

Paul Brothers (Tailoring Division) and Others

Vs

Ashim Kumar Mondal and Others

With

Phani Bhusan Ghosh and Others

Vs

Ashim Kumar Mondal and Others

Civil Appeal Nos. 1756 and 1755 of 1990

(S. Ranganathan, V. Ramaswami II JJ)

02.04.1990

JUDGMENT

RANGANATHAN, J. -

1. Leave granted.

2. These appeals arise a sequel to certain directions of this Court in the famous Sanchaita case. The Sanchaita Investment Company was a firm which was controlled and run, primarily, by three persons Sambhu Prasad Mukherjee, Biharilal Murarka and Swapan Kumar Guha. It had been able, by dint of a tremendous advertisement campaign, to collect deposits amounting to several crores of rupees from thousands of depositors spread all over India by holding out attractive terms of interest. The firm initially prospered and its deposits steeply mounted to astronomical figures. The firm, however, began to acquire, or deal in, movable and immovable properties in various cities of India in the names, not only of the firm, but of relatives and benamidars of various persons who were in management of its affairs. A sizable portion of the firm's funds being thus tied up or siphoned away from its coffers for the private benefit of the individuals running it, the firm eventually began making defaults in the obligations to the depositors. The depositors, thereupon, approached the High Court and eventually the matters came up to this Court in W.P. Nos. 638 and 755-800 of 1983. With a view to safeguard the interests of the depositors, arrange for a return to them of as much of their deposits as possible and ensure that the properties of the firm were duly identified and the full and due benefit of the funds diverted from its coffers was restored to the firm, this Court, by its order dated May 4, 1983, appointed a retired District Judge as a Commissioner to charge of all the assets, documents and papers of the firm and of its agents, sub-agents, transferees and benamidars. Directions were given to the Commissioner to look into the claims of depositors and to devise a scheme whereby persons who had deposited sums not exceeding Rs. 25,000 could be repaid expeditiously. By a subsequent order dated September 27, 1983, certain directions were given to enable the Commissioner to gather in all the assets of the firm. It is necessary to quote a portion of this order. It read :

"The Commissioner may attach such assets and properties which, in his prima facie opinion, are of the ownership of the firm Sanchaita Investments, or of the ownership of any of its partners. Such assets and properties may be put to sale by the Commissioner if no objection is received to the attachment thereof within one month of the date of attachment. All objections received to the attachment of such assets or properties will be forwarded by the Commissioner to the Prothonotary of the High Court of Calcutta. We request the learned Chief Justice of the Calcutta High Court to nominate a Division Bench of the High Court for the purpose of jurisdiction upon such objections. The Division Bench will dispose of the objections on merits after hearing all interested parties."

3. Reference must also be made to another order of this Court dated September 23, 1985 in C.M.P. No. 38589 of 1985. By this order, this Court directed :

"After hearing counsel for the parties we consider it necessary to empower the Commissioner, Sanchaita Investment, to remove all unauthorised persons and trespassers from possession of the property proposed to be sold by the Commissioner under the orders of this Court and to hand over vacant possession to the rightful purchasers. The Commissioner is authorised to take the assistance of the police for the purpose of obtaining possession and handing it over to the rightful purchasers."

4. In pursuance of these directions, the Commissioner attached a large number of properties situate all over the country which, he had reason to believe, were properties which belonged to the firm though acquired in the names of others. When the properties were so attached and sought to be sold, objections were lodged by persons claiming title or possession of the property in their own right and these objections were adjudicated upon by the designated Division Bench of the Calcutta High Court.

5. One of the properties that were thus attached by the Commissioner was house No. 52/1/1-B, Surendra Nath Banerjee Road, Calcutta-14. (There is a slight discrepancy in the door number of this property as appearing in various documents but that is not material for our purposes). This property stood on land of the small extent of about 800 sq. ft. and comprised of five rooms in the ground floor (three in front and two at the back), a first floor and a second floor but, being business premises in a busy commercial locality, is of considerable value today. The Commissioner found that this property had been acquired in the names of Mahamaya Devi, an aunt of Sambhu Prasad Mukherjee, for Rs. 85,000 on October 4, 1977. Apparently the Commissioner was of the opinion that the property was really that of the firm acquired in the name of Mahamaya Devi. He, therefore, attached this property by a public notice taken out, inter alia, in "The Statesman" dated May 27, 1984 to the following effect :

"The public are hereby informed that in exercise of the authority and power vested in me under the order of the Hon'ble Supreme Court of India passed and made on May 4, 1983 and September 27, 1983, I had attached or I had taken possession of or I am taking possession of (as the case may be) the following properties (specified in the schedule below) including flats, lands, cars, launch, business, shares in companies and partnership firms and house properties. The persons in whose names these properties stand are hereby warned that they shall not lease out, assign, sell, mortgage, transfer or otherwise encumber or deal with them until further orders from me. Anybody dealing with such properties would do so at his own risk or

responsibility."

6. It appears that there were also other similar notices issued by the Commissioner. In response to one of these notices, Smt. Mahamaya Devi put forward her claim to the ownership of the property but her claim was rejected by the Division Bench of the Calcutta High Court on March 29, 1985 in Case No. 23 of 1984. Sri Kapur, learned counsel for the respondents states that a petition for special leave to appeal to this Court preferred by her was also rejected some time in 1985. This is not contradicted by the petitioners. We may, therefore, proceed, for the purposes of this case, on the footing that, though standing in the name of Mahamaya Devi, the property in question belongs to the firm Sanchaita.

7. Subsequently the property was brought to sale by the Commissioner. Sealed tenders were invited for the purchase of the properties specified in the schedule, by a notice in "The Statesman" on March 7, 1986, on an "as is where is basis". The notice specifically mentions that the possession of only three of six items mentioned in the notice was with the Commissioner and the property presently in question was not one of them. Ashim Kumar Mandal and two others (the respondents before us, hereinafter compendiously referred to as 'the Mandals') offered, on May 22, 1986, to purchase the property for Rs. 1,26,000 in lump sum subject to negotiations in the matter. They undertook to deposit 25 per cent of the price on the acceptance of the offer and the balance "at the time of giving us the physical possession of the said premises". After a discussion with the Commissioner, they deposited Rs. 31,500 on June 11, 1986 and stated in their letter of the same date to the Commissioner :

"We shall deposit the balance amount as and when called upon to do so. Thereafter, you will hand over to us the possession of the said premises free from illegal trespassers".

On June 12, 1986, the Commissioner accepted the offer of the Mandals subject to the following conditions, namely :

"(a) That the proposed sale in your favour under the conditions mentioned hereinbelow is approved by our advisory Board.

(b) That one-fourth (i.e. Rs. 31,500) of the total consideration money is at once paid by you to the Commissioner, Sanchaita Investments, through bank draft or pay order.

(c) That the balance of the consideration money is paid within June 30, 1986.

(d) That in default of payment of the consideration money as stated above, the earnest money (Rs. 31,500) to be paid by you through bank draft or pay order as mentioned above shall stand forfeited.

