

SUPREME COURT OF INDIA

M/s. K.B.Saha & Sons Pvt. Ltd.

Vs.

M/s. Development Consultant Ltd.

C.A.Nos.5659-5660 of 2002

(A.K.Mathur and Tarun Chatterjee JJ.)

12.05.2008

JUDGMENT

Tarun Chatterjee, J.

1. These two appeals are directed against the common final judgment and order dated 18th of May, 2001 of the High Court of Calcutta passed in F.A. Nos. 39-40 of 1999 affirming the judgment and decree dated 11th of November, 1998 passed by the Asstt. District Judge, 9th Court at Alipore, South 24 Parganas whereby the two suits namely, Title Suit No 19/92 and 39/92 filed at the instance of the appellant were dismissed.

2. The facts leading to the filing of these two appeals are narrated in a nutshell as follows:

“M/s. K.B. Saha & Sons Pvt. Ltd. (in short "the appellant") brought Title Suit No.19/92 before the 9th Court of the Asstt. District Judge, Alipore, South 24 Parganas against M/s. Development Consultants Ltd. (in short "the respondent") alleging, inter alia, that the appellant was the owner of Premises No. 28/8, Gariahat Road, within Police Station Lake in the district of South 24 Parganas (hereinafter called "the suit property"). By a memorandum dated 30th of March, 1976, the respondent became a tenant in respect of a flat, a fully described in Schedule-A of the plaint, in the suit property (hereinafter called "the suit premises") for the residential accommodation of a particular officer Mr. Keshab Das and members of his family and for no other purpose. The monthly rent was fixed at Rs. 1100/-, which included the rent of fixtures, fittings and parking place payable in advance by 5th of the current month for which the rent became due. The monthly rent and other charges were increased to Rs. 1210/- from September, 1985. The appellant alleged that the memorandum dated 30th of March, 1976 specifically provided that if the respondent intended to use the suit premises for any purpose other than providing residential accommodation to its named officer Mr. Keshab Das and members of his family, the respondent would have to seek a written consent from the appellant bringing the change of purpose by a notice.

3. By a letter dated 6th of March, 1992, the respondent informed the appellant that Mr. Keshab Das had vacated the suit premises and that it wanted to make repairs and to allot the same to another employee to which the appellant objected and replied by a letter dated 12th of March, 1992 that the respondent had no right to allot the suit premises to another employee and, therefore, must surrender the same once vacated by Mr. Keshab Das. However, the appellant was informed by the respondent that they would not surrender the suit premises and shall carry out the repair work in it. In this backdrop, the aforesaid Title Suit No. 19/92 was filed by the appellant for declaration and permanent injunction that as per the terms of the Memorandum of Agreement dated 30th of March, 1976, the respondent had no right to allot the suit premises to any other employee after the same was vacated by Mr. Keshab Das and members of his family. By an interim order passed on 13th of March, 1992 in the aforesaid suit, the Assistant District Judge, 9th Court at Alipore had passed an order of injunction restraining the respondent from allowing any other person except Mr. Das to occupy the suit premises. This interim order was made final on 2nd of September, 1992. On 18th of March, 1995, a notice under Section 13(6) of the *West Bengal Premises Tenancy Act, 1956* (in short "the Act") was served on the respondent asking them to vacate the suit premises and on failure of the respondent to vacate the suit premises as desired in the notice, another suit was filed by the appellant being Title Suit No. 39/95 praying for ejection of the respondent from the suit premises. The aforesaid suit was brought by the appellant with similar allegations as contained in Title Suit No. 19/92 and it was alleged, inter alia, that although the respondent was bound to vacate the suit premises after Mr. Das had vacated the same, yet the respondent had not vacated the suit premises and, therefore, the appellant was constrained to file the aforesaid suit for eviction of the respondent and damages and consequential relief. The respondent entered appearance and contested both the suits by filing written statements. In the written statements, it was the defence of the respondent that the respondent was in urgent need of rented accommodation for its officer and, therefore, they hurriedly put their signatures on the agreement dated 30th of March, 1976. The respondent further alleged that the tenancy was taken by them for providing residential accommodation to its officer Mr. Keshab Das who was only an officer of the respondent and it was the respondent who was the tenant of the suit premises and not the named officer Mr. Keshab Das. Therefore, according to the respondent, even after the suit premises was vacated by Mr. Das, the tenancy of the respondent continued and it was still continuing. The allegation of the appellant that the respondent had no right to allow another officer to occupy the suit premises was misconceived and baseless. It was further alleged in the written statements that the respondent had duly informed the appellant that the employee of the respondent i.e. Mr. Das had left the suit premises and that they were going to allot the suit premises to another officer. It was also asserted that since it was the respondent who was the tenant under the appellant and paid the rent to the appellant, such tenancy was protected by the provisions of the Act. It was further the case of the respondent that the tenancy agreement entered into by the parties was illegal and invalid and such an agreement was against the Statute. Accordingly, in both the written statements, the respondent asserted that neither any order of injunction could be passed against them nor could the suit be decreed in favour of the appellant directing eviction of the respondent from the suit premises. By a common judgment dated 11th of November, 1998, the suits of the appellant were dismissed.

