

Mohar Singh (Dead By Lrs.) vs Devi Charan & Others on 9 May, 1988

Equivalent citations: 1988 AIR 1365, 1988 SCR SUPL. (1) 255, AIR 1988 SUPREME COURT 1365, 1988 ALL. L. J. 805, (1988) 1 RENCER 654, (1988) 2 SCJ 558, (1988) 2 RENCJ 470, (1988) 2 ALL WC 849, (1988) 2 CURCC 265, 1988 HRR 376, (1988) 2 ALL RENTCAS 124, (1988) 14 ALL LR 438, (1988) 2 RENTLR 160, 1988 (3) SCC 63, 1988 SCFBRC 365, (1988) 2 LS 1, (1988) RAJ LR 402, (1988) 2 JT 492 (SC), 1988 ALL CJ 498, 1988 2 JT 492

Author: R.S. Pathak

Bench: R.S. Pathak

PETITIONER:

MOHAR SINGH (DEAD BY LRS.)

Vs.

RESPONDENT:

DEVI CHARAN & OTHERS

DATE OF JUDGMENT 09/05/1988

BENCH:

VENKATACHALLIAH, M.N. (J)

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VENKATACHALLIAH, M.N. (J)

PATHAK, R.S. (CJ)

CITATION:

1988 AIR 1365

1988 SCR Supl. (1) 255

1988 SCC (3) 63

JT 1988 (2) 492

1988 SCALE (1) 1133

ACT:

Transfer of Property Act, 1882: Section 109-Limitation on right of landlord against splitting unity and integrity of tenancy-Assignee of part of reversion can exercise right of landlord-Consent of tenant not needed.

U.P. Urban Buildings (Regulations of Letting, Rent And Eviction) Act, 1972: Section 21-Landlord-Not entitled to split unity and integrity of tenancy and recover possession of part of demised premises from tenant.

HEADNOTE:

The first respondent was a tenant of two adjacent shops, under a single lease, obtained from two co-owners. The co-owners transferred their respective shares separately. Pursuant to partition between the transferees, the appellant became the exclusive owner of one of the shops.

The appellant instituted proceedings and obtained an order for the eviction of the first respondent from his shop on the ground of own bonafide need. The District Judge upheld that order. The High Court, however, in a writ petition accepted the contention of the first respondent that in claiming possession of a part of the subject matter of the original lease the appellant as seeking to split the integrity and unity of the tenancy, which was impermissible in law. The High Court accordingly set aside the concurrent orders of the courts below.

Allowing the appeal, it was

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HELD: (1) A landlord could not split the unity and integrity of the tenancy and recover possession of a part of the demised premises from the tenant. But section 109 of the Transfer of Property Act provided a statutory exception of this rule. By virtue of this exception, the limitation on the right of the landlord against splitting-up of the integrity of the tenancy, inhering in the inhibitions of his own contract, did not visit the assignee of the part of the reversion. There was no need for the consent of the tenant for the severance of the reversion and the

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assignment of the part so severed. [258C-E]

(2) Though there was difference of opinion among the various High Courts on the point, the learned Judge in this case should have considered himself bound by an earlier decision of the same High Court in Ram Chandra Singh case which had taken the view that section 109 of the T.P. Act was attracted to the case of partition also. [259G-H]

(3) Without pronouncing on the correctness of the decision in Ram Chandra Singh's case, this Court applied the same rule; and reversed the High Court on the point and restored the order of eviction. [260B]

Kannan v. Alikutty, AIR 1920 Mad 838 (FB): Badri Narain Jha and Ors. v. Rameshwar Dayal & Ors., [1951] SCR 153 and Ram Chandra Singh v. Ram Saran & Ors., AIR 1978 All. 173, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No 485 of 1982.

From the Judgment and order dated 28.3.1980 of the Allahabad High Court in Civil Misc. Writ No. 2280 of 1979.

M.S. Gupta for the Appellant.

Uma Dutta for the Respondents.

The Judgment of the Court was delivered by VENKATACHALIAH, J. This appeal, by special leave, is by the Landlord preferred against the judgment and order dated 28.3.1980 by the High Court of Judicature at Allahabad in Civil Misc. Writ No. 2280 of 1979 setting aside, at the instance of the First respondent-tenant, the concurrent orders of the Courts below granting possession to the appellant.

2. The first-respondent was a tenant of two adjacent shops, under a single lease, obtained from two co-owners Shri Jado Ram and Asha Ram who had, respectively 3/8th and 5/8th shares in the property. Appellant, Mohar Singh became the transferee of the 3/8th share of Jadoram. Similarly, Asha Ram's 5/8th interest came to be transferred, through and intermediary alienation, to a certain Gyan Chand. Pursuant to a decree in a civil suit for partition between Gyan Chand and the appellant, the co-ownership came to an end and towards his share appellant was allotted, and became the exclusive owner of, one of the shops. That is the subject- matter of the present proceedings.

3. Appellant instituted proceedings for eviction against the First respondent under Section 21 of U.P. Act XIII of 1972 before the prescribed authority on the ground of his own bonafide need. The prescribed-authority ordered release of the premises and made an order granting possession. The appeal preferred by the First-respondent before the District Judge, Muzaffarnagar was dismissed. First-respondent then moved the High Court in Writ No. 2280 of 1979.