(e) That the aforesaid sale is made on "as is where is basis".

(f) That on payment of the full consideration money as above within the date fixed you may take steps for the obtaining possession of the said entire premises and the Commissioner will help you for the said purpose."

The Mandals, thereafter, paid Rs. 31,500 on June 27, 1986 and Rs. 63,000 on July 18, 1986 and wrote to the Commissioner as follows :

"Please send us the draft sale certificate in respect of the above property for our approval on behalf of our clients and arrange immediately to give our clients vacant possession of the property as agreed upon.

Please inform us if any objection was received by you in respect of the property pursuant to your advertisement in The Statesman dated March 7, 1986."

The Commissioner referred the purchasers to his lawyer in regard to the preparation of the sale certificate and a certificate of sale dated (sic) was eventually issued in favour of Mandals on April 10, 1987. The certificate referred to the orders of the Supreme Court, the satisfaction of the Commissioner, the fact of attachment and the absence of any objections from Mahamaya Devi and conveyed the property to the Mandals.

8. Having thus purchased the property, the Mandals requested the Commissioner to give them vacant possession of the property but there was no response. Thereupon, on September 17, 1987, the Mandals moved an application (being Matter No. 3737 of 1987) before the High Court praying that they may be given vacant possession of the property. It appears that, in the meantime, they had come to know that the premises were occupied by the following parties :

Name of person Portion occupied
1. Paul Brothers (Textile One room on ground floor Division)
2. Paul Brothers (Watch - do - Repairing Division)
3. Paul Brothers (Electronics - do - Division)
4. Dulal Dutta and Panchanan - do - Dutta
5. G. Dey - do
6. Phani Bhusan Ghosh First floor
7. Hari Narayan Gupta Second floor##

These persons were made respondents to the application and, alleging that they were all trespassers in occupation of the property, a prayer was made that they should be directed to hand over vacant possession of the property to the applicants. This prayer has been granted by the Division Bench of the High Court and, hence, these two petitions for leave to appeal, one by the three Paul Bros. and the other by three of the other four "objectors". We have heard these petitions at great length. We grant leave in both SLPs and proceed to dispose of the appeals.

9. The petitioners claim that they are bona fide tenants in the property. Except for petitioner H. N. Gupta who was inducted as a tenant by Mahamaya Devi, the others claim that they have been tenants even under the predecessors-in-interest of Mahamaya Devi. They claim, therefore, that they can be evicted only in accordance with due procedure prescribed by law after full contest and opportunity to lead evidence and cannot be thrown out in summary proceedings like the present one just as if they were persons in unauthorised possession of the property or as if they were mere trespassers. On the other hand, for the Mandals it is contended that once it is held that Mahamaya Devi was a benamidar for Sanchaita, the Commissioner is entitled to take possession of the property, removing all present occupants including tenants therein and selling the property at maximum possible price free of all encumbrances so that the proceeds may be made available to the innumerable depositors who had been denuded of their lifetime savings by the undesirable and fraudulent activities of the persons in charge of the firm. A pernicious evil, it is said, warrants a drastic remedy and hence this Court, having regard to the large scale involvements of the firm, considered it necessary to arm the Commissioner with wide powers so that he may be able to gather in all the real assets of the firm without delay or obstruction for the benefit of the defrauded investors. The Mandals have, it is said, having regard to the terms of the orders passed by this Court and by the Calcutta High Court, purchased the property in the belief that they would not only get a perfect title but also speedy possession of the property. If bona fide purchasers are to be obstructed

like this by all manner of claims, real or imaginary, it is argued, the properties of the firm can only be sold for a song and the entire object and purpose of the various directions of this Court would be frustrated. It is, therefore, contended that, even if the appellants are really tenants in the property as claimed, their claims will have to yield to the paramount public interest of the Sanchaita investors.

10. We are unable to accept this contention of the Mandals. It is not maintainable either in principle or on the terms of the directions given by this Court. To take up the latter first, there is nothing in the terms of the orders of this Court or of the notices of attachment or sale or of any other orders of the Calcutta High Court that vests an absolute title in the auction purchasers of the property free from all encumbrances. The order of the court dated September 27, 1983 only authorised the Commissioner to attach properties which he believed to belong to Sanchaita and provided for any objections to the attachment being heard by the designated Division Bench of the High Court. The attachment and sale of the property presently in question were effected in pursuance of this order. Any sale, transfer, encumbrance or alienation subsequent to the attachment could, no doubt, be impugned but the attachment did not have the legal effect of invalidating earlier interests of others subsisting in the property. In fact also, the sale was on an "as is, where is basis" i.e. without prejudice to the claims of other persons in whose favour bona fide encumbrances or interests may have been created earlier qua the property. There appears to be some force in the contention of the claimants that the price paid by the appellant is not adequate to reflect the market value of the property situated in an important commercial locality in Calcutta at the present day if sold free from all encumbrances but we shall leave this contention out of account as there is no material before us on this aspect. The order of September 23, 1985, no doubt, goes a step further but it only empowers the Commissioner to remove all unauthorised persons and trespassers. The reference to vacant possession in the order has to be restricted only to cases where the property is in the possession of such unauthorised persons or trespassers and cannot be read so as to empower the Commissioner to evict forcibly, or seek the orders of the court to evict summarily, persons who are in lawful possession of the property. We should also like to point out that, in fact also, the Mandals got no better right on the terms of the auction and the correspondence that followed. Though the Mandals referred in their letters to vacant possession of the property, the sale was only on an "as is, where is" basis and the Commissioner at no time offered or assured the Mandals that they would get such vacant possession. He only offered to help them in the process to the extent permissible in law. He has made this position explicit in the letters written by him.

11. Sri Kapur, for the Mandals, placed considerable reliance on the common order of the Calcutta High Court dated March 25, 1986 in *Amar Mondal v. Commissioner* (Matter No. 122 of 1986) and *Jagdish Chand Aggarwala v. Commissioner* (Matter No. 146 of 1985) to contend that the Mandals are entitled to get vacant possession of the property. In that case, Amar Mondal who was the auction purchaser of an item of property (which we shall call 'Property A') at a sale by the Commissioner sought to be put into possession by evicting the respondents 2 to 5 "who are unauthorised occupants" and Jagdish Chand Aggarwala, whose highest bid at an auction for an item of property (which we shall call 'Property B') by the Commissioner could not be proceeded with because of an injunction obtained by respondents 6 and 7, sought the orders of the court "for completing the sale and giving delivery of possession by evicting the respondents". So far as Property A is concerned, the court found, for reasons which need not be repeated here, that they were "unauthorised occupants" and not "bona fide tenants in occupation" and were, hence liable to be evicted. Likewise, in respect of Property B, the court concluded that the claims of tenancy put forward by respondents 6 and 7 "were frivolous". These were, therefore, not cases where tenants were held liable to be evicted and the order does not help the Mandals to the extent claimed.

