



**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 5320/2020

1. Smt Chaya Sethi W/o Late Shri Vimal Kumar Sethi, Aged About 42 Years, Resident Of 1188 Champawatji Ka Mandir, Gali Najeem Kundalmal Ji, Partaniyo Ka Rasta, Jaipur (Rajasthan)
2. Chirag Sethi S/o Late Shri Vimal Kumar Sethi, Aged About 23 Years, Resident Of 1188 Champawatji Ka Mandir, Gali Najeem Kundalmal Ji, Partaniyo Ka Rasta, Jaipur (Rajasthan)
3. Bhoomika Sethi D/o Late Shri Vimal Kumar Sethi, Aged About 18 Years, Resident Of 1188 Champawatji Ka Mandir, Gali Najeem Kundalmal Ji, Partaniyo Ka Rasta, Jaipur (Rajasthan)

----Petitioners

Versus

1. Jitendra Bohra S/o Late Shri Balkishan Bohra, Aged About 52 Years, Resident Of Nimla Kuake Pass Wali Gali, Khanda Falsa, Jodhpur
2. Shyam Sunder Bohra S/o Late Shri Balkishan Bohra, Aged About 48 Years, Resident Of Nimla Kuake Pass Wali Gali, Khanda Falsa, Jodhpur
3. Goverdhan Lal S/o Late Shri Jamna Lal Sethi, Resident Of 1188, Champawatji Ka Mandir, Gali Najeem Kundalmal Ji, Partaniyo Ka Rasta, Jaipur (Died)
4. Ashok S/o Late Shri Radhamohan Sethi, Resident Of 1188, Champawatji Ka Mandir, Gali Najeem Kundalmal Ji, Partaniyo Ka Rasta, Jaipur

----Respondents

For Petitioner(s) : Mr. Ashok Mishra  
For Respondent(s) : Mr. Amol Vyas  
Mr. Pulkit Arora  
Mr. Deven Pareek

**HON'BLE MR. JUSTICE BIPIN GUPTA**

**Judgment / Order**



**Reportable**

|                                                                    |               |
|--------------------------------------------------------------------|---------------|
| Date of hearing and conclusion of arguments                        | 28.01.2026    |
| Date on which the judgment was reserved                            | 28.01.2026    |
| Whether the full judgment or only the operative part is pronounced | Full Judgment |
| Date of pronouncement                                              | 07.02.2026    |



1. The present writ petition has been filed assailing the order dated 24.02.2020, passed by the learned Appellate Rent Tribunal, Jaipur, in Civil Appeal No. 09/2020, whereby, while dismissing the appeal, the learned Appellate Tribunal upheld the order dated 02.12.2019, passed by the learned Rent Tribunal, Jaipur (Senior Civil Judge and Additional Chief Metropolitan Magistrate, Jaipur Metropolitan), in Case No. 02/2019, wherein the application filed by the objectors-petitioners under Section 47 read with Order 21 Rule 97, 101 and 104 CPC in the execution application of the decree dated 16.01.2016, was rejected.
2. Shorn of the facts, the property in question was rented out by Late Shri. Balkishan, father of respondent Nos. 1 and 2, to Late Shri. Jamnalal and Late Shri. Banshidhar on 15.02.1949, on a monthly rent of Rs.5/-. However, even after the death Shri. Jamnalal and Shri. Banshidhar, their family members continued to reside in the said premise but were neither paying the rent nor were delivering the possession of the property.
3. Thus, a suit for eviction and arrears of rent was filed by respondent Nos. 1 and 2 i.e. Shri. Jitendra Bohra and Shri. Shyam Sunder Bohra against respondent Nos. 3 to 7 Shri. Gordhan Lal, Smt. Prem Devi, Shri. Sanjay, Shri. Manish and Shri. Ashok before



the learned Rent Tribunal, under Section 9 of the Rajasthan Rent Control Act, 2001 (hereinafter referred to as the 'Act of 2001'), on the grounds of material damage being caused to the premise, sub-letting, nuisance and for arrears of rent.

4. The said eviction petition was allowed by the learned Rent Tribunal vide judgment dated 16.01.2016 and an eviction decree was passed thereof in favour of the plaintiffs-landlords-respondent No.1 and 2 herein, on the grounds of substantial damage to the property, sub-letting and denial of title of the landlords. The said decree attained finality as it was not challenged by any of the defendants.

5. During the execution of the decree dated 16.01.2016, an application under Order 21 Rule 97, 101 and 104 CPC read with Section 47 CPC came to be filed by the present petitioners, wherein the petitioners raised objections to the execution of decree on the grounds that the petitioners are successors of Late Shri. Vimal Kumar Sethi, who was the son of Late Shri. Bhagwan Das and grandson of Late Shri. Banshidhar, and thus, since Late Shri. Vimal Kumar Sethi was not made a party to the suit, therefore, the decree dated 16.01.2016 cannot be executed against the legal heirs of Late Shri. Vimal Kumar Sethi. It was further contended that since they were not a party to the suit proceedings, therefore the said decree cannot be executed against the applicants-petitioners.

