

Sri M.V.Ramachandrasa vs M/S. Mahendra Watch on 14 July, 2017

IN THE COURT OF THE CHIEF JUDGE,
COURT OF SMALL CAUSES AT BANGALORE
(SCCH-1)

Dated this the 14th day of July 2017

PRESENT : SRI H.P.SANDESH, B.A.L., LL.B.,
CHIEF JUDGE.

H.R.C.No.63/2016

PETITIONERS : Sri M.V.Ramachandrasa,
Aged 86 years,
Son of Late Magaji Venkatesh,
Residing at No.9 & 11,
O.T.C. Road, Bangalore -53.

(By Sri. H.S.S., Advocate)

-Vs-

RESPONDENT : 1. M/s. Mahendra Watch
Company,
A Partnership firm,
Represented by one of its
partner,
Mr.Rajesh Kumar,
S/o Shantilalji,
Shop No.1, Ground Floor,
Maruthi Plaza Block-'C'
U.M.Lane, Chickpet,
Bangalore -560 053.

2. Mr.Rajesh Kumar,
Son of Mr.Shanthilalji,
C/o Mahendra Watch

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Company,
Shop No.1, Ground Floor,
Maruthi Plaza Block-'C',
U.M.Lane, Chickpet,
Bangalore -560 053.

... Exparte

3. Mr.Ashish Jain,

Shop No.1, Ground Floor,
Maruthi Plaza Block-'C',
U.M.Lane,
Chickpet, Bangalore -560 053.

4. Mr.Atul M.Jain,
Shop No.1, Ground floor,
Maruthi Plaza Block-'C',
U.M.Lane,
Chickpet, Bangalore-560 053.

(By Sri. P.J., Advocate for
R1,R3,R4)

ORDERS

This petition is filed u/s.27(b)(ii), 27(d)(i)(ii) and
27(p) of Karnataka Rent Act, 1999 by the petitioners
seeking a direction to vacate and hand over the vacant
possession of the petition schedule premises on the
ground of sub-letting and on the ground of original
tenant not being in occupation of the leased premises
and on the ground of person in occupation having
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failed to prove that he is a bona fide tenant as per
section 27(b)(ii), 27(d)(i)(ii) and 27(p) of Karnataka Rent
Act ,1999.

2. The brief facts of the case are :

It is the case of the petitioner that he is the long
term lease holder of the entire immovable property
bearing municipal New No.22 to 33, situated at
Uttaradi Mutt Lane, Chickpet, Bangalore having
obtained the lease for a period of 55 years, by virtue of
a registered lease deed dated 02.02.1983, and under

the said registered lease deed the petitioner herein is authorized and empowered to sub-lease all or any portion of the aforesaid property, accordingly the petitioner has let out the shops to tenants.

3. It is the case of the petitioner that he is the landlord and the first respondent is a tenant under the petitioner in respect of shop premises presently bearing shop No.1, ground floor, Maruthi plaza, block - 'C' . U.M.Lane , which is more fully described in the SCCH-1 4 HRC No.63/2016

schedule. The petitioner and the first respondent herein at the inception of the tenancy have entered into a registered lease deed dated 22.02.1985. The first respondent was inducted as a tenant under the petitioner and was put into the possession of schedule premises on execution of the aforesaid lease deed. The first respondent is a partnership firm which is represented by the second respondent who was the actual and original partner of the first respondent firm.

4. It is further contended that as per clause No.19 of the aforesaid registered lease deed dated 22.02.1985, the first respondent was specifically restrained from sub-letting the schedule premises to any third parties without the consent of the petitioner in writing and further the first respondent was also

restrained from selling the ongoing concern i.e, the
first respondent firm under the name and style of
M/s.Mahendra Watch Company without the written
consent of the petitioner.

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5. It is further case of the petitioner that the 2nd
respondent who is the actual and original partner of
the first respondent firm has not been in the
occupation and possession of the schedule premises
from the past 3 years without any reasonable cause
and neither any of the family members of the 2nd
respondent is in the occupation and possession of the
schedule premises. It is further case of the petitioner
that the 3rd and 4th respondents who are the strangers
with regard to the tenancy of the first respondent in
respect of the schedule premises are illegally and
unlawfully occupying the schedule premises and there
is total and complete absence of the first and 2nd
respondent who are the original tenant in the schedule
premises and only the name board of the first
respondent is put in the premises and the 3rd and 4th
respondents are without any authority occupying the
schedule premises. In any event, the 3rd and 4th
respondents are not tenants in the schedule premises

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and they do not have or possess any valid tenancy rights over the schedule premises.

6. It is further contended that the first and 2nd respondents have sub-let the schedule premises to 3rd and 4th respondent and have sold the ongoing concern i.e, the first respondent firm under the name and style of M/s.Mahendra Watch Company, to the 3rd and 4th respondent, which is against and in violation of the terms and conditions of the registered lease deed dated 22.02.1985. That due to the aforesaid breach committed by the first and second respondent with regard to the terms and conditions of the registered lease deed dated 22.02.,1985 the tenancy of the first respondent is liable to be terminated and determined by petitioner.

7. It is the case of the petitioner that the schedule premises is leased by the petitioner to the first respondent only, which is a partnership firm by virtue of the registered lease deed dated 22.02.1985 and the

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3rd and 4th respondent are utter strangers and remotely do not have any rights with regard to the tenancy of the first respondent in respect of schedule premises. To the shock and surprise of the petitioner the 3rd and 4th respondent have been occupying the

schedule premises without having any valid rights.

The 3rd and 4th respondents claiming to be the tenant of the petitioner has issued cheque in respect of the rent due to the petition schedule premises and the petitioner has not presented the aforesaid cheque for encashment and has declined and refused to accept rents from 3rd and 4th respondent as the 3rd and 4th respondents are not the tenants in respect of the schedule premises. Thereafter neither the first respondent nor the 3rd and 4th respondent has made any attempts to pay the rents for the use and occupation of the schedule premises.

8. It is submitted that the petitioner after noticing that the first respondent having not been in the
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occupation of the schedule premises from the past 3 years without any reasonable cause, he got issued legal notice to the 2nd respondent who is the original partner of the first respondent and called upon the 2nd respondent to provide an explanation as to who is occupying the schedule premises and further who are the partners of the first respondent firm .

9. It is contended that the petitioner had also called upon the 3rd and 4th respondent to furnish details as to what is their role in the firm , status of Mr.Rajesh Kumar in the firm as on date. Though the

said letter is duly served on 3rd and 4th respondent they have failed to provide the information as sought the petitioner. On 16.09.2015 they have given a vague reply stating that schedule premises was leased to the 3rd and 4th respondent and they are in occupation of the schedule premises from the day one of the lease and are carrying on business in the schedule premises and they have sent a cheque for Rs.26,503/- and the
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same is signed by the 4th respondent but the petitioner has not encashed the same and he refused to decline to accept the 3rd and 4th respondent as tenants in the schedule premises.