12. Shri Kapur, however, relies strongly on two sets of observations in this order. The first reference by him is to an observation that any person 30 days of the attachment and that any claim made beyond this period would be barred by limitation and hence cannot be considered. The second reference is to an observation that the court is entitled to adjudicate upon all claims, even those of persons who claim to have any bona fide intermediate interests in the properties attached by the Commissioner. The court observed :

"In our opinion, therefore, once an attachment is effected by the Commissioner on the authority of his powers, vested in him by the Supreme Court, not only persons claiming right, title and interest independent of Sanchaita Investments but also claiming any bona fide intermediate interest created by Sanchaita Investments in favour of the claimant should put forward to claim of objection. It was not the intention of the Supreme Court that there should be proliferation of litigation, result whereof would be that the insignificant part of the depositors' money which should be realised by the Commissioner would be wasted in litigation. This position has been made clear by the Supreme Court when the Supreme Court by a recent order upheld the view of the Bombay High Court that a claim of tenancy in respect of a property attached by the Commissioner must be lodged with this Special Bench and not before any ordinary civil court. The attachment made by the Commissioner cannot be equated with an attachment made by a civil court either prior to judgment or in execution since there what is attached is the right, title and interest of either the defendant or the judgment debtor. In the present case, however, on the scheme framed by the Supreme Court what is being attached is the property itself so that anybody having any lawful claim in whatever interest held by him, must put forward his claim before the Commissioner so that it can be adjudicated once for all in a proceeding before this Special Bench and thus avoid wasteful litigation. We do not accept for a moment that this Court's jurisdiction is limited to adjudication of all claims preferred as against the attachment made by the Commissioner. The scope of our power must be determined with reference to the intention of the Supreme Court referred to herein. Such power in our opinion covers adjudication of all sorts of claims or objections for the Commissioner's attachment and sales of assets belonging to the beneficial ownership of Sanchaita Investment preferred or brought forward at any stage and also to make all incidental and consequential orders as we may find necessary to assist the Commissioner in collecting the assets having regard to the resistance faced by him from persons putting forward any claim of his own. In that view we hold that our power covers a case like the present one where even after the objection has been overruled by this Court, others have come forward to resist the Commissioner from effecting sale by putting forward a claim of tenancy. Such a claim in our opinion, is really an objection to the attachment when we consider it on its substance, that comes well within the scope of our jurisdiction. It matters little whether such jurisdiction is invoked by the Commissioner or the claimant or the proposed purchaser."

He submitted, on the strength of these passages, that the claims in the present case are liable to be dismissed (a) on the ground that they are time barred, and (b) even if the claimants are found to be bona fide tenants in the property.

13. We are unable to agree. While, no doubt, this Court had indicated that claims and objections to attachments should be filed within a period of thirty days, that period cannot be read as if were a

rigid rule of limitation prescribed by law. The order also only says that, if objections are not put forward within a month, the property may be sold and does not preclude objections being filed after the sale. Indeed, the Division Bench did not rest its conclusion on this ground and proceeded to consider the objections on merits. We are also unable to read into the order any conclusion of the Division Bench that even bona fide tenants are liable to be evicted from the property. If that had been so, the bench need not have gone into a detailed consideration of the merits of the claim of tenancy put forward by the contesting respondents in that case. All that the bench observed in the passage extracted above was that all claimants to the properties subjected to attachment by the Commissioner, whether as owners or as intermediate interest holders (like tenants) or otherwise, have to put forward their claims for adjudication by the Division Bench. The bench did not proceed to hold, as suggested by Sri Kapur, that the auction purchasers are entitled to get vacant possession of the property free from all encumbrances and that even bona fide tenants can be directed to be summarily evicted from the property in pursuance of the orders of this Court. We are unable to see in this order any observation that could legitimately have induced the Mandals to believe that they would be entitled to evict even lawful tenants from the property by purchasing it at the auction sale.

14. In principle also, this contention is not well founded. The object of the directions given by this Court was to cut short the proliferation of litigation and to ensure that the Commissioner is able to gather in expeditiously the assets of Sanchaita which were dissipated or siphoned off by the persons in charge of the firm. Thus, if the firm's moneys had been utilised to purchase properties in the name of various individuals benami such property had to be taken back by the Commissioner from such benamidars. Also, where the said benamidars or other persons put up frivolous claims to the property or its possession without the semblance of any legal title to its ownership or possession, such claims could and should be rejected by the court. But this principle cannot apply to bona fide interests of others in the property. For instance, suppose Sanchaita's moneys had been advanced on the mortgage of an item of immovable property, all that the Commissioner would be entitled, legally and equitably, would be to call in the mortgage moneys (principle and interest) and not the entire property itself. An auction purchaser of such a property cannot get anything higher than the interest Sanchaita itself could have claimed in respect of the property. Likewise, if Sanchaita's moneys had been invested in a property which had been bona fide let out to tenants, Sanchaita would have paid only the value of the property so encumbered and its rights in the property can only be subject to those tenancy rights. Sanchaita could not have a right in respect of the property superior to that which its vendor had. Similar would be the position where Sanchaita or its benamidars had, after acquiring a property, created a bona fide tenancy or other encumbrance in respect of that property, in respect of independent outsiders who acquire such interest for consideration. To say that Sanchaita, through the Commissioner, would be entitled to vacant possession even from such tenants, or free from such encumbrances, would result in its being able to realise a larger interest in the property than it acquired. Not only this, the result of any such conclusion would ensure to the benefit of, not Sanchaita, but of the auction purchaser of the property. Having bid for and acquired the right, title and interest of Sanchaita in the property, he would be enabled to get vacant possession which Sanchaita, even if it had continued to be active and prosperous, could not have got except by due process of law. We have, therefore, no doubt that this Court, by its orders dated May 4, 1983 and September 27, 1983 intended only that the firm, or the auction purchasers at the sales effected by the Commissioners, should be able to clear the property of trespassers and unauthorised persons and not that even bona fide tenants could be got evicted straightway in pursuance thereof. Normally, even trespassers and unauthorised persons cannot be thrown out except by recourse to legal proceedings but, having regard to the large scale dealings, the special circumstances and the desperate situation, this Court made an exception and made it possible for the Commissioner to get

false and frivolous claimants out of the way by a quick procedure but nothing more. We are, therefore, of opinion that if the court, on a consideration of the materials placed by the claimants or objectors, comes to the conclusion that they are not mere stooges or false claimants but have a bona fide right to possession as against Sanchaita, it cannot direct their eviction but should leave it to the auction purchaser to initiate such eviction proceedings in the normal course and in accordance with law, as may be available to him against the claimants/objectors.