6. The learned Rent Tribunal considered the said objections of the applicants-petitioners. However, vide order dated 02.12.2019,



the objections as raised by the applicants were rejected by the learned Tribunal.

7. Against the order dated 02.12.2019, an appeal came to be filed by the present petitioners, before the learned Rent Appellate Tribunal, wherein vide order dated 24.02.2020, the appeal was dismissed and the order dated 02.12.2019 was upheld.

8. Aggrieved by the orders dated 02.12.2019 and 24.02.2020, the present writ petition has been filed.

9. The case set up by the petitioners is that the property in dispute was in the co-tenancy of Late Shri. Jamnalal and Late Shri. Bansidhar. Further, Shri. Bansidhar had three sons namely Ramdas, Bhagwandas and Radha Mohan. The present petitioners are successors of Shri Bhagwandas, who is the father-in-law of petitioner No.1 and grandfather of petitioner No.2 and 3.

9.1 Learned counsel for the petitioners submitted that after the death of Shri. Jamnalal and Shri. Bansidhar, their successors were jointly living in the tenanted property in question and were peacefully enjoying the occupation of the premise. It was contended by learned counsel for the petitioners that by virtue of Section 2(i) of the Act of 2001, which provides the definition of 'tenant', the petitioners are co-tenants and therefore, without impleading them in the eviction proceedings, no decree could be executed against them. It was further contended by learned counsel for the petitioners that, until and unless all the co-tenants are made party, a decree cannot be executed against the co-tenant, whom the landlord has not made a party in the proceedings.



9.2 Learned counsel for the petitioners further argued that due to non-payment of the loan rendered by Shri. Jamna Lal and Shri. Banshidhari i.e. her great grandfather-in-law and grandfather-in-law respectively to the father of the landlords namely Shri. Balkishan, he had orally sold the property to them and therefore, by concealing the said facts, a decree has been obtained by the respondents behind the back of the petitioners which cannot be executed and therefore, prayed that the objections of the petitioners to the execution of the decree may be allowed.

9.3 Learned counsel for the petitioners to support his submissions has placed reliance on the judgment passed by a Co-ordinate Bench of this Court in the case of **Kedar Lal and Ors. vs L.Rs of Ram Dyal ; 2008 (1) RLR 386.**

10. Per contra, learned counsel for the respondents-Landlords submitted that the original tenants of the rented premise were Shri Jamnalal and Shri Bansidhar, who were the co-tenants of the premise. After their death, all the successors came in the joint possession of the tenanted premise and were jointly living in the said premises.

10.1 Counsel for respondents-landlords further submitted that after the death of original tenants, those persons who succeeds the tenancy rights and comes into the possession of the rented premise are termed as the 'Joint Tenant' and not as 'Co-Tenant'. Therefore, even if the decree has been obtained against one joint tenant, the same is executable and binding on all the other joint tenants.



10.2 Learned counsel for the respondents lastly submitted that even the learned Courts below have concurrently decided against the petitioners and therefore, against the concurrent finding of two learned Courts below, the scope of Article 227 of the Constitution of India is very limited and therefore, prayed that the present writ petition be kindly rejected.

10.3 Learned counsel for the respondent placed reliance on the judgment passed by a Co-ordinate Bench of this Court in the case of **Sajjan Kumar Agarwal & Ors. vs Rent Control Appellate Tribunal, Jaipur & Ors.**; S.B. Civil Writ Petition No. 14833/2010 (decided on 22.02.2011) to buttress his arguments.

11. Heard learned counsel appearing for the parties and perused the material available on record.

12. Before adverting on to the merits of the case, it is apposite to examine the scope of interference available to this Court while exercising its jurisdiction under Article 227 of the Constitution of India, where there exists concurrent findings of the fact. In the present case, both the learned Courts below have adjudicated the matter against the present petitioners after recording a categorical finding and thoroughly appreciating the evidences. Thus, in such circumstances the scope of interference available with this Court is very limited.

13. The said position of law has been reiterated time and again by the Hon'ble Apex Court in the judgments of **Sadhana Lodh vs National Insurance Company Limited & Anr.**; 2003 (3) SCC 524 and **Ranjeet Singh vs Ravi Prakash**; 2004 (3) SCC 682 wherein the Court has held that the interference under Article 227



of the Constitution of India is warranted only in cases where there is flagrant violation of the fundamental principles of law or justice, or where there is a patent error, not requiring elaborate examination. Thus, the High Court out not to re-appreciate or re-evaluate evidence as if it were exercising appellate jurisdiction. Hence, the Court is vested with limited role and cannot interfere in concurrent findings of fact unless the same are shown to be perverse, patently illegal or vitiated by a jurisdictional error. Keeping these principles in mind, the submissions advanced by learned counsel for the parties have been considered.