10. It is further case of the petitioner that the 3rd and 4th respondent have got no rights to continue in the petition schedule premises and the past communications of the 3rd and 4th respondent have failed to prove that they are bonafide tenants under the petitioner in respect of the schedule premises. The 3rd and 4th respondents are illegally holding over the schedule premises under the 1st and 2nd respondents in violations of the terms and conditions of the registered lease deed dated 22.02.1985, therefore, the respondents are liable to be evicted from the schedule premises. It is further case of the petitioner that in

view of the above said facts and circumstances the

petitioner by virtue of notice dated 18.02.2016

terminated the tenancy of the first respondent in

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respect of the schedule premises and called upon the

respondents to vacate and handover the vacant

possession of the schedule premise and the notices

have been served on all the respondents.

11. It is the contention of the petitioner that the

respondents No.3 and 4 have got issued a frivolous

and vexatious reply dated 26.02.2016 and have

refused and declined to vacate and hand over the

vacant possession of the schedule premises to the

petitioner. That the respondent's tenancy in respect of

the petition schedule premises is terminated for

default committed by the respondents, therefore,

respondent is liable for eviction and other

consequences under the provisions of the Karnataka

Rent Act ,1999. The petition schedule premises is in

occupation of the 3rd and 4th respondent is measuring

less than 14 square meters and the petition schedule

premises is more than 30 years old and the monthly

rent for the schedule premises is Rs.485/- , hence, the

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provisions of Karnataka Rent Act ,1999 is clearly

applicable to the present case. Hence, prays to allow the petition.

12. In pursuance of this eviction petition, this Court has issued notice against the respondents and they have appeared before the Court through their counsel and have filed common written statement.

13. The respondents have contended that respondent No.1 is a partnership firm of which the respondent No.3 and 4 are the present partners of the said firm. The respondent No.3 and 4 are brothers and both are sons of Sri.Mohanlal D.Jain and they together constitute Hindu Undivided Family. The respondent No.1 is a partnership firm and it is carrying on business since last 4 decades. Sri Mohanlal D.Jain was carrying on business along with Shanthilal, Mahendra Kumar and Ashish Kumar in partnership.

In the course of time Shanthi Lal and Mohan Lal
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retired and Ashish Kumar and Atul Kumar are carrying on business of electronic goods.

14. It is the contention of the respondents that the petitioner has taken the premises on long lease from Srimad Jagadguru Madhavacharya Moola Mahasamsthane, Uttaradi Math, in the year 1983 for long lease of 55 years and at that time the respondents

were already tenant of the shop NO.26, measuring East to west $18\frac{1}{2}$ feet and north to south 9 feet and 8 inches, having internal height of $10\frac{1}{2}$ feet comprising an area of 178 sq.ft. There were totally 16 tenants in occupation.

15. It is the case of the respondents that after taking the premises on lease, the petitioner got the old premises demolished and constructed new building and christened the name of the new building as "Maruti Plaza" comprising of basement floor, ground floor, first floor and second floor. Each floor has shops ranging from 48 to 55 shops. Basement floor has 48
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shops. Ground floor has 52 shops. First floor has 28 shops. Second floor has 36 shops. Thus there are totally 164 shops in the premises of which the petitioner is landlord. While delivering the shop to the old tenants the area was reduced to 50% of the original area. Thus the respondents got the shop measuring 95 square feet and lease cum agreement to lease was executed and registered on 22.02.1985 and the schedule of the agreement confirms the measurement of the shop delivered. As per the said agreement advance of Rs.500/- was paid by the respondents and rent was fixed at Rs.85/-p.m. and was entitled to enjoy and occupy the premises for whole of the lease period

Sri. Shanthi Lal was not the proprietor of said firm. He
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was a partner along with Sri.Mahendra Kumar, Sri
Mohanlal D. Jain and Sri Ashish M. Jain. The
petitioner aware of the same and deliberately
suppressed the said fact.

18. It is the case of the respondents that there
was change in constitution of the partnership firm and
two partners by name Shanthilal and Mahendra
Kumar retired from the partnership and Mohanlal
D.Jain and his son Ashish Jain continued as partners.
On 01/06/2008 Mohanlal D. Jain (father) retired from
the partnership and Mohanlal D.Jain and his son
Ashish Jain continued as partners. All these facts are
within the notice and knowledge of the lessor and with
his consent in writing , reconstitution of the firm was
effected. Further the lessor demanded that lessee
should part with his 25% of the space in lieu of
permission granted by him for reconstitution of the
firm, accordingly, the shop of the lessee was bifurcated
into two units and thus total area of the respondent
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firm was reduced from 95 sft. To 76.7 sft. The newly
carved out shop was leased to new tenant by name
Hafiz Bhai, who is carrying on business under the

name and style of Time world. In such circumstances the shop in occupation of the lessee was reduced from 95 sft to 76.7 sft, at the same rate of rent.

19. It is further contended that in a partnership firm all partners are partners of the firm and it cannot be distinguish that one partner is actual and original and other partners are not so. One of the partners has signed the lease deed because law permits one partner can represent all the partners and the firm and no one prevented the petitioner from taking the signature of all the partners at that particular point of time. It is further contended that the respondents have neither sublet the schedule premises to third parties nor they have sold the running business. It is the contention of the respondents that 2nd respondent retired from the partnership firm long back on 01.07.2000, thus the

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question of 2nd respondent being present in the petition schedule shop does not arise at all. The petitioner and his sons are in the property every day and they themselves are carrying on the business in the shop located opposite to the property and also located in the adjacent building.

20. It is the contention of the respondents that the petitioner has demanded enhanced rents from all

the tenants in occupation and from the respondent firm also it was demanded. The respondent firm agreed for reasonable amount but the demand of the petitioner was unreasonable. In such circumstances, this false and frivolous petition has been filed. Under the lease deed executed, the respondent firm has to pay monthly rents of Rs.485/- p.m. but the demand of the petitioner is Rs.3,000/-. The respondent firm agreed to enhance the rents by 100%. Further the respondent has put forth the condition that new lease deed for a period of 11 months have to be executed,

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along with enhancement of the rents. The respondent firm refused for such unreasonable demand of the petitioner. In Maruti Palza, the petitioner has got executed new lease agreement for 11 months and rental enhancement upto Rs.4,000/-. There are many shops lying vacant, which has been evicted from the tenants by filing frivolous petition. It is further contended that, the petitioner is the owner of 3 more shopping complexes, within 200 meters of petition schedule premises, by name Maruti tower, maruthi Arcade and Raghavendra Complex. In this case the registered lease deed is for a period of 53 years, which expires in the year 2038, this petition is not maintainable and this Court has no jurisdiction to

21. Petitioner in order to prove his case, he has examined his General Power of Attorney as PW1 and got marked the documents Ex.P.1 to 25. On the other hand, 4th respondent is examined as RW-1 but he was not subjected himself for cross-examination, hence, his evidence was discarded. The G.P.A. holder of respondents No.3 and 4 is examined as RW-1 and examined four more witnesses as RW-2 to 5 and they have got marked the document Ex.R.1 to 40.

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22. After closure of the evidence, I heard the arguments of petitioner counsel and respondents counsels.

