ALLAHABAD HIGH COURT

Vishnawati

Vs.

Bhagwat Vithu Chowdhry

Second Appeal No. 74 of 1968, against judgment and Decree of 2nd Addl. Civil J. Lucknow, (G.S. Lal, J.)

06.01.1968. 26.02.1969

JUDGMENT

G.S. Lal, J.

1. This second Civil Appeal arises out of a suit for ejectment from a house and recovery of arrears of rent. The suit was decreed by the trial Court and an appeal from the judgment and decree of the trial Court was dismissed.

2. The suit was instituted by Bhagwat Vithu Chowdhry (respondent in this appeal) against Smt. Vishnawati (appellant in this appeal) claiming that he had terminated the tenancy by notice to quit and had obtained the permission of the District Magistrate under Section 3 of the U. P. (Temporary) Control of Rent and Eviction Act, 1947 to get over the bar to the institution of the suit created under that section. Admittedly the appellant's husband Gaya Prasad Shukla was originally the tenant of the house on a monthly rent of Rs. 35 from its former owner Lala Mangli Prasad. The house was sold by Lala Mangli Prasad to one Smt Vidyawati. The latter in turn sold it to the respondent. After the purchase of the house, which professedly was for the purpose of his own residence, the respondent obtained the District Magistrate's permission dated 8-8-1966 to sue the tenant for eviction. He had already given a notice dated 24-3-1966 to the appellant terminating the tenancy and asking for vacation of the premises. The plaintiff filed a revision before the Commissioner but the same was dismissed on 20-1-1967. The suit was instituted the same day.

3. The suit was contested by the defendant-appellant on various grounds. The notice was said to be invalid since it was not given after grant of permission, and the permission to be invalid as the purchase was with full knowledge of the tenancy. Gaya Prasad Shukla, who had died about 10 years before suit, had left, besides his widow (appellant), three sons and daughters from her as also two sons from an earlier wife. Since permission had been obtained to file a suit against the widow and not the sons and daughters of Gaya Prasad Shukla and the notice terminating the tenancy had also been addressed to, and served upon, the widow alone, it was pleaded that the notice was bad for that reason and the permission was also illegal and without jurisdiction. The

suit was also said to be not maintainable on the ground of the State Government having passed a stay order on the filing of a revision application by the defendant under Section 7-F of the aforesaid Act.

4. As to the plea of the notice being invalid on the ground that it was not given after the grant of permission by the District Magistrate, not again after the confirmation of the District Magistrate's order by the Commissioner, the learned Additional Munsif who tried the suit held that it was not necessary to give the notice after the grant of permission and that it could be given before that. The plea has not been pressed again at least in this Court, and for obvious reasons, as it has been held in several decisions of this Court that it is not necessary that the notice under Section 106 of the Transfer of Property Act be given only after the permission to evict has been obtained. About the additional ground (raised by an amendment of the written statement) that the notice was bad because it had been both addressed to and served upon the appellant alone though Gaya Prasad Shukla had left other heirs and the tenancy devolved upon those other heirs also, the learned Munsif held that the appellant alone had been acting as, and asserting herself to be, the tenant and had for all practical purposes been recognised as the tenant and she was thus the sole tenant. He was further of the opinion that even if the sons and daughters had inherited the tenancy rights they had impliedly surrendered those rights in favour of their mother. For these reasons he held the notice to have been rightly given to the appellant alone.

5. Regarding the plea of invalidity of the permission, it was conceded before the learned Munsif on the defendant's side that permission granted against one co-tenant held good against all the co-tenants. He held that the defendant had failed to show in what respect otherwise the permission was illegal and without jurisdiction. On the plea that the State Government had stayed the operation of the order of the lower authorities granting permission and the suit was therefore, not maintainable, the learned Munsif found that no order of stay of the State Government was on the record and so he rejected the plea.

6. After deciding also the minor controversies which related to the arrears of rent and damages, the trial Court decreed the suit for ejectment and for recovery of a lesser amount as arrears of rent besides damages for use and occupation.