14. On bare perusal of the material available on record, the principal issue that requires consideration is that whether the petitioners, being the successors of one of the original tenants, can raise objections to the execution of an eviction decree on the ground that they were not impleaded as parties to the eviction proceedings, by claiming themselves to be co-tenants of the premise in question.

15. Section 2(i) of the Act of 2001 defines a 'tenant' to include, *inter alia*, any person by whom or on whose account rent is payable and, upon the death of the original tenant, in case of premises let out for residential purposes, his surviving spouse, son, daughter, mother and father who had been ordinarily residing with him in such premises as member of his family upto the date of his death. For ready reference, Section 2(i) of the Act of 2001 is reproduced herein below:

"(i) "tenant" means-



*(i) the person by whom or on whose account or behalf rent is, or but for a contract express or implied, would be payable for any premises to his landlord including the person who is continuing in its possession after the termination of his tenancy otherwise than by an order or decree for eviction passed under the provisions of this Act; and*

*(ii) in the event of death of the person referred to in sub-clause (i),-*

*(a) in case of premises let out for residential purposes, his surviving spouse, son, daughter, mother and father who had been ordinarily residing with him in such premises as member of his family upto his death;*

*(b) in case of premises let out for commercial or business purposes, his surviving spouse, son, daughter, mother and father who had been ordinarily carrying on business with him in such premises as member of his family upto his death; and"*

15.1 It is also pertinent to refer to the earlier definition of 'tenant' under Section 3(vii) of the Rajasthan Premises (Control of rent and Eviction) Act, 1950 (hereinafter referred to as the 'Act of 1950') which reads as under:

"(vii) 'tenant' means

*(a) the person by whom or on whose account or behalf rent is, or, but for a contract express or implied would be payable for any premises to his landlord including the person who is continuing in its possession after the termination of his tenancy otherwise than by a decree for eviction passed under the provisions of this Act; and*  
*(b) in the event of death of the person as is referred to in Sub-clause (a), his surviving spouse, son, daughter and **other heir** in accordance with personal law applicable to him who had been, in the case of premises leased out for residential purpose, ordinarily*





*residing and in the case of premises leased out for commercial or business purposes, ordinarily carrying on business with him in such premises as member of his family up to his death.”*

16. It is a settled position of law now that upon the death of a tenant, his legal heirs do not acquire separate or independent tenancy rights. Rather, they step into the shoes of the deceased tenant and succeed to the tenancy as joint tenants. Such joint tenancy is indivisible in nature and does not result in the creation of multiple co-tenancies, each having an independent or exclusive right in the tenanted premises. Further, the distinction between 'co-tenants' and 'joint tenants' is well established as co-tenants derive their rights independently, joint tenants derive their rights collectively and represent a single tenancy. In cases of joint tenancy, service of notice upon or institution of eviction proceedings against one joint tenant is sufficient, and any decree passed therein binds all joint tenants.

17. The said position of law was discussed by the Hon'ble Apex Court in the case of **H.C. Pandey vs G.C. Paul**; (1989) 3 SCC 77, wherein the Court clarified the position regarding joint tenancy and held that on the death of the original tenant, the tenancy rights devolve upon the heirs as joint tenants and the tenancy remains a single and indivisible one. There is neither division of premises nor of rent payable, and the heirs collectively step into the shoes of the original tenant. The relevant portion of the **H.C.Pandey** (supra) is reproduced hereinbelow:

*"4. It is now well settled that on the death of the original tenant, subject to any provision to the*



*contrary either negating or limiting the succession, the tenancy rights devolve on the heirs of the deceased tenant. The incidence of the tenancy are the same as those enjoyed by the original tenant. It is a single tenancy which devolves on the heirs. There is no division of the premises or of the rent payable thereof. That is the position as between the landlord and the heirs of the deceased tenant. In other words, the heirs succeed to the tenancy as joint tenants....”*

18. Further, the issue stands conclusively settled by the judgment of the Hon'ble Supreme Court in ***Kanji Manji vs. The Trustees of the Port of Bombay***; (1962) Supp (3) SCR 461, wherein it has been categorically held that in the case of joint tenancy, not only a notice to one joint tenant is sufficient, but even a suit for eviction filed against one of the joint tenants is maintainable and binding upon the others. The relevant paragraph of the judgment is reproduced herein below:

