

THE CONTRACT OF TENANCY IS AN INDEPENDENT CONTRACT THAN THE JOINT HINDU FAMILY BUSINESS

INTRODUCTION:

*A three Judge Bench of the Supreme Court in its decision in **Kiran Devi vs. The Bihar State Sunni Wakf Board & Ors**¹. held that no presumption of Hindu joint family property is attached to a business activity carried out by an individual in a tenanted premise.*

FACTS:

The great grandfather of the Respondent No. 4 (Original Plaintiff), Ram Sharan Ram was inducted as a tenant in the suit premises belonging to the Wakf Board. Ram Sharan Ram predeceased his brother Ram Sewak Ram. Ram Sewak Ram died issueless and his widow predeceased him. Ram Sewak Ram was carrying on the business of a hotel in the premises of the Wakf Board, until his death in January, 1960. Due to advanced age, he handed over the possession of the hotel business to his nephew Devendra Prasad Sinha, the grandfather of the Original Plaintiff. It was contended by the Original Plaintiff that his grandfather succeeded to the tenancy as member of the joint Hindu family and after his death, Defendant Nos. 1 to 3 succeeded to tenancy as members of the Joint Hindu Family. The hotel was initially being run by Surendra Kumar, son of Devendra Prasad Sinha and father of the Original Plaintiff, when the grandfather of the Original Plaintiff fell ill. Surendra Kumar started paying rent to the Wakf Board. However, Surendra Kumar later joined service and the hotel was being run by employees. It was alleged by the Original Plaintiff that he had started running the hotel in the year 1988. On account of disputes over the management, the hotel was closed and it remained closed for several years. It is the

Original Plaintiff who wanted to resume the hotel business in the premises in question and thus communicated with the Wakf Board to continue the hereditary tenancy of the shop as Karta in his name.

The Original Plaintiff had filed a suit for declaration before the competent civil court stating that he is a tenant in the suit premises and is entitled to continue in the suit premises as a tenant on payment of monthly rent.

The cause of action was stated to arise on 21.3.1996, when the Original Plaintiff's grandfather, Devendra Prasad Sinha along with others broke the lock of the suit premises and removed the belongings available in the shop. Later, the plaint was amended and the present Appellant (Kiran Devi) was impleaded as Defendant No. 5 alleging that the lease in her favour by the Wakf Board is forged, fabricated, anti-dated and collusive paper.

On the other hand, in the Written Statements filed by the Appellant and the Wakf Board, it was submitted that Md. Salimuddin was the duly appointed Mutawalli of the Janki Bibi Wakf Estate No. 465B. Devendra Prasad Sinha was a tenant in the suit premises who had surrendered his tenancy rights in favour of Md. Salimuddin through a written letter dated 31.5.1996 and thereafter handed over vacant possession of the

¹ 2021 SCC OnLine SC 280

premises. Subsequently, the Appellant had been inducted as a tenant on a monthly rent of Rs.600/- on 5.6.1996.

The Appellant and the Wakf Board filed applications before the Civil Court for transfer of the suit for adjudication by the Wakf Tribunal in terms of provisions of Section 85 and 85A of the Wakf Act, 1995. The suit was thus transferred by the learned Munsif on 4.2.2009. Such order of transfer of the suit to the Tribunal was challenged by the Original Plaintiff by way of a revision petition before the Patna High Court. Such revision was found to be frivolous and dismissed on 19.5.1999 with cost of Rs.3,000/-.

The parties went to trial before the Wakf Tribunal. The Tribunal noted that the Original Plaintiff did not even suggest that Devendra Prasad Sinha was managing a joint family business and thus in the absence of such suggestion it was difficult or rather impossible to believe that Devendra Prasad Sinha was managing a joint family business. Consequently, the suit was dismissed.

