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**Rights of “Legal Heirs” distinction between Month to Month tenancy and Contractual tenancy**

**Definition:**

**Code of Civil Procedure,1908** definition of Legal Representative reads as under:

**Section 2 (11)“legal representative”** means a person who in law represents the estate of a deceased person, and includes any person who inter-meddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.

**Maharashtra Rent Control Act,2000**

**Section 7 (4) “legal representative”** means a legal, representative as defined in the Code of Civil Procedure, 1908, and includes also, in the case of joint family property, the joint family of which the deceased person was a member;

**Section 7(15) “tenant”** means any person by whom or on whose account rent is payable for any premises and includes,- (a) such person,- (i) who is a tenant, or (ii) who is a deemed tenant, or (iii) who is a sub-tenant as permitted under a contract or by the permission or consent of the landlord, or (iv) who has derived title under a tenant, or (v) to whom interest in premises has been assigned or transferred as permitted, by virtue of, or under the provisions of, any of the repealed Acts; (b) a person who is deemed to be a tenant under section 25; (c) a person to whom interest in premises has been assigned or transferred as permitted under section 26; (d) in relation to any premises, when the tenant dies, whether the death occurred before or after the commencement of this Act, any member of the tenant’s family, who,- (i) where they are let for residence, is residing, or (ii) where they are let for education, business, trade or storage, is using the premises for any such purpose, with the tenant at the time of his death, or, in the absence of such member, any heir of the deceased tenant, as may be decided, in the absence of agreement, by the court. Explanation– The provisions of this clause for transmission of tenancy shall not be restricted to the death of the original tenant, but shall apply even on the death of any subsequent tenant, who becomes tenant under these provisions on the death of the last preceding tenant

**Courts View:**

**Rights of tenant under both Rent Act and Transfer of property Act,1882 “TP Act”.**

Municipal Corporation For Greater Bombay vs Lala Pancham Of Bombay & Others on 1 October, 1964 1965 AIR 1008, 1965 SCR (1) 542 We have no doubt that a tenant has both under the Transfer of Property Act and under S. 12 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 an interest in the demised premises which squarely falls within the expressions property occurring in sub-cl. (f) of cl. (1) of Art. 19 of the Constitution. The right which a tenant enjoys under this sub-clause is, however, subject to the provisions of cl. (5) of Art. 19 which, among other things, provides that the right recognised by the sub-clause does not affect the operation of any existing law in so far as it imposes, ,or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses in the interests of the general public.

**What happens when several members, who are residing as members of the tenant’s family, fail to come to an agreement?**

**Gool Rustomji Lala vs Jal Rustomji Lala And Ors. on 29 January, 1971 AIR 1972 Bom 113, (1971) 73 BOMLR 600, ILR 1972 Bom 1210**

Whenever persons who are members of the tenant’s family start a scramble for the tenancy rights, in a sense the war of succession begins. Succession to the property of the deceased is generally decided by applying the rules of Succession forming part of the personal law of the parties. But the law of Succession is substantially modified while resolving the disputes which arise after the death of the tenant, whether statutory or contractual. If the several members, who are residing as members of the tenant’s family, fail to come to an agreement, then the Court has to make the choice and declare that one amongst them will be the tenant for claiming the protection of the Rent Act. The Court will have to take into account several relevant factors including the wishes of the deceased – tenant. In all such cases the Court should have regard to the paramount collective interest of the family of the deceased – tenant. The court should make the choice in such a way that the person selected to be the tenant is likely to act in the interest of the family, like the Karta of a Hindu Joint Family or the paterfamilias. If the Court has in mind such considerations then it is likely that the Court will select the right person for looking after the collective interest of the tenant’s family after his death. In any event the court cannot declare more than one person as the tenant under Section 5(11)(c) of the Rent Act. The learned trial Judge was clearly in error when he made a declaration that both the petitioner and Respondent No. 1 are tenants under Section 5(11)(c) of the Rent Act.

**Bequeath of Tenancy Rights:**

**Dr. Anant Trimbak Sabnis vs. Vasant Pratap Pandit reported in AIR 1980 Bom. 69 held as under:-**

“11. It was, therefore, held that in the absence of any definition the legal heirs of the tenants who succeeded by intestate succession became the tenants under the Rent Act for the purpose of continuance of tenancy right had by the tenant even if it is after the determination of the contractual tenancy.

The statutory tenancy steps in and gives protection to the legal heirs of the deceased tenant. It is true that in that case no distinction was made by this Court between testamentary succession or intestate succession. As far as testamentary succession is concerned, this court had considered that question in **Bhavarlal’s case (AIR 1986 SC 600)**. In that case, S. 5(11) of the Bombay Rent Act defines the tenant and clause (c) defines the “restricted tenancy rights” in favour of the family members of the tenant. In that context, the question arose in that case whether a tenant can bequeath a Will in favour of a stranger? Considering the ratio in Gian Devi’s case (AIR 1985 SC 796) and the object of the Act, this court had held that the tenant cannot by a Will bequeath leasehold right in favour of strangers and induct the stranger as tenant of the demised premises against the Will of the landlord and the landlord is not bound by such a bequest to recognise the legatee as a tenant. It is, thus, settled law that though leasehold interest may be bequeathed by a testamentary disposition, the landlord is not bound by it nor a stranger be thrusted as tenant against the unwilling landlord.”