23. After having considered the petition averments, evidence and the arguments of both the counsels the points that arise for my consideration are:-

- 1) Whether the petitioner has made out the grounds to invoke sec.27(2)(b)(ii) of Karnataka Rent Act 1999 that the petition schedule premises was sublet without consent of the landlord in writing ?
- 2) Whether the petitioner has made out grounds to invoke sec.27(2)(d)(i)(ii) of Karnataka Rent Act 1999 that the tenant has not been in occupation there for a period of 6 months and two years as envisaged in the Act?
- 3) Whether the petitioner has made out grounds to invoke sec.27(2)(p) of Karnataka Rent Act 1999 that the tenant has failed to prove that he is a bonafide tenant?
- 4) What order?

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24. My answers to the above points are as under:-

- 1) Point No.1 .. In the affirmative
- 2) Point No.2 .. In the negative
- 3) Point No.3 .. In the affirmative
- 4) Point No.4 .. As per final order

for the following:-

REASONS

25. Point No.1 : It is the contention of the petitioner that he is the long term lease holder of the petition schedule premises and having obtained the lease for a period of 55 years, by virtue of a registered lease deed dated 02.02.1983. The petition schedule premises originally belongs to Uttaradi Mutt and the said Mutt has executed a lease deed dated 02.02.1983 in favour of the petitioner and as per the said registered lease deed, he is authorized and empowered to sub-lease all or any portion of the aforesaid property, accordingly the petitioner has let out the shops to tenants. The petitioner has let out the petition
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schedule premises to M/s.Mahendra Watch Company the respondent No.1 in the year 1985 and the same is represented by one Rajesh Kumar and first respondent is the tenant under the petitioner in respect of shop premises presently bearing shop No.1, ground floor, Maruthi plaza, block - 'C' . U.M.Lane. The said document is also registered document dated 22.02.1985. It is also contention of the petitioner that as per the clause NO.19 of the said lease deed dated 22.02.1985 the first respondent shall specifically restrained from sub-letting the schedule premises to

any third parties without the consent of the petitioner
in writing and further the first respondent was also
restrained from selling the ongoing concern without
the written consent of the petitioner. The 2nd
respondent who is the actual and original partner of
the first respondent firm has not been in the
occupation and possession of the schedule premises
from the past 3 years without any reasonable cause

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and neither any of the family members of the 2nd respondent is in the occupation and possession of the schedule premises. It is further contended that 3rd and 4th respondents who are the strangers with regard to the tenancy of the first respondent in respect of the schedule premises are illegally and unlawfully occupying the schedule premises. In any event, the 3rd and 4th respondents are not tenants in the schedule premises and they do not have any valid tenancy rights over the schedule premises.

26. It is further contended that to the utter shock and surprise the 3rd and 4th respondents have occupied the schedule premises in violation of the terms and conditions of the registered lease deed dated 22.02.1985.

27. On the other hand, respondents in the

written statement contended that the respondents

No.3 and 4 are brothers and both are sons of

Sri.Mohanlal D.Jain and they together constitute

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Hindu Undivided Family. The respondent No.1 is a partnership firm and it is carrying on business since last 4 decades. Sri Mohanlal D.Jain was carrying on business along with Shanthilal, Mahendra Kumar and Ashish Kumar in partnership. In the course of time Shanthi Lal and Mohan Lal retired and Ashish Kumar and Atul Kumar are carrying on business. It is further contended that the tenant was vested with powers to occupy the premises forever, he being statutory tenant and the tenancy is for a period of 53 years and this 3rd and 4th respondents are the partners of first respondent Firm and they are carrying on the business legally and the petitioners have not approached this Court with clean hands. It is further contended that there was change in constitution of the partnership firm and two partners by name Shanthilal and Mahendra Kumar retired from the partnership and Mohanlal D.Jain and his son Ashish Jain continued as partners.

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On 01/06/2008 Mohanlal D. Jain (father)

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retired from the partnership and Mohanlal D.Jain and

his son Ashish Jain continued as partners of the firm and all these facts are within the notice and knowledge of the lessor and with his consent in writing , reconstitution of the firm was effected. It is also contention of the respondent that truth is that 2nd respondent retired from the partnership firm long back on 01.07.2000, thus the question of 2nd respondent being present in the petition schedule shop does not arise at all. These respondents are in occupation of the premises as partners of the first respondent firm and the respondent NO.1, 3 and 4 are collectively having tenancy rights over the petition schedule premises and their rights are protected under the registered lease deed and they are also protected under the provisions of Transfer of Property Act. The petitioners are not in the habit of issuing rent receipts intentionally and the rents are paid in favour of the petitioner by this

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respondent No.3 and 4, hence, the contention of the sub-letting cannot be accepted.

28. The petitioner in order to prove his case examined his General Power of Attorney holder, his son as PW-1 and he reiterated the averments of the petition in his affidavit and has got marked certified copy of lease deed, khatha certificate, khatha extract,

certified copy of lease deed as Ex.P.1 to 4 and other documents. He was subjected to cross-examination of PW-1, it is elicited that Maruthi Plaza business is co-owners business and Lakshmikantharaj, G.R. Gayathri and K.G. Anuradha are the co-owners and they are the sons and daughter-in-law of M.V.

Ramachandrasa. It is elicited that M.V. Ramachandrasa has assigned his right in respect of this property in favour of his sons and daughter-in-law and the said document is a registered document and he has not produced the said document before the Court. He admits that Mahendra Watch company was
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carrying on the business before the execution of the lease deed in favour of Ramachandrasa. He further admits that the Mahendra Watch company is a partnership firm. Rajesh Kumar Jain is the partner along with the Mahendra Watch company and though they have told that they are going to furnish the partnership deed but they have not furnished and hence, he cannot tell the names of the other partners of the firm. He admits that the Ex.P.1 is executed for a period of 55 years. It is suggested that, at the time of the execution of the document, Mohanlal and Shanthilal are also the partners and the said suggestion was denied. A bunch of photos were

confronted to PW-1 and out of that he identifies 11
photos saying that those photos are in respect of
Maruthi Palza and hence those photos are marked as
Ex.R.1 series. The witness is confronted with xerox
copy of rent receipts and witness admits the same and
same are marked as Ex.R.2 series i.e., rent receipts
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from 1991 to 2008. It is also elicited that
Lakshmikantharaj and M.R. Surendra only have
signed the said receipts. It is further elicited that M.R.
Surendra is the Manager and Lakshmikantharaj is one
of the co-owner and hence they have signed. It is
further elicited that the lease deed is executed in
favour of the partnership firm Mahendra Watch
company. Further admits that partnership firm
comprises the partners. It is elicited that the rent
receipts are being issued whenever the rents are paid
till 2008 from the date of lease. It is suggested that,
from 2015 onwards they have demanded 10 to 15
times higher rent from all the tenants and the said
suggestion was denied. It is elicited that there are 7 to
8 tenants came forward to pay the higher rent. It is
also elicited that the earlier rent was Rs.400/- was
enhanced to Rs.4,000/-. It is suggested that, before
filing of this case, they have forced this respondent to

enhance the rent to Rs.4,500/- per month and also

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forced to enter the fresh agreement for a period of 11 months or otherwise an eviction petition will be filed and the said suggestion was denied. It is suggested that, from the inception of tenancy Asis Jain, Atul Jain and their father Mohan Lal Jain were running the business till date and the same is noticed by him while collecting the rent as well as passing through in the said road and the said suggestion was denied. He says 2nd respondent has sub-let the petition schedule premises to the respondent no. 3 and 4 and he has not produced any document to show that the R.2 has sub-let the premises to R.3 and R.4. It is suggested that, the respondent no.3 and 4 and their father Mohan Lal were carrying on the business along with respondent no.2 and Shanthi Lal from 1980 onwards and the said suggestion was denied. However, he admits that the 2nd respondent is the son of Shanthi Lal. He has no document to show that the Mahendra Watch company has been sold. He has not produced

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any single piece of document to prove the sale of the on going concern. He admits that Mahendra watch company is in occupation. Further suggested that, no

third party is in occupation of the premises and the said suggestion was denied. PW-1 was cross-examined in length. He admits that other than Mahindra Watch company no other firm is doing business. Further admits that the shop was not closed at any point of time. He says he cannot produce the assignment deed and suggested that he has no right to file present petition and the same is denied.