The Original Plaintiff, aggrieved by the order of the Tribunal, preferred a writ petition against the said order before the Patna High Court. The Patna High Court by an order dated 6th February, 2013, observed that Devendra Prasad Sinha could not have surrendered the tenancy in favour of the Mutawalli on 31.5.1996 without the consent of other members of the joint family. Consequently, the judgment of the Tribunal was set aside and also a direction was issued to dispossess the Appellant from the suit premises and to handover the vacant possession of the suit premises to the Original Plaintiff.

The Appellant challenged the order of the Patna High Court dated 6th February, 2013, by approaching the Apex Court.

ISSUES FOR CONSIDERATION:

The issues for consideration before the Hon'ble Court were *inter alia* as follows:

(a) Whether the surrender of possession of the tenanted premises by the Defendant No. 1, i.e., Mr. Devendra Prasad Sinha was of a business of joint Hindu family or of the tenancy which was not been carried out for large number of years even as admitted by the Original Plaintiff?

(b) Whether the Defendant No. 1, i.e. Mr. Devendra Prasad Sinha as a Karta of the joint Hindu family, he had the right to surrender the tenancy without the consent of the other coparceners as such surrender was for the benefit of the family inter-alia for the reason that no business was carried out for the last many years?

SUBMISSIONS ON BEHALF OF THE APPELLANT:

The Appellant submitted that the surrender of possession of the tenanted premises by Defendant No. 1 was not of a business of joint Hindu family but of the tenancy which had not been carried out for large number of years even as admitted by the Original Plaintiff.

Even if it was assumed that Defendant No. 1 was a Karta of the joint Hindu family, he had the right to surrender the tenancy without the consent of the other coparceners as such surrender was for the benefit of the family inter-alia for the reason that no business was carried out for the last many years.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

The Respondent No. 4, i.e., the Original Plaintiff submitted that Ram Sewak Ram was inducted as

a tenant and therefore, the Plaintiff has a right by birth in the tenancy which could not be surrendered by the Karta, Defendant No. 1 without the consent of the other coparceners.

It was contended that the personal law of Hindus regarding the devolution of joint Hindu family property is applicable to tenanted property² and that members of Hindu Undivided Family can enter into contract with a stranger³.

JUDGMENT:

On the two issues set out above, the Supreme Court observed that if a male member had taken premises on rent, he is a tenant in his individual capacity and not as Karta of Hindu Undivided Family in the absence of any evidence that the Karta was doing the business for and on behalf of Joint Hindu Family.

The Hindu Joint Hindu Family cannot be presumed to be in existence only on the basis of Ration Card unless there is evidence that the funds of joint Hindu Family were invested in the business in the tenanted premises.

There can be presumption of Hindu joint family property if the property has been acquired by the male member or if the same has been treated as joint Hindu family. But no such presumption is attached to a business activity carried out by an individual in a tenanted premise.

"A perusal of the facts on record would show that it was a contract of tenancy entered upon by great grandfather of the plaintiff. Even if the great grandfather was maintaining the family out of the income generated from the hotel business, that itself would not make the other family

members as coparceners in the hotel business. It was the contract of tenancy which was inherited by the grandfather of the plaintiff who later surrendered it in favour of the Wakf Board. The tenancy was an individual right vested with the grandfather of the plaintiff who was competent to surrender it to the landlord. The High Court has clearly erred in law by holding that since the grandfather was a tenant, the tenancy is a joint family asset. The contract of tenancy is an independent contract than the joint Hindu family business."

The Supreme Court further opined that mere payment of rent by great grandfather or by the grandfather of the Original Plaintiff raises no presumption that it was a joint Hindu family business. The High Court clearly erred in law to hold so without any legal or factual basis. The Supreme Court held that the contract of tenancy is an independent contract distinct from the Joint Hindu Family business being carried out from the tenanted premises.

The Supreme Court held that the order of the High Court was not sustainable for the reasons recorded above. Consequently, the present appeal was allowed. The order of the High Court was set aside and that of the Wakf Tribunal was restored with no order as to costs.

² AIR 1969 All. 526

³ (1970) 2 SCC 352

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.