7. In the appeal filed by the defendant Smt. Vishnawati the second Additional Civil Judge who disposed the same held that it being undisputed that a tenancy is heritable in the absence of a contract to the contrary and that Gaya Prasad Shukla had left surviving him not only the appellant but also sons and daughters, those sons and daughters also became co-tenants of the house with the widow. However, relying on the decision of the Supreme Court in *Kanji Manji v. The Trustees of the Port of Bombay*[1], he held that the notice to the widow alone to determine the tenancy was sufficient and the suit for ejectment filed against her alone was also good at law. In regard to the permission, he too held that nothing had been shown as to how the permission was illegal or without jurisdiction and that so far as the ground that it was obtained against one of the

co-tenants only was concerned, the decision in the case

[1] AIR 1963 SC 468

Janardan Swarup v. Debi Prasad[2], showed that the permission obtained against one co-tenant was good against the entire body of the class designated as 'the tenant'. The plea based on an alleged stay order by the State Government was not seriously pressed in the appeal. Relying upon the Full Bench case *Bashi Ram v. Mantri Lal*[3], the learned Judge held that the proceedings under Section 7-F aforesaid could have no effect on the suit already instituted. It may be stated that this position has since been confirmed by the decision of the Supreme Court in *Parshottam Das V. Smt. Raj Mani Devi*[4], The appeal was accordingly dismissed.

8. In the second appeal the same legal pleas have been reiterated and argued. Learned counsel for both the sides have been heard at length. It may be noted here that another second civil appeal No. 152 of 1967 with a similar plea about invalidity of notice given to one co-tenant only was also tacked with this appeal under decision after it had been heard in part and this appeal is being decided after hearing also learned counsel for both the sides in that other second appeal.

9. On the side of the appellant it has been urged that the decisions of the High Courts in India have no doubt been that a notice served on one of the co-tenants is a good notice to the other co-tenants But that is only where the notice is addressed to all. It is said that the notice in the instant case was addressed only to the appellant and was served only on her. For that reason the notice is said to be not in accordance with law and therefore, invalid for the purpose of terminating the tenancy. In regard to the Supreme Court decision aforesaid, the argument is that the same is distinguishable because it relates to a case of"joint tenants" as distinct from"tenants-in-common" which is the position of the appellant and the other heirs of Gaya Prasad Shukla who succeeded to the tenancy by inheritance. Now the expression"joint tenants" has very often been used in those earlier cases too which have been cited on the appellant's side and on which reliance is placed for the argument that in order to be effective under Section 106 of the Transfer of Property Act, the notice must be addressed to all the co-tenants but it has not been urged that in those decisions also the expression"joint tenants" was intended to refer to co-tenants holding as"joint tenants" as distinguished from"tenants-in-common". It has also not been disputed that the expression"joint tenants" was used in those cases as a substitute for"co-tenants" and not with a view to indicate the nature of the estate held by the co-tenants. It therefore, needs to be examined whether the Supreme Court decision referred to above was peculiar to any “joint tenancy" estate held by the co-tenants in the tenancy and whether the same is not applicable to co-tenants who got the rights of a tenant in the tenancy on his death by inheritance.

10. At the outset it may be stated that there is no controversy on the proposition that even in the case of a monthly tenancy, the tenancy is inherited by the heirs of the tenant on his death. It was so held in *Anwarali Bepari v. Jamini Lal, Mannalal*[5] *Serowjie v. Ishwari Prasad*[6], and *Rajib Husain v. Nawab Yanuskhan*[7], It is also not in controversy that except in the case of coparceners in a joint Hindu family under the

[2]1958 All LJ 573: AIR 1959 All 33 [4]AIR 1970 SC 763: 1968 All WR (HC) 892 [6] AIR 1966 Cal 447

[3]1965 All LJ 58: AIR 1965 All498 (FB) [5]AIR 1940 Cal 89 [7]AIR 1937 Nag 321

Hindu Law, property under various inheritance laws in this country is taken by inheritance from a deceased owner by his heirs as “tenants in common" and not
as “joint tenants" as between themselves. So it cannot be doubted that as between themselves the interest which the heirs of a deceased tenant inherit will itself be heritable and will not pass by survivorship and in that sense they cannot be said to hold it as “joint tenants." That is why the expression “joint tenants" used in dealing with a case of more than one person holding together the tenancy either by original lease in their favor or by inheritance from a deceased tenant is meant to convey nothing more than the idea that such persons hold the tenancy as one entity and not that they hold that kind of estate which is governed by the rule of passing by survivorship. If the Supreme Court decision in AIR 1963 Supreme Court 468 can be said to be in relation to a case of joint tenants in such ordinary sense of the expression, then it would be directly relevant to the instant case, but if it laid down law of sufficiency of notice to determine lease by being given to one of the co-tenants to a case where the co-tenants were holding the tenancy by way of an estate of"joint tenancy", then the decision would be distinguishable, though the point would still require decision whether in other cases of joint tenancy also notice to one of the joint tenants will not be good and effective in law for the purpose of terminating the tenancy. This calls for an examination of the facts of Kanji Manji's case, AIR 1963 Supreme Court 468.