29. On the other hand, respondent has examined its Power of Attorney holder one Mohan Lal as RW-1 and he has filed his affidavit reiterating the averments of the objection statement and relied upon the document Ex.R.3 to R.40. He was subjected to cross-examination. In the cross-examination, he admits that the Mahendra Watch company has taken the petition

schedule	premises	from	the	Mutt	and	the
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Ramachandrasa has entered lease with the Mutt and thereafter the Mahendra Watch company has continued as tenant under the Ramachandrasa. He further says he knows the affairs of the Mahendra Watch company from 1983 and he does not remember the exact year in which the Ramachandrasa has executed the rental agreement in favour of Mahendra Watch company. He further says that at the time of

the execution of Lease agreement in favour of Mahendra Watch company, Rajesh Kumar, Mahendra Kumar, Chualal, Kamala Bai and Mohan Lal are the partners of the said firm. The partnership deed was in existence and the same was given to Ramachandrasa to prepare the lease deed and he did not return the same. The said partnership deed is not registered. He further admits that he does not have the copy of the said partnership deed. Further admits that the above said partners are not the partners as on today. The partnership deed was reconstituted in the year 2002

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and 2008. He further admits that second respondent is not his relative and he knew Rajesh kumar from 1980. It is also elicited that family members of Rajesh Kumar are not visiting the petition schedule premises. He does not know the details of the children of Rajesh Kumar but he claims that his father was also the partner along with him. He further says 15 years ago, he has seen Rajesh Kumar but he has not seen him after the death of his father. It is elicited that partnership is reconstituted twice after 1980 and he has got one partnership reconstitution deed i.e., Ex.R.5. He has no any reconstitution other than Ex.R.3 and R.5 and he know the contents of Ex.R.3. It is further elicited in the cross-examination that he has not informed the

Ramachandrasa about the reconstitution of the partnership deed and he has also not informed in writing. He says he has taken the permission of Ramachandrasa while inducting Athul Jain and Ashish Jain as partners. He also admits that the

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Mahendra Watch Company has taken the petition schedule premises from M.V Ramachandrasa in the year 1985 and the 1st respondent partnership firm or Reconstitution deed are not registered. However, he volunteers that the same was typed on the Rs.500/- stamp paper. He admits that he was a partner of 1st respondent firm prior to 1985 but he has not produced any document to show that he was the partner in the year 1985 itself, but he has produced the partnership deed of the year 2000. Further witness volunteers that in the year 1988 or 1989 both the Govardhan and Ramachandrasa came and requested to give possession of the shop to repair the seepage on account of the toilet leakage and hence when the possession was given they have reduced the size of the shop premises and they took the bill books, cheques and agreement copy. At this stage the counsel for respondent reminded the witness about the partnership deed and hence the witness includes the

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document of partnership deed. He admits that lease deed was registered in the year 1985 and the said lease deed was executed by Ramachandrasa as landlord in favour of Mahendra Watch Company and represented by Rajesh Kumar as one of the partner. He further admits that he has no any other lease deed except the said lease deed. He says Rajesh Kumar was retired from the firm may be in 1986 or 1987. He further says he has to verify and search about the retirement document. He says he is giving the evidence on behalf of Mahendra Watch Company. The partners of the firm have executed the power of attorney in his favour. He admits that in terms of Ex.R.8 Athul Jain and Ashish Jain have executed the power of attorney. He has not taken any authorization from Rajesh Kumar. He admits the Reconstitution deed Ex.R3 was taken place between Shanthilal, Mahendra Kumar, Mohanlal and Ashish Kumar and the same is not registered but he cannot tell who has

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purchased the stamp paper, but Auditor has prepared the document. The stamp paper was purchased to just prior to execution of the document. Ex.R3 was in his custody. He further admits that he has given the

reply to the notice given by Ramachandrasa. He says he has given the instructions to his counsel to give reply in terms of Ex.P.24 and also given the instructions to his counsel to give reply in terms of Ex.P.16. He further says he has given the instructions to his counsel to prepare the objections. He does not know whether the document of consent given in writing by the Ramachandrasa is there, as stated in para 19 of his affidavit. He further says Ramachandrasa has given consent to enter into the fresh partnership deed. It is suggested that, Ramachandrasa has not given any permission for fresh partnership deed or reconstitution of partnership deed and the said suggestion was denied. It is suggested
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that, Ex.R.3 is created for the purpose of this case and the same was denied.

30. The respondents also examined four witnesses and these witnesses says that they know Mohanlal from 1990 and the respondents are doing the business. In the cross-examination of RW-2, he admits that he does not know who took this petition schedule premises for rent in the year 1985 and he is not seen original tenant Mr.Rajesh Kumar. He says he does not know whether Rajesh Kumar was the original partner

of the said firm.

31. RW-3 in the cross-examination he admits that Mohanlal requested him to give evidence. He does not know who took the petition schedule premises initially on lease. He further says he does not know the original tenants are Mr.Shantilal and Rajesh Kumar and they are the original partners of Mahendra Watch company. Further he says he does not know under
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what capacity the respondent No.3 and 4 are in the said shop and doing their business.

32. RW-4 , in the cross-examination he admits that he does not know who took the petition schedule premises for lease and he also does not about Mohanlal went to jail. He says he has not enquired at any point of time what rights they are having to do the business and he also does not know the owner of the petition schedule premises. He does not know whether Mahendra Watch Company is a partnership firm or Proprietary concern or partnership firm.

33. RW-5 is also cross-examined. He says he has seen Shantilal who started Mahendra Watch Company and also seen son of Shantilal and Rajesh Kumar. He says he does not know whether they are partners but they were running the business. He admits that Mohanlal and his sons are not relatives of Shantilal

but he claims that they are friends. He admits that he

has not seen Rajesh Kumar and Shantilal in the
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petition schedule premises from last 5 years but he
claims that Mohanlal was with Shantilal in the
business which was carried on in the petition schedule
premises. He admits that he knew that Mahendra
Watch Company was run by partners, but he does not
know who were all the partners in Mahendra Watch
Company. He says he does not know who are all the
partners and when the partners were retired and when
the same was reconstituted. He claims Athul Jain and
Ashish Jain i.e., respondent No.3 and 4 are the
partners and he does not know when they became the
partners and he has not seen any documents. But
claims that before respondent No.3 and 4 became the
partners Shantilal and Mohanlal were the partners. He
further says, he has not seen the partnership deed of
the Athul Jain and Ashish Jain. He has not seen the
partnership deed of Mohanlal Jain also but they are
partners.

