Krishna Kumar Khemka

Vs

Grindlays Bank P. L. C. and Others

Civil Appeal No. 2072 of 1990

(S. R. Pandian, K. Jayachandra Reddy JJ)

02.05.1990

JUDGMENT

K. JAYACHANDRA REDDY, J. -

1. Leave granted.

2. This appeal is directed against the order of the Division Bench of the High Court of Calcutta. The appellant was transposed as the plaintiff in the original side Suit No. 2479 of 1967 in the High Court of Calcutta. The suit was filed for a declaration that the various properties set out in the Schedule belonged and still belong to the joint family consisting of the members mentioned in the plaint. Pending the suit an application was filed for appointment of a receiver for the various properties mentioned in Schedule 'A' annexed to the petition, for injunction and for other reliefs. One Mr. S. C. Sen was appointed as Receiver. A declaration was also sought in the suit that the trust dated October 20, 1948 created by late Gopi Krishna Khemka, father of the plaintiff, is void and for cancellation of the same. Premises No. 38, New Road, Alipore, building with open space was one of the properties belonging to the trust. Grindlays Bank Limited ('Grindlays' for short), respondent 1 herein was the original tenant and they were occupying four flats and they surrendered a portion of the tenancy namely two flats i.e. flats Nos. 1 and 2 which came into effect from April 1, 1978. The receiver let out these two flats to M/s. Tata Finlay Ltd. ('Tatas' for short) with effect from February 7, 1979 pursuant to a letter written by Tatas. Questioning the action of the receiver an application was filed in the High Court contending that the receiver had no authority to create any tenancy and that the receiver has virtually created two new tenancies terminating the original tenancy of Grindlays and it was contended before the learned Single Judge of the Calcutta High Court that neither Grindlays not Tatas were entitled to occupy the premises and they are liable to be evicted summarily. The learned Single Judge was not inclined to order summary eviction as prayed for but, however, observed that the respective contentions of the parties as to the validity of the tenancy created in favour of Tatas have not been finally decided by the High Court and that the parties are at liberty to agitate the same grounds in any action that they may be advised to proceed for eviction of Tatas and Grindlays. As against the order of the learned Single Judge, an appeal was filed before a Division Bench. It was contended before the Division Bench that upon surrender of flats Nos. 1 and 2 by the Grindlays a fresh tenancy was created by the receiver from April 1, 1978 and the other tenancy in favour of Tatas is beyond the powers of the receiver and that the receiver had no authority to create any tenancy either in favour of Grindlays or Tatas. Various contentions were raised before the Division Bench and ultimately the Division Bench having considered the several submissions passed an order, the operative portion of which reads as follows :

> "Therefore, the petitioner is entitled to get a decree for possession on any ground

mentioned in Section 13(1) of the said Act and such relief can be obtained in a suit which cannot be filed in this court inasmuch as the premises in question is situated outside the original side jurisdiction of this court."

More or less the same contentions are advanced before us. Firstly, it is submitted that the receiver had no right or authority to create any lease or tenancy in respect of the said flats for a term exceeding three years at a time and such creation of a tenancy should be deemed to be only for a period of three years terminable on the expiry of the said period. In this context a further submission is that upon surrender of flat Nos. 1 and 2 by Grindlays a fresh tenancy was created by the receiver from April 1, 1978 for which he had no authority. Therefore, the High Court ought to have ordered summary eviction of Tatas and Grindlays.