*"7. All these pleas were found against the appellant. It was held that the tenancy was a joint tenancy that a notice to one of the joint tenants was sufficient, and that the suit also was not bad for non-joinder of the legal representatives of Rupji Jeraj. The trial Judge held that the present agreement was enforceable, inasmuch as this case was governed by sub-s. (1) and not sub-s. 4(a) of s. 4 of the Act. For the same reason, the trial Judge also held that the suit was properly laid in the Bombay City Civil Court at Bombay. The same contentions were raised before us, and we shall deal with them in the same order.*

*8. The arguments about notice need not detain us long. By the deed of assignment dated February 28, 1947, the tenants took the premises as joint tenants. The*



*exact words of the assignment were that "..... the Assignors do and each of them doth hereby assign and assure with the Assignees as Joint Tenants..... ". The deed of assignment was approved and accepted by the Trustees of the Port of Bombay, and Rupji Jeraj and the appellant must be regarded as joint tenants. The trial Judge therefore, rightly held them to be so. Once it is held that the tenancy was joint, a notice to one of the joint tenants was sufficient, and the suit for the same reason was also good. Mr. B. Sen, in arguing the case of the appellant, did not seek to urge the opposite. In our opinion, the notice and the frame of the suit were, therefore, proper, and this argument has no merit."*

19. The said position of law was further reaffirmed in the recent judgment passed by the Hon'ble Apex Court in the case of **Suresh Kumar Kohli vs Rakesh Jain and Ors.**; (2018) 6 SCC 708, wherein the Court while discussing at length the jurisprudential development of the concept of joint tenancy held as under:

*"20. We are of the view that in the light of H.C. Pandey (supra), the situation is very clear that when original tenant dies, the legal heirs inherit the tenancy as joint tenants and occupation of one of the tenant is occupation of all the joint tenants. It is not necessary for landlord to implead all legal heirs of the deceased tenant, whether they are occupying the property or not. It is sufficient for the landlord to implead either of those persons who are occupying the property, as party. There may be a case where landlord is not aware of all the legal heirs of deceased tenant and impleading only those heirs who are in occupation of the property is sufficient for the purpose of filing of eviction petition. An eviction petition against one of the joint tenant is sufficient against all the joint tenants and all joint*



*tenants are bound by the order of the Rent Controller as joint tenancy is one tenancy and is not a tenancy split into different legal heirs. Thus, the plea of the tenants on this count must fail."*

20. In the present case, it is not in dispute that the eviction proceedings were initiated against the successors of the original tenants who were in possession of the premises. The petitioners claim their right only through Late Shri. Vimal Kumar Sethi, who himself derived his alleged rights through Late Shri. Banshidhar, one of the original tenants. Therefore, the petitioners cannot claim a status higher or independent than that of the original tenant or his successors already impleaded in the eviction proceedings.

21. The objection raised by the petitioners that the decree is in-executable due to their non-impleadment is thus misconceived. Once a decree of eviction is passed against one of the joint tenants, it is executable against all persons claiming under the tenancy, including those who were not separately impleaded but derive their possession from the original tenant.

22. The plea raised regarding an alleged oral sale of the property is wholly untenable and rightly rejected by the learned Court below. Such a plea not only runs contrary to the settled law requiring transfer of immovable property to be by a registered instrument, but also amounts to a collateral attack on a decree which has attained finality.

23. In the case of **Kedar Lal** (supra), as relied upon by the learned counsel for the petitioners, the Court dealt with a scenario where the rights of heirs of a deceased tenant were directly protected under the provisions of Act of 1950, which expressly





recognized the status of heirs as tenants. However, by the enactment of the Act of 2001, the legislature deliberately omitted the word 'heir' from the definition of 'tenant' under Section 2(i) of the Act of 2001. This deletion indicates a clear legislative intent that the tenancy rights do not automatically vest in every heir of a deceased tenant, and that such every heir cannot claim protection as tenants. Unlike in **Kedar Lal** (supra), where the heirs were recognized as necessary parties for the execution of a decree, the present petitioners, as successors of Shri Vimal Kumar Sethi, do not fall within the statutory definition of 'tenant' as provided under the Act of 2001 and, therefore, were not required to be impleaded in the eviction proceedings. The execution of the decree against some successors of the original co-tenants is, therefore, legally permissible, and the reliance on **Kedar Lal** (supra) is misplaced as it was a judgment based on definition of 'tenant' under the old Act of 1950, which was different from the Act of 2001 as already quoted in earlier paragraph of this judgment.

24. Thus, no such perversity or jurisdictional error has been demonstrated in the present case. The findings recorded by the learned Courts below are based on correct appreciation of law and facts and warrants no interference.

25. In view of the foregoing discussion, the writ petition is devoid of merit and is accordingly dismissed.

26. All pending applications stands disposed of.

**(BIPIN GUPTA),J**

Sudha/2

