CALCUTTA HIGH COURT

India Electric Works Ltd

Vs.

Mrs. B.S. Mantosh

A.F.O.D. Nos. 77 to 79 and 121 and 122 of 1952

(R.P. Mookerjee and Sarkar, JJ.)

13.06.1955

JUDGMENT

Sarkar, J.

1. These five appeals arising out of the same judgment in three suits tried analogously have been heard together and this judgment will govern all of them. The facts out of which these appeals have arisen are not in dispute and may be briefly stated as follows :

2. Premises No. 25 South Road, Entally, Calcutta, belongs to one Nripendra Nath Deb who granted a lease of the same in favour of Messrs. F.S. Sehan and Co. along with a two storied building and some outhouses. This Company constructed a very big shed with iron framework; iron joists and angles, brackets and corrugated iron roofing on pucca brick walls For the purpose of a factory. They, however, sold the leasehold interest to one P.S. Mantosh who thereafter became the lessee of the premises under the owner. On 1-12-1927, Mantosh took fresh lease of the premises for a term of ten years, and this was evidenced by a registered lease, dated 16-3-1928 (Ex. 1). Before this, however, Mantosh had sublet the entire leasehold property together with the above mentioned factory shed to the India Electric Works Ltd. with effect from 1-10-1927, for a term of ten years, though no registered lease was executed. On 13-3-1937, Nripendra demanded vacant possession of the premises from P.S. Mantosh, on the expiry of the term of the lease and asked him to remove the structure, i.e., the shed, it was not, however, removed, and the India Electric Works Ltd. took a lease of the premises from, Nripendra with effect from 1-12-1937. This Company which will hereafter be referred to as the Company then called upon P.S. Mantosh to remove the shed from the premises. Certain correspondence passed between them, regarding the matter and ultimately on 8-3-1938, Mantosh filed a suit, being Title Suit No. 12 of 1938 which was subsequently renumbered as No. 8 of 1939 in the Additional Court of the Subordinate judge, Alipur, against the Company and Nripendra praying for a declaration of his right to pull down and remove the shed and for a mandatory injunction on the Company to remove their machineries for three months or such period as the Court thought reasonable For the convenience and speedy removal of the shed and also for rent, taxes and damages. The suit was contested and during the pendency of the suit P.S. Mantosh died and his widow, son and daughter, who will hereafter be described as the Mantoshes, were substituted in his place. On 17-

5-1940, the suit was compromised between the Mantoshes and the Company and a compromise decree was passed against the Company, the name of Nripendra having been expunged.
According to the compromise decree the Company was to continue to use the shed for nine months from May, 1940, and was given the option to use it for a further period of two years thereafter on payment of Rs. 125/- per month for such use and occupation and was to pay a sum of Rs. 8,327/10. as damages for past use and occupation including costs. The Company exercised the option and continued to use the shed upto January, 1943 and paid compensation therefore at the above rate except For the last two months. They had, however, been served with a notice to quit six months before the expiry of the period of two years and their prayer for extension of the period had been refused. As the Company was then engaged in productions for War they did not give up possession but requested the Government to requisition the shed and this was requisitioned with effect from the 2-2-1944. The Mantoshes and the Government arrived at an agreement with regard to the compensation to be paid For the shed on 2-3-1945, and the amount of compensation was fixed at Rs. 350/- per month which was to be paid to them by the Government who would realize the same from the Company. The Company protested against the amount fixed but paid at this rate to the Land Acquisition Collector upto November, 1945, and the Land Acquisition Collector paid the same to the Mantoshes. On the 21-11-1945, the shed was derequisitioned and the Government made over formal possession of the same to the Company.