3. It is not in dispute that the tenancy in respect of flat Nos. 1 and 2 was surrendered by the Grindlays and from April 1, 1978 Tatas was inducted as tenant in respect of the said two flats at a monthly rent of Rs. 1200 and service charge at the rate of Rs. 600 per month and since then Tatas is a monthly tenant in respect of the said two flats. It is the case of the Tatas that the terms of the tenancy were reduced into writing as recorded in the letter dated February 7, 1979 and the receiver adopted the same did not raise any objection thereto, and it claimed to be still a monthly tenant and therefore, they are entitled to protection under West Bengal Premises Tenancy Act ('Act' for short) and the appellant has no right to demand vacant possession of the said flats from the Tatas. The stand taken by the Grindlays is that the premises in question comprised of four flats and they took all the four flats for 10 years on lease from June 1, 1958. After the expiry of the period of the said lease relationship between Grindlays and the Trust continued to be that of landlord and tenant governed by the Act, and that in 1977 they agreed to surrender flat Nos. 1 and 2 by the letters dated March 17, 1978 and March 29, 1978 addressed to the receiver in favour of Tatas. However, at all material times they retained the tenancy in respect of flat Nos. 3 and 4 and continued to be tenant in respect of those flats and they are also governed by the Act. In the letters written it is also stated by the Grindlays that their continuation as tenant of flat Nos. 3 and 4 was acknowledged by the receiver by his letter dated May 15, 1978. It is contended on behalf of the appellant that after the expiry of the lease the receiver had no power to grant a lease for a period exceeding three years without the leave of this Court as envisaged in Chapter 21 Rule 5(a) of the Original Side Rules and that in the instant case without obtaining any such leave receiver's granting monthly tenancies is illegal. Reliance was also placed on the injunction order passed by Justice A. N. Sen sitting on original side while appointing the receiver. The learned Judge passed an order restraining the tenants from selling or "transferring" any of the properties mentioned in Schedule 'A'. According to the appellants the transfer includes lease and therefore, the receiver by creating a new lease i.e. tenancy has violated the injunction order and on that ground also the action of the receiver should be held to be illegal. Order XL CPC which provides for the appointment of receivers empowers the court to confer upon the receivers all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property. In Satyanarayan Banerji v. Kalyani Prosad Singh Deo Bahadur (AIR 1945 Cal 387 : 49 CWN 558 : 80 CLJ 198), a Division Bench held that the object of appointment of receiver is not to divest the rightful owner of the title but only to protect the property and an appointment might operate to change possession but cannot affect the title to the property, which remains in those in whom it was vested when the appointment was made. In Ratnasami Pillai v. Sabapathy Pillai (AIR 1925 Mad 318 : 82 IC 793), it is held that the receiver has only such powers as expressly granted by the court.

4. Relying on these two decisions the learned counsel for the appellants submitted that in the instant case the receiver has acted in such a manner affecting the title to the property and to the detriment of

the interest of the rightful owner. Section 5 of the Transfer of Property Act defines the meaning of 'transfer of property' and it is in the following terms :

> "5. In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself, or to himself and one or more other living persons and "to transfer property" is to perform such act.
>
> In this section "living person" includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals."

In Mulla Transfer of Property Act, (7th edn., p. 48), there is a passage in this respect which reads thus :

> "The word 'transfer' is defined with reference to the word 'convey'. This word in English Law in its narrower and more usual sense refers to the transfer of an estate in hand; but it is sometimes used in a much wider sense to include any from of an assurance inter vivos. The definition in Section 205(1)(ii) of the Law of Property is 'Conveyance includes a mortgage, charge, lease, assent, vesting declaration, vesting instrument, disclaimer, release of every other assurance of property or of any interest therein by any instrument except a will'. This is a special definition adopted for the purpose of the Law of Property Act, 1925. The word 'conveys' in Section 5 of the Indian Act is obviously used in the wider sense referred to above. Transferor must have an interest in the property. He cannot sever himself from it and yet convey it."

The word 'transfer' is defined with reference to word 'convey'.