11. Kanji Manji's case, AIR 1963 Supreme Court 468 decided by the Supreme Court arose out of a suit filed by the Trustees of the Port of Bombay for ejectment of Kanji Manji and one Rupji Jeraji from a piece of land. The land had been leased by the Trustees of the Port of Bombay on a monthly tenancy to two persons. Those two persons later assigned their rights in the lease to Kanji Manji and Rupji Jeraji and the assignment appeared to have been accepted by the lessors. Some years later, the Trustees of the Port of Bombay sent a notice to Kanji Manji and Rupji Jeraji requiring them to vacate the premises and deliver vacant and peaceful possession on a certain date. On non-compliance with the notice the suit was instituted against both the persons. It however, turned out that Rupji Jeraji had died much earlier to the institution of the suit and the plaintiff therefore, amended the plaint by deleting the name of Rupji Jeraji. The suit was contested, inter alia, on the ground that the notice of termination of tenancy was invalid inasmuch as it had been served only upon one of the lessees (that is, Kanji Manji) and not upon the heirs and legal representatives of Rupji Jeraji, who were also said to be necessary parties to the suit. The suit was decreed by the Bombay City Civil Court by holding that the tenancy was a joint tenancy and notice to one of the joint tenants was sufficient and that the suit was also not bad for non-joinder of the legal representatives of Rupji Jeraji. An appeal to the Bombay High Court was dismissed summarily. The dispute was taken to the Supreme Court by Kanji Manji upon having obtained from that Court special leave to appeal. In paragraph 7 of the judgment of the Supreme Court it was observed:-

"The argument about notice need not detain us long. By the deed of assignment dated February 28, 1947, the tenants took the premises as joint tenants. The exact words of the assignment were that '.....the assignors do and each of them doth hereby assign and assure that the assignee as joint tenants.....'. The deed of assignment was approved and accepted by the Trustees of the Port of Bombay, and Rupji Jeraji and the appellant must be regarded as joint tenants. The trial Judge, therefore, rightly held them to be so. Once it is held that the tenancy was joint, a notice to one of the joint tenants was sufficient and the suit for the same reason was also good. Mr. B. Sen, in arguing the case of the appellant, did not seek to urge the o opposite. In our opinion, the notice and the frame of the suit were, therefore, proper, and this argument has no merit."

12. It can very well be argued that the expression “joint tenants" used in the deed of assignment and used in the above paragraph by their Lordships of the Supreme Court was meant to convey no other sense than that Kanji Manji and Rupji Jeraji did not take separate and exclusive interests under the assignment and that they were joint tenants in the sense that they were to hold the lease jointly and not with separate interests therein. In the Kerala High Court case *Valiyaveettil Konnappan v. Kunnivil Manikkam*[8], a single Judge of that Court interpreted Kanji Manji's case, AIR 1963 Supreme Court 468 to be one relating to a tenancy held by two persons as"joint tenants" in the other sense. It was observed at page 229, column 2 of the report:-

"That is clear from the emphasis placed by their Lordships on the circumstance that the tenants took the premises as joint tenants, the deed of assignment by which they acquired the lease expressly providing that they were taking as joint tenants. Where joint owners are joint tenants there is unity of title, unity of interest and the right of survivorship in addition to unity of possession so that it might be said that any one of the joint tenants represents the entire estate- indeed in the Supreme Court case already referred to it would appear that one of the two joint tenants had died and the lease had vested solely in the other by survivorship before notice to quit was served on the other so that there was no question of the legal representatives of the deceased joint tenant having any interest whatsoever in the lease so as to require that notice should go to them." The learned Judge proceeded further to observe at page 230 column 1:-

"Where, however, the joint owners are only tenants in common there is only unity of possession, not of title or interest, and to determine a tenancy so held in accordance with Section 106 of the Transfer of Property Act notice must be addressed to all the tenants though proof of service on one will be prima facie proof of service on all. See *Harihar Banerji v. Ramshashi Ray*[9], and *Bejoy Chand v. Kali Prasanna*[10], In the words of the section, notice must go to every party intended to be bound by it, and if it is not issued to any of the joint owners of the lease there is no determination of the lease so far as he is concerned. A lease cannot be determined piecemeal and hence it follows that there is no determination even so far as the others are concerned."