4. Feeling aggrieved by the aforesaid common judgment of the trial Court, two appeals were filed in the High Court at Calcutta, which came to be registered as FA Nos. 39-40 of 1998. By the impugned common judgment of the High Court, the aforesaid two appeals being FA Nos. 39-40 of 1998 were dismissed and two Special Leave Petitions were filed against them in respect of which leave has already been granted.

5. We have heard the learned counsel for the appellant and examined the judgment of the High Court as well as of the trial court and other materials on record. We keep it on record that none had appeared for the respondent despite our best efforts to bring the respondent to appear before us and contest the appeals. We also keep it on record that in view of the interim order granted by the High Court as well as by the trial Court to the extent that the respondent cannot be allowed to bring any officer other than Mr. Keshab Das to occupy the suit premises, the respondent has kept the suit premises under lock and key without any occupation of any officer in the same.

6. On a perusal of the pleadings of the parties, it is pellucid that the case of the appellant in both the suits was based on the memorandum of lease agreement dated 30th of March, 1976. In this view of the matter, it is expedient to reproduce some of the relevant Clauses in the Tenancy Agreement between the parties before we proceed further with this appeal. Accordingly, the relevant portion of the memorandum dated 30th of March, 1976 is reproduced as under: -

"THIS MEMORANDUM OF AGREEMENT made this the 30th day of March, one thousand nine hundred and seventy six BETWEEN M/s. K. B. Saha & Sons (Biri Merchants) Limited, a body corporate registered under the Companies Act, 1956 having its registered office at 28/8, Gariahat Road within P.S. Tollygunge, Calcutta-700 029 within the local limits of Corporation of Calcutta hereinafter called the landlords (which expression unless repugnant to the context shall include its successors and assigns) of the First Part AND DEVELOPMENT CONSULTANTS PRIVATE LTD, a body corporate registered under the Companies Act, 1956 having its registered office at present at premises No.24-B, Park street, Calcutta, within P.S. Park Street, Calcutta- 16 hereinafter called the tenant (which expression unless repugnant to the context shall include its successors and assigns.) of the Second Part; HEREAS the party of the F IRST PART , the Landlord hereof is the sole owner and proprietor of multistoreyed buildings being Premises No. 28/8, Gariahat Road, within P.S. Tollygunge, Calcutta-29 within the local limits of corporation of Calcutta AND WHEREAS the said Landlord, party of the first part hereof offered to let out flat No. 3 on the 2nd floor of the said premises along with fittings, fixtures and installations therein at a total monthly rental of Rs.1100/- (Rupees One Thousand One Hundred) only inclusive of rent of fittings and fixtures and service charges and parking space for one car AND WHEREAS the party of the second part hereof approached the party of the first part hereof and offered to it the said flat No.3 of the 2nd floor of the said premises No,28/8, Gariahat Road, Calcutta-29 for the use and occupation of its present Chief Engineer (Cement) of the aforesaid party Mr. Keshab Das and the members of his family only agreeing and accepting to the aforesaid