5. In Hari Mohan alias Hari Charan Pal v. Atal Krishna Bose (23 IC 925 (Cal HC) a Division Bench of the Calcutta High Court held that "the term 'transfer' as used in Section 11 or Section 88 of the Bengal Tenancy Act, includes a lease, as a lease is a transfer of an interest in immovable property." It is, therefore, clear that a lease comes within the meaning of the word 'transfer' but in this case the matter does not stop there. According to the learned counsel for the respondents the receiver has not created any new tenancy and the continuation of Grindlays as tenants in respect of flat Nos. 3 and 4 does not amount to a new lease and, therefore, there is no transfer. Consequently there is no violation of the injunction order passed by Justice A. N. Sen. Learned counsel for the respondents referred to various documents mostly in the form of letters between the receiver and the Grindlays. We have perused these letters. They go to show that the Grindlays surrendered those two flats with the consent of the receiver but the stand taken by them is that their continuation as tenants of flat Nos. 3 and 4 was acknowledged by the receiver and the same cannot be treated as a new lease. One of the questions is whether mere surrender of flat Nos. 1 and 2 affects the Grindlays' tenancy of flat Nos. 3 and 4.

6. It is also contended by the learned counsel for the appellant that after the expiry of the stipulated period the tenancy in question turned to be a monthly tenancy and, therefore, the entire character of tenancy got changed. In Utility Articles Manufacturing Co. v. Raja Bahadur Motilal Bombay Mills Ltd. (AIR 1943 Bom 306 : 45 Bom Lr 605), a Division Bench consisting of Beaumont, C.J. and Kania, J. explaining the nature of the monthly tenancy observed in the following terms : (AIR pp.

309-10)

> "A characteristic of a periodical tenancy is that as each period commences, it is not a new tenancy; it is really an accretion to the old tenancy. A monthly tenancy, that is a tenancy subject to a month's notice creates in the first instance a tenancy for two months certain. But as soon as the third month commences, that is not a new tenancy; it turns the original tenancy into a three months' tenancy, and when the fourth month beings, the tenancy becomes a four month's tenancy, and so on so long as the tenancy continues, until, that is to say, notice to quit is given."

Relying on the above passage the learned counsel contended that the monthly tenancy, therefore, is new tenancy. Even otherwise, according to the learned counsel, the integrity of the tenancy is broken up and on that score also it is a new tenancy. Reliance is placed on Badri Narain Jha v. Rameshwar Dayal Singh (1951 SCR 153 : AIR 1951 SC 186) it is observed : (SCR p. 159)

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

In White v. Tyndall ((1888) 13 AC 263 : 4 TLR 411) it is stated that the parties to whom a demise is made hold as tenants in common but what they covenant to pay is one rent, not two rents and not each to pay is one rent, not two rents and not each to pay half a rent but one rent. There is a privity of the estate between the tenant and the landlord in the whole of the leasehold and he is liable for all the covenants running with the land.

7. According to the appellant, in the instant case, if this principle is followed, the break up of the tenancy affected the integrity of the tenancy inasmuch as by virtue of this break up two new tenancies have come into existence paying separate rents and, therefore, in that view also it is a new tenancy. Yet another submission of the appellant is that the act of the receiver in leasing out in favour of Grindlays and Tatas for a period of more than three years was bad in view of Chapter 21 Rule 5(a) of the Original Side Rules. Though this point appears to have been abandoned before the Division Bench yet it is also canvassed before us. Chapter 21 of the Calcutta High Court Original Side Rules deals with receivers. Relevant part of the Rule 5 reads thus :

> "5. In every order directing the appointment of a receiver of immovable property, there shall, unless otherwise ordered, be inserted the following directions :-
>
> (a) that the receiver shall have all the powers provided for in Order XL, Rule 1(d) of the Code, except that he shall not, without the leave of the court (1) grant leases for a term exceeding three years,
>
> #.... ...."##

The submission is that the act of the receiver in leasing out the flats in the above manner beyond three years is in violation of this rule and in that view of the matter lease should be cancelled and the tenants should summarily be evicted.