3. On 16-1-1946, the Mantoshes instituted Money Suit No. 1 of 1946 in the Second Court of the Additional Subordinate Judge, Alipur against the Company praying that a decree should be passed against the Company for use and occupation of the shed For the months of December, 1942, and January, 1943 and Rs. 4,404/- as damages for unlawful occupation thereof from 1-2-1943, to 2-2-1944, that being the date on which the shed was requisitioned, at the rate of Rs. 127- per diem. The total claim, including interest, was laid at Rs. 5,337/-. Then on 22-11-1948, they filed a second money suit, No. 28 of 1948, against the Company praying for a decree for Rs. 13,164/- as damages for wrongful use and occupation of the shed from 21-11-1945, the date of de-requisition, to 21-11-1948, at the rate of Rs. 12/- per claim. They also prayed for a decree at the same rate from the date of the suit to the date on which the Company would vacate the shed. The Dominion of India was subsequently Joined as a defendant in the suit, and the plaint was amended and a claim for Rs. 245/- at the rate of Rs. 350/- per month For the period from the 1st to the 21st November, 1945, was made against the Dominion of India. Alternatively a claim for damages at the rate of Rs. 350/- per month from 22-11-1945, to 21-11-1948, and for further damages at that rate until possession of the shed was restored to the Mantoshes was made against both the defendants on the footing that possession had been wrongfully given to the Company on de-requisition of the same. In between these two suits the Company filed a suit on 30-1-1947, being Title Suit No. 4 of 1947, against the Mantoshes in which they prayed for a declaration that by operation of law the right, title and interest of the Mantoshes in the filed had been extinguished and had vested in the owner of the premises on the expiry of the term of the lease of P.S. Mantosh, and that thereafter the same had vested in the Company as lessee. This was also the main defence taken by the Company in the two money suits. The Company also claimed refund of Rs. 7,582/15 as which they had paid to the Land Acquisition Collector as compensation For the shed during the period of requisition and which had been wrongly paid to the Mantoshes. In the alternative, they prayed that a decree might be passed asking the Mantoshes to remove the shed and give vacant possession of the land to the Company, and that in default, the shed might be demolished. A claim was also made for manse profits or damages from 2-2-1944, until the date of the removal of the shed.

4. As already stated, all these suits were tried together and disposed of by the same judgment on 15-12-1951. The learned Subordinate Judge who tried the suits decreed in part Money Suit Nos. 1 of 1946 and 28 of 1948 with proportionate costs. In the first suit he gave a decree at the rate of Rs. 125/- per month For the months of December, 1942, and January, 1943, and at the rate of Rs. 300/- per month For the period from 1-2-1943, to 1-2-1944. Money Suit No. 28 of 1948 was decreed for Rs. 245/- against the Union of India with proportionate costs and the Union was also awarded costs in proportion to success. As against the Company the suit was decreed at the rate of Rs. 300/- per month for three years from 22-11-1945, and thereafter from the date of the suit until the of the decree, the total amounting to Rs. 21,820/-, with proportionate costs on condition that the deficit court-fees were paid on a certain date. The said court-fees were subsequently paid. It was further directed that the Mantoshes would get damages at the same rate from the date of the decree until the date on which the Company vacated the shed, such amount being left to be ascertained in the execution proceedings, on payment of proper court-fees. With regard to Title Suit No. 4 of 1947 instituted by the Company the learned Subordinate Judge dismissed the Company's prayers for a declaration that the title of Mantoshes to the shed had been extinguished or had vested in the owner of the premises and thereafter in the Company and for refund of the sum of Rs. 7,582/15 as. He, however, allowed the alternative prayer and' directed the Mantoshes to remove the shed from the premises and give vacant possession of the land within four months from the date of the decree on condition that the Company would remove their machineries, tools and other appliances within two months from the date of the decree. In default of compliance with this direction by either of the parties, he directed that the aggrieved party would be at liberty to get the order carried out by execution of the decree at the cost of the other party and by appointment of an engineer for supervising the task of demolition of the shed. The Mantoshes were allowed their costs, but the Company was not allowed any costs.

5. Appeal No. 77 of 1952 is by the Company and is directed against the decree passed in Money Suit No. 28 of 1948. Appeal No. 78 of 1952 is also by the Company and is directed against the decree passed in Money Suit No. 1 of 1946. Appeal No. 79 of 1952 has been filed by the Company against the decree passed in Title Suit No. 4 of 1947 and is directed against the dismissal of the other reliefs asked for by them and the form of the decree Appeal No. 121 of 1952 has been filed by the Mantoshes and is directed against that portion of the claim of Money Suit No. 28 of 1948 which was dismissed. Appeal No. 122 of 1952 is also by the Mantoshes and is directed against that portion of the claim of Money Suit No. 1 of 1946 which was dismissed.

6. Mr. Apurbadhan Mukherjee appearing For the Company argued that the learned Subordinate Judge should have dismissed the two money suits on the finding that the Mantoshes had lost their right, title and interest in the shed on the expiry of the term of the lease on 1-12-1937 since they failed to remove the shed before that date, and he based his argument on the provisions of Section 108(h), Transfer of Property Act. He contended that the owner of the premises who was the lessor had become the owner of the structures on the expiry of the term of the lease, since the structures had not been removed, and that accordingly the Mantoshes had no right to claim any compensation For the use of the shed by the Company, the same being comprised in the leasehold interest obtained by the Company from the owner. The same argument had been advanced before the learned Subordinate Judge who held that the provisions of Section 108(h) were inapplicable in this case, because there was a contract to the contrary in the lease granted by Nripendra to P.B. Mantosh and because the Mantoshes were in constructive possession of the

shed through the Company after the expiry of their lease.