The argument in the second quotation will be discussed later on, but the observation

[8] AIR 1968 Ker 229 [10] AIR 1925 Cal 752

[9] AIR 1918 PC 102

in the latter part of the first quotation itself would indicate that their Lordships of the Supreme Court had not in their mind the consideration that Kanji Manji and Roopji Jeraji were owners of the tenancy as “joint tenants" in the special sense, with the right of survivorship as an incident thereof, for in that case it would have been enough for their Lordships to dispose of the controversy by merely saying that upon the death of Roopji Jeraji his interest passed to Kanji Manji and he became the sole lessee, with no necessity in consequence of any notice going to the heirs of Roopji Jeraji or of their impleadment as defendants in the suit. On the other hand, their Lordships proceeded to lay down that a notice to one of the joint tenants was sufficient and the suit against one joint tenant was for the same reason also good. However, reference to an old well-known Privy Council case relied upon on the respondent's side may also be made. That case is AIR 1918 PC 102 in which it was laid down that in the case of joint tenants each is intended to be bound and service of a notice to quit upon one joint tenant is prima facie evidence that it has reached the other joint tenants. There was a suit by the landlords of a piece of land against the tenants and sub-tenants who were actually in possession. The set of defendants who were the tenants consisted of seven persons some of whom were members of a joint Hindu family of which the others were once such members but had ceased to be so. This fact is significant in so far as it shows that all the seven tenants were not, as between themselves, bound by any rule of passing of their interest by survivorship. It may also be stated that they had come to possess what was formerly the tenancy holding of one Nidhi Ram and that they were being treated as tenants in place of Nidhi Ram who was treated as dead. In that case notice was sent to all the seven persons separately but a contest was entered into as to whether some of them who had not been personally served with notice could be regarded as duly served. It was in the context of this contest that their Lordships of the Privy Council observed at page 110, column 2 of the report at the very commencement of their discussion on this controversy:-

> "Next and lastly as to the service of the notice to quit. The 106th section of the Transfer of Property Act, 1882, only requires that such a notice should be tendered or delivered to the party intended to be bound by it either personally or to one of his family or servants at his residence, or if such tender or delivery be not practicable, affixed to a conspicuous part of the property. The personal tender or delivery may take place anywhere; the vicarious tender or delivery must take place at the residence of the person intended to be bound by the notice. Well in the case of joint tenants, each is intended to be bound, and it has long ago been decided that service of a notice to quit upon one joint tenant is prima facie evidence that it has reached the other joint tenants. *Doe d. Macartney v. Crick*[11], *Doe d. Bradford v. Watkins,*

13. About this case it has been argued on the appellant's side that as a matter of fact notice was issued to all the seven co-tenants and the notice was also held to have been sufficiently served on each one of them and in the circumstances the observation that in the case of joint tenants each is

intended to be bound and service of a notice to quit
upon one joint co-tenant (is evidence that it has reached the other joint tenants?) is
11(1805) 5 Esp 196 : 8 RR 848
12(1806) 7 East 551 : 8 RR 670 : 3 Smith KB 517, Pollok v. Kelley, (1856) 6 Ir CLR 367