The findings as to the bona fides and reasonableness of the requirement of the appellant stand concluded by the concurrent findings of the statutory authorities. Indeed that was not also the ground on which the order of eviction was assailed before the High Court in the writ petition

4. Before the High Court what was urged by the First- respondent, and accepted by the High Court, was the contention that the severance of the reversion and assignment of that part of the reversion in respect of the suit shop in favour of the appellant did not clothe the appellant with the right to seek eviction without the other lessor joining in the action; and that in claiming possession of a part of the subject matter of the original- lease the appellant was seeking to split the integrity and unity of the tenancy, which according to the First- respondent, was impermissible in law.

The High Court does not appear to have considered the effect of the partition decree between erstwhile co-owners and of the appellant, consequently, having become the exclusive owner of one of the shops. The reasoning that appears to have commended itself to the High Court in setting-aside the order made by the Courts-below granting possession, is somewhat on these lines:

".... But unless such a situation has been created with the consent of all of them, the effect of transfer of a portion of the accommodation would be that in place of one lessor would be substituted two lessors, even though of defined portions of the accommodation let out to the lessee. It cannot be denied that one of the two joint lessors cannot institute a suit for ejectment or apply for permission to file such a suit in respect of a portion of the accommodation."

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"..... In other words even now as a result of transfer a part of the building under tenancy the splitting up of the tenancy cannot be permitted unless the tenant has agreed to it. On this view of the matter, the impugned orders are liable to be quashed."

5. It is trite proposition that a land-lord cannot split the unity and integrity of the tenancy and recover possession of a part of the demised premises from the tenant. But Section 109 of the Transfer of Property Act provides a statutory exception to this rule and enables an assignee of a part of the reversion to exercise all the rights of the landlord in respect of the portion respecting which the reversion is so assigned subject, of course, to the other covenant running with the land. This is the true effect of the words 'shall possess all the rights of the lessor as to the property or part transferred ' occurring in Section 109 of the T.P. Act. There is no need for a consensual attornment. The attornment is brought about by operation of law. The limitation on the right of the landlord against splitting-up of the integrity of the tenancy, inhering in the inhibitions of his own contract, does not visit the assignee of the part of the reversion. There is no need for the consent of the tenant for the severance of the reversion and the assignment of the part so severed. This proposition is too well-settled to require any further elucidation or reiteration. Suffice it to refer to the succinct statement of the law by Wallis, CJ in *Kannyan v. Alikutty*, AIR 1920 Madras 838 (FB) (at 840).

"..... A lessor cannot give a tenant notice to quit a part of the holding only and then sue to eject him from such part only, as pointed out quite recently by the Privy Council in *Harihar Banerji v. Ramasashi Roy*, AIR 1918 PC 102. Consequently, if the suit is brought by the original lessor the answer to the question referred to us must be in the negative because such a suit does not lie at all. Other considerations, however, arise, where, as in the present case, the original lessor has parted in whole or in part with the reversion in part of the demised premises. Under the general law such an assignment effects a severance, and entitles the assignee on the expiry of the term to eject the tenant from the land covered by the assignment."

6. Shri Uma Dutta, learned counsel for the respondent- tenant, however, relied on the pronouncement of this Court in *Badri Narain Jha and Ors. v. Rameshwar Dayal Singh and Ors.*, [1951] SCR 153 (159) to support his contention that severance and assignment of a part of the

reversion would not affect the integrity of the lease. We are afraid, reliance on this case is somewhat misplaced. This was a converse case where this Court considered the effect of splitting-up of the interest of the lessees, inter-se. In that context, Mahajan, J said:

".... An inter-se partition of the mokarrari interest amongst the mokarraridars as alleged by the plaintiffs could not affect their liability qua the lessor for the payment of the whole rent, as several tenants of a tenancy in law constitute but a single tenant, and qua the landlord they constitute one person, each constituent part of which possesses certain common rights in the whole and is liable to discharge common obligations in its entirety"

"There is a privity of the estate between the tenant and the landlord in the whole of the leasehold and he is liable for all the covenants running with the land. In law, therefore, an inter-se partition of the makarrari interest could not effect the integrity of the lease"

This is an altogether different proposition.

7. The next contention of Shri Uma Datta is that, at all events, what flows from a 'transfer' under section 5 read with Section 109 of T.P. Act cannot be predicated of a partition as partition is not 'transfer'. It is true that a partition is not actually a transfer of property but would only signify the surrender of a portion of a joint right in exchange for a similar right from the other co-sharer or co-sharers. However, some decisions of the High Courts tend to the view that even a case of partition is covered by Section 109 and that, in any event, even if the section does not in terms apply the principle of the section is applicable as embodying a rule of justice, equity and good conscience. We need not go into this question in this case. Suffice it to say that the same High Court itself, from whose decision this present appeal arises, in *Ram Chandra Singh v. Ram Saran & Ors.*, AIR 1978 Allahabad 173 has taken the view that section 109 of T.P. Act is attracted to the case of partition also. That was a decision which the learned judge in the present case should have considered himself bound by, unless there was a pronouncement of a larger bench to the contrary or unless the learned judge himself differed from the earlier view in which event the matter had to go before a Division Bench.

The correctness of the decision in *Ram Chandra Singh's* case was not assailed before us and, therefore, we do not feel called upon to pronounce on it. We should, we think apply the same rule to this case. Several other High Courts have also taken this view, though, however, some decisions have been content to rest the conclusion on the general principle underlying Section 109, T.P. Act, as a rule of justice, equity and good conscience.

8. In the result, this appeal is allowed, the order of the High Court set-aside and that of the III Additional District Judge, Mazaffarnagar in Rent Control Appeal No. 48 of 1978 restored. In the circumstances of this case, there will be no order as to costs.

R.S.S.

Appeal allowed.

