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DR. H. K. SHARMA

v.

SHRI RAM LAL

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(Civil Appeal Nos. 1237-1238 of 2019)

JANUARY 28, 2019

**[ABHAY MANOHAR SAPRE AND
DINESH MAHESHWARI, JJ.]**

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Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972:

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s.21(1)(a) – Application under – Seeking eviction on the ground of bona fide need – Maintainability of, challenged by the tenant/lessee on the ground that relationship of lessor-lessee/landlord-tenant had ceased to exist as the parties had entered into agreement to sale/purchase of the suit house – Prescribed Authority dismissed the application agreeing with the plea of the tenant/lessee – Appellate Court also affirmed the view of Prescribed Authority – In Writ Petition, High Court set aside the orders of the Prescribed Authority and appellate Court and allowed the application for eviction – On appeal, held: As per s.111(e) and (f) of the Transfer of property Act lease can be determined by express or implied surrender – The conditions of the sale agreement do not make out a case of express or implied surrender – Therefore, sale agreement did not result in termination of the tenancy and hence

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application for eviction – On appeal, held: As per s.111(e) and (f) of the Transfer of property Act lease can be determined by express or implied surrender – The conditions of the sale agreement do not make out a case of express or implied surrender – Therefore, sale agreement did not result in termination of the tenancy and hence

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application was maintainable – The finding of High Court as regards bona fide requirement, being question of fact, needs no interference – Transfer of Property Act, 1882 – s.111(e) and (f).

Dismissing the appeals, the Court

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HELD: 1.1 A lease of an immovable property is a contract between the lessor and the lessee. Their rights are governed by Sections 105 to 117 of Transfer of Property Act (TP Act) read with the respective State Rent Laws enacted by the State. Section 111 of the TP Act deals with the determination of lease. Clauses (a) to (h) set out the grounds on which a lease of an immovable

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property can be determined. Clauses (e) and (f) provide that a lease can be determined by an express surrender; in case, the lessee yields up his interest under the lease to the lessor by mutual agreement between them whereas Clause (f) provides that the lease can be determined by implied surrender. [Paras 28, 29 and 30][554-G-H; 555-A-B]

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1.2 None of the conditions set out in the sale agreement dated 13.05.1993 can be construed for holding that the parties intended to surrender the tenancy rights. *A fortiori*, the parties did not intend to surrender the tenancy rights despite entering into an agreement of sale of the tenanted property, as necessary provision to that effect was not made by providing a specific clause in the agreement. On the other hand, the conditions set out in the agreement do not make out a case of express surrender under clause (e) or implied surrender under clause (f) of Section 111 of the TP Act. [Paras 33, 34][555-G-H; 556-A-B]

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1.3 Thus, the tenancy in question between the parties did not result in its determination as contemplated under Section 111 of TP Act due to execution of the agreement dated 13.05.1993 between the parties for sale of the suit house. [Para 38][557-C]

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1.4 The respondent (lessor) was rightly held entitled to file an application against the appellant (lessee) under Section 21(1)(a) of the Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 and seek the appellant's eviction from the suit house after determining the tenancy in question. [Para 39][557-D]

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Shah Mathuradas Maganlal & Co. v. Nagappa Shankarappa Malage & Ors. (1976) 3 SCC 660 : [1976] 3 SCR 789 – relied on.

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R. Kanthimathi & Anr. v. Beatrice Xavier (Mrs.) (2009) 9 SCC 339 – distinguished.

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2. The question as to whether the respondent has made out a case of his *bona fide* need for his residence and the members of his family as contemplated under the Rent Act, being a question of fact, the finding recorded by the High Court on this question

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- A does not call for any interference in the present appeal. It is binding on this Court. Even otherwise, there is no good ground to interfere in the finding for the reason that the respondent being a landlord and a retired man has every right to live in his house with his family. Therefore, there is no perversity in the finding of the High Court on this issue. [Para 41][557-F-G]
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Case Law Reference

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|---|---------------|---------|
| (2000) 9 SCC 339 | distinguished | Para 18 |
| [1976] 3 SCR 789 | relied on | Para 31 |
| C CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1237-1238 of 2019. | | |
| From the Judgment and Order dated 03.10.2017 and 17.07.2017 of the High Court of Uttarakhand at Nainital in Recall Application No.871 of 2017 in Writ Petition (MS) No.396 of 2016 and in Writ Petition (MS) No.396 of 2016 respectively. | | |

Jitendra Mohan Sharma, Sr. Adv., Ajit Sharma, Pranshu Kaushal, Asutosh Senger, Sanchit Garga, Advs. for the Appellant.