prima facie an obiter dicta. In this connection reliance was placed on the Supreme Court case, Superintendent and Remembrancer of *Legal Affairs West Bengal v. Corporation of Calcutta*[13], in which it was observed that a decision made on a concession made by parties, even though principle conceded was accepted by the Privy Council without discussion, cannot be given the same value as a decision given upon a careful consideration of pros and cons of the question raised. The judgment in the case no doubt did not discuss the grounds for the rule enunciated, but that appears to be because the rule was taken to be well recognised. There were three English cases cited in that connection. At any rate, the service of a notice addressed to all the co-tenants upon one of them only has been held to be sufficient service for terminating the tenancy in a number of decisions of various High Courts following this Privy Council case. Some of these cases are *Pt. Lila Dhar Pandey v. L. Ramji Dass*[13], *Shri Nath v. Smt. Saraswati Devi*[14], *Roshan v. Purshottam Lal*[15], *Bodardoja v. Ajijuddin Sircar*[16], *Bhusan Chandra Paul v. Bengal Coal Co. Ltd*[17]., *Mohan Lal v. Governor General in Council*[18], *Vaman Vithal Kulkarni v. Khanderao Ram Rao*[19], and *Mst. Banubai v. Jairam Sharma*[20], In none of these cases, however, the question arose whether a notice addressed to one or some only of the joint tenants and served upon him or some was sufficient to terminate the tenancy, since the notice was addressed to All It was in the case, AIR 1925 Calcutta 752 that it was specifically decided that the notice must be addressed to all and the same view has been taken in the Kerala High Court case, AIR 1968 Kerala 229. In the Calcutta case the Privy Council case cited above was distinguished on the ground that the notices were addressed to all the joint tenants by being sent to all of them. The cases (1805) 5 Esp 196 : 8 RR 848 and (1806) 7 East 551 : 8 RR 670 : 3 Smith KB 517 referred to in the Privy Council case were also considered. The first case was said to have no value because in India the matter is governed by the provisions of the Transfer of Property Act About the other case it was said that the matter was left to the Jury. It cannot be supposed that their Lordships of the Privy Council had not in mind the statutory provision in Section 106 of the Transfer of Property Act when they laid down the rule that"in the case of joint tenants each is intended to be bound, and it has long ago been decided that service of a notice to quit upon one joint tenant is prima facie evidence that it has reached the other joint tenants". Indeed they were specifically considering Section 106 of the Transfer of Property Act and the use of the words"each is intended to be bound" was with reference to the language of the section. The relevant part of Section 106 is in the following words:-

> "Every notice under this section must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party or to one of his family or servants, at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of

the property."

[13]1956 All LJ 650
[14] AIR 1964 All 52
[15]AIR 1965 All 287
[16] AIR 1929 Cal 651
[17] AIR 1966 Cal 63
[18] AIR 1945 Nag 255
[19] AIR 1935 Bom 247
[20] AIR 1964 Bom 96

14. One requirement under the above quoted provision is about the form of the notice, namely, that it should be in writing and signed by or on behalf of the person giving it. The other is about service of the notice.

15. It has not been laid down in the section that the notice should be addressed to all co-tenants or to every one of them. In regard to service of notice, it is required that it be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party or to one of his family or servants at his residence, or, if such tender or delivery is not practicable affixed to a conspicuous part of the property. If the words"party who is intended to be bound by it" are interpreted to mean each one of the co-tenants where the tenancy is held by more than one person jointly, then notice must be served on each one of the co-tenants and that would be in direct conflict with the rule about which there is no controversy that service of a notice on one of the co-tenants would be sufficient service in respect of all (provided it is addressed to all). The fact of its being addressed to all will be immaterial if the notice must be served on each co-tenant individually in order that all of them may be bound. The rule of sufficiency of service of notice on one co-tenant in the case of co-tenancy can be in conformity with the requirement of the section only if the co-tenants are taken to constitute one"party" so that service on any one only of them will be service on the party intended to be bound. It must be in this background that it was laid down by the Privy Council in Harihar Banerjee's case, AIR 1918 PC 102 that"well in the case of joint tenants, each is intended to be bound"; in other words, if a notice is given to one of the joint tenants, it means that the joint tenants as a whole are intended to be bound by the notice. It is an incident of 'tenancy' that it is one and even though more than one person may hold it they hold it together as one. It is well recognized that a landlord cannot terminate the tenancy piecemeal, nor can some out of the several co-tenants terminate it for themselves only. Co-tenants who come to hold a tenancy by inheritance may, for the purposes of succession have an estate as"tenants in common" and not"joint tenants", but the special incidents attaching to a tenancy will not be changed upon the tenancy passing to more than one person by inheritance. In so far as their relationship with the landlord is concerned, they hold the tenancy jointly and for the landlord they constitute one unit. So even if a notice is addressed to one or some of the co-tenants, it must be effective as against all, the only limitation to this being that there is nothing to show that the tenancy is intended to be terminated piecemeal and it is clear that the intention is to terminate the tenancy as a whole. It appears that it is by way of this safeguard that while laying down the rule in the several decisions mentioned above that service of notice on one co-tenant will be sufficient service of notice for terminating the tenancy that the qualification has been added that the notice should be addressed to all the co-tenants. There does not appear to be any

sanctity otherwise behind this qualification. In this connection the following passages from the report of AIR 1964 Bombay 96 which, if I may say so with respect, contain also my line of thinking, may be usefully reproduced:-