offer by the party of the first part at a total rental of Rs.1,100/ - (Rupees One thousand one hundred only) inclusive of the rent of fittings and fixtures, service charges and parking space for one car AND WHEREAS the party of the first part hereof has agreed to let out the said flat to the party hereto of the second part for the use and occupation of its present said Chief Engineer (Cement) and his family members only AND WHEREAS the party of the first part agrees to give vacant possession of the said tenancy and the party of the second part hereto agrees to take possession of the said tenancy for the use and occupation of the said Chief Engineer (Cement)and his family members on First day of April, 1976"

Clause-9 of the Agreement runs as follows:-

"That the party of the second part hereof agrees and undertakes that the tenancy will be used and occupied by its present officer Mr. Keshab Das and members of his family for residential purpose only and for no other purposes. If the tenant intends to use the tenancy for occupation of any other officer or employees, it will seek for written consent of the landlord and the landlord shall have the option to agree or disagree to give such consent".

Clause 20 of the said agreement is as follows:-

"That the tenant shall vacate and deliver vacant Khas possession of the demised premises unto the landlord on termination or determination of the tenancy with whole of the fittings and effects in as sound, perfect and clear condition as they were at the commencement of the tenancy excepting natural wear and tear".

7. In view of the pleadings of the parties, the following issues were framed by the trial court in Title Suit No.19 of 1992: -

- “1. Has the plaintiff any cause of action for the suit?
2. Is the suit maintainable in its present form and in law?
3. Was the suit premises let out by the plaintiff to the defendant for providing accommodation to its particular officer viz. Mr.Keshab Das?
4. Is the plaintiff entitled to get the decree as prayed for?
5. To what relief, if any, is the plaintiff entitled?”

8. In Title Suit No.39/95, the following issues were framed: -

1. Is the suit maintainable?

2. Whether the notice of ejection is valid, legal and sufficient? If so, was it duly served upon the defendant?
 3. Whether the defendant is a defaulter in payment of rent as alleged?
 4. Whether the defendant has caused damage to the suit premises?
 5. Whether the defendant has violated the terms of the memorandum of agreement by not vacating the premises after the same having been vacated by Mr.Keshab Das?
 6. To what relief, if any, is the plaintiff entitled?
9. Considering the different clauses of the lease agreement and on consideration of the evidence on record and the contentions of the learned counsel for the parties, the trial court finally came to the following findings : -

“I) The suit premises was let out by the appellant to the respondent initially for providing accommodation to its particular officer namely Mr. Keshab Das and members of his family, which could not mean that the tenancy was created exclusively for the accommodation and residence of Mr. Keshab Das and his family only.

II) The tenancy was created in respect of the suit premises in favour of the respondent.

III) Since the tenancy was determinable and terminable by a legal sufficient valid notice under the Act to the respondent, the respondent could be directed to vacate the suit premises only on proof of the grounds mentioned in Section 13(1) of the Act.

IV) Since the respondent was depositing rent in the office of the Rent Controller, Calcutta, the respondent was not a defaulter in payment of rent as a tenant and therefore, not liable to be evicted on the ground of default.

V) The respondent was a tenant in respect of the suit premises although it was taken exclusively for the benefit of the named officer and therefore, the named officer Mr. Das was only occupying the suit premises on behalf of the respondent.

VI) Since, admittedly, the lease agreement was not registered, which document under Section 49 of the Registration Act was required to be registered, the said agreement was not admissible in evidence.

VII) The lease agreement, being an unregistered document, could not be used to establish that the suit premises was let out to the respondent only for the purpose of occupation of its employee Mr. Keshab Das and the members of his family for their residential purpose and for no other purpose.