15. Sri Kapur laid considerable stress on the aspect that, unless vacant possession can be had, no one will purchase any property at the auction sales conducted by the Commissioner as no one would like to face further litigation to secure possession of the property. He submitted that the object which the court had in mind was to effectuate sales of Sanchaita properties by assuring vacant possession with a view to secure maximum price therefore and to ensure expeditious return to the Sanchaita investors of as much of their deposits as possible and that this object would be totally frustrated if people were encouraged to put in hurdles in the way which will depreciate the value of the property. This contention proceeds, only partially, on a correct basis. It is true that there should be a quick and expeditious realisation of the properties that really belong to Sanchaita. That is why the court empowered the Commissioner to attach and sell properties that, in his opinion, really belong to Sanchaita though ostensibly held in the names of others and also devised a quick and summary method for adjudication upon claims and removal of obstructions. But this order cannot be availed of to ride rough-shoulder over the rights and interests of others in the properties which have been created bona fide. Third parties who have acquired real interests in the property, either independent of, or even through, Sanchaita cannot be called upon to give up their rights. To do so would be to do more than merely realise what rightfully belongs to Sanchaitas; it would amount to conferring on Sanchaita a better title than it had, in fact, acquired. The depositors or investors in Sanchaita cannot claim any such rights. It is, therefore, difficult to accept the ground urged by Sri Kapur as entitling the Mandals to an interest that can ignore or override all manner of rights and interests in the auctioned properties.

16. For the above reasons, we are unable to accept the plea that the Mandals are entitled to get vacant possession of the premises, irrespective of the nature of the interests the claimants had therein and that, on this ground alone, we should uphold the order of the Division Bench. We shall, therefore, proceed to consider how far the claim of each one of the appellants before us to continue in possession of the property, unless and until evicted in due course by process of law, is maintainable.

17. Though the High Court has set out in extenso the details of the claims put forward by the various claimants, we consider it necessary to set out, in some detail, the evidence put forward by the claimants as the principal complaint of every one of the claimants is that a considerable volume of evidence adduced by him has been summarily brushed aside by the Division Bench. We shall, therefore, proceed to do this :

1. Paul Brothers

18. The petitioners in SLP 3258/89 have described themselves as "Paul Brothers". A complete paper book containing copies of a number of documents has been placed before us to substantiate their claim that they have been tenants in the premises since a very long time. These are :

- (1) A letter addressed by one Ramakrishna Paul to Dilip Kumar Paul and Mihir Kumar Paul, landlords, seeking permission to make some alterations in the Radio and

Electrical shop and a reply thereto dated April 8, 1975 by Dilip and a similar reply to Amar Nath Paul (Paul Brothers) in respect of the watch repairing shop;

(2) A letter intimating "Amar Nath Paul (Paul Bros.), Repairing Shop" that Satyanarayan Paul had died on August 10, 1966 and that the four signatories Ashok Paul, Dilip Kumar Paul, Mihir Kumar Paul and Mrs. Suchitra Kundu had succeeded as landlords entitled to the rents thereafter;

(3) (a) A stamped deed of partnership dated August 14, 1961 drawn up by B. M. Motilal, advocate, between Amar Nath Paul, Robindra Nath Paul, Abani Bhushan Paul, Arun Kumar Paul, Kiron Chandra Paul and Gopal Chandra Paul (all sons of Mohni Mohan Paul) sharing profits equally. The firm is said to have started business in Watch Repairing and Tailoring w.e.f. April 14, 1961 at the suit premises under the name and style of Paul Bros. and is said to have been registered with the Registrar of Firms.

(b) Three stamped deeds of partnership drawn by B. M. Motilal (advocate) and dated April 25, 1974 have also been produced. The first of these, of Paul Brothers (Watch Division), Amar Nath Paul, Rabindra Nath Paul, shows Abani Bhushan Paul and Rama Kishore Paul (sons of Mohni Mohan Paul) as having started and been carrying on business as watch dealers and repairs since April 15, 1974 in the premises sharing profits equally without a formal deed till then. The second is of Paul Brothers (Radio and Electrical Division) in which Kiron Chandra Paul, Amiya Kumar Paul, Samir Kumar Paul, Amar Nath Paul (sons of Mohni Mohan Paul) and Shyama Ranjan Paul (son of Lalit Mohan Paul) are partners with Amar Nath having a 10 per cent share and the others 22.5 per cent share each. The deed recites that the above partnership started a business in radio and electricals on April 15, 1974 at the suit premises as well as at 195/1, Mahatma Gandhi Road, Calcutta without a formal deed having been drawn up till that date. The third deed is between Arun Kumar Paul, Benoy Kumar Paul, Gopal Chandra Paul and Amar Nath Paul (all sons of Mohni Mohan Paul) in respect of Paul Brothers - Tailoring Division with Amar Nath Paul having a 10 per cent share and the others 30 per cent each. This deed also recites that the business had started earlier with effect from April 15, 1974 but that no formal deed had been drawn up till then.

(c) A deed of partnership dated May 8, 1980 also on stamp paper and witnessed by B. M. Motilal, is between Kiron Chandra Paul, Amiya Kumar Paul, Samir Kumar Paul (sons of Lalit Mohan Paul). By this deed Shama Ranjan and Amar Nath retire from Paul Brothers - Radio and Electricals w.e.f. April 13, 1980 leaving the remaining four to share the profits equally.

(4) More than 225 rent receipts in favour of "Amar Nath Paul", "Amar Nath Paul and others", or "Amar Nath Paul (Paul Brothers)" have been produced. They are spread over the period from 1962 to November 1987 (except October 1965 to March 1968). They are signed by S. N. Pal between May 1962 and September 1965, by Ashok Paul between April 1968 and October 1971, by Dilip and Mihir between October 1971 and September 1977 and by Mahamaya Devi from October 1977 onward. Rent receipts from April 1962 to September 1987 in favour of "Amar Nath Paul", "Amar Nath Paul (Paul Bros.) Watch Makers Shop" have been produced. Also copies of rent

receipts in favour of "Ramkrishna Paul", "Ramkrishna Paul and others" in respect of one shop room in the north-west corner covering the period from March 1974 onwards signed by Dilip and Mihir and Mahamaya Devi are also produced.

(5) Rent receipts and a deposit receipt showing that a third shop situated in the north-west corner of the ground floor, previously occupied by one Tarak Nath Roy, was taken over by the Paul Bros. at a rent of Rs. 75 p.m. in December 1973 after purchasing the assets of the earlier tenant for Rs. 200.

(6) Three electricity bills of October 1969, January 1975 and May 1988 in respect of the premises issued in the name of one D. P. Paul, claimed to be an uncle of the Pauls and electricity bills in the name of Paul Bros. Radio Division of April 1980 and April 1988 have also been produced.

(7) Three telephone bills of 1969, 1973 and 1977 in the name of Paul Brothers (and three electricity bills of March 1974, March 1977 and February 1988 in the name of Tarak Nath Roy) have been produced.