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34. Before considering the contentions of both the
parties, I would like to refer the condition of the

agreement -as well as the proviso of the Rent Act

which has been invoked by the petitioner.

The condition No.19 of the lease deed marked at
Ex.P.4 is as follows:

That the Lessee shall not sub-let the
schedule premises without the consent of the
Lessor in writing but shall be entitled to
carry on the business in partnership with
such other person or persons. Further, if the
lessee intends to sell the going concern the
lessee shall be entitled to do so with the
consent of the Lessor. However, the Lessor
shall not be unreasonable in giving new
premises shall be heritable and transferable
among the partners to their heirs.

I would like to mention the proviso of 27(2)(b)(ii)
which reads thus:

27(2)(b)(ii) : After such commencement
of this Act without the consent in writing of
the landlord, sublet, assigned or otherwise
parted with possession of the whole or any
part of the premises;

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On reading of condition No.19 of Ex.P.4, it is
mentioned that Lessee shall not sub-let the schedule
premises without the consent of the Lessor in writing
but shall be entitled to carry on the business in
partnership with such other person or partners.
Further, if the lessee intends to sell the going concern
the lessee shall be entitled to do so with the consent of
the Lessor. However, the Lessor shall not be
unreasonable in giving new premises shall be heritable

and transferable among the partners to their heirs.

This condition stipulates that the Lessee shall not sublet the schedule premises without the consent of the Lessor in writing and also if the lessee intends to sell the on going concern the lessee shall be entitled to do so with the consent of the Lessor.

35. Admittedly, the petitioner herein has executed deed of lease cum agreement to lease on 22.02.1985 and this lease agreement is between the petitioner and the M/s. Mahendra Watch Company represented by its

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partner Rajesh Kumar, S/o Shanthilal . In the cross-examination also PW-1, he has admitted that the second respondent, Rajesh Kumar is the son of Shanthilal. On perusal of the condition No.19 of Ex.P.4, it is specific that while sub-letting the premises the firm has to take the permission in writing from lessor. The respondent in the objection statement has contended that the lease is for a period of 53 years and the said fact is also not disputed by the petitioner and the lease deed is also a registered lease deed. It is important to note that the respondent has raised the objection that the petitioner herein has created an assignment in favour of three persons as admitted in the cross-examination of PW-1, hence, the petitioner

cannot maintain this petition once he has assigned his rights. It is important to note that the petitioner counsel has brought to my notice the averment made in para 4 of the written statement. In the said written statement it is specifically contended that the SCCH-1 42 HRC No.63/2016

petitioner herein is the landlord and the first respondent is a tenant under the petitioner in respect of shop premises i.e., petition schedule premises. Once the respondent has admitted the fact that petitioner is the landlord and first respondent Firm is a tenant, the respondent cannot blow hot and cold that the petitioner cannot maintain the petition. I would like to refer definition of section 3(e) of Karnataka Rent Act, 1999 :

Landlord means a person who for the time being is receiving or is entitled to receive, the rent of any premises, whether on his own account or on account of or on behalf of or for the benefit of any other person or as trustee, guardian or receiver for any other person or who would so receive the rent or to be entitled to receive the rent, if the premises were let to a tenant;

The meaning of landlord is very exhaustive and need not be necessarily a title holder or owner , a person who receives rent for the first time or entitled to SCCH-1 43 HRC No.63/2016

receive rent of any premises whether on his own account or on account of others also termed as landlord. In the case on hand, it has to be noted that the rental agreement is between petitioner and first respondent company and the respondent also admitted the same in para 4 of written statement. Even any one of the co-owner can maintain the eviction petition. No doubt, in the cross-examination of PW-1, he admits that his father has created assignment and the said assignment document has not produced before the Court, that will not disentitle the petitioner in view of definition of the landlord and admission of the respondent that the petitioner is landlord and the first respondent as tenant, hence, the contention of the respondent that the assignment deed is not produced, hence, petitioner is not entitled to file the petition cannot be accepted. It is also an admitted fact that when the written statement is filed before the Court, along with memo stating that rent has been tendered

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in favour of the petitioner herein and the same has been accepted by the respondents, when the rent has been paid in the name of the Firm and not in the individual capacity of respondent No.3 and 4 as partners of the Firm.

36. The counsel appearing for the respondent

also brought to my notice that Ex.R.2 series rent receipts which are confronted to PW -1 are admitted and got marked by the respondent during the course of cross-examination. On perusal of the rent receipts which are marked as Ex.R.2 are in favour of Mahendra Watch Company and not in the name of respondent NO.3 and 4 and these document Ex.R.2 will not come to the aid of respondents No.3 and 4.

37. The counsel appearing for the respondent

also brought to my notice section 108 of Transfer of Property Act regarding rights and liabilities of lessor and lessee and 108(c) says " the lessor shall be deemed to contract with the lessee that , if the latter pays the
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rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption".

There is no dispute with regard to the fact of proviso.

On the other hand, the counsel for the petitioner has brought to my notice the judgment of Apex Court

(2001) SCC 564(Vannattankandy ibrayi Vs. Kunhabdulla Hajee). In this judgment Apex Court held that:

Where rented premises are governed by a State of rent law, held tenant could not claim benefit of provisions of Section 108

The counsel also relied upon the judgment reported in AIR 1970 Rajasthan 86 (Alware Iron Syndicate Vs. Union of India) and counsel has brought to my notice para 6 of the judgment and para 6 is also with regard to partnership. A firm as such is not an entity in law and is not a person within the meaning of section 4 of the Patnership Act and the same is in respect of bringing the suit by all its partners under

the firm name.

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39. The counsel also regarding sub-letting mainly relied upon the judgment reported in 1974(1) SCC 289 (Smt.Krishnawati Vs. Shri Hans Raj) and the counsel brought to my notice para 6 of the judgment. In this judgment the Apex Court held that in this respondent produced no evidence to show such sub-letting in spite of the appellant's denial in the written statement of any sub-letting and the averment that she was the wife of Sohan Singh provided the necessary ammunition for a formidable battle in which the respondent took upon himself to show that she was not the legally married wife of Sohan Singh.

40. Further with regard to sub-letting the counsel for the respondent has relied upon the judgment reported in (1987) 3 Supreme Court cases 538 (Helper Girdhar Bhai Vs. Syed Mohammed Miar Sahib Kadri and others) and counsel brought to my notice para 19 of the judgment "tenant becoming a partner of a partnership firm and allowing the firm to carry on

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business in the demised premises while himself retaining legal possession thereof does not amount to

subletting.

41. The counsel also brought to my notice the judgment reported in 2005(1) SCC 481(Mahendra Saree Emporium Vs. G.V.Srinivasa Murthy) and brought to my notice para 16 to 18 regarding sub-letting is concerned and the Apex Court while dealing with subletting there is unrebutted evidence available on record to show that the family of the tenant consists of sixteen members which includes cousins as well. The family is joint and depends for its livelihood on the business run in the suit premises. There is no evidence adduced and no material available on record to draw an inference that the tenant has dissociated himself from the business activity leaving for the partners alone to carry on the business.