VIII) From the agreement, which could be seen as collateral evidence, the purpose of the tenancy was clearly for residence and, therefore, the question of violation of Clause (o) of Section 108 of the Transfer of Property Act by the respondent in the facts and circumstances of the case could not arise at all.”

10. On the aforesaid findings arrived at by the Trial Court, both the suits were dismissed and the High Court on the same lines had affirmed the findings of the trial court and held that no ground was made out by the appellant to evict the respondent from the suit premises.

11. Mr. Somnath Mukherjee, the learned counsel appearing on behalf of the appellant submitted that the lease agreement (Ext.4) creating tenancy from month to month in respect of the suit premises was not compulsorily registerable under Section 107 of the Transfer of Property Act. He also contended that the High Court as well as the trial court were wrong in holding that the lease agreement being an unregistered document cannot be used to establish the provisions made in that agreement that the suit premises was let out to the respondent only for the purpose of occupation of the respondent's named officer Mr. Keshab Das and members of his family and for no other purpose. He further contended that since the lease agreement in question was not required to be registered, the prohibition contained in Section 49 of the Registration Act was not applicable. He also contended in the alternative that even if it was held that the lease agreement in question was compulsorily registrable, even then the purpose of letting specified in the lease agreement was a 'collateral purpose' and accordingly, the lease agreement could be looked into under the proviso to Section 49 of the Registration Act and also that the said term did not extinguish the tenant's right under the Act. Lastly, he contended that the respondent had violated section 108(o) of the Transfer of Property Act and, accordingly, was liable to be evicted under Section 13(1b) of the Act. Mr. Mukherjee contended that the lease agreement between the parties was not illegal and against the statute. In support of this contention, Mr. Mukherjee relied on a decision of this Court in the case of *Smt. Juthika Mulick & Anr. vs. Dr. Mahendra Yashwant Bal & Ors.*¹ and he strongly relied on paragraph 42 of the said decision which says:

"As general proposition of law, there can be no demur that there is no estoppel against a statute. The language of Section 13 of the Act makes it clear that only if anything is found contrary in any other law an order or decree for the recovery of possession of any premises shall be made by any court in favour of the landlord against a tenant. This wording is peculiar unlike most of the Rent Control Legislations where contract to the contrary is also enveloped in affording protection to the tenants against eviction. In view of the language of Section 13(1) of the Act, the parties have freedom to contract out of Section. In this case clause (1) of the lease-deed extracted above stipulates that the heirs of lessee will have no right to hold after the death of lessee and they have to deliver quiet, peaceful and vacant possession within three months after the demise of the original lessee. In other words, the right has been made specifically not heritable."

12. In order to appreciate the submissions made by Mr. Mukherjee, the learned counsel appearing on behalf of the appellant, it would be necessary for us to look into Section 107 of the Transfer of Property Act which would be, in our view, material for rendering proper decision in this appeal. Accordingly, Section 107 of the Transfer of Property Act may be quoted which runs as under:

"Lease how made - A lease of immoveable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument.

All other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

Where a lease of immoveable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee.

Provided that the State Government may from time to time, by notification in the Official Gazette, direct that leases of immoveable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession."

13. Another section which would also be material for us to decide this appeal is - Section 49 of the Registration Act which runs as under:

"Effect of non-registration of documents required to be registered- No document required by Sec.17 [or by any provision of the *Transfer of Property Act, 1882* (4 of 1882) to be registered shall -

(a) Affect any immoveable property comprised therein, or

(b) Confer any power to adopt, or

(c) Be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immoveable property and required by this Act or the *Transfer of Property Act, 1882* (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the *Specific Relief Act, 1877* (3 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument."