(8) Receipts dated May 2, 1961, May 10, 1962, May 7, 1963, March 25, 1972 and December 28, 1987 by the Corporation of Calcutta being fees in respect of the Tailoring Shop in the premises for the years 1961-62, 1962-63, 1963-64, 1971-72 and 1987-88 in favour of Paul Bros. (Partners Sri Arun Kumar Paul and others). Corporation Receipts (18 in numbers) for trade licence fees in respect of radio and watch business carried on in the premises covering the years 1962-63 to 1987-88 (except 1984-85, 1981-82, 1980-81, 1975-76, 1972-73 and 1971-72) in the name of Paul Bros. are produced. These describe the partners of the firm differently as "Amiya Paul and others", "Arun Kumar Paul and others" and "Amar Nath Paul and others". 7 fee receipts for trade licenses issued to the watch division of Paul Bros. covering the years 1987-88, 1986-87, 1985-86, 1983-84, 1982-83, 1981-82, 1980-81, 1979-80, 1978-79, 1977-78, 1976-77, 1975-76 and 1974-75 describe the partners as "Rabindra Nath Paul and others". There are also fee receipts in respect of licence fees for the years 1962-62, 1971-72, 1972-73, 1987-88 in respect of the watch repairing shop in the name of "Paul Bros. (Amar Nath Paul and others)".

(9) A letter dated July 17, 1970 addressed by the Government of West Bengal to the Accountant General, copy endorsed to M/s. Paul Brother at the address of the suit premises and other correspondence between 1970 and 1973 with the tailoring division of the said firm at the same address. Copies of two letters addressed to the radio and watches shop of Paul Bros. at this address between July 1965 have also been produced.

(10) Challans for payment of self-assessment tax of Rs. 190 for assessment year 1976-77 by Paul Brothers (Tailoring Division) on August 12, 1976 from this address. Also produced are certificates from the Income Tax Department that the three Paul Bros. at the above address are being assessed to income tax since assessment year 1975-76/1976-77.

(11) Orders under section 158 and demand notices under Section 156 of the Income Tax Act in respect of assessment years 1969-70, 1968-69, 1967-68 have been

produced, the former of which evidences the constitution of Paul Bros. A declaration has been filed before a Presidency Magistrate, Calcutta, on August 26, 1965 by some of the Pauls referred to above to the effect that they are the partners in the firm from April 14, 1961 and that they have filed income tax returns for three years. The declaration also states :

"2. That we have been carrying on business as tailors, watch repairers and sellers of cut piece cloth and watches from 1st day of Baisakh, 1368 B.S. and also we have started radio manufacturing/sales/service department from second year of our business i.e. 1369 B.S. We have no other business save and except those mentioned in this paragraph, this is true to our knowledge."

(12) Documents showing the registration of the following firms with the Registrar of Firms :

#Date Firm January 10, 1974 Paul Bros. (Watch Division) June 10, 1974 Paul Bros. (Radio and Electrical Division) September 20, 1961 Paul Bros.##

(13) A central excise licence dated January 20, 1965 and a postal department licence of August 24, 1962 in respect of the radio and electrical shop in the name of Paul Bros. with Shri Kiran Chandra Paul as partner.

(14) Several letters, notices, receipts etc. from the Income Tax Department and Central Excise Department as well as correspondence from the Life Insurance Corporation of India and premium receipts have been produced but these are not of much help except to show that they were addressed to Paul Bros. or Arun Kumar Paul or Rabindra Kumar Paul or Amar Nath Paul or A. K. Paul or Amarendra Nath Paul and others or Abani Bhushan Paul or Kiran Chandra Paul, or Gopal Chandra Paul at the suit premises.

(15) Extracts from the assessment registers of the Corporation of Calcutta for two years. The first of these shows the name of the owner as Avamoyee Paul and that of the occupier as Tarak Nath Roy and others. Endorsements thereon show the calculation of the annual value on the basis of the following rents :

Rs. p.m. I Tarak Nath Roy 25.00 Panchanana Dutta 25.00 (Watch Shop) 41.00 (Tailoring Shop) 44.00 7.50 7.50 II Phani Bhushan Ghose 45.00 III Owner 45.00 240.00##

The second of these documents shows the name of the owner as "Estate of Avamoyee Paul c/o Shri Mihir Paul and Brothers" but this is struck off and replaced by "Smt. Mahamaya Devi (in the premises)". Against the column "occupants" the name of Tarak Nath Roy and others is replaced by "Smt. Mahamaya Devi and others". This extract also contains, what apparently are later endorsements of detail as follows :

"R. S. (Road Side) Shop

Rent p.m. I. Ramakrishna Paul says 75 (Goldsmith) (Radio) Amarnath Paul " 48 (Tailoring) Paul Bros. " 48 (Goldsmith) Panchan " 44 Dutta (Dulal Dutta)##

2. Dulal Chandra Dutta

19. The tenancy in respect of a backside shop on the ground floor is claimed as having belonged initially to two person, Panchanan and Dulal Dutta. Of these, Panchanan Dutta appears to have dies in 1981 and it is only Dulal Dutta who is the claimant now. He state that the property belonged to Satyanarayan Paul, then to Dilip Kumar Paul and Mihir Kumar Paul and then to Mahamaya Devi. In the case of this claimant there is not direct evidence of tenancy in the form of a rent deed or rental agreement. About 51 rent receipts have been produced but all these receipts purport to have been issued only by Mahamaya Devi. No receipts have been produced for any earlier period though the claimant says he has been tenant of the property since 1973; it is stated that the rent receipts issued in the joint names by Dilip Kumar Paul and Mihir Kumar Paul are missing from his custody, The High Court has said that there are several inconsistencies, defects and errors in the receipts that had been produced and, though a number of other documents have been placed before us here, none of these receipts or compiles thereof have been produced. According to the claimant's affidavit filed before the High Court, he started his work as a goldsmith in the premises in 1973, the tenancy of which stood in the name of one Panchanan Dutta and that he also contributed rents to Panchanan Dutta "who used to pay the rents in his name to the owner of the premises". No receipts in the joint name of Panchanan Dutta and the claimant have been produced. The extracts from the records of the Corporation referred to earlier show Panchanan Dutta as the occupant and the claimant's name does not figure therein. The claim of tenancy is, however, sought to be established by the following documents :

- (a) A certificate of the Gold Control Authority of 1976 recognising the claimant as a goldsmith with his place of business and residence at 6, Doctor's Lane, Calcutta subsequently shifted to the suit premises w.e.f. November 4, 1981;
- (b) A certificate from the Bangia Swarna Silpi Samithi dated August 12, 1975 showing the claimant's place of work at the suit premises and a letter of November 13, 1987 from the Samithi stating that the claimant has been maintaining a khata under the Gold Control Act from 1976;
- (c) A petition for remand by the police dated September 18, 1975 in connection with a criminal case showing the claimant's address at the suit premises;
- (d) A search list of September 23, 1975 on complaint No. 657 under Section 380 IPC showing that certain items were seized from Dulal Dutta's shop in the suit premises; and a petition from the prosecution seeking impleadment of Dulal Dutta of the suit premise as a co-accused in connection with the above case;
- (e) A letter from the police of a complaint from the Corporation against the claimant for not having obtained a trade licence for 1979-80 in time and a municipal licence fee receipt dated December 19, 1980 in respect of the year 1978-79 issued by the Corporation of Calcutta in favour of the claimant and Panchanan Dutta;
- (f) A summons issued by the Corporation to the claimant on February 6, 1981 showing his address as at the suit premises; and
- (g) A letter dated June 10, 1981 by the claimant to the Superintendent, Central Excise asking for a change of address from Doctor's Lane to the suit premises;

(h) An extract got in 1988 from the assessment book of the Corporation which shows Smt. Mahamaya Devi as the owner and Shri Phani Bhusan Ghose, Shri Amarnath Paul and Shri Dulal Dutta as the occupants. This purports to be the entry with effect from 3/66-67 of 4/88.