42. The counsel also relied upon the judgment reported in (1988)3 Supreme Court cases 57(Jagan SCCH-1 49 HRC No.63/2016

Nath (deceased) through LRs Vs. Chander Bhan and others) and counsel has brought to my notice para 6 of the judgment. In this judgment at para 6 Apex Court held that mischief contemplated under section 14(1)(b) of the Act has been committed as the tenant had sublet, assigned, or otherwise parted with the possession of the whole or part of the premises without obtaining the consent in writing of the landlord. There

is no dispute that there was no consent in writing of the landlord in this case. There is also no evidence that there has been any subletting or assignment. The only ground perhaps upon which the landlord was seeking eviction was parting with possession. It is well settled that parting with possession meant giving possession to persons other than those to whom possession had been given by the lease and the parting with possession must have been by the tenant; user by other person is not parting with possession so long as the tenant retains the legal possession himself or in

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other words there must be vesting of possession by the tenant in another person by divesting himself not only of physical possession but also of the right to possession. So long as the tenant retains the right possession there is no parting with possession in terms of clause (b) of section 14(1) of the Act. Even though the father had retired from the business and the sons had been looking after the business, in the facts of this case, it cannot be said that the father had divested himself of the legal right to be in possession.

43. By relying upon these judgments, it is the argument of the respondents' counsel that the respondent No.3 and 4 are in possession of the petition

schedule premises as partners of the firm of the first respondent.

44. On the other hand, counsel appearing for the petitioner also relied upon one more judgment reported in (2002)5 Supreme Court Cases 90 (P.John Chandy and Co.(P) Ltd., Vs. John P.Thomas) and brought to SCCH-1 51 HRC No.63/2016

my notice regarding inference from the fact established held is not purely a question of fact, it is rather a point of law in as much as it is related to conclusions or inferences to be drawn from findings of fact, inference from facts. Findings of the fact in the present case is that after the lease was given to the appellant in the year 1949 sub-tenancies had been created apart from in the year 1949 itself, in the years 1965, 1971, 1972 and 1974, so as to have a clear factual position it may be indicated that liability of the tenant to hand over possession on account of sub-letting to the landlord, came into existence by virtue of section 11(4)(i) of the Kerala Buildings (Lease and Rent Control) Act, 1965. He vehemently contended that this Court has to see that the conduct of the parties and admittedly there is no any documents to prove the reconstitution of the partnership deed along with the original partner. The document Ex.R.3 and 5 does not create any right in favour of the respondent No.3 and 4 and the position

of the respondent No.3 and 4 is nothing but sub-tenant and in order to prove that they are the partners of the firm, no material is placed before the Court. The document Ex.P.6,7,12 will not come into the aid of the respondents and the documents which has been relied upon by the respondents does not create any right and sub letting has to be assessed only by conduct and admission elicited by RW-1. It is clear that the respondents NO.3 and 4 are in occupation of the petition schedule premises as sub lessees and not as tenants.

45. In keeping the contentions urged by both the counsels, this Court has to appreciate the material on record. Before appreciating the oral and documentary evidence, I have already referred the condition No.19 of Ex.P.4 regarding sub-letting is concerned. I have already pointed out definition and meaning of section 3 (e) the word landlord is very exhaustive who not only the owner can seek for an eviction, co-owner can seek

for eviction. Rent has been tendered in favour of the petitioner by the respondent No.1 and admittedly petitioner is the landlord and first respondent is the

tenant and no dispute with regard to the rental agreement between the petitioner as well as the first respondent and the said lease agreement has been signed by the second respondent Rajesh Kumar as one of the partner of the Firm. It is important to note that regarding sub-letting is concerned, no permission was taken from the petitioner. On the other hand, the respondents in the objection statement has contended that in para 4.1 that there was change in constitution of the partnership firm and two partners by name Shathilal and Mahendra Kumar retired from the partnership and Mohanlal D.Jain and his son Ashish Jain continued as partners. In order to substantiate their contention the respondents have relied upon the document Ex.R.3. On perusal of Ex.R.3, the document came into existence on 1st July 2000 between SCCH-1 54 HRC No.63/2016

Shantilal and Mahendra Kumar and Mohanlal D.Jain and Ashish M.Jain. On perusal of Ex.R.3 it is mentioned in page 2, that one more partnership deed dated 01.03.2000 was in existence and this document has not been placed before the Court to show that who are all the partners in terms of the partnership deed dated 01.03.2000. It is also important to note that the petitioner counsel has brought to my notice that in order to prepare this document stamp paper

was purchased on 05.03.2000. On perusal of the treasury seal on the overleaf of this stamp paper, the date mentioned is 21.04.2000 and hence, there is force in the contention of the petitioner counsel that Ex.R.3 cannot be relied upon and the said document came into existence in the suspicious circumstances.

46. It is further important to note that Ex.R.5 is the deed of admission cum retirement between Ashish M.Jain, Atul M.Jain and Mohanlal D.Jain. This document deed is to admit Ashish M. Jain, Atul M. SCCH-1 55 HRC No.63/2016

Jain into the partnership and for the retirement of Mohanlal D.Jain from the partnership deed. In the said document also it is mentioned deed of partnership dated 01.03.2000 and subsisting deed dated 01.07.2000 the confirming partner and the retiring partner agreed to start and carry business as dealer of watches, electronic goods and such other allied products in the business and the said partnership dated 01.07.2000 is not forthcoming before the Court, hence, it is clear that partnership deed dated 01.03.2000 is in existence and there is no explanation on the part of the respondent why the said document has not been produced before the Court and it appears the same is suppressed. It is further important to note

that the Ex.R.3 is not between the original partner
Rajesh Kumar and these respondents NO.3 and 4 and
though they claim that Shantilal is also the partner of
first respondent firm, no document is placed before
the Court to show that Shanthilal is also the partner of
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Mahendra Watch Company. It is important to note that
Ex.R.5 Deed of Admission-cum-Retirement, it discloses
that Sri Mohanlal D. Jain is leaving partner with effect
from 01.06.2008 and his sons Ashish M. Jain and Atul
M. Jain are the incoming partners of the firm. The
respondents No.3 and 4 have not produced any
documents to show that their father also the partner of
the respondent No.1 Firm. Hence, it is clear that all
these reconstitution was made without the consent of
the petitioner and not with the original partners. That
too they specifically claimed that consent is obtained
in writing in the objections but no such consent letter
is produced before the Court. It is important to note
that respondents in para 6 of the objection statement
has contended that the truth is that the 2nd
respondent retired from the partnership firm long back
on 01.07.2000, thus question of 2nd respondent being
present in the petition schedule shop does not arise at
all. Hence, it is clear that second respondent is not in
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occupation of first respondent firm and also not in possession. It is contended that second respondent retired from the partnership firm long back in 2000 and the said document has not been placed before this Court showing that second respondent has retired from the partnership firm. Ex.R.3 discloses Shantilal and Mahendra Kumar retired from the firm and the said document is also dated 01.07.2000. I have already mentioned regarding the stamp paper was purchased on 05.03.2000 and treasury seal discloses the date as 21.04.2000 and the said document cannot be relied upon.