7. Section 108, Transfer of Property Act enumerates the rights and liabilities of the lessor and the lessee and enacts that, in the absence of a contract or local usage to the contrary the rights and liabilities of the lessor and the lessee of immovable property, as against one another, will be as provided in the section. Then under the head 'rights and liabilities of the lessee', it provides in Clause (h) that the lessee may even after the determination of the lease remove, at any time whilst he is in possession of the property leased out but not afterwards, all things which he has attached to the earth; provided he leaves the property in the state in which he received it. The original clause which was amended in 1929 provided that the lessee might remove at any time during the continuance of the lease all things which he has attached to the earth, etc.

8. The learned Subordinate Judge was of the opinion that the lease between Nripendra and P.S. Mantosh (Ex. 1) contained a contract to the contrary which prevented the application of Clause (h) in the present case. That lease, however, only provided that the lessee would be entitled "on or before the expiration of the lease" to remove the workshop and the structure, shed or fencing after paying all rents and taxes. The learned Subordinate Judge interpreted, the word "on" in this clause as meaning after the expiration of the lease. We cannot, however, agree with that interpretation, and it was not also pressed before us on behalf of the Mantoshes. The words "on or before the expiration of the lease" should be taken to have the same meaning as the words "at any time during the continuance of the lease" mentioned in the original Clause (h) as it stood in 1928. The words have reference to the date of the expiry of the lease, and the meaning should, therefore, be that the tenant's structures should be removed before or on the date of expiry of the lease.

9. It was, however, contended by Mr. Pramatha Nath Mitra For the Mantoshes that the only effect of Section 108(h) was that it enunciated the right of the lessee to remove his fixtures during the term of the lease or afterwards so long as he was in possession and that the operation of the section did not extend to any period after the lessee had ceased to be in possession. Thereafter, according to his contention, the rule laid down in 'Thakoor Chunder Pramanik's case Beng LB Sup Vol. 595 (A) would prevail as local usage in the absence of a contract to the contrary. Before the Transfer of Property Act the rule of law to be applied as between the landlord and the tenant to structures erected by the tenant on the land demised had been considered by a Full Bench of this Court in Beng LR Sup Vol 595, and it was held that the English maxim 'quic quid plantatur' was not applicable in this country and that a tenant in this country had under the Hindu and Muhammadan Laws the right to remove the materials of his structures or to obtain compensation For the value of the structures if they are allowed to remain in the land, the option remaining with the owner of the land.

10. Mr. Mitra referred to this rule and also to certain observations in the case of '*Ismai Kani Rowther v. Nazarali*[1]', and to the dissentient judgment of Sankaran Nair, J. in '*Angammal v. Aslami Sahib*[2]', The following are fee observations in the case of *'Ismai Kani v. Nazarali* relied on by Mr. Mitra :

> "It is, however, noteworthy that Clause (h) of Section 108 only provides For the tenant removing, 'doing the continuance of the lease', all things which he may have attached to the land, and nothing is said as to the rights of the parties in respect of such things after

the determination of the lease, if they have not been already removed by the tenant. The question may arise whether the tenant forfeits all his rights in such things, if he has not so removed them and in the absence of ally contract on that point, the question will have to be solved with reference to 'local usage'.." (page 217 of the report). In the dissentient judgment of Sankaran Nair, J., the following observations are relied upon :

"The section (108(h)) therefore, in conferring a right to remove a building during the tenancy does not take away or negative any right which a tenant had before the passing of this Act to claim compensation or remove the building after the expiry of the period". (page 728).