3. Phani Bhusan Ghosh

20. Phani Bhusan Ghosh, who claims tenancy in respect of the first floor of the suit premises comprising of three bedrooms and one sitting room besides other conveniences. Ghosh is a retired government servant. He claims to have been inducted as a tenant in 1948 by Satyanarayan Paul at a monthly rent of Rs 75 p. m. According to him, on the death of Satyanarayan, his son Ashok Paul used to grant rent receipts; thereafter, consequent on a partition among the heirs of Satyanarayan, Dilip Kumar Paul and Mihir Kumar Paul used to issue the receipts until, in October 1977, they sold the suit premises to Mahamaya Devi. Though it is not clear whether there was any original tenancy agreement in 1948 and no rent receipts of that time have been produced, the claimant relied on the following documents in support of the plea of tenancy :

(a) A photocopy of a certified copy of the plaint in Ejectment Suit No. 1095 of 1961 filed by Satyanarayan Paul against the claimant for eviction and khas possession which recites that the claimant was a tenant of Satyanarayan in respect of the premises; (Incidentally, the schedule to this deed refers to Tarak Nath Roy, Panchanan Dutt, Dulal K. Dey and Amarnath Paul (Paul Bros.) as the tenants on the ground floor).

(b) An undated letter from Dilip Kumar Paul and Mihir Kumar Paul informing the claimant of the sale of the premises to Mahamaya Devi and a letter dated October 9, 1977 from Prabir Kar, an advocate on behalf of Mahamaya Devi asking claimant to attorn to Mahamaya Devi as she had purchased the property from the two Pauls;

(c) Three receipts issued by Ashok Paul in 1969, three issued by Dilip and Mihir in 1971, 1976 and 1977 and two issued by Mahamaya Devi for July 1978 and September 1987;

(d) A certificate dated January 4, 1988 from the Geological Survey of India stating that the address of the claimant had been recorded on March 20, 1952 in its official records as being at the suit premises.

4. Hari Narayan Gupta

21. This person claims tenancy in the second floor. One feature that distinguishes this claimant from others is that he claims to have been a tenant in the property under Mahamaya Devi since 1982. The plea of Gupta is that he became a tenant of the flat on the second floor under Mahamaya Devi on a rent of Rs. 350 p.m. vide an agreement dated January 7, 1982 and that he had been regularly paying the rent to her ever since up to September 1987. The agreement produced is an unregistered agreement. There are only two rent receipts dated January 1983 and September 1987 produced in support of the claim. The photostat copies of the extract from the records of the Corporation which have been referred to earlier show the occupants as Mahamaya Devi and then one Harindra Nath Chakraborty. H. N. Gupta claims to be running a tea stall on S. P. Banerjee Road and to have taken this premises on rent.

22. We shall now consider the claims of each of these claimants individually, starting with Hari Narayan Gupta.

1. Hari Narayan Gupta

23. Sri Kapur contended that since it has now been finally decided that Mahamaya Devi never really owned the premises herself, she could not have validly created a tenancy in favour of Gupta. We do not think this conclusion necessarily follows. It is true that the finding that Mahamaya Devi was only a benamidar for Sanchaita has become final but it does not follow that any tenancy created by her is invalid, unless it can be shown that, in creating such interest, she acted in breach of trust and contrary to the interest of Sanchaita. If she had put Gupta in possession of the property as her stooge or, if Gupta had taken the property from her on rent collusively or with full knowledge that the property really belonged to Sanchaita, the position would be different but if Gupta is an independent third party with no such notice or intention and had been inducted by her as a tenant bona fide, all that Sanchaita can claim is that she should account to the firm for the rents derived by her from the property in the past and that the firm or the Commissioner or the auction purchaser should be entitled to the rents from the property as from the date of its attachment by the Commissioner.

24. Examining the facts and the evidence from this perspective, it does seem that Gupta has not been able to adduce any evidence to satisfactorily establish that he was a bona fide tenant under Mahamaya Devi. It is difficult to believe that this tea-stall owner took the suit premises on rent of Rs. 350 from Mahamaya Devi. There is no consistent or satisfactory evidence of such tenancy. We are inclined to agree with the conclusion of the High Court that Gupta was not a bona fide tenant in the property as claimed and that he is liable to be evicted from the premises.

2. Dulal Dutta

25. Turning next to the case of Dulal Dutta, we have gone through the documents placed before us carefully and are constrained to observe that this claimant has also not been able to establish his bona fide tenancy of the premises. The original trade licence shows that the claimant had started his business at No. 6, Doctor's Lane and that this was got changed to the address presently in question only in 1981 but, according to him, he had started working at the suit premises even in 1973. The police remand papers and corporation notices no doubt indicate that the claimant was found at this address in 1975 and 1978-79 but these papers are not sufficient to establish the claimant's plea of tenancy. Admittedly, even according to him Panchanan Dutta was originally the tenant of the premises and the claimant seems to have had some working arrangement with him. Panchanan Dutta is said to have died some time in 1981 and the change of address for excise purposes seems to show that the claimant moved into the premises wholly thereafter. But the question is not whether the claimant was in occupation of the premises but whether he was a bona fide tenant therein. As to this, there is no proof or evidence except the few odd rent receipts purportedly issued by Mahamaya Devi the genuineness of which has not been accepted by the High Court. It was argued that even if Dulal Dutta is treated as a sub tenant or as being in adverse possession, the landlord's right to evict him would be time barred. But neither of these stands was taken by Dulal Dutta and his adverse possession, even if claimed, could not have started before 1981 and so no question of time bar could arise. In the circumstances, we are constrained to uphold the findings of the Division Bench in respect of the portion of the suit premises occupied by Dulal Dutta.

3. Phani Bhusan Ghosh

26. We next turn to the case of Phani Bhusan Ghosh. On behalf of the Mandals, it is submitted that the pieces of evidence relied on by the claimant amount to nothing. Sri Kapur submits that, as per the extracts from the Corporation records filed in the case, one Avamoyee Paul was the owner of the premises in 1948 and there is nothing to show that either Satyanarayan Paul or his legal heirs were ever the owners of the property. The partition deed has not been produced. The rent receipts produced contain lacunae, errors and inconsistencies. The genuineness of the receipts and the letters produced is not accepted. Advocate Prabir Kar, who is alleged to have sent the attornment notice, is alleged to be a reputed agent of Sanchaitas. So far as the plaint of 1961 is concerned, he points out, there is no explanation given as to what made the claimant obtain a certified copy of the plaint in 1972 and there is also no evidence as to the outcome of the suit. The records of the Geological Survey had not been summoned and it is also curious that the claimant has produced a certificate of 1988 to show the claimant's address in 1952 but not his recent or present address as recorded therein.

