GUJARAT HIGH COURT

Nanalal Girdharlal

Vs.

Gulamnabi Jamalbhai Motorwala

Civil Revision Application No. 582 of 1967

(P.N. Bhagwati, C.J., M.U. Shah and D.P. Desai, JJ.)

28.02.1972

JUDGMENT

P.N. Bhagwati, C.J.

1. This revision application preferred under Section 29 sub-section (2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, (hereinafter referred to as 'the Rent Act') has been placed before us on a reference made by Mr. Justice D.P. Desai. Two questions have been referred to us. Once is, whether some only out of several co-owners of property can effectively determine a tenancy by giving notice to quit and the other is, whether a suit to evict a tenant can be filed by one or more co-owners without joining other co-owners in the suit. Both questions are of frequent occurrence in cases arising under the Rent Act and even under the general law of landlord and tenant, they have a certain importance and it is, therefore, necessary that they should be carefully examined and finally laid at rest by a Full Bench decision of this Court.

2. The first question which falls consideration is whether in a case where a property owned by two or more co-owners is let out to a tenant, a notice to quit given by some only out of them is sufficient to determine the tenancy or it is necessary that the notice to quit must be given by or on behalf of all co-owners. We shall presently examine this question on principle as also on authority but before we do so, we may clear the ground by pointing out that there are two main forms which co-ownership of property may assume : one is joint tenancy and the other is tenancy-in common. It is not necessary for the purpose of the present discussion to examine in detail the distinctive features of these two forms of co-ownership, but we may briefly indicate the principal characteristics of each. The two main features of a joint tenancy are the right of survivorship and the four unities. The right of survivorship is, above all others, the distinguishing feature of joint tenancy. On the death of a joint tenant his interest in the property passes to the other joint tenants by right of survivorship and this process continues until there is but one survivor who then holds the property as sole owner. The four unities of a joint tenancy are unities

of possession, interest, title and time. The concept of unity of possession involves that each co-owner is as much entitled to possession of any part of the land as the others. The other three unities, namely, unities of interest, title and time are no doubt essential attributes of a joint tenancy but they are not material and we need not pause to consider them. A tenancy in common is quite different. It differs greatly from a joint tenancy. Unlike joint tenants, tenants-in-common hold the property in undivided shares : each tenant-in-common has a distinct share in the property which has not yet been divided amongst the tenants-in-common. There is also no right of survivorship amongst tenants in common : when a tenant-in-common dies, the devolution of his interest is not governed by the right of survivorship but it passes under his will or intestacy, for his undivided share is his to dispose of as he wishes. Lastly, though the four unities of a joint tenancy may be present in a tenancy-in-common, the only unity which is essential is the unity of possession. Each tenant in common is entitled to possession of the entire land, that is to say, every part of it as much as the others, Vide *Jahuri Shah v. D.P. Jhunjhunwala*[1], Now when property is transferred to two or more persons, a question may arise whether the transferees take as joint tenants or as tenants-in-common. The rule of English law is to presume that a transfer to a plurality of persons creates a joint tenancy unless there are words of severance. The law in India is, however, different. It has always been held in this country that where there is a transfer to two or more persons, they must be presumed to take as tenants-in-common unless there are clear words conveying a contrary intention. Vide *Jageshwar Narain Deo v. Ram Chand*[2], *Mohamad Jusab v. Fatima Bai*[3],

3. Having discussed the two forms of co-ownership, one of which is widely prevalent in England and the other in India, we may now proceed to consider what is the jural relationship created between the parties when a lease is granted by one party to the other. A lease is defined by Section 105 of the Transfer of Property Act to mean a transfer of a right to enjoy property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, share of crops, service, or any other thing of value, to be rendered periodically or on specified occasions, to the transferor by the transferee, who accepts the transfer on such terms. The transferor is called the lessor and the transferee is called the lessee. The relationship of lessor and lessee is always one of contract : it is, as pointed out in *Deo Nandan v. Meghas Mabton*[4], a relationship "which is a matter of contract assented to by both parties". Now a lease may be of three kinds. It may be a lease for a certain time or a periodic lease or a lease in perpetuity. We are concerned here with a case of periodic lease and we shall, therefore, have to examine the question before us in relation to such a type of lease but one thing is clear that, whatever be the nature of the lease, since lease is transfer of a right to enjoy property, it cannot take place except by participation of all co-owners, whether they be joint tenants or tenants-in-common : one co-owners alone cannot grant the lease because he by himself has not the whole estate in the property. See Megarry's Law of Real Property (Second Edition), page 393. If property is held jointly, a transfer, as pointed out by Somervell, L.J. in *Leek and Moorlands Buildings Society v. Clark*[5], "must be by or under the authority of all concerned". This indeed was not disputed by Miss V.P. Shah on behalf of the plaintiff. It was also not disputed by her that one