11. These cases as also other previous decisions on the point were reviewed by Rankin, C.J., in *'Govinda Prasad v. Charusila Dasi[3]'* which was relied upon by Mr. Apurbadhan Mukherjee. The case of 27 Madras 211, had been decided upon the law prevailing prior to the passing of the Transfer of Property Act, as was pointed out by Rankin, C.J., in this case, and so this decision is of no assistance. Rankin, C.J. also disagreed with the dissentient judgment of Sankaran Nair, J., in the case of 38 Mad 710 (FB). The majority decision in this case was that the tenant was entitled to a reasonable time alter the end of the tenancy to remove his structures. In AIR 1933 Calcutta 875 the person to whom a monthly tenant had assigned certain 'pucca' buildings, erected by him on the land let out to him, had sued the landlord after the termination of the tenancy to recover the buildings or alternatively for compensation thereof. Though Rankin, C.J., held that the suit was bound to fail even on the view taken by the majority in the case of '*Angammal v. M.M.S. Aslami*' because the plaintiff had not come within, reasonable time from the expiry of the lease, he also considered the effect of the enactment of Section 108(h), Transfer of Property Act on the previous law on the point and made the following observations at page 878 of the report :

"While the section is somewhat ambiguously worded, I consider that the intention of Clause (h) was to declare the law and to substitute for a law dependent upon the personal law of the parties or general considerations of equity a definite principle.

The Legislature did not, in my judgment, intend to clear up the matter during the continuance of the term, and after the term to leave it, as under the decision of Wilson, J., in '*Russick Lol Muciduck v. Lokenath[4]',* it remained a Question of Hindu or Muhammadan Law, according to the personal law of the parties. Nor did it intend to leave open as regards any point of time the question whether in a Presidency town the rule of equity to be applied was different from the rule to be applied in the Mofussil. It established a

[1]27 Mad 211 [3] AIR 1933 Cal 875
[2]38 Mad 710 (FB) [4]5 Cal 688

principle inconsistent with the principle of 'quic quid plantatur' by declaring the tenant's right to remove, but it limited and defined the tenant's right to remove as a right to be exercised during the term. In so doing it failed to notice that cases of hardship might arise where a tenancy was suddenly determined....The limit produced difficulties and these difficulties were the reason of the amendment of 1929. It is clear that Clause (h) as amended negatives any right to remove after the time limited by the clause".

12. We respectfully agree with these observations, and this being the legal effect of Clause (h) of

Section 108, Transfer of Property Act, there is no room for invoking the rule in 'Thakoor Chunder Pramanik's' case after the enactment of the Transfer of Property Act.

13. We do not think, however, that in the present suits the provisions of Section 108(h), Transfer of Property Act are of any assistance to the Company because these suits are not between the Mantoshes and their lessor Nripendra, and we are not called to consider whether the Mantoshes had or have any right enforcible against Nripendra for removal of the shed after the term of the lease or after they ceased to be in possession. The scope of Clause (h) of Section 108, Transfer of Property Act is limited and it only prevents the lessee from enforcing the right of removal of his fixtures from the demised land after the term of the lease or after he ceased to be in possession of the land. There is nothing in the clause to support the contention of Mr. Mukherjee that the title of the Mantoshes to the shed had been lost or extinguished after the term of the lease by operation of the clause.

The clause does not say so either by express words or by necessary implication. It is not a clause of forfeiture and it is not declared therein that after the expiry of the term of the lease or after the lessee has ceased to be in possession his title to the fixtures will be forfeited. There may be stipulations in a lease to that effect, but the lease in the present case did not contain, any stipulation for forfeiture of the shed on the expiry of the term.

Mr. Mukherjee referred in this connection to the decision of the Privy Council in '*Narayan Das v. Jatindra Nath*[5]*',* which was a case of sale under Act 11 of 1359 of an estate on which there was a building, and before the removal of the building the whole property was acquired under the Land Acquisition Act of 1894. The question arose whether the owner of the building was entitled to any part of the compensation, and it was held that the building did not pass by the sale and that the owner had a right to remove provided that he did so within a reasonable time. Next, in considering the question how the compensation was to be apportioned, their Lordships made the following observations at page 138 of the report :

> "After the sale the plaintiff would have been the owner of the land and the defendants would have been the owners of the house. The plaintiff would have had the right to call upon the defendants to remove the house. If the defendants did remove the house, the value to them would be small, and in the ordinary course would be no more than what has been called 'demolition value' - namely, the value of the materials less the cost of removal and if the defendants did not remove the house they would lose it". Stress was laid by Mr. Mukherjee upon the last sentence, and it was argued that the observations of their Lordships meant that the defendant would lose title to it, but that is certainly not clear from the actual words used and from the actual granting of compensation on the basis of demolition value of the building to the owners thereof.