27. We are of opinion that these objections cannot be sustained. Leaving aside the rent receipts and other correspondence the authenticity of which cannot be taken for granted, there is enough evidence to sustain the claim of the applicant. The certified copy of the plaint shows that Ghosh was tenant of the first floor under Satyanarayan Paul who claimed to be the owner of the premises. It does not show that he was tenant since 1948 but read with the certificate of the Geological Survey of India, it does not show that Ghosh was the tenant between 1952 and 1961 in the premises. No foundation has been laid and no material has been adduced to show that the copy of the plaint is not genuine or cannot be acted upon or that there was no such suit in 1961 between the parties as alleged. What happened to the suit or what defence was raised by Ghosh to the suit is irrelevant in the absence of any suggestion, or any material to indicate, that Ghosh had been in fact evicted in pursuance of the order passed in the suit by the date of the present proceedings. There is also no information placed before us as to the persons who were the legal representatives of Avamoyee Paul or that Dilip and Mihir did not at all become the owners of the property. On the other hand, the extract from the Corporation records at the relevant time, shows the owner of the premises to be :

#"Estate of Avamoyee Paul c/o Sri Mihir Paul and Bros."##

This indicates a connection of Mihir Paul with the premises and the sale deed on 1977, the genuineness of which is not, and cannot be, in dispute (for that, verily, is the basis of the title of Sanchaita to the property in question) shows that she purchased it from Mihir and Dilip. It is, of course, theoretically possible that Ghosh had been evicted from the premises by Satyanarayan and that the receipts produced from Dilip and Mihir as well as the letters of authority produced are not genuine. But this is a far-reaching assumption and it cannot be presumed that all these are got-up documents, in the absence of some foundation or material for the suggestion. In our opinion, the claimant has let in sufficient material to show that he was a tenant in the premises long before Mahamaya Devi entered into the picture.

4. Paul Brothers

28. Now turning to the case of Paul Brothers, our narration above shows that there was a mass of evidence adduced by the parties in support of their tenancy in the premises since long. The grievance of these - and indeed also the other - claimants has been that the High Court has failed to apply its mind to the evidence produced in support of each of the claimants. It is submitted that an analysis of the judgment of the High Court (which runs to 52 pages) will show that the High Court, after setting out the preliminary facts, the contents of the affidavits, counter-affidavits and rejoinder

affidavits and the contentions of the respective counsel in great detail, has disposed of the entire case with the following observations appearing on the last page of the judgment :

"On the basis of the intrinsic evidence and when the 'Corporation' records, produced on behalf of the respondents, being incompatible with the rent receipts, their inherent inconsistencies do not appear to us to be trustworthy, it would appear that the submissions of Mrs. Paul, regarding the character and quality of rent receipts as produced now, were of substance and we also feel that the story of tenancies were subsequently sought to be established for the purpose of avoiding the effect of the auction sale and that too, not in a bona fide manner. We are of the confirmed opinion that in terms of the determinations of the Hon'ble Supreme Court of India, as followed earlier by a Special Division Bench of this Court in Jagadish Agarwalla case (supra), this Court is not so powerless to make orders in terms of the prayers as made in the petition and that too in the facts of the present case and as such, we allow this application and direct the respondent Commissioner, to take such steps, so that, forthwith vacant possession of the said premises is handed over to the petitioners i.e. the purchasers in the auction sale. We also have it on record that if necessary, the respondent Commissioner would also be entitled to take appropriate police help and assistance in having respondents 2-8 removed from their claimed occupation of the said premises or to break open any padlock which is there or which has been put in now."

It is submitted that the High Court does not discuss why and in what respects the Corporation records are inconsistent with the rent receipts, what the inherent defects and inconsistencies were in the rent receipts produced and why the story of tenancies is considered to be an afterthought. There is also no reason given for the rejection of the innumerable other pieces of evidence produced by the claimants.

29. On the other hand, the complaint of Sri Kapur has been that the claimants - Paul Brothers, in particular - had been placing documents before the courts in driblets. Most of these were in the nature of xerox copies with no guarantee of their authenticity. He points out that the entire collection of receipts, purporting to be from Satyanarayan Paul, Ashok Paul and Dilip and Mihir - not to speak of Mahamaya Devi - could easily have been written up for the purposes of the case. In his submission, they have indeed been so written up at one or more sittings and these are revealed by the inconsistencies and discrepancies, some of which have been pointed out before the High Court by Mandal's counsel and referred in the judgment. It is unfair, argues Sri Kapur, to say that the Division Bench has not applied its mind to the facts of the individual cases. These having been fully brought out in the earlier parts of the judgment with special reference to the defects pointed out and criticisms made by counsel for Mandals, the High Court did not consider it necessary to repeat the same again in the concluding part of the judgment. He says that the Division Bench had had occasion to deal with similar claims in regard to various other properties and has assessed the entire evidence in the light of its experience regarding the various devices employed to put forward ostensible third parties as obstructors. The criticism that the judgment, High Court's reasoning is brief and cryptic, he submits, is based on a total misconception and should be rejected.

30. Sri Kapur then drew our attention to the infirmities in the case put forward by the claimants, both procedural and substantive. He says that it is only in this Court, for the first time, and that too, after this Court called upon them to do so, that the Paul Brothers have attempted to put forward a chronological version of the history of tenancy of the three shops allegedly taken on rent by them.

Earlier, they merely produced a few receipts and correspondence in the name of Paul Brothers - a convenient label enabling them to explain away documents of different dates in the names of different persons who were all "Pauls" and to create a confusion between Avamoyee Paul (shown originally in the municipal records), Satyanarayan Paul and his alleged relatives Dilip and Mihir, and the different dates. Also, many documents (such as the income tax and customs department notices, assessment and certificates) have been produced in this Court and were not produced before the High Court. Per contra, certain documents (such as the first affidavit dated November 14, 1987, the 1974 partnership deeds and a letter dated April 5, 1975 from Ram Krishan Paul to the landlords) produced before the High Court have been deliberately suppressed from this Court. Sri Kapur submits that the most crucial circumstance in the present case is that the objections of Mahamaya Devi to the attachment and sale of the property did not contain even the whisper of a suggestion that there were not one or two but as many as seven tenants in the property. If this had been a fact, he says, she would not have failed to say so emphatically in her objections. Sri Kapur points out that the basic case of all the claimants is that the premises originally belonged to one Satyanarayan Paul, that on his death five persons inherited the property, that on partition among them the property came to Dilip and Mihir (mentioned, perhaps wrongly, as Dulal Chandra Paul in the affidavit of November 14, 1987) who conveyed the property to Mahamaya Devi. The whole edifice crumbles, he points out, as even according to the municipal extracts produced by the claimants, neither Satyanarayan Paul nor Dilip and Mihir have been ever recorded as the owners of the property. The version of undated attornment letters, partition and Prabir Kar's letter was not attempted to be proved by producing even an affidavit from Dilip or Mihir or Prabir Kar. Even an affidavit from Mahamaya Devi is conspicuous by its absence. Above all, says Sri Kapur, the case of the claimants regarding the constitution and nature of business of Paul Bros. and the evidence in support thereof as put forward at various stages bristles with inaccuracies and inconsistencies which justify its rejection. These were pointed out before the High Court in detail and have been set out in the judgment. Some of these are as follows :

