

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



S.B. Civil Writ Petition No. 9940/2023

Kamlesh Verma S/o Late Shri Radheshyam Vemra, Aged About 45 Years, R/o Plot No.10, Gangapath, Kabir Marg, Banipark, Jaipur

-----Petitioner/Non-Applicant/Objector
Versus

1. Smt. Varsha Rai W/o Shri Sekat Rai, D/o Late Braj Dulal Sen, R/o House No.60, Iind Floor, Indraprasth Colony, Sector-30-33, Faridabad (Haryana)
2. Smt. Meghna Sen Saha D/o Late Braj Dulal Sen, R/o House Shanti Nagar, Khardaha Rahara, North-24, Pargana, West Bengal-700118 Through Power Of Attorney Varsha Rai
3. Poluk Sen S/o Late Braj Dulal Sen, R/o House No. 18, Professor Colony, Nayapura, Tehsil Ladpura, Kota (Raj.)
4. Smt. Jhankar Devi W/o Late Shri Radheshyam Verma, R/o Plot No.10, Gangapath, Kabir Marg, Banipark, Jaipur (Now Deceased)

-----Proforma Respondents/ Non-Applicant

For Petitioner(s)	:	Mr. S.K. Gupta Sr. Adv. with Ms. Surbhi Agarwal, Mr. Manjeet Sharma
For Respondent(s)	:	Ms. Suruchi Kasliwal, Ms. Alisha Chopra, Mr. Vikram Singh Ms. Annika Anna, Mr. Dikshant Jain

HON'BLE MR. JUSTICE BIPIN GUPTA

Judgment / Order

19/03/2026

1. The present writ petition has been filed assailing the order dated 02.06.2023 passed by the learned Rent Tribunal, Jaipur Metropolitan-II, in Application No. 19/2022, whereby the

objections filed by the petitioner under Order 21 Rules 97, 98, and 101 CPC have been rejected.

2. Brief facts giving rise to the present writ petition are that respondent Nos. 1 to 3, being successors of late Braj Dulal Sen, filed an eviction petition before the learned Rent Tribunal, Jaipur, seeking eviction of Smt. Jhankar Devi and Kamlesh Verma from the property in dispute. The residential property was initially let out to one Radheshyam Verma. After his death, the eviction petition was filed against his wife, Jhankar Devi, and his son, Kamlesh Verma.

3. After filing of the eviction petition, non-applicant Jhankar Devi was hospitalized and, during treatment, she passed away on 29.01.2020. Thereafter, the learned Rent Tribunal proceeded *ex-parte* and allowed the eviction petition vide judgment dated 12.11.2021.

4. Subsequently, the respondents (decree-holders) filed an execution application before the learned Rent Tribunal. The present petitioner, Kamlesh Verma, filed objections under Order 21 Rules 97, 98, and 101 CPC, contending that the judgment dated 12.11.2021 had been passed *ex-parte* against deceased Jhankar Devi and, therefore, a judgment against a dead person cannot be executed. It was further contended that such a judgment is null and void.

5. In reply, the decree-holders submitted that defendant No. 1, Smt. Jhankar Devi, had been duly served through registered post but failed to appear, and hence *ex parte* proceedings were initiated. It was further contended that no information regarding her death was provided by the other defendant. Therefore, her

death would not affect the validity of the decree, and the objections filed by the petitioner were baseless and liable to be rejected.

6. The learned Rent Tribunal, vide order dated 02.06.2023, rejected the objections and proceeded with the execution proceedings.

7. Aggrieved by the order dated 02.06.2023, the present writ petition has been filed.

8. Learned counsel for the petitioner submits that the service of summons was not properly effected upon the petitioner; therefore, the *ex-parte* order dated 12.11.2021 is illegal. It was further contended that the said order is also illegal as it was passed against a deceased person.

9. Learned counsel for the petitioner further contends that other successors of Radheshyam Verma were alive but were not impleaded as parties; therefore, the decree passed against only some of the legal heirs is not executable.

10. Learned counsel for the petitioner also submits that after the death of Jhankar Devi, her legal heirs were not brought on record; hence, the decree passed without impleading them is inexecutable. Accordingly, it was prayed that the order dated 02.06.2023 be quashed and set aside and the execution proceedings be dropped.

11. Per contra, learned counsel for the respondents submits that the original tenant was Radheshyam Verma, and after his death, Jhankar Devi and Kamlesh Verma acquired rights as joint tenants and not as independent co-tenants.

12. Learned counsel for the respondents further submits that the objections filed by Kamlesh Verma were not maintainable, as he was already a party to the original proceedings, and objections under Order 21 Rules 97, 98, and 101 CPC cannot be raised by a person who was a party to the decree.

13. Learned counsel for the respondent also submits that the argument regarding non-impleadment of all legal heirs is baseless, as the legal heirs of the original tenant inherit the tenancy as joint tenants and not as co-tenants. Reliance was placed on the judgment passed by this Court in case titled as **Smt. Chaya Sethi & Ors. vs. Jitendra Bohra & Ors.**; S.B. Civil Writ No. 5320/2020, (decided on 07.02.2026). Accordingly, it was prayed that the writ petition be dismissed.

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

15. It is an undisputed fact that the petitioner was a defendant in the original proceedings and that an *ex-parte* decree was passed on 12.11.2021. Once the petitioner was a party to the proceedings, the objections under Order 21 Rules 97, 98, and 101 CPC were not maintainable, and the court ought to have dismissed the objections on that ground alone.

16. Upon perusal of the record, this Court also finds that none of the other successors have come forward to claim any right in the tenanted premises.

17. This Court further finds that even otherwise, a decree against one joint tenant is sufficient and executable against all other joint tenants claiming under the original tenant, as the

rights devolve upon successors as joint tenants and not as co-tenants.

18. This Court has reached the aforesaid conclusion based on the judgment rendered by this Court in the case of **Smt. Chaya Sethi** (supra), wherein it has been held that upon the death of a tenant, legal heirs inherit the tenancy as joint tenants and not as independent co-tenants, and a decree passed against one joint tenant is binding upon all. The relevant paragraphs of the judgment reads as under:

"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 up to 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 up to 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 up to 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 herein below:

"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, in as much 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."

19. In view of the above, the arguments raised by learned counsel for the petitioner cannot be accepted and are liable to be rejected.

20. For the foregoing reasons, this Court finds no error warranting interference in exercise of its writ jurisdiction under Article 227 of the Constitution of India. Accordingly, the present writ petition is dismissed.

21. All pending applications stand disposed of.

(BIPIN GUPTA),J