14. Having heard the learned counsel for the appellant and after going through the judgment of the High Court as well as of the trial court, we do not find any ground for which

interference can be made with the judgment of the High Court. We may note that it was the case of the respondent before the High Court that it was protected by the provisions of the Act and that it could not be evicted only because as per the agreement, the tenancy was to be occupied by one of its officers. The appellant, on the other hand, as noted hereinabove, placed reliance on the decision of this court in Smt. Juthika Mullick's case [supra], to put forth the point that the respondent was bound to vacate the premises after the said officer had left the premises and relying on Smt. Juthika Mullick's case [supra] submitted that the lease agreement was not at all contrary to the provisions of the Act and that the parties were at liberty to contract out of the Section delineating the various grounds for eviction. We may note at this stage that in that decision, this court had held that although the tenant was protected under the provisions of Section 13 of the Act and such tenant could be evicted only for one or more grounds as provided in that Act, the parties had the freedom to enter into an agreement to take their case out of the provisions of that Section i.e. the parties were at liberty to contract out of that section. Before we deal with the submission of Mr. Mukherjee, learned counsel appearing on behalf of the appellant, on this question, we may look into the findings arrived at by the High Court on this question. The High Court in the impugned judgment has come to a conclusion that the decision in the case of Smt. Juthika Mullick's case (Supra) cannot be of any benefit to the appellant on the ground that in Smt. Juthika Mullick's case, the respondent had leased out the premises in question in favour of the lessee under a registered deed of sale whereas in the instant case, the lease deed was not registered. The High Court has observed that the lease agreement between the parties was in effect an agreement for lease of the suit premises and was unregistered. Relying on Section 49 of the Registration Act, the High Court observed that a document purporting to be a lease and required to be registered under Section 107 of the Transfer of Property Act is not admissible in evidence if it is not registered. Proviso to Section 49, however, provides that although a lease deed falling under the provision of Section 107 of the Transfer of Property Act will not be admissible in evidence if the same is not registered but that deed may be used as evidence of any collateral transaction not required to be effected by a registered instrument. Therefore, the High Court observed that the question to be decided in this appeal is whether the conditions noted in the lease deed could be looked into for determining the question that the tenancy in question would be used only for the purpose of occupation of the named officer of the respondent.

15. Section 49 clearly provides that a document purporting to be a lease and required to be registered under Section 107 will not be admissible in evidence if the same is not registered. Proviso to this section, however, as noted hereinabove, provides that an unregistered lease deed may be looked into as evidence of collateral facts. Mr. Mukherjee, learned counsel for the appellant argued before us that the tenancy in question was exclusively granted for the benefit of the named officer and his family and unless the landlord gave his consent, no other person could use it and such condition in the lease agreement is admissible for ascertaining the purpose of allotting the suit premises which according to the appellant is a collateral fact.

16. Having heard the learned counsel for the appellant, we are of the view that the decision of this Court in Smt. Juthika Mullick's case [supra], on which strong reliance was placed by the learned counsel for the appellant is of no help to the appellant because as rightly pointed

out by the High Court, the said decision was based on a registered deed of lease. In Smt. Juthika Mulick's case [supra], as noted herein earlier, it has been held that the language of Section 13 of the Act makes it clear that notwithstanding anything to the contrary contained in any other law, an order or decree for the recovery of possession of any premises shall be made by the court in favour of the landlord against a tenant on the grounds mentioned in that section. It was further observed that in view of the language of Section 13(1) of the Act, the parties have freedom to contract out of the Section. In the aforesaid judgment of this Court, on which strong reliance was placed by the appellant, the fact was that the predecessor-in-interest of the respondents in that appeal leased out the premises in question in favour of one Lal Bihari Mulick in a registered deed of lease at a monthly rental of Rs. 160/- and the lease deed contained a covenant that the lease was for the lifetime of the lessee and his heirs, executors, administrators, representatives and the heirs must yield up and deliver quiet, peaceful and vacant possession of the demised premises within three months from the date of death of the lessee unconditionally and without any objection whatsoever. It was further stipulated that they shall have no right to handover the demised premises after the said period under any circumstances. The lessee died on 16th of December, 1970 and his heirs did not deliver vacant possession in favour of the lessors or their successors in interest and this necessitated filing of the suit for eviction of the defendants. In that decision, the main defence raised in the written statement was that the original lessee Lal Bihari Mulick, having died on 16th of December, 1970, the registered lease dated 11th of July, 1966 shall fall under the category of the West Bengal Premises Tenancy Act and the tenants were residing in the demised premises with the said lessee namely Lal Bihari Mulick during his lifetime became monthly tenants under the plaintiffs of that case by operation of law. In view of the aforesaid facts and considering the fact that the aforesaid decision of this Court was rendered on the basis of a registered lease deed, we are of the view that the said decision is clearly distinguishable from the present case because of the fact that in the present case, there was no registered deed of lease nor was there any such covenant as mentioned hereinabove. Therefore, we do not find any ground to place any reliance on the aforesaid decision of this court.