8. Learned counsel for the respondents, on the other hand, submitted that there was no new tenancy and surrender of flat Nos. 1 and 2 by the Grindlays and retaining two more flats does not amount to a new tenancy at least so far as Grindlays is concerned and a reduction of rent also does not create new tenancy inasmuch as the rent that they had to pay was only for two flats in respect of each (sic which) their tenancy continue.

9. In Woodfall's Law of Landlord and Tenant, (25th edn., p. 969) paragraph 2079 reads as under :

> "2079. Implied surrender of part only. If a lessee for years accepts a new lease by indenture of part of the lands, it is a surrender for that part only, and not for the whole; and though a contract for years cannot be so divided, as to be avoided for part of the years and to subsist for the residue, either by act of the party or act in law; yet the land itself may be divided, and the tenant may surrender one or two acres, either expressly or by act of law, and the lease for the residue will stand good and untouched."

In Halsbury's Laws of England (4th edn., Volume 27) paragraph 449 reads as under :

> "449. Surrender by change in nature of tenants's occupation. A surrender is implied when the tenant remains in occupation of the premises in a capacity inconsistent with his being tenant, where, for instance, he becomes the landlord's employee, or where the parties agree that the tenant is in future to occupy the premises rent free for life as a licensee. An agreement by the tenant to purchase the reversion does not of itself effect a surrender, as the purchase is conditional on a good title being made by the landlord."

In Foa's General Law of Landlord and Tenant (7th edn.) by Judge Forbes, paragraph 991 reads thus :

> "991. Lease of part - It has been held that acceptance of a new lease of part only of the demised premises operates as a surrender of that part and no more; but any arrangement between landlord and tenant which operates as a fresh demise will work a surrender of the old tenancy, and this may result from an agreement under which the tenant gives up part of the premises and pays a diminished rent for the remainder - and it may result from the mere alteration in the amount of rent payable. Where one only of two or more lessees accepts a new lease, it is a surrender only of his share."

In Hill and Redman's Law of Landlord and Tenant, (16th edn. on page 451) it is observed :

> "Any arrangement between the landlord and tenant which operates as a fresh demise will work a surrender of the old tenancy; and this may result from an agreement under which the tenant gives up part of the premises and pays a diminished rent for the remainder, provided a substantial difference is thereby made in the conditions of the tenancy. But a surrender does not follow from a mere agreement made during the tenancy for the reduction or increase of rent, or other variation of its terms, unless there is some special reason to infer a new tenancy, where, for instance, the parties make the change in the rent in the belief that the old tenancy is at an end."

From the above passages it can be inferred that surrender of a part does not amount to implied surrender of the entire tenancy and the rest of the tenancy remains untouched. We shall now

examine the cases cited. In Konijeti Venkayya v. Thammana Peda Venkata Subbarao (AIR 1957 AP 619 : 1969 Andh WR 1093) Viswanatha Sastri, J. referred to the abovementioned passage from Woodfall's Law of Landlord and Tenant and observed that the principle of law is stated correctly.

10. It can therefore be seen that surrender of the part of the lease does not amount to surrender of the whole. In N. M. Ponniah Nadar v. Smt. Kamalakshmi Ammal ((1989) 1 SCC 64 : AIR 1989 SC 467) it is held : (SCC p. 73, para 11)

> "A mere increase or reduction of rent will not necessarily import a surrender of an existing lease and the grant of a new tenancy. So also if on account of the variation in the quantum of rent any consequential change is made regarding the time and manner of the payment of the rent it cannot have the effect of graver consequences being imported into the change of rent than what the parties had intended and warrant a finding by the court, that the parties had intended and to create a new tenancy in supersession of the earlier one or that by operation of law a new tenancy had come into existence."

From what has been considered above it emerges that surrender of part of the tenancy does not amount to implied surrender of the entire tenancy. Likewise the mere increase or reduction of rent also will not necessarily import a surrender of an existing lease and the creation of a new tenancy. We have noticed above that the transfer includes 'lease'. Therefore it becomes necessary at this stage to consider whether there has been violation of injunction granted by Justice A. N. Sen which formed part of the appointment order of the receiver. So far as the Grindlays are concerned we are unable to accede to the contention that a new tenancy is created.

