

**Vijayaraghavan Vs. Mohammed Yakub Rowther (Died) and ors.**

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**Court :** Chennai

**Decided On :** Aug-27-1975

**Reported in :** (1976)1MLJ128

**Appellant :** Vijayaraghavan

**Respondent :** Mohammed Yakub Rowther (Died) and ors.

**Judgement :**

T. Ramaprasada Rao, J.

1. An interesting question has arisen in this civil revision petition. One Rukkaiya Animal was the owner of a property a portion of which was let out to the petitioner. It is not in dispute that the petitioner is actually in occupation of a thatched bunk of an extent 5' x 4'. The landlady filed an application under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, on the ground that the petitioner had committed wilful default and also on the ground that she wanted the leased premises for her husband's business of making articles from zinc and iron sheets. The Rent Controller ordered eviction on both the grounds. The appellate authority was not convinced that there was wilful default in the payment of rent, but he was, however, satisfied that the landlady was entitled to the possession of the building for purposes of her husband's business. In the course of the hearing of the appeal, the landlady died and her husband, her son and her daughter were brought on record and the appeal proceeded with the above three persons as her legal representatives and resulted in a decision in their favour. The petitioner-tenant has come up in revision to this Court. During the pendency of the revision petition, the husband of the landlady died leaving behind the son and daughter as the legal representatives of the landlady to continue the proceedings.

2. Mr. Chandra Mouli, learned Counsel for the petitioner, takes up the position that as the husband of the landlady died, though at the revision stage, the purpose for which the building was required by the landlady having lapsed, the respondents as the surviving legal representatives of the landlady are not entitled to the benefit of the order of eviction obtained by her in both the Courts below. He would say that once a landlady comes to Court on the ground that a portion in the occupation of the tenant is required for the landlady or for her near and dear, as provided under the Act and if she obtains an order of eviction but dies in the course of such proceedings, the cause of action does not survive, to the benefit of her legal representatives and such legal representatives could only seek relief by filing an independent application as provided for under the Act, on the new facts and circumstances which have cropped up due to the death of the landlady. Mr. Kumaraswamy, learned Counsel for the legal representatives on record before me, however, would say that there is no such snapping of the cause of action by reason of the death of the original landlady and

that, in any event, if the landlady dies after she obtains an order of eviction and if the said decision is questioned before the higher hierarchy, then it would be in the fitness of things that the legal representatives should take advantage of the decision obtained by the landlady earlier and it is not necessary for them to file an independent application for the same relief, as if a different set of circumstances have cropped up due to the death of the landlady.

3. A personal action dies with the person is a well established principle. Even that doctrine has certain exceptions. In a case where a litigant seeks for a statutory relief in relation to property and obtains it after satisfying the statutory Tribunal that he or she is entitled to that relief, then that decision which projects a right becomes annexed to the property of that litigant who initiated the action and it cannot be divested by invocation of any technicalities. The mother in the instant case wanted that her husband should do business and therefore the petitioner-tenant should surrender possession to enable her husband to do such business. The son and daughter who are before me express their candid intention to continue that business of their father by occupying the shed in the occupation of the petitioner. On the facts, therefore, there does not seem to be any doubt whatever that the son and daughter intend carrying on the business of their father and so they are keen to obtain the non-residential premises in the occupation of the petitioner.

4. Thyagarajan, J., in *Muhammad Ibrahim v. Rahiman Khan* : (1947)2MLJ419 , while considering an earlier encroachment of the subject, widely expressed that an order of the Rent Controller directing the tenant to put the landlord in possession of his house on the ground that the landlord desired to occupy the house himself is one for the personal benefit of the landlord and is not capable of execution after the death of the landlord at the instance of the legal representatives. The learned Judge was of the view that if the legal representatives desired to obtain such possession, they should file an independent application and obtain relief.

5. The point however for consideration is as to what is the legal effect of an order which a landlord secures from the Rent Controller or such other statutory Tribunal, which would entitle him to obtain possession from his tenant should it automatically lapse on the death of that person in whose favour a decision was so rendered.

6. Whatever may be said of the general principle *actio personalis moritur cum persona* which itself has some exceptions, that general doctrine cannot be inducted as a matter of course into decisions obtained under peculiar circumstances and under given conditions and prescriptions as per the special enactment. The Tamil Nadu Buildings (Lease and Rent Control) Act provides for certain reliefs in favour of landlords and concurrently enables the tenants to continue in occupation of the demised premises unless they are compelled to surrender that possession by an invocation of the special law. Therefore, if a landlord or a landlady, as the case may be, comes to Court and obtains possession whereby the tenant would be obliged to surrender possession not under a contract, but under the provisions of a statute and that too under the stringent clauses, the invocation of which alone could enable the landlord or landlady to obtain possession, then such a right cannot be barely characterised as a personal right which ought to die with the person concerned. The exception to the above doctrine that a personal right dies with the person can certainly be invoked having regard to the peculiar nature of the right obtained by the landlord or landlady under the provisions of the Tamil Nadu Buildings (Lease and Rent Control) Act (XVIII of 1960); It is this peculiarity in the incorporeal right

obtained by the landlord in such circumstances that has been referred to by the Supreme Court in *Phool Rani v. Naubat Rai* : [1973]3SCR679 ., as a right which is annexed to the estate of the deceased and that such annexation resulting in the benefit to the estate could be taken advantage of by the legal representatives of the person who obtains such a benefit. Though the Supreme Court referred to *Muhammed Ibrahim v. Rahiman Khan* : (1947)2MLJ419 , yet by reason of the distinguishing features characterised by them in the judgment which would take some cases out of the general rule stated by Thyagarajan, J., in *Muhammed Ibrahim v. Rahiman Khan* : (1947)2MLJ419 , I am of the view that the present case is distinguishable from the general posee of cases which would arise under such circumstances. The Supreme Court would say that a case in which the petitioner's death occurs after a decree for possession is passed in his favour, say, during the pendency of the appeal filed by the unsuccessful tenant is one of the many categories of cases which ought to be distinguished from the generality of cases which usually arise for consideration. Dealing with such a category, the Supreme Court observed:

Cases falling under this category are distinguishable because the decisions therein are explicable on the basis, though not always so expressed that the estate is entitled to the benefit which, under a decree, has accrued in favour of the plaintiff and therefore the legal representatives are entitled to defend further proceedings, like an appeal, which constitute a challenge to that benefit.

7. While I respectfully adopt the observations as above, I would like to add that the benefit by way of a decree which a predecessor-in-interest has secured being an incorporeal right and that right having vested in a landlord or landlady in that a decree for eviction has already been passed cannot be divested by his or her death, as it could pass on to the heirs as it becomes part and parcel of the property owned by the landlord or landlady. Thus viewed, the respondents before me are entitled in law and in equity to take advantage of the favourable decision obtained by their mother before the Rent Controller and which gained acceptance before the appellate authority as well. There cannot be a divesting of such right by reason of the death of the father during the course of the revision proceedings. The right to process an order of eviction is already in the stream of execution and it cannot be stemmed by reason of the death of the father at the revision stage. The respondents do assert that they want to continue the business which their father wanted to commence and this aspect cannot therefore be lightly brushed aside factually.

8. The concurrent finding of fact that the premises is required bona fide for purposes of business of the father cannot be interfered with or set aside by this Court.

9. On a consideration of the relevant provisions of law and the decisions, I am of the view that the order of the Court below does not suffer from any error of jurisdiction. Of course, the present point has arisen only at the revision stage. I have considered this aspect, since the point raised poses some general interest.

10. The revision petition is dismissed. There will be no order as to costs. The petitioner will surrender possession within six months after this date.