- (1) The business has sometimes been described as one business (SLP and affidavit of November 2, 1988) and sometimes (affidavit of November 14, 1987) as separate business with separate partners and separate deeds of partnership. The date of commencement of each of these business have been set out differently in the different affidavits and go back to 1958, 1959, 1962 and 1973. These do not talk (sic) with the partnership deeds of 1974 which show the business as having started only on April 15, 1974 which in turn, is belied by the production of a deed of 1961. The names of the partners are also not given consistently. While Ramakrishna Paul is a partner of the radio and tailoring firms as per the affidavit of July 2, 1988, he is not one as per the affidavit of November 14, 1987. So also K. C. Paul is a partner of the tailoring firm according to the 1988 affidavit but is not, according to the earlier one;
- (2) In the affidavit dated November 14, 1987, the claimants had stated that they had been able to locate, after great effort, a few municipal trade licences and produced eight of them. But later, with the second affidavit, they produce a few more. How this has been done has not been explained;
- (3) It is not explained how the electricity bills stand in the name of Tarak Nath Roy and D. P. Paul and how the electricity bill in the name of Paul Brothers dated March 13, 1980 shows an electricity connection having been obtained for the premises only on that date though the claimants were said to have been running the business there since 1973;

(4) The telephone bills again are not helpful. They contain the name of one M. S. Paul for which no explanation had been given. One of the bills shows the installation of telephone in the premises even in 1958 though according to the claimants the business in the premises started earliest only in 1959. Also the bills give the number of the premises as No. 52/1/1 and not 52/1/1-B;

(5) The rent receipts have been produced in driblets - six with the affidavit of 1987 and 44 with the affidavit of July 1988 - while with the SLP only 17 rent receipts have been annexed. Some of the receipts date back earlier than 1974 though according to the partnership deeds, the business of the firms commenced only in April 1974. The rent receipts bear almost continuous serial numbers. There are several discrepancies : for example, a receipt dated August 6, 1977 bears No. 59 whereas one dated June 10, 1977 bears No. 60 and there are two rent receipts for July 1977. The rent receipts in favour of Paul Brothers (Electricals) are in the name of R. K. Paul who is not a partner therein according to the deed and who is referred to in the Corporation records as a goldsmith. There is no rent receipt from Avamoyee Paul or her estate and Satyanarayan Paul, Ashok Paul, Dilip Paul or Mihir Paul are not recorded as owners. There is not a single affidavit by any of the signatories to the receipts vouching for their genuineness;

(6) There is no effort by these three or the other claimants to pay the rents, after the attachment of the premises, either to the Commissioner or to the Mandals. Their case that they did not know about the attachments was false;

(7) There is no difference between the case of the claimants in the cases of Amar Mandal and Jagdish Prasad Agarwalla and that of the various claimants herein.

31. We have carefully considered the contentions of the parties. It is true that some of the grounds of criticism of the evidence produced by the claimants are valid. A certain amount of difficulty has been caused by the High Court in pursuance of the order of this Court. It appears that the court has proceeded to consider the issues in a summary manner on the basis of the affidavits of the claimants and on prima facie consideration of the documents formally as well as informally produced in support thereof. The enquiry has been somewhat analogous to the procedure which used to be adopted in disposing of petitions by obstructors under the Code of Civil Procedure, 1908 (before its amendment in 1976) which concluded in a tentative finding leaving it open to the parties to file a suit and establish their right to possession. On the other hand, if these are taken to be in the nature of proceedings for the execution of a decree under the amended Code, there will have to be a more detailed trial with full opportunity to parties to lead evidence and to examine and cross-examine witnesses, as a finding reached in these proceedings would be final and conclusive. In the present case, the application has been disposed of somewhat summarily and informally. At one stage, therefore, we were inclined to think that the matter, so far as the Pauls are concerned, should be remanded to the High Court for fresh disposal. But on further consideration, we have come to the conclusion that there is sufficient material placed on record by the claimants to show that Paul Brothers have been in the premises as tenants since long and that no such remand is necessary. Taking all the documents collectively, it is difficult to say that one could reasonably arrive at the conclusion that the Pauls were trespassers or unauthorised occupants. The Mandals have done nothing positive to establish this but to barely deny the genuineness of the various documents put forward on behalf of the claimants.

32. One direct piece of evidence is the extract from the municipal records. It was suggested that the photostats produced could not be relied upon and that the entries therein could have been reproduced by some process of superimposition. However, it has been found that, apart from the photostat copies, the original records were summoned and certified extracts produced by the representative of the Corporation have been taken on record. These extracts which relate to the relevant period show the Paul Brothers as tenants in the three shops. It is true that the estate of Avamoyee Paul has been shown as the landlords but the entry contains a reference to Mihir Paul and, admittedly, Mahamaya Devi purchased the property from Dilip and Mihir. Letters calling for attornment and rent receipts galore have been produced. Though one cannot eschew the possibility of these being got-up document, some foundation must be laid by the Mandals to reject them other than a mere assertion that they are not genuine. The discrepancies suggested are few and minor and do not warrant the summary rejection of the large number of receipts. The electricity bills, phone bills, tax department correspondence likewise prima facie support the claim of the appellants. The mistakes pointed out in the telephone and electricity bills are insignificant. The bills are made out not in the name of M. S. Paul but M/s. Paul Brothers and D. P. Paul is said to be an uncle of the Pauls. These, together with the partnership deeds and municipal licences and correspondence the genuineness of which cannot be rejected straightway, support the claim. No doubt there is a slight discrepancy in that the 1961 deed is not referred to in the 1974 deeds but this cannot entail the rejection of 1961 deed. We do not wish to elaborate on every one of the other points made by the counsel for the Mandals. It is true that Mahamaya Devi did not refer to them in her objections but she was concerned about saving "her" property from attachment and sale as that of Sanchaitas and the issue about her having let out the property was irrelevant for the decision of her objections. We are satisfied that even in the face of the evidence produced before the High Court (which has been supplemented in some respects before us) it is difficult to treat the Paul Brothers as trespassers or unauthorised occupants in the property.

33. In the result, the appeals of Paul Brothers and Phani Bhusan Ghose are allowed while those of Hari Narayan Gupta and Dulal Chandra Dutta are rejected. We, however, make no order as to costs.

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