**Vasant Pratap Pandit vs Dr Anant Trimbak Sabnis on 12 April, 1994 1994 SCC (3) 481, JT 1994 (3) 267** it was observed that, in our considered view the legislature could not have intended to confer such a right on the testamentary heir. Otherwise, the right of the landlord to recover possession will stand excluded even though the original party (the tenant) with whom the landlord had contracted is dead. Besides, a statutory tenancy is personal to the tenant. In certain contingencies as contemplated in Section 5(11)(c)(i) certain heirs are unable to succeed to such a tenancy. To this extent, a departure is made from the general law.

**State Act to prevail over Central Act**

**Kaiser-I-Hind Pvt. Ltd. And Ors vs National Textile Corporation** Supreme Court held that, the ‘assent of the President’ to the State Act having been obtained in a general way, State Act would prevail over the Central Act.

so long as the contractual tenancy continues, a landlord cannot sue for the recovery of possession **Urmi Deepak Kadia vs State Of Maharashtra** on 11 August, 2015 Bombay High Court observed that, It is not as if only a right is created by this provision in the member of the family residing with the tenant or carrying on business with him but there is a duty and obligation while permitting the member of the family to step in after the tenant’s demise and that is to pay rent and other charges for the premises in terms of the MRC Act and also to abide by it so far as the matters covered by it.

In **Ebner v. Lascelles** (1) It was said, dealing with the provisions of Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (10 and 11 Geo. 5, c. 17) : “It has been truly said that the main rights conceded to a tenant under these Acts are, first a right to hold over or ‘status of irremovability,’ and, next, a right not to have his rent unduly raised. The right to hold over is a right that comes into existence after the expiration of the contractual tenancy. During the contractual tenancy the tenant, being in possession under the protection of his contract, has no need of the protection of the Act to enable him to retain possession, but (1) (1928) 2 K.B. 486,497 during that tenancy the Act protects him in regard to rent by providing that, notwithstanding any other agreements which he may make with his landlord as to rent, he is not to be charged a higher rent than the law allows, and if he is charged a higher rent than that he can have it reduced. The right to hold over after the termination of the contractual tenancy and the right to protection during the contractual tenancy are two rights which must be kept distinct from each other.” It may be mentioned that s. 5 of the aforesaid Act of 1920 provided that no order or judgment for the recovery of possession of any dwelling house to which the Act applied or for the ejectment of a tenant therefrom would be made or given unless the case fell within one of the clauses mentioned in sub. s.(1).

**Bhaiya Punjalal Bhagwanddin vs Dave Bhagwatprasad Prabhuprasad 1963 AIR 120, 1963 SCR (3) 312** We are therefore of opinion that so long as the contractual tenancy continues, a landlord cannot sue for the recovery of possession even if s.12 of the Act does not bar the institution of such a suit, and that in order to take advantage of this provision of the Act he must first determine the tenancy in accordance with the provisions of the Transfer of Property Act.

**Contractual Tenancy and Rights of Legal Heirs : 27 (1985) DLT 460 Gian Devi Anand** the Apex Court observed that so long as a contractual tenancy remains subsisting, the contractual tenancy creates heritable rights and on the death of a contractual tenancy, the heirs and legal representatives step into the position of the contractual tenant and in the same way on the death of a landlord, the heirs and legal representatives of a landlord become entitled to all the rights and privileges of the contractual tenancy and also come under all the obligations under the contractual tenancy.

**AIR 2000 ANDHRA PRADESH 417:** In this judgment titled as **“S.A. Wali Quadri Vs. Sadar Anjuman** **e Islamia**, it has been held by the Andhra Pradesh High Court that ” notwithstanding the fact that the other legal heirs are not paying the rents and they have relinquished the tenancy rights, in absence of clear evidence to the effect that possession of the premises was taken by the lessor pursuant thereto, no valid implied surrender can be inferred from of the same. Mere abandonment of possession by the tenant does not ipso facto amount to surrender unless accompanied by the acceptance on the part of the lessor.”

**1989 (2) RCJ 246 DELHI : In this judgment titled as ”Jaimal Singh Vs. Jaswant Singh”,** the Hon’ble High Court of Delhi has held that when the original tenant continues to be a contractual tenant till his death, all his heirs would become tenant by inheritance.

**1985(1) AIRCJ 640 : In this judgment titled as ” Smt. Gian Devi Anand Vs. Jeevan Kumar and Ors.”** In this Suit No. 107/14 (Old Suit No. 239/10/04) Page No. 34/51 case, the constitutional bench of the Hon’ble Supreme Court of India held that the tenancy is inheritable and after death of a tenant, all his heirs would inherit the tenancy, whether the same is residential or commercial.”

**Conclusion:**

Inheritance rights or possessory rights of Month to month tenancy is governed by provisions of Rent Act and Contractual Tenancy is governed by Transfer of Property Act,1882

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**CONFIRMATION**

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