[5] AIR 1927 PC 135

This was not a case under Section 108(h), Transfer of Property Act, and it has, therefore, no bearing on the question with which we are concerned. No authority has been shown to us that the loss of the lessee's right to enforce removal of any structure erected by him on the land leased as against the lessor and loss or extinction of lessee's title to it and vesting of the same in the lessor are the same thing in law. It cannot be said that one follows from the other. A lessee may lose his right to enforce the removal of the structure on the demised land after the expiry of the term, but he can still remove it with the permission of the landlord and he will have a good title to it as

against the whole world. He can only lose his title to it by adverse possession For the statutory period.

14. In these suits, the question has arisen not between the Mantoshes and their lessor, but between them and their lessee, the Company. So far as Nripendra is concerned, he never, as the learned Subordinate Judge has pointed out in his judgment, attempted to lay any claim to the shed or objected to its removal. The lease of the Mantoshes expired on 30-11-1937 and while P.S. Mantosh was carrying on correspondence with the Company for removal of the shed, he wrote on 15-1-1938, to Nripendra requesting him, if it was correct that he had let out the premises to the Company, to give him facilities to enable him to remove the shed (Ex. 2(g)). Nripendra replied by this letter dated 24-1-1938 in which he did not claim that the Mantoshes had no right to remove the structures or had lost that right by operation of law or that the structures had been forfeited to him. He only stated that he was at a loss to find how he could help in the matter but he promised to request the Company to give him facilities For the removal of the shed (Ex. 2(f)). When P.S. Mantosh subsequently instituted a suit against Nripendra and the Company in March 1938, Nripendra filed written statement in that suit but did not claim any title to the shed or suggest that it had been forfeited to him or that the title of P.S. Mantosh had been extinguished by operation of law. All that he stated was that P.S. Mantosh not having removed the shed in proper time according to the terms of the lease was not entitled to remove the same. So the question of extinction of the title of the Mantoshes to the shed and the vesting of the same in him was never raised1 by Nripendra at any stage, and no such question can arise under Section 108(h), Transfer of Property Act. We may also mention that during his reply Mr. Mukherjee did not contend that the title to the shed had been extinguished by virtue of Section 108(h), Transfer of Property Act.

15. The Company cannot also claim to stand in the shoes of Nripendra because the latter did not lease out the shed to them claiming title therein. No registered lease was executed in favour of the Company by Nripendra, but the terms of the lease were embodied in a letter written by the Company to Nripendra on 23-10-1937, which were confirmed by Nripendra on 31-10-1937. Exhibit B(16) is that letter and it makes no mention of the shed. According to it the lease was in respect of the premises together with the two storied building and its outhouses. The Company was in possession of the shed as sub-lessee under P.S. Mantosh and they never gave up possession of the same after the expiry of the lease of Mantosh. In their long correspondence after the expiry of the latter's lease, they never claimed any this to the shed, either on their behalf or on behalf of Nripendra, but, on the other hand, recognized the right of the Mantoshes to remove the same though actually they appear to have prevented its removal on the plea of damage to their machineries and of interruption of their work. The learned Subordinate Judge has quoted the relevant letters on the point, and his finding is that up to the suit of 1938 the Company at every stage admitted the right of P.S. Mantosh to remove the shed provided that it could be done without causing any damages to their machineries and without interrupting their usual routine of business a finding with which we fully agree.

16. The Mantoshes examined one engineer in this case. He is H.K. Sarkar, witness No. 5, and he has given his opinion that it was not possible to dismantle the shed without interrupting the work of the Company and that there was also the chance of the machineries being damaged in the course of the operation of dismantling, unless they were removed beforehand. The Company also examined an engineer, but no question was put to him to show that the shed could be removed

without such damage or interruption of the Company's work. It is clear, as the learned Subordinate Judge has pointed out, that the Company was laying down impossible conditions For the removal of the shed and insisted upon the shed being removed without interrupting their usual work for a single day. So the position which emerges from the series of correspondence up to the institution of the suit of 1938 was that the Company was in possession of the shed to which the title of P.S. Mantosh was always admitted.