E Narender Hooda, Sr. Adv., Dr. Monika Gusain, Hariom Yaduvanshi, Advs. for the Respondent.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. Leave granted.

F 2. These appeals are directed against the final judgment and orders dated 03.10.2017 in Recall Application No.871 of 2017 in W.P.(MS) No.396 of 2016 and dated 17.07.2017 in W.P.(MS) No.396 of 2016 passed by the High Court of Uttarakhand at Nainital.

G 3. In order to appreciate the short controversy involved in these appeals, few relevant facts need mention *infra*.

4. The appellant is the “opposite party” whereas the respondent is the “applicant” in the original application out of which these appeals arise.

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5. The respondent (applicant) is the owner of house bearing No.5A, Court Road, Nardev Shastri Road, Dehradun comprising of four rooms, one kitchen, two verandahs and two galleries. The respondent has let out a portion of this house consisting of three rooms, one kitchen, latrine-bathroom, one store and two verandas (hereinafter referred to as the “suit house”) to the appellant on a monthly rent of Rs.750/- as per the tenancy agreement dated 22.07.1985 entered into between them.

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6. On 28.04.2008, the respondent filed an application under Section 21(1) (a) of the U.P. Urban Buildings (Regulation of Letting Rent and Eviction) Act, 1972 (hereinafter referred to as “the UP Act”) against the appellant (opposite party) before the Prescribed Authority (Civil Judge) Sr. Division, Dehradun seeking his eviction from the suit house.

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7. The eviction was sought on the ground of respondent’s *bona fide* need for his residence and also the members of his family. The respondent alleged that he has retired from the services and has no other suitable house of his own where he can live and, therefore, requires the suit house for his personal residence as also for the residence of the members of his family.

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8. The appellant (opposite party) contested the application by filing the written statement. While denying the ground of *bona fide* need, it was contended that the appellant has entered into an agreement on 13.05.1993 with the respondent for purchase of the suit house and pursuant thereto he has also paid huge amount to the respondent. It was contended that since the parties have already entered into an agreement of sale/purchase of the suit house, the relationship of landlord/tenant between them has ceased to exist and now it no longer subsists and has come to an end.

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9. It was also contended that consequent upon the execution of the agreement between the parties for the purchase of the suit house, the appellant is no longer in possession of the suit house as tenant but is now in possession as a purchaser of the suit house in part performance of the agreement dated 13.05.1993 *qua* the respondent.

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10. In other words, it was contended that the relationship of landlord and tenant between the parties has come to an end and now the same stood converted into the new relationship of buyer and seller of the suit house. It was, therefore, contended that the application filed by the

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- A respondent under Section 21(1) (a) of the UP Act against the appellant for his eviction from the suit house is not maintainable and, therefore, it is liable to be dismissed on this short ground.
 - 11. The Prescribed Authority by order dated 03.11.2010 dismissed the respondent's application and held that since the parties entered into an agreement dated 13.05.1993 for sale of the suit house, the appellant was not required to pay any monthly rent to the respondent inasmuch as according to him the relationship of the landlord and tenant between the parties has come to an end. He also decided the issue of *bona fide* need against the respondent and in appellant's favour.
 - C 12. The respondent felt aggrieved and filed an appeal before the Appellate Court. By order dated 19.12.2015, the Appellate Court dismissed the appeal and affirmed the order of the Prescribed Authority. The respondent (applicant) felt aggrieved and filed the writ petition under Article 227 of the Constitution of India before the High Court of Uttarakhand at Nainital.
 - E 13. By impugned order dated 17.07.2017, the High Court allowed the writ petition and set aside the order of the Appellate Court and the Prescribed Authority. The appellant felt aggrieved and filed recall application. The High Court by order dated 03.10.2017 dismissed the recall application.
 - F 14. The High Court held that mere agreement to sell the suit house would not result in termination of landlord-tenant relationship between the parties unless there is a stipulation in the agreement itself to that effect. It was also held that since the agreement in question relied on by the appellant (opposite party) is not a registered agreement, he is not entitled to raise the plea of part performance based on Section 53-A of the Transfer of Property Act, 1882 (for short "the TP Act") against the respondent. The High Court further held that the respondent being an old man has every right to live in his house in the last leg of his life and more so when he has no other house of his own in the city and, therefore, he has made out a case of *bona fide* need for his residence as also for the members of his family.
 - H 15. It is against these two orders of the High Court, the opposite party, i.e., the tenant has filed these appeals by way of special leave in this Court.

16. So, the short question, which arises for consideration in these appeals, is whether the High Court was justified in allowing the respondent's application filed under Section 21(1) (a) of the UP Act.