17. As we have already noted that under the proviso to Section 49 of the Registration Act, an unregistered document can also be admitted into evidence for a collateral fact/collateral purpose, let us now look at the meaning of "collateral purpose" and then ascertain whether Clause 9 of the lease agreement can be looked into for such collateral purpose. In *Haran Chandra Chakravarti Vs. Kaliprasanna Sarkar*², it was held that the terms of a compulsorily registrable instrument are nothing less than a transaction affecting the property comprised in it. It was also held that to use such an instrument for the purpose of proving such a term would not be using it for a collateral purpose and that the question as to who is the tenant and on what terms he has been created a tenant are not collateral facts but they are important terms of the contract of tenancy, which cannot be proved by admission of an unregistered lease-deed into evidence.

18. The High Court in the impugned Judgment relied on a decision of the Allahabad High Court in the case of *Ratan Lal & ors. Vs. Harisankar & Ors.*³ to hold that since the appellant wanted to extinguish the right of the respondent with the help of the unregistered tenancy, the

same was not a collateral purpose. In Ratan Lal's case[supra], while discussing the meaning of the term "Collateral Purpose", the High Court had observed as follows :-

"The second contention was that the partition deed, even if it was not registered could certainly be looked into for a collateral purpose, but the collateral purpose has a limited scope and meaning. It cannot be used for the purpose of saying that the deed created or declared or assigned or limited or extinguish the right to immovable propertyterm collateral purpose would not permit the party to establish any of these acts from the deed."

19. In the case of *Bajaj Auto Limited vs. Behari Lal Kohli*⁴, this Court observed that if a document is inadmissible for non-registration, all its terms are inadmissible including the one dealing with landlord's permission to his tenant to sub-let. It was also held in that decision that if a decree purporting to create a lease is inadmissible in evidence for want of registration, none of the terms of the lease can be admitted in evidence and that to use a document for the purpose of proving an important clause in the lease is not using it as a collateral purpose.

Again this court in *Rai Chand Jain Vs. Chandra Kanta Khosla*⁵ reiterated the above and observed in paragraph 10 as under : -

".....the lease deed Ex. P1 dated 19th May, 1978 executed both by the appellant and the respondent i.e. the landlady and the tenant, Rai Chand Jain, though unregistered can be considered for collateral purposes and as such the findings of the Appellate Authority to the effect that the said deed cannot be used for collateral purposes namely to show that the purpose was to lease out the demised premises for residential purposes of the tenant only is not at all legally correct. It is well settled that unregistered lease executed by both the parties can be looked into for collateral purposes. In the instant case the purpose of the lease is evident from the deed itself which is as follows: "The lessor hereby demises House No. 382, Sector 30-A, Chandigarh, to lessee for residential purposes only". This clearly evinces that the property in question was let out to the tenant for his residence only...."