17. The suit instituted by P.S. Mantosh in 1938 was contested for some time, but ultimately it was compromised, and one of the terms of compromise (Ex. 8), was that the Company would continue to use the shed for nine months certain and thereafter use it at their option for a period of two years, and that if the Company wished to vacate the shed within this period, they could do so on giving two months' notice and removing their machineries and other fixtures. The amount of compensation on payment of which the Company would continue to use the shed was fixed at Rs. 125/- per month and the Company actually paid this amount and remained in occupation for nine months certain and then For the optional period of two years without giving any notice to the Mantoshes to remove the shed. By this petition of compromise in terms of which the suit was decreed the Company admitted the title of the Mantoshes to the shed. This compromise decree and the payment of compensation thereafter by the Company must stand in the way of the Company's present contention that the Mantoshes had lost title to the shed or that the title hereto had vested in Nripendra and from him in them, even if such were the effect of Section 108 (h), Transfer of Property Act, and the legal position after the compromise would be that the Company would be estopped from denying the title of the Mantoshes to the shed at the time of the compromise and thereafter so long as they continued to pay compensation.

18. Mr. Mukherjee argued that the legal effect of the compromise was different and that Nripendra not being a party to it and the Company not having accepted any tenancy under the Mantoshes but only having agreed to pay a certain sum per month by way of damages For the use and occupation of the shed, it could not operate as estoppel, and that, in any case, the compromise decree would operate only For the period mentioned therein and after the expiry of the period of two years and nine months, the original legal position would be revived. We are not impressed by this argument, and we have already found that the original legal position was not, as was contended by Mr. Mukuerjee that the Mantoshes had lost title to the shed.

19. It was next contended by Mr. Mukherjee that the compromise was entered into by the Company in ignorance of their legal rights, by which he meant the rights which the Company could claim to the shed as lessee from Nripendra. But, as has already been shown, the Company could not claim any such legal right, and there is no room For the contention that they entered into the compromise in ignorance of any legal right, because in the written statement filed in the suit, the Company had taken the plea that the shed not having been removed by P.S. Mantosh, it had become landlord's property and could no longer be removed. The claim which is now being made had, therefore, been advanced in the written statement, and if the Company thereafter entered into the compromise, it must be on the basis that they were convinced that the Mantoshes had legal title to the shed.

20. Reference was made in this connection to the decision in the case of '*Raja Kumara Venkata Perumal v. T. Ramaswamy Chetty*[6]*',* in which it was held that though a compromise decree did not operate as 'res judicata', it nevertheless created an estoppel, and the test for determining whether there was estoppel was laid down as follows :

"Did the parties decided for themselves the particular matter in dispute by the compromise, and was the matter expressly embodied in the decree of the Court passed on the compromise or was it necessarily involved in, or was it the basis of, what was embodied in the decree ?"

Now, in this case the Company had raised the question of title of the Mantoshes to the shed in the written statement and claimed title for their lessor and themselves and if they agreed to the compromise, it must be taken to be on the footing that the Mantoshes had title to the same and they would remain in possession under the Mantoshes on payment of compensation. It may be that no formal tenancy was created in their favour by the compromise decree but that would not make any difference. Estoppel would nevertheless arise, because the position accepted by the Company was virtually that of a tenant or payment of compensation for use and occupation.

21. Six months before the expiry of the period of two years the Mantoshes served a notice, dated 30-7-1942, upon the Company requiring the latter to deliver vacant possession of the shed by removing their machineries fixtures, etc., by the last day of January, 1943 (Ex. 2(c)). The Company acknowledged the receipt of the said notice and applied for an extension of the existing arrangement which was, however, refused. The Company was at that time busy in war productions and proposed to the Secretary, Department of Supply, Government of India, that the shed should be requisitioned under the Defense of India Rules, and accordingly it was requisitioned with effect from 2-2-1944. After the requisition, the compensation payable to the Mantoshes For the shed was fixed at Rs. 350/- per month by an agreement between the Mantoshes and the Government, and this amount was paid by the Company to the Government and the Government paid it to the Mantoshes. In the letter which the Company had written to the Government proposing requisition of the shed they described their interest in the shed as a tenancy at a rent of Rs. 125/- per month, and it was also stated that the same had been leased to them by P.S. Mantosh and that the lease continued up to 31-1-1943 (Ex.2(k)).
Thus the same legal position continued after the requisition of the shed when the Company had to deposit the rent for payment to the Mantoshes. They admitted the Mantoshes to be their landlords in respect of the shed and wanted the shed to be requisitioned on the footing that the latter were trying to eject them. They never objected that the Mantoshes were not entitled to get any rent from them, but they objected to the amount of the compensation fixed by the Land Acquisition Collector.
[6]35 Mad 75
22. It was contended by Mr. Mukherjee that the compromise decree had spent itself with the expiry of the period of two years and nine months mentioned therein or on service of notice by the Mantoshes. Under the law of estoppel, as embodied in Section 116, Evidence Act, no tenant of immovable property shall during the continuance of the tenancy be permitted to deny that the landlord of such tenancy had at the beginning of the tenancy a title to such immovable property. No doubt, this estoppel is confined to the time when the tenancy commenced, and a tenant can always plead that the landlord who had originally title to the property had lost such title by any act of his or by operation of any law. That is why Mr. Mukherjee was entitled to argue that the Mantoshes had lost title to the shed by operation of law, i.e., by operation of Section 108(h), Transfer of Property Act. But apart from the fact that the said argument is not valid, there is a further estoppel against the Company arising out of their virtual acceptance of a tenancy under