47. It is further important note that in the cross-examination of PW-1 it is suggested that at the time of the execution of the document Ex.P.1 in the year 1983 itself Mohanlal and Shanthilal are partners and hence, it is definite case of the respondentd that Mohanlal and Shanthilal are the partners even at the time of lease deed between the Uttaradhimutt and petitioner

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herein. In order to substantiate the said contention also the respondents have not placed any materials before the Court. It is further important to note that in the cross-examination of PW-1, the respondent counsel

Indian Kanoon - <http://indiankanoon.org/doc/102728091/>

contended that respondents No.3 and 4 have become partners in 2000 and in another breath suggesting that from the inception of the tenancy Asish Jain, Atul Jain and their father are partners of the firm from the inception and the said suggestion is contrary to the contention of the respondents. In the cross-examination of RW-1, who is the Power of Attorney holder of respondent No.3 and 4 and also the father of respondent No.3 and 4, he categorically admits that
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the premises was taken by Mahendra Watch Company and he does not remember which year Ramachandrasa executed the lease deed in favour of the first respondent Firm. Though he is not able to say when the rental agreement was executed he claims that from the inception of tenancy he was one of the partner. But he says at the time of execution of the lease agreement in favour of Mahendra Watch Company, Rajesh Kumar, Mahendra Kumar, Chualal, Kamala Bai and Mohan Lal are the partners of the said firm. Further he says deed was in existence and same was given to Ramachandrasa to prepare the lease deed and he did not return the same. RW-1 says partnership deed was reconstituted in the year 2002 and 2008. Ex.R.3 is dated 2000 and not 2002 as contended by RW-1 and

Ex.R.5 is dated 2008. It is further important to note that RW-1 do not remember the date of birth of his son Atul Jain and Ashish Jain. It is elicited from the mouth of RW-1 that he is not the relative of second
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respondent Rajesh Kumar Jain but he claims that father of the second respondent, Mr. Shanthilal was also the partner along with them but no document is produced and the counsel reminded the witness while cross-examining him that the documents including partnership deed was taken while attending the repairs but no pleading.

48. He categorically admits that his children are running the business in the petition schedule premises. The partnership is reconstituted twice after 1980 and he is having one partnership reconstitution deed. Ex.R.3 and R.5 does not disclose any chain between the original partners of Mahendra Watch Company and present respondents No.3 and 4.

Though the respondents have claimed that their father Mohanlal was the partner of the firm, no document is produced. Original partnership deed is not produced before the Court. He contends the same was given to

Ramachandrasa. In the cross-examination of RW-1 bill
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books, cheques, agreement copy was taken when the possession was given to Ramachandrasa in the year 1988 or 1989. In one breath he says the partnership deed was given to petitioner at the time of preparing lease deed i.e., in 1985 and in another breath the RW1 says in the year 1988 or 1989 the same was taken by the petitioner and the counsel appearing for the respondent reminded the witness about the partnership deed along with other documents. Hence, it is clear that the counsel is very interested in bringing the same from the mouth of the RW-1 that partnership deed was taken by Ramachandrasa. No document is placed before the Court to substantiate the contention of the respondents that partnership deed was taken by the petitioner herein. RW-1 also categorically admits that there were five partners when Mahendra Watch Company was started and lease deed was registered in the year 1985 and only Rajesh Kumar has signed as one of the partner to the lease deed and they have no

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other lease deed except the said lease deed and again he says Rajesh Kumar retired in the year 1986 or 1987. He says he has to search about the retirement document. If the respondent placed the document of retirement of Rajesh Kumar along with these

respondents then the contention of the respondents would have been accepted. He further says another document was executed in 2002 and the document produced before the Court Ex.R.3 came into existence in the year 2000. In the said document Rajesh Kumar is not a party to the said document, only father of the Rajesh Kumar is a party and the said document came into existence in a suspicious circumstances. In order to prove that Shanthilal was the partner no document is produced before the Court. Ex.R.3 is suspected document, respondents have purchased the stamp paper on 05.03.2000 i.e., before issuance of stamp paper by the treasury to the stamp vendor and

treasury	seal	is	dated	21.4.2000	how	can	the
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document can be issued by the stamp vendor on 05.03.2000 before stamp vendor gets the stamp paper from the treasury and said document cannot be believed.

49. The respondents in support of their case have examined witnesses RW-2 to 5 all of them says about the respondent NO.3 and 4 are doing business and there is no dispute with regard to the fact that they are doing business only. They claim that they are the partners but in the cross-examination all of them have

stated that they have not seen the partnership deed and they does not know when respondent No.3 and 4 have become the partners of first respondent firm. Hence, the evidence of RW-2 to 5 will not come into the aid of respondents to come to the conclusion that respondent No.3 and 4 are the partners of the first respondent Firm.

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50. Regarding purchase of the stamp paper is concerned i.e., Ex.R.3 . RW-1 categorically admits reconstitution deed was taken place between Shanthilal, Mahendra Kumar and Mohanlal D.Jain and Ashish M.Jain and the same is not registered one. He says he cannot tell who has purchased the stamp paper, but Auditor has prepared the document. Ex.R.3 came into existence on 01.07.2000 and the same was purchased on 05.03.2000 and why it was purchased 4 months prior to its existence no explanation and the same was in the custody of RW-1. Further more, it is important to note that he has given the reply to the notice given by Ramachandrasa in terms of Ex.P.24 and he has given the instructions to his counsel to give reply in terms of Ex.P.16. Further he categorically admits that he does not know whether the document of consent given in writing by the Ramachandrasa as

stated in para 19 of his affidavit. RW-1 claims that

they	have	taken	consent	in	writing	from
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Ramachandrasa. RW-1 in one breath he says consent

was taken in writing from the petitioner and in another

breath he says consent was not taken in writing. RW-1

says Ramachandrasa given consent to enter into fresh

partnership deed. In the absence of documentary

proof regarding obtaining of consent from the

petitioner in creating the reconstitution deed clearly

establish that the respondents No.3 and 4 are the

strangers to the firm Mahendra Watch Company. No

doubt they are running business but no any legal

document before the Court that they have entered into

partnership with the original partners of Mahendra

Watch Company. Respondents claims that RW-1

Mohanlal and Rajesh Kumar were partners earlier but

no documentary proof to shows that they were also the

partners of the company and the other documents

produced by the respondents as Ex.R. series from

Ex.R.6 to Ex.R.40 are not substantiate that with the

consent	of	the	landlord	the	partnership	was
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reconstituted. There is no any substance before the

Court to show that respondents No.3 and 4 were

entered the partnership along with other partners. It is also important to note that the G.P.A. given to their father RW-1 in the individual capacity of respondents No.3 and 4 and not in the capacity of as partners of the respondent No.1 Firm. In the absence of documentary proof this Court has to arrive for the conclusion that respondents No.3 and 4 are strangers as contended by the petitioners. Hence, the petitioner has proved that the respondents No.3 and 4 are sub-lessees and there is clear violation of condition No.19 on the lease agreement Ex.P.4 and the respondents have failed to produce documentary proof of consent of the landlord Ramachandrasa for reconstitution of the partnership deed as contended by the respondents.