> "(11) In this connection it is contended by the learned counsel for the appellants that the provisions of Section 11 of Hindu Succession Act in terms lay down that property acquired by heirs who inherit by intestate succession is acaqired by them as tenants-in-common and not as joint tenants. In this context reference is also invited to paragraph 31 of Mulla's Hindu Law, page 99, 12th edition. In mv judgment, the phrase"tenants-in-common" or"joint tenants" used in Section 19 of the Hindu Succession Act or in other texts, when considering the rights of owners of property inter se cannot be confused with the right to hold land as joint tenant in the sense as joint lessees or co-lessees or co-tenants of property such as the subject-matter of the suit. The word"tenant" in Section 19 is not used in the sense of lessees. That word is used in the sense of owners of property whether they are joint owners of property or holding in defined shares. It is an incident of ownership that has been referred to in Section 19 and that incident in the case of persons holding as tenants-in-common is that the devolution in the case of each of these tenants-in-common would be according to the personal law while in the case of persons holding as joint tenants it will be by survivorship. The expression is not germane in deciding whether the leasehold is held as joint tenants. That expression may have led to some confusion and it is preferable to refer to rights of more than one person holding under the leasehold vis-a-vis the landlord as co-tenants or co-lessees. If understood in that sense, there will be no difficulty in holding that all the co-lessees or co-tenants held as joint tenants in the sense that they have a single tenancy relationship with the landlord and they are not different tenants vis-a-vis the landlord.
>
> (12) If this is the correct interpretation of the position of persons even succeeding under Section 19 to a leasehold interest of the deceased Hindu, there would be no difficulty in holding that notice to one of the joint tenants in this case should be held to be a valid and good notice provided notice is intended to be notice to all these joint tenants. It is in that sense that the decision of the Privy Council in ILR 46 Cal 458: (AIR 1918 PC 102) has been applied in several Courts."

16. In contrast, the view taken in the Kerala case, on the one hand, that the expression"party intended to be bound by it" means in the case of co-tenants, each co-tenant individually and on the other hand, that notice can be served on one of them to bind all, would appear to be self-contradictory and also in conflict with the provisions of Section 106 about service of notice with the said interpretation of that expression.

17. I accordingly hold that both on the authority of Kanji Manji's case. AIR 1963 Supreme Court 468 aforesaid and otherwise (i.e., if it applies only to joint tenants with right of survivorship) the notice served on the appellant was sufficient to terminate the tenancy since on the facts of this

case, it must be inferred that by the notice it was intended to terminate the tenancy as a whole and not in part.

18. It may be noted that the appellant was for all practical purposes acting as the tenant. She admitted the averment in the plaint that the house was in her tenancy. It was for the first time in her written statement that she referred to the existence of her sons and daughters. The plea of those sons and daughters being also tenants was raised by an amendment of the written statement. She has deposited rent under Section 7-C of the U.P. (Temporary) Control of Rent and Eviction Act describing herself as the tenant. The notice required the vacation of the house which meant house as a whole and not in part. In the permission proceedings also personal necessity for the house as a whole and not in part was disclosed.

19. As has already been stated, it was conceded in the first appellate Court that the permission was not invalid on the ground of having been obtained against the appellant alone. Though no grounds were put forward in the courts below for the permission being invalid otherwise or without jurisdiction, it has been argued in this Court that the permission is invalid and without jurisdiction for want of considering the needs of the tenant as well as required according to the Full Bench case of this Court, *Prem Singh v. B. D. Sanwal*[21], It is however incorrect to suggest that in the case under consideration the District Magistrate did not consider whatever case was put up by the appellant. On her behalf it was only said that she was a poor lady and had no source of income to make her both ends meet during these hard days. That did not mean that she required the house in dispute in particular for her residence. She was only interested in refuting the case of personal needs advanced by the respondent before the District Magistrate. Accordingly the plea of invalidity on the new ground taken in this Court has also no substance.

20. In the result the appeal must fail. It is dismissed with costs and the order of stay against execution is vacated

Appeal dismissed.

[21]1968 All WR (HC) 572: AIR 1969 All 474 (FB)