16A. Heard Mr. Jitendra Mohan Sharma, learned senior counsel for the appellant and Mr. Narender Hooda, learned senior counsel for the respondent.

17. Mr. Jitendra Sharma, learned senior counsel for the appellant while assailing the legality and correctness of the impugned order has essentially argued one point.

18. Placing reliance on the decision reported in **R. Kanthimathi & Anr. vs. Beatrice Xavier (Mrs.)** [(2000) 9 SCC 339], learned counsel contended that the High Court erred in allowing the application filed by the respondent against the appellant.

19. It was his submission that the issue raised by him in support of his submission remains no longer *res integra* and stands decided by the decision rendered in the case of **R. Kanthimathi** (supra) in appellant's favour.

20. Learned counsel elaborated his submission by contending that the moment the landlord and the tenant enters into an agreement of sale/purchase of the tenanted property while subsistence of the tenancy and the tenant pursuant to such agreement pays part consideration to the landlord towards sale price of the tenanted premises, the relationship of landlord and tenant comes to an end and ceases to exist, i.e., it results in termination of the tenancy agreement *ipso facto* and in its place brings into existence a new relationship between the parties, namely, that of the purchaser and the seller of the tenanted premises.

21. It was his submission that it is for this reason, the application filed by the respondent as landlord of the tenanted premises to seek the appellant's eviction as his tenant from the suit house was wholly misconceived and not maintainable for want of any subsisting relationship of landlord-tenant between them. It was, therefore, rightly dismissed by the Prescribed Authority and the Appellate Authority but wrongly allowed by the High Court by the impugned order.

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- A 22. In reply, learned counsel for the respondent (applicant-landlord) supported the impugned order and contended that no case is made to interfere in the impugned order.
23. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in these appeals.
- B 24. The question, which arises for consideration in these appeals, is when the lessor and the lessee enters into an agreement for sale/purchase of the tenanted premises where the lessor agrees to sell the tenanted premises to his lessee for consideration on certain conditions, whether, as a result of entering into such agreement, the Jural relationship of lessor and the lessee in relation to the leased property comes to an end and, if so, whether it results in determination of the lease.
- C 25. In other words, the question that arises for consideration is when the lessor enters into an agreement to sell the tenanted property to his lessee during the subsistence of the lease, whether execution of such agreement would *ipso facto* result in determination of the lease and sever the relationship of lessor and the lessee in relation to the leased property.
- D 26. In our considered opinion, the aforementioned question has to be decided keeping in view the provisions of Section 111 of the TP Act and the intention of the parties to the lease - whether the parties intended to surrender the lease on execution of such agreement in relation to the tenanted premises or they intended to keep the lease subsisting notwithstanding the execution of such agreement.
- E 27. Chapter V of the TP Act deals with the leases of Immovable property. This chapter consists of Section 105 to Section 117.
- F 28. A lease of an immovable property is a contract between the lessor and the lessee. Their rights are governed by Sections 105 to 117 of TP Act read with the respective State Rent Laws enacted by the State.
- G 29. Section 111 of the TP Act deals with the determination of lease. Clauses (a) to (h) set out the grounds on which a lease of an immovable property can be determined.

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30. Clauses (e) and (f) with which we are concerned here provide that a lease can be determined by an express surrender; in case, the lessee yields up his interest under the lease to the lessor by mutual agreement between them whereas Clause (f) provides that the lease can be determined by implied surrender.

31. This Court in the case of **Shah Mathuradas Maganlal & Co. vs. Nagappa Shankarappa Malage & Ors.**, (1976) 3 SCC 660 considered the scope of clauses (e) and (f) of Section 111 of the TP Act and laid down the following principle in Para 19 as under.

“19. A surrender under clauses (e) and (f) of section 111 of the Transfer of Property Act, is an yielding up of the term of the lessee’s interest to him who has the immediate reversion or the lessor’s interest. It takes effect like a contract by mutual consent on the lessor’s acceptance of the act of the lessee. The lessee cannot, therefore, surrender unless the term is vested in him; and the surrender must be to a person in whom the immediate reversion expectant on the term is vested. Implied surrender by operation of law occurs by the creation of a new relationship, or by relinquishment of possession. If the lessee accepts a new lease that in itself is a surrender. Surrender can also be implied from the consent of the parties or from such facts as the relinquishment of possession by the lessee and taking over possession by the lessor. Relinquishment of possession operates as an implied surrender. There must be a taking of possession, not necessarily a physical taking, but something amounting to a virtual taking of possession. Whether this has occurred is a question of fact.”