Hence, I answer point No.1 in affirmative.

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51. Point No.2: The petitioners have invoked provision 27(2)(d)(i)(ii) of Karnataka Rent Act ,1999 contending that the tenant or any member of his family has not been in occupation thereof for a period of six months and also tenant has not been in occupation thereof, without a reasonable cause for a period of two years, immediately before the date of filing of the petition for recover of possession thereof. It has to be noted that the provision says if the tenant or

any member of his family has not been in occupation
for a period of 2 years not in occupation, the landlord
is entitled for an order of eviction. In the case on hand,
it is not the case of the petitioners that the premises
was kept under lock and also not been in occupation
and only contention was that the respondents No.3
and 4 are strangers and the fact that they are doing
business is not denied by the petitioner and it is also
elicited in the cross-examination of PW-1 that
respondents No.3 and 4 are in occupation of the
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premises and doing the business. Under such
circumstances, I am of the opinion that the petitioner
cannot invoke section 27(2)(d)(i)(ii) of Karnataka Rent
Act ,1999 seeking an order of eviction. Hence, I answer
point No.2 as negative.

52. Point No.3: The petitioner has invoked
section 27(2)(p) of Karnataka Rent Act ,1999 . On
reading of the provision it says " that the person in
occupation of the premises has failed to prove that he
is a bonafide tenant", hence, petitioner has claimed an
order of eviction. In the case on hand, it has to be
noted that this Court while considering the ground
urged under section 27(2)(b) has come to the
conclusion that the respondents No.3 and 4 are the

sub lessee and they have not derived any right from
the original tenant and when this Court has come to
the conclusion that they are not the bonafide tenants
and they are the sub-lessee the petitioner has made
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out the ground to invoke section 27(2)(p) of Karnataka
Rent Act ,1999. Respondents No.3 and 4 cannot be
termed as bonafide tenants, hence, respondents are
liable to be evicted from the petition schedule
premises. Hence, I answer point No.3 in the
affirmative.

53. Regarding granting of time is concerned this
enactment was brought into force with an intention to
dispose off the case as early as possible and also the
very proviso of section 42 (7) mandates the Court that
every application made to the Court shall be heard as
expeditiously as possible and endeavour shall be
made to conclude the hearing and to dispose off the
application within six months of it being filed. In view
of this mandate given to the Court to dispose of the
matter within 6 months , it is clear that the relief is to
be given within the stipulated time. Considering the
said proviso , the Court has to grant the just and
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reasonable time to vacate the premises and when the time is fixed for 6 months for disposal of the application and the word is used that Court shall be heard as expeditiously as possible and endeavour shall be made to conclude and dispose off the application within 6 months and granting of 3 months would be reasonable , since this case is filed on 15.07.2016 and already one year is lapsed and the matter is not disposed off within six months as stipulated under section 42(7) of the Act.

54. Point No.4: In view of the discussions made above, I proceed to pass the following:-

ORDER

The petition filed by the petitioner under Section 27(2)(b)(ii) and 27(2) (p) is allowed.

The respondents are hereby directed to quit, vacate and deliver vacant possession of the petition schedule premises to the petitioner within three (3) months from the date of this order.

The petition filed by the petitioner under Section 27(2)(d)(i)(ii) is dismissed.

Under the facts and circumstances of the case, there is no order as to costs.

Draw decree accordingly.

(Dictated to the Stenographer , transcribed by her, corrected & then pronounced by me in Open Court on this the 14th day of July 2017) (H.P.SANDESH) Chief Judge, Court of Small Causes, Bangalore.

SCHEDULE All that piece and parcel of the shop premises presently bearing shop No.1, Ground floor, Maruthi Plaza Block-'C' U.M.Lane, Chickpet, Bangalore -560 053, measuring North to South 9 feet and East to West 10 feet 7 inches and bounded on the :

East by : Bathing Ghat Lane West by : Remaining portion in the same building North by: Passage South by: Adjoining shop in the same property.

(H.P.SANDESH) Chief Judge, Court of Small Causes, Bangalore.

ANNEXURES List of witnesses examined for the petitioners :

PW-1 : M.R.Goverdhan List of witnesses examined for the respondents :

RW-1	: Mohan Lal
RW-2	: Mahendra Kumar Jain
RW-3	: Deepak Mathuria
RW-4	: Dalaram Gajaji
RW-5	: Jestmal Rathod

List of documents exhibited for the petitioners:

Ex.P-1 : Certified copy of lease deed Ex.P-2 : Khatha Certificate Ex.P-3 : Khatha extract Ex.P-4 : Certified copy of lease deed Ex.P.5 RTI application Ex.P.6 Reply Ex.P.7 Letter sent by the respondent Ex.P.8 Cheque Ex.P.9 Office copy of legal notice sent to the respondent Ex.P.10 Postal receipt Ex.P.11 Returned postal cover Ex.P.12 Letter sent by the petitioner Ex.P.13 Postal receipt Ex.P.14 Postal acknowledgements &15 Ex.P.16 Reply given by the respondent Ex.P.17 Cheque Ex.P.18 Termination notice Ex.P.19 4 postal receipts Ex.P.20 Postal acknowledgements to 23 Ex.P.24 Reply Ex.P.25 D.D. List of documents exhibited for the respondent:

Ex.R-1 : Photographs (11) Ex.R-2 : Xerox copies of rent receipts Ex.R-3 : Reconstitution of partnership firm(subject to objection) Ex.R-4 : Saral forms (3) Ex.R.5 Admission and retirement deed Ex.R.6 Intimation given to the commercial department Ex.R.7 Letter given by the Bank Ex.R.8 G.P.A. Ex.R.9 Deed of lease cum agreement Ex.R.10 VAT certificate Ex.R.11 Return of Turn over(Form No.4) Ex.R.12 Form No.3(5 in Nos) Ex.R.13 Letter addressed to C.T.O. Ex.R.14 Letter addressed to CTO Dt.29.4.2002 Ex.R.15 Building plan Ex.R.16 Returned postal covers(3) to 18 Ex.R.19 Letter addressed to petitioners along with 3 postal receipts Ex.R.20 Letter dated 17.4.2012 along with postal receipt Ex.R.21 Returned postal cover Ex.R.22 Bank Challan Ex.R.23 Returned postal cover Ex.R.24 Letter dated 05.02.2014 Ex.R.25 M.O.Receipts(5) Ex.R.26 M.O. Receipts(9) Ex.R.27 Returned postal cover Ex.R.28 Letter dated 03.12.2014 along with two postal receipts Ex.R.29 Returned postal cover Ex.R.30 M.O.receipts(2) Ex.R.31 Rent receipts (19) Ex.R.32 Saral Forms(2) Ex.R.33 Letter dated 29.01.2004 Ex.R.34 Notice issued by commercial tax officer Ex.R.35 Assessment order Ex.R.36 Reply notice Ex.R.37 Notice dated 18.02.2016 Ex.R.38 Reply dt.16.09.2015 Ex.R.39 Letter dt.08.09.2015 Ex.R.40 Bank pass book (H.P.SANDESH) Chief Judge, Court of Small Causes, Bangalore.

Kvs/-