

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Part-heard:

Petition(s) for Special Leave to Appeal (Civil) No.11653/2000

(From the judgement and order dated 23/02/2000 in CP 162/00  
of The HIGH COURT OF KARNATAKA AT BANGALORE)

BHAJRANGALAL AGARWAL (D) BY LRS.

Petitioner (s)

VERSUS

CHANNAPPA (D) BY LRS.

Respondent (s)

(With prayer for interim relief)

Date : 05/12/2000 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SYED SHAH MOHAMMED QUADRI  
HON'BLE MR. JUSTICE S.N. PHUKAN

For Petitioner (s) Mr.Girish Ananthamurthy,Adv.  
Mr. P.P. Singh,Adv.

For Respondent (s) Mr. Shankar Divate,Adv.

UPON hearing counsel the Court made the following  
O R D E R

.....L.....I.....T.....T.....T.....T.....T.....J  
Leave granted. The appeal is allowed with no  
order as to costs.

(Usha Bhardwaj)  
P.S. to Registrar

(Kanwal Singh)  
Court Master

Signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7155 OF 1998@@  
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(Arising out of SLP(C)No.11653 of 2000)

Bhajarangalal Agarwal (D) by Lrs. ....Appellant (s)

Versus

Channappa Hatpakki (D) by Lrs. Respondent (s)

O R D E R@@  
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Leave is granted.

Appellants 1(a) to 1(e) are the legal representatives of appellant No.1, late Bhajrangalal Agarwal, who died during the pendency of the Revision before the High Court. He had obtained on rent the suit premises, a non-residential building, of which late Channappa Hatpakki ,respondent No.1 was the landlord. His legal representatives are respondents 1(a) to 1 (d). The appellants have challenged the legality of the order of the High Court passed in Civil Petition No.162 of 2000 dated February 23, 2000 in this appeal. (Hereinafter the parties will be referred to as tenant and the landlord).

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The tenant had suffered an order of eviction from the court of learned Principal Munsiff Hubli in H.R.C.No.254 of 1983 dated March 7, 1987. Against the said order, he filed a Revision before the First Additional District Judge, Dharwad being Revision (Rent No.49/87). It was dismissed on October 21, 1992. It was against that order that the aforementioned Revision was filed by the tenant before the High Court. During the pendency of the Revision Petition, the tenant, revision petitioner, died on April 19, 1999. The revision stood abated for the legal representatives of the tenant were not brought on record within the period of limitation. Appellants 1(a) to 1(e) filed applications to set aside abatement and to bring them on record as the legal representatives of the deceased tenant. There was delay of 95 days in filing the said applications. The explanation for the delay was that they had no knowledge that the business premises in which their father was carrying on the business was the subject matter of revision before the High Court and that as soon as they came to know of it on 9.12.99 when they were brought on record in the execution petition filed by the landlord, they made further enquiries, took necessary steps and filed the applications on January 9,

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2000. There was thus a delay of 95 days in filing the applications. The High Court by the impugned order,declined to condone the delay and also held that in case of non-residential premises the legal representatives had no right to come on record.

In so far as the condonation of delay is concerned, in our view, the tenants/appellants have shown sufficient cause to justify condonation of delay and accordingly we set aside the order of the High Court

on that aspect and condone the delay of 95 days.

In view of the judgment of this Court in *Gantusa*@@  
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H. Baddi vs. Meerabai G. Pai, reported in 2000 (4)@@  
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SCC 586, holding that the view expressed by the  
Karnataka High Court that the legal representatives of a  
non-residential premises have no right to prosecute the  
eviction proceedings is not a good law. The second  
ground in the impugned order cannot also be sustained.  
This Court held as follows:

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"The provisions of the Karnataka  
Rent Control Act directly came up for  
consideration before a Bench of this  
Court in the case of *Vishnu Narayan  
Gadskari vs. Paralal Baladev Uza*.  
Relying upon the aforesaid Constitution

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Bench decision and bearing in mind the  
definition of "tenant" in Section 3(r) of  
the Karnataka Act, the Court held that  
the tenant continues to have an estate or  
interest in the tenanted premises and the  
tenancy rights both in respect of  
residential premises and commercial  
premises are heritable. In the latter  
decision in *Venkatesh Thimmaiah* case  
neither the decision of the Constitution  
Bench, referred to supra, has been  
noticed nor the earlier two Judge Bench  
decision of this Court on the provisions  
of the Karnataka Act has been noticed and  
relying upon the decision of the  
Karnataka High Court, without any  
analysis of the provisions of the Act,  
the conclusion of the forums below that  
the premises in question being  
non-residential, the right of tenancy  
therein is not heritable has been upheld.  
In view of the law laid down by the  
Constitution Bench as well as the earlier  
decision of this Court in *Vishnu Narayan  
Gadskari* case we have no hesitation to  
hold that the latter decision in  
*Venkatesh Thimmaiah* case has not been  
correctly decided. In the absence of any  
contrary provisions in the Act, it must  
be held that the tenancy in respect of a  
non-residential premises under the  
Karnataka Rent Control Act is heritable.  
The conclusion of the High Court to the  
contrary, therefore, cannot be  
sustained."

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It follows that the order relied upon by the High  
Court in dismissing the revisions is no longer good law  
and, therefore, the order impugned has to be set aside  
on that ground.

For the aforementioned reasons, the impugned  
order of the High Court is set aside. The revision is

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restored to the file of the High Court and the case is remanded back to the High Court for disposal in accordance with law.

The appeal is accordingly allowed. But in the circumstances of the case, we make no order as to costs.

Since the matter is pending from 1987, we have no doubt that the High Court will dispose of the revision expeditiously.

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.....J  
(Syed Shah Mohammed Quadri)

New Delhi,  
December 05, 2000

.....J  
(S.N. Phukan)