20. In the case of *Rana Vidya Bhushan Singh Vs. Ratiram*⁶, the following has been laid down:

"A document required by law to be registered, if unregistered, is inadmissible as evidence of a transaction affecting immovable property, but it may be admitted as evidence of collateral facts, or for any collateral purpose, that is for any purpose other than that of creating, declaring, assigning, limiting or extinguishing a right to immovable property. As stated by Mulla in his Indian Registration Act, 7th En. At p. 189:

"The High Courts of Calcutta, Bombay, Allahabad, Madras, Patna, Lahore, Assam, Nagpur, Pepsu, Rajasthan, Orissa, Rangoon and Jammu & Kashmir; the former Chief

Court of Oudh; the Judicial Commissioner's Court of Peshawar, Ajmer and Himachal Pradesh and the Supreme Court have held that a document which requires registration under Section 17 and which is not admissible for want of registration to prove a gift or mortgage or sale or lease is nevertheless admissible to prove the character of the possession of the person who holds under it."

21. From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that:-

"1. A document required to be registered is not admissible into evidence under Section 49 of the Registration Act.

2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the Proviso to Section 49 of the Registration Act.

3. A collateral transaction must be independent of, or divisible from, the transaction to affect which the law required registration.

4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.

5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose."

22. In our view, the particular clause in the lease agreement in question cannot be called a collateral purpose. As noted earlier, it is the case of the appellant that the suit premises was let out only for the particular named officer of the respondent and accordingly, after the same was vacated by the said officer, the respondent was not entitled to allot it to any other employee and was therefore, liable to be evicted which, in our view, was an important term forming part of the lease agreement. Therefore, such a Clause, namely, Clause 9 of the Lease Agreement in this case, cannot be looked into even for collateral purposes to come to a conclusion that the respondent was liable to be evicted because of violation of Clause 9 of the Lease Agreement. That being the position, we are unable to hold that Clause 9 of the Lease Agreement, which is admittedly unregistered, can be looked into for the purpose of evicting the respondent from the suit premises only because the respondent was not entitled to induct any other person other than the named officer in the same.

23. Before we part with this Judgment, let us deal with another ground, which the High Court had also taken into consideration. This is with regard to the violation of provisions of Section 108 (o) of the *Transfer of Property Act*. Section 108 (o) clearly provides that the Lessee must not use or permit another to use the property for a purpose other than that for which it was let out or leased. Relying on this provision, the learned counsel for the appellant argued that since the purpose of the lease was for the use and occupation of one of the officers of the

respondent, after the said officer had vacated the suit premises, the respondent, by refusing to handover the possession of the suit premises to the appellant and by giving the same to another officer, had violated the provisions of Section 108 (o) of the Transfer of Property Act. Before we decide this question, it is necessary for us to reproduce the finding of the High Court on this aspect, which is as follows: -

"...Clause (O) of Section 108 of the T.P. Act touches the question of user. This clause requires the lessee to use the property as a man of ordinary prudence would use his property and not to use the property, for any other purpose, for which it is leased. In the instant case, from the tenancy agreement, what can be seen as collateral evidence is the purpose of the tenancy and such purpose clearly is for residence. Therefore, there is no question of violation of Clause (o) of Section 108 of the T.P. Act by the tenant/company in the facts and circumstances of the case."

24. We have carefully examined the aforesaid finding of the High Court on the question of violation of Section 108 (o) of the Transfer of Property Act. In our view, the High Court was justified in coming to a conclusion that since this was not a case of 'Change of User' within the meaning of Section 108 (o) of the Transfer of Property Act, it could not be held that the appellant had violated the provisions of Section 108 (o) of the Transfer of Property Act. Section 108 (o) requires the lessee to use the property as a man of ordinary prudence would use his property and not to use it for a purpose different to that for which it was leased. It is true that under Section 108 (o) of the Transfer of Property Act, use of the property for the purpose other than that for which it was leased i.e. 'Change of User' is not permitted. Therefore, we have to consider whether in the backdrop of the facts of this case, violation of Clause 9 of the lease agreement, even if it is held that it can be looked into for collateral purposes, would be 'Change of User' or not. In other words, we have to find whether the expression 'change of user' would cover a situation wherein the property is let out for a particular named officer and for none else and despite this condition, the same is given to some one else, or would it cover and be limited to the cases where property is leased out for a residential or non-residential purpose or for a particular business and despite such express conditions, the property is used for the purpose other than the specified. We are of the view that letting out or leasing out the property for a particular named officer cannot be the 'purpose' of letting. The purpose of letting out would be residential or non-residential or for a particular business etc.