the Mantoshes by the compromise decree and the agreement to pay compensation and the continuance of the same position during the period 01 requisition. The Company must, therefore, be held to be estopped from denying the Mantoshes' title to the shed. It would make no difference that they were already in possession of the shed at the time of the compromise decree, because after the decision of the Privy Council in '*Krishna Prosad Lal Singh Deo v. Baraooni Coal Concern Ltd*[7].', the rule of estoppel has been extended to cases where a tenant was already in possession.

23. So the position which emerges from a consideration of the facts and circumstances of this case is that the Mantoshes have got title to the shed and the Company having entered into occupation thereof as their tenant and being in possession thereof is liable to pay compensation for such use and occupation. So far as Money Suit No 1 of 1946 is concerned, that portion of the claim which relates to the recovery of Rs. 250/- from the Company for use and occupation of the shed for December, 1942, and January, 1943, under the compromise decree at the agreed rate of Rs. 125/- per month was rightly decreed by the learned Subordinate Judge with interest. The next question is at what rate further compensation for use and occupation should be allowed in the said suit as also in Money Suit No. 28 of 1948. The learned Subordinate Judge has rightly declined to assess such compensation at the rate of Rs. 12/- per diem, as claimed by the Mantoshes, because compensation must be decreed in such cases on a rental basis. The learned Subordinate Judge has decreed compensation for this period at the rate of Rs. 360/- per month. This figure was mainly based upon the rate of compensation fixed by the Government during the period of requisition.

24. Our attention has, however, been drawn to Ex. 13 which is a certified copy of an order passed by the Land' Acquisition Collector on 21-7-1944, and which shows that the shed was valued at Rs. 84,520/- and the Collector arrived at a figure of Rs. 350/- as the fair compensation on a rental basis by two alternative methods on the basis of this valuation.
Engineer H.K. Sarkar on whose report and valuation this compensation had been fixed has been examined by the Mantoshes. He has not given details of his valuation, and it is difficult to be satisfied from his evidence that he made a proper and accurate valuation. Mr. J. Mantosh stated in his evidence that the shed had been valued in 1926 by Mackintosh Burn Ltd., at Rs. 41,000/-. If that were so, it cannot be believed that in 1944 the shed was worth more than double of this amount. The Collector calculated the rent at
five per cent, of the value assessed by Mr. Sarkar. Another method was calculation of the

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ground rent taking the land value to be Rs. 2,000/- per cotta and deducting rent For the floor area. It does not appear from the evidence of Sarkar that he had had any basis for assessing the land value at this rate or for calculating the rent at Rs. 3/- per one hundred square feet, as he has done. The Company examined P.C. Chatterjee, another competent engineer, who had inspected the shed in 1940 and in 1944 and he found the shed to be old and also found that it had been constructed in portions with old materials. The learned Subordinate Judge deducted Rs. 360/- as the rent payable by P.S. Mantosh to Nripendra while his lease was subsisting, from Rs. 690/- which was the rent payable by the Company when they held a sublease under P.S. Mantosh, and he arrived at the figure of Rs. 300/- by allowing ten per cent, profit to the Mantoshes, and he considered that to be the fair rent For the shed. But in 1944 the rent payable by the Company to Nripendra For the lease of the premises was not Rs. 360/- but Rs. 400/- and the method adopted by the learned Subordinate Judge cannot be approved because it was not known at what profit the

lessee had sublet the premises. The Company had all along protested against the fixation of Rs. 350/- as compensation For the shed, and we are not satisfied that the compensation fixed could be taken as fair rent For the shed on the consideration indicated above. It should also be remembered that that was the war period when the Company was busy in production of war materials and what would have been considered as fair compensation For the shed during such period cannot necessarily be taken to be so after the War.