11. It is true that Justice A. N. Sen issued an injunction restraining the defendants from selling or transferring any of the properties. There is some force in the submission of the learned counsel for the appellant that the lease in favour of Tatas amounts to transfer but the same cannot be said of Grindlays. Therefore the question of evicting them summarily on this ground does not arise. However, the submission of the learned counsel is that even the lease in favour of the Grindlays expired and by creating a monthly tenancy it may even go beyond three years, and therefore it is not only creating a new lease but also is in violation of Rule 5 of the Original Side Rules. We think we need not deal with this question elaborately in view of the main and important question regarding the applicability of the provisions of the Act. However, we have already considered and held that no new tenancy is created so far Grindlays are concerned. Regarding the contention of infraction of Rule 5 it must be noted that the tenancy continued as monthly tenancy and it cannot be said that the receiver has created tenancy for a period exceeding three years and as observed in Utility case AIR 1943 Bom 306 : 45 Bom LR 605) it is an accretion to the old tenancy and not a new tenancy. Merely because there is change in a tenancy namely that it has become a monthly tenancy, it does not amount to a new tenancy as contended by the appellant so far as Grindlays are concerned.

12. It is also submitted on behalf of the Grindlays that no new lease has been created by the receiver and they come within the meaning of 'tenants' and therefore they cannot be evicted except as provided under the provisions of the Act. Section 2(h) of the Act reads thus :

> "2(h) "tenant" means any person by whom or on whose account or behalf, the rent of any premises is, or but for a special contract would be, payable and includes any person continuing in possession after the termination of his tenancy or in the event of such person's death, such of his heirs as were ordinarily residing with him at the time

> of his death but shall not include any person against whom any decree or order for eviction has been made by a court of competent jurisdiction."

In Damadilal v. Parashram ((1980) 1 SCC 185 : (1980) 1 SCR 650) Section 2(i) of the Madhya Pradesh Accommodation Control Act, 1961 which is analogous to Section 2(h) of the Act has been considered and it is held; (SCC p. 864, para 11)

> "Tenancy has its origin in contract. There is no dispute that a contractual tenant has an estate or property in the subject matter of the tenancy, and heritability is an incident of the tenancy. It cannot be assumed, however, that with the determination of the tenancy the estate must necessarily disappear and the statute can only preserve his status of irremovability and not the estate he had in the premises in his occupation."

It is also further observed that : (SCC p. 864, para 12)

> "The definition makes a person continuing in possession after the determination of his tenancy a tenant unless a decree or order for eviction has been made against him, thus putting him on par with a person whose contractual tenancy still subsists."

In Biswabani (P) Ltd. v. Santosh Kumar Dutta ((1980) 1 SCC 185 : (1980) 1 SCR 650) it is observed that : (SCC p. 193, para 10)

> "If thus the appellant was already in possession as a tenant of the premises, an unsuccessful attempt to create a fresh lease would not change the nature of his possession as from a tenant to one in part performance under a void lease. The appellant continues to be in possession as tenant and no cloud is created over its title to remain in possession as tenant merely because the appellant and respondents 1 and 2 attempted to enter into a fresh lease which did not become effective."

Their Lordships referred to a passage in Woodfall on Landlord and Tenant (Vol. 1, 27th edn., p. 187 para 446) which reads thus : (quoted at SCC p. 193, para 12)

> "Moreover, if the tenant enters into possession under a void lease, he thereupon becomes tenant from year to year upon the terms of the writing, so far as they are applicable to and not inconsistent with a yearly tenancy. Such tenancy may be determined by the usual notice to quit at the end of the first or any subsequent year, and it will determine, without any notice to quit, at the end of the term mentioned in the writing. But if the lessee does not enter, he will not be liable to an action for not taking possession; nor will an action lie against the lessor for not giving possession at the time appointed for the commencement of the term but before the lease is executed."