25. The learned counsel for the appellant placed strong reliance on the decisions of this court in *Dashrath Baburao Sangale and others Vs. Kashimath Bhaskar Data*⁷ and *M. Arul Jothi and another Vs. Lajja Bal (deceased) and another*⁸ to suggest that the respondent had violated Section 108(o) of the Transfer of Property Act. After carefully examining the aforesaid decisions of this Court, we do not find any support from the said decisions for the purpose of holding that the present case is covered by the expression 'Change of User' as used in Section 108(o) of the Transfer of Property Act. In *Dashrath Baburao Sangale's* case [supra], the premises was let out to the tenant for sugarcane juice business whereas the tenant was using the premises for selling cloth and readymade clothes and on this ground, it was held that he was liable to be evicted on account of 'change of user'. Similarly, in *M. Arul*

Jothi's case [supra], the tenant was held liable for eviction when the shop rented to him for carrying on the business of radios, cycles, fans, clocks and steel furniture was converted into a grocery store despite a specific clause in the rent agreement forbidding the same.

26. Therefore, in the present case, we are of the view that although the premises was leased out exclusively for the named officer of the respondent, the fact that it was subsequently used for the residence of some other officer of the respondent would not constitute 'change of user' so as to be hit by Section 108 (o) of the Transfer of Property Act.

27. Before we part with this judgment, we may deal with a short submission of Mr. Mukherjee that since the lease agreement in question was simplicitor a tenancy agreement, which is not compulsorily registrable, the respondent was liable to be evicted even under the provisions of the Act. We are unable to agree with this contention of Mr. Mukherjee for the simple reason that for a decree to be passed under the Act, the landlord has to plead and prove one of the grounds mentioned in Section 13 of the Act. Even if we accept that the appellant had made out a case under Section 13(1b) of the Act to the extent that the respondent was liable to be evicted under Section 108(o) of the Transfer of Property Act, in view of our findings made hereinabove on that aspect, the appellant is not entitled to a decree of eviction under the Act.

28. In view of our discussions made hereinabove, we are, therefore, of the view that Clause 9 of the Agreement, which requires the respondent to use the suit premises only for its particular named officer, can not be looked into even for collateral purposes and that the decision of this court in Smt. Juthika Mullick's case [supra] would not be of any help to the appellant because in that case, the lease deed was registered.

29. Secondly, we are of the view that although the suit premises was leased out exclusively for the named officer of the respondent, the fact that the respondent sought to use it for some other officer would not constitute "Change of User" within the meaning of Section 108(o) of the Transfer of Property Act and, therefore, the respondent cannot be evicted for violation of the provisions of Section 108(o) of the Transfer of Property Act.

30. No other point was raised by the learned counsel for the appellant and accordingly, we do not find any merit in this appeal and the appeal is therefore dismissed.

31. Since the suits have been dismissed and no argument was advanced in respect of the other appeal i.e. the appeal in respect of the injunction suit, the said appeal shall also stand dismissed.

32. Since the appeals have been dismissed, all the interlocutory applications, if any, now pending before this Court have become infructuous and accordingly, they are disposed of as infructuous. There will be no order as to costs.

¹[AIR 1995 SC 1142]

²[AIR 1932 Cal 83(2)]

³[AIR 1980 Allahabad 180]

⁴[AIR 1989 SC 1806]

⁵[AIR 1991 SC 747]

⁶[1969 (1) UJ 86 (SC)]

⁷[AIR 1993 SC 2646]

⁸[AIR 2000 SC 1122]