25. Besides under the agreement between the Government and the Mantoshes (Ex. 7) the Mantoshes were liable to carry out annual repairs of the shed and that must have cost an appreciable amount. It has been contended For the Company that by the compromise decree of 1940 the fair compensation For the shed agreed upon by both the parties was Rs. 125/- per month without any liability on the part of the Mantoshes for repairs and taxes and that the said figure should be taken to be fair compensation For the shed. The learned Subordinate Judge has held that at the time of that compromise the Mantoshes were in a rather difficult position as P.S. Mantosh had died and his son was a minor and that they were anxious to end the protracted litigation. It is possible that the compensation was fixed at this low figure on that account. Taking all the factors into consideration we are of opinion that the fair compensation to be fixed For the shed For the period in suit should be Rs. 200/- per month. So Suit No. 1 of 1946 should be decreed For the period from 1-2-1943, to 2-2-1944 at the rate of Rs. 200/- per month. Suit No. 28 of 1943 should also be decreed for compensation at that rate from 22-11-1945, to 21-11-1948, the day previous to the date of the suit. Decree for Rs. 245/- against the Union of India For the period from 1-11-1945 to 21-11-1945, has been rightly passed and has not been objected to on behalf of the Union. The rest of the decree in Suit No. 28 of 1948 was not according to law and cannot be maintained. The suit was a pure money suit and not a suit for recovery of possession of immovable property and for mesne profits under Order 20 Rule 12, Civil Procedure Code. In such a suit a preliminary decree may be passed for possession and for assessment, but in a pure suit or recovery of money, no decree can be passed for recovery of compensation after the date of the suit upto the date of the decree or after the date of the decree until recovery of possession. This part of the decree should, therefore, be set aside.

26. As regards the suit instituted by the Company against the Mantoshes the learned Subordinate Judge rightly dismissed their prayer for a declaration that the title of the Mantoshes to the shed had been extinguished and had vested in the owner of the premises and thereafter in the Company. But objection has been taken to the form of the decree actually passed which has been characterised by Mr. Mukherjee as practically a decree in favor of the Mantoshes and not in favor of the Company. The defendants in this suit, i.e., the Mantoshes, have, no doubt, been directed to remove the disputed shed from the premises and give vacant possession of the land to the Company, but conditions have been imposed on the plaintiff, i.e., on the Company, and in default of compliance of the order by either of the parties, the aggrieved party has been given the right to get the order carried out by the Court in execution. We do not consider this to be a proper decree, and we think that the decree should be modified to the effect that the Mantoshes should remove the shed from the premises and give vacant possession of the land to the Company within six months from the date of the present decree and that the Company will be entitled to get such possession and have the shed removed. This should be done through an engineer to be appointed by the trial Court as Commissioner who will supervise the removal of the shed and the Company will be bound to carry out the directions of the Commissioner as to stoppage of their work and temporary removal of any of their machineries, tools and appliances as may be necessary For the

execution of the decree.

27. Appeal No. 77 which arises out of Money Suit No. 28 of 1948 is allowed in part and the decree modified as follows : Compensation be decreed at the rate of Rs. 200/- per month from 22-11-1945, to 21-11-1948, with proportionate costs against the Company. The decree for Rs. 245/- against the Union of India will remain intact. The rest of the decree be set aside. As regards the costs of the appeal we direct in the circumstances of the case that each party will bear his own costs.

28. Appeal No. 78 which arises out of Suit No. 1 of 1946 is allowed in part and the decree modified as follows : The suit be decreed at the rate of Rs. 200/- per month from 1-2-1943, to 2-2-1944 with proportionate costs. The decree at the rate of Rs. 125/- for December, 1942, and January, 1943 will remain intact. In this appeal each party will bear his own costs.

29. Appeal No. 79 is also allowed in part and the decree modified as follows : The defendants are directed to remove the shed from the premises and give vacant possession of the land thereof to the Company within six months from the date of the present decree.
The Company will be entitled to get such possession and have the structure removed through an engineer to be appointed by the trial Court as Commissioner who will be empowered to supervise the removal of the shed and the Company will be bound to carry out the directions of the Commissioner as to tire stoppage of their work and temporary removal of any of their machineries, tools and appliances, as may be necessary For the execution of the decree. The costs of the removal of the shed will be borne by the defendants and the costs of temporary removal of the machineries, tools and appliances of the Company will be borne by the Company. In this appeal also each party will bear his own costs.

30. Appeals Nos. 121 and 122 are dismissed, without costs.

R. P. Mookerjee, J.
31. I agree.

Orders accordingly.