32. It is in the light of the aforementioned legal principle, the question involved in this case has to be examined.

33. Perusal of Agreement to Sell dated 13.05.1993 (Annexure P-1) shows that though the agreement contains 9 conditions but none of the conditions provides much less in specific terms as to what will be the fate of the tenancy. In other words, none of the conditions set out in the agreement 13.05.1993 can be construed for holding that the parties intended to surrender the tenancy rights.

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- A 34. *A fortiori*, the parties did not intend to surrender the tenancy rights despite entering into an agreement of sale of the tenanted property. In other words, if the parties really intended to surrender their tenancy rights as contemplated in clauses (e) or (f) of Section 111 of the TP Act while entering into an agreement to sell the suit house, it would have made necessary provision to that effect by providing a specific clause in the agreement. It was, however, not done. On the other hand, we find that the conditions set out in the agreement do not make out a case of express surrender under clause (e) or implied surrender under clause (f) of Section 111 of the TP Act.
- C 35. It is for this reason, the law laid down by this Court in the case of **R. Kanthimathi** (*supra*) has no application to the facts of this case and is, therefore, distinguishable on facts. Indeed, it will be clear from mere perusal of para 4 of the said decision quoted hereinbelow:
- D **“4. As aforesaid, the question for consideration is, whether the status of tenant as such changes on the execution of an agreement of sale with the landlord. It is relevant at this junction first to examine the terms of the agreement of sale. The relevant portions of the agreement of sale records the following:**
- E **“I the aforesaid Mrs. Beatrice Xavier hereby agree out my own free will, to sell, convey and transfer the property to you Mrs. R. Kanthimathi wife of Mr. S. Ramaswami, 435 Trichy Road, Coimbatore for a mutually agreed sale consideration of Rs.25,000/-.**
- F **I shall be proceeding to Coimbatore and shall execute the sale deed and present the same for admission and registration before the Registering Authority, accepting and acknowledge payment of the balance of consideration of Rs. 5000/- (Rupees five thousand only) at the time of registration and shall complete the transaction of sale and conveyance as the property demised has already been surrendered to your possession.”** (Emphasis in Original)
- H 36. The words highlighted in italics of the agreement were construed by Their Lordships for holding that these italicized words in the agreement clearly indicate that the parties had really intended to surrender their

tenancy rights on execution of the agreement of sale and bring to an end A
their jural relationship of the landlord and tenant.

37. As observed supra, such is not the case here because we do not find any such clause or a clause akin thereto in the agreement dated 13.05.1993 and nor we find that the existing conditions in the agreement discern the intention of the parties to surrender the tenancy agreement B either expressly or impliedly.

38. In the light of the foregoing discussion, we are of the considered opinion that the tenancy in question between the parties did not result in its determination as contemplated under Section 111 of TP Act due to execution of the agreement dated 13.05.1993 between the parties for sale of the suit house and the same remained unaffected notwithstanding execution of the agreement dated 13.05.1993 C

39. *A fortiori*, the respondent (lessor) was rightly held entitled to file an application against the appellant (lessee) under Section 21 (1) (a) of the UP Act and seek the appellant's eviction from the suit house after determining the tenancy in question. D

40. Before parting, we make it clear that we examined the terms of the agreement dated 13.05.1993 only for deciding the question as to whether the execution of agreement, in any manner, resulted in determination of the existing tenancy rights between the parties in relation to the suit house in the context of the TP Act and the UP Act and not beyond it. E

41. Coming to the next question as to whether the respondent has made out a case of his *bona fide* need for his residence and the members of his family as contemplated under the UP Act, suffice it to say, it being a question of fact, the finding recorded by the High Court on this question does not call for any interference in this appeal. It is binding on this Court. Even otherwise, we find no good ground to interfere in the finding for the reason that the respondent being a landlord and a retired man has every right to live in his house with his family. Therefore, there is no perversity in the finding of the High Court on this issue. F G

42. In the light of the foregoing discussion, we concur with the reasoning and the conclusion arrived at by the High Court in the impugned order. It does not call for any interference. H

- A 43. The appeals thus fail and are accordingly dismissed.
44. The appellant is, however, granted three months' time to vacate the suit house subject to the appellant furnishing usual undertaking in this Court within two weeks from the date of this order and paying entire arrears of rent upto date including three months rent to be paid in advance
- B to the respondent to enable him to remain in possession for a period of three months from the date of this order. The arrears of rent, as directed, be paid by the appellant to the respondent within one month from the date of this order.

Kalpana K. Tripathy

Appeals dismissed.