In an unreported judgment of the Calcutta High Court in Smt. Ashrafi Devi v. Satyapal Gupta (Suit No. 966/58 dated 9th Sept., 1977) Justice Sabyasachi Mukharji, as he then was, dealt with the question of cancelling the tenancy of lease created in respect of a room and kitchen by the Official Receiver. In that case it was found that the Official Receiver violating the order of the injunction granted lease which the court found it to be illegal. Then the learned Judge proceeded further to consider whether such an illegality can be rectified in the proceedings before the court and it was held that : "Therefore, by acting in violation of the order of the court, no right, in my opinion, can

be created in favour of a third party. Indeed the court has not acted. The action was in breach of the order of the court."

13. The learned counsel for the appellant relied on this judgment in support of his submission that the lease in the instant case created by the Official Receiver is also illegal. From the facts of that case we find a clear injunction order was passed specifically restraining the receiver from creating any new tenancy and in gross violation of that order. But, in the instant case, the facts are different. The injunction granted by A. N. Sen, J. does not apply to the tenancy in favour of Grindlays in respect of flat Nos. 3 and 4 inasmuch as it is an old tenancy though in a modified form. In Ashrafi Devi case (Suit No. 966/58 dated 9th Sept., 1977) as a matter of fact, the learned Judge observed :

> "There was no question of the lease being given without the power by the receiver or in derogation or in violation of the order of the court. The lease within the competency of a receiver cannot be impeached or affected in the summary manner as was contended."

We have already noted that the Grindlays were the tenants in respect of the four flats. They surrendered two flats. This partial surrender does not put an end to the tenancy and we are satisfied that in respect of the Grindlays no new tenancy is created by the receiver and they continued to be the tenant and they are entitled to the protection under the Act.

14. Shri. Vaidyanathan, learned counsel appearing for one of the respondents, relying on the Full Bench decision of the Madras High Court in Arumugha Gounder v. Ardhanari Mudaliar (AIR 1975 Mad 231 : (1975) 1 MLJ 385) contended that the protection under the Act cannot be extended to the tenant of a receiver. In that case the tenant was let into possession of a land by receiver appointed by the court pending the suit. The question was whether the provisions of Tamil Nadu Cultivating Tenants Protection Act, 1955 can be extended to such a tenant. It was observed in para 6 that : (AIR p. 234)

> "So then the act of the receiver in letting out the land in the suit is an act of the court itself and it is done on behalf of the court, the whole purpose of the court taking possession through the receiver appointed by it is to protect the property for the benefit of the ultimate successful party. If that is the essence and purpose of appointment of a receiver, as we hold it is, it will be difficult to agree that by a literal application of the Tamil Nadu Cultivating Tenants Protection Act, it could be put beyond the reach of the court to give relief to the successful party entitled to possession."

Before arriving at this conclusion, the Full Bench, as a matter of a fact, also observed in para 3 : (AIR p. 233)

> "If literal application of the Tamil Nadu Cultivating Tenants Protection Act is made, it may prima facie appear that a tenant let into possession by a receiver would be entitled to statutory protection under the Act. A cultivating tenant in relation to any land has been defined to mean a person who carries on personal cultivation on such land under a tenancy agreement, express, or implied. A "landlord" in relation to a holding or part thereof is defined to mean a person entitled to evict a cultivating tenant from such holding or part. A tenant let into possession by a receiver appointed by court literally appears to satisfy the definition of "cultivating tenant" and the

> receiver, the definition of "landlord" because the former carried on personal cultivating under a tenancy agreement."

The Full Bench however took the view that the receiver appointed by the court acts as an officer of the court and he cannot create a lease which takes the pending matter beyond the purview of the court and anyone who gets possession through such an act could only do so subject to the directions and orders of the court. In our view the principle laid down by the Full Bench does not apply to the facts in the instant case at least to the case of Grindlays as in our view no new tenancy is created in their favour. Even by the time the receiver was appointed the Grindlays were the tenants in respect of the four flats and they continued to be so. It is only later after due correspondence that they made a partial surrender and those two flats were let out to Tatas after due negotiations in respect of the rent. Grindlays' affidavit shows that they have also sent rent by way of bank pay orders and they have been received by the landlord. It is only for the first time on July 26, 1988 that the tenant was informed to stop the payment of rent. Further the receiver has not acted in any manner affecting the title.

15. Now coming to the case of Tatas we agree with the High Court that it is a new tenancy. Such a lease comes within the meaning of 'transfer' and in view of the injunction order passed by A. N. Sen, J. creation of such a new tenancy is legally barred. In Kerr on Receivers, (12th edn. at p. 154) it is observed :

> "The receiver does not collect the rents and profits by virtue of any estate vested in him, but by virtue of his position as an officer of the court appointed to collect property upon the title of the parties of the action.
>
> In appointing a receiver the court deals with the possession only until the right is determined, if the right be in dispute."

It is also useful to note the passage from Sir John Woodroffe's book on Receivers :

> "The receiver being the officer of the court from which he derives his appointment, his possession is exclusively the possession of the court, the property being regarded as in the custody of the law, in gremio legis for the benefit of whoever may be ultimately determined to be entitled thereto."

In Kanhaiyalal v. Dr. D. R. Banaji (AIR 1958 SC 725, 729 : 1959 SCR 333) it was observed : (AIR p. 729, para 10)

> "A receiver appointed under Order XL of the Code of Civil Procedure, unlike a receiver appointed under the Insolvency Act, does not own the property or hold any interest therein by virtue of a title. He is only the agent of the court for the safe custody and management of the property during the time that the court exercises jurisdiction over the litigation in respect of the property."

In such a situation the question is whether the Tatas can invoke the benefit of the provisions of the Act. In Smt. Ashrafi Devi case (Suit No. 966/58 dated 9th Sept., 1977) this is precisely the question that is decided, and we have already referred to some of the observations made therein. Justice Sabyasachi Mukharji held further :

> "On behalf of the transferee of the said property, it was contended that the West

> Bengal Tenancy Premises Act, 1956 protects such transferee. If however, a valid lease or a tenancy had been created then of course, such a lease or a tenant would be protected but that, in my opinion, begs the question. Secondly, it was contended that no party should be made to suffer because of an act of the court, I have not been able to appreciate this contention. The court specifically prevented the transfer or creation of the tenancy. The tenancy which is created was in derogation and in violation of the order of the court. Therefore, by acting in violation of the order of the court, no right, in my opinion, can be created in favour of a third party. Indeed, the court has not acted. The action was in breach of the order of the court."

16. Similarly as observed in Arumugha Gounder case (AIR 1975 Mad 231 : (1975) 1 MLJ 385) any such act of the receiver done on behalf of the court pendente lite and anyone who gets possession through such an act could only do so subject to the directions and orders of the court. If we apply the above principles to the case of Tatas the tenancy created in their favour by the receiver is in violation and contrary to the injunction order and such an act is subject to the directions and orders of the court appointing the receiver. Therefore the tenancy created in favour of the Tatas was in breach of the order of the court and consequently the Tatas claim any protection under the provisions of the Act and they are liable to be evicted. In the counter-affidavit filed on their behalf, it is no doubt stated that they were inducted into possession and even sending the cheques. The case of the appellant is that cheques were never encashed. In any event as observed above, the new tenancy created in their favour contrary to the orders of the court does not create a right and is liable to be cancelled. Consequently the provisions of the Act cannot be invoked by them. The appeal is therefore dismissed as against respondent 1 Grindlays and allowed as against respondent 2 Tatas. In the circumstances of the case, parties are directed to bear their own costs.

</html