co-owner alone cannot forfeit the lease before the expiry of the term : the right of forfeiture can be exercised only if all desire to exercise it. Equally, in the converse case where there is a lease for a certain term in favour of joint tenants one joint tenant alone cannot surrender the lease "They all have the right to the full term and all must concur if this right is to be abandoned". Vide Leek & Moorlands Building Society v. Clark (supra). But, contended Miss V.P. Shah on behalf of the plaintiff the position is different in case of periodic tenancy. A periodic tenancy is not a

[1] AIR 1967 SC 109 [3]49 Bom Law Reporter 505 [5]1952(2) Q.B. 988 : 1952 All England Reporter 492
[2]23 I.A. 3 [4]34 Cal 57

creature of contract but a creature of law, namely, Section 106 of the Transfer of Property Act. There is therefore, no privity of contract between lessor and lessee in a periodic tenancy. There is only privity of estate and where there are two or more co-owners, each co-owner has privity of estate with the lessee. This Privity of estate which subsists between a co-owner and the lessee can be determined by the co-owner by expressing his intention to do so by a notice to quit and when that happens, the tenancy as a whole comes to an end, for the tenancy cannot to quit and determines the privity of estate between him and the lessee, he becomes entitled to the possession of the property, irrespective whether he is a join tenant or a tenant-in-common, since it is a characteristic of both joint tenancy and tenancy-in-common that each co-owner is as much entitled to possession of every part of the property as the others and in consequence, the tenant ceases to be entitled to exclusive possession and that puts an end to the tenancy as to all co-owners. The argument was also put in another form. It was said that a periodic tenancy continues from period to period so long as all co-owners pleased and if one of the co-owners wishes it not to continue beyond the end of a period and accordingly gives notice to quit, the tenancy does not continue into the new period and comes to an end. This contention was sought to be supported to by two decisions, one, a decision of the English Court and the other, a decision of the Bombay High Court, namely, *Doe, Dem Aslin v. Summersett*[6]*,* and *Ebrahim Pir Mohomad v. Currsettji*[7]*,* We do not think the contention is well founded. It is based on a mis- apprehension of the true nature of periodic tenancy.

4. Now in the first place it is not correct to say that a periodic tenancy is a creature of law and not of contract. We have already referred to the definition of lease given in Section 105 of the Transfer of Property Act. This definition shows beyond doubt and this indeed was not disputed on behalf of the landlord, that a lease coming within the definition is a creature of contract. Vide Section 5 and the words "who accepts the transfer on such terms" in Section 105. But the argument was that a periodic lease is not a lease within the meaning of the definition in Section 105 and hence different considerations must apply. Now it is true that the definition in Section 105 contemplates a lease for a certain time or a lease in perpetuity and a periodic lease such as a lease from year to year or month to month would be a lease of uncertain duration : Vide Section 108 clause (i) and would, therefore, be strictly outside the plain language of Section 105 but that does not mean that it is a lease having its origin otherwise than in contract. The Transfer of Property Act, as is evident from Section 5 deals only with transfers inter vivos, save in Section 100 whether there is express reference to charge by operation of law, and a periodic lease contemplated in Chapter V headed "Of Leases of Immovable Property", would therefore,

necessarily be a lease created by act of parties, that is, a contractual lease, unless there is some provision in the statute which reates a periodic lease or expressly seeks to affect periodic lease created by operation of law. Section 106 was strongly relied upon on behalf of the plaintiff in this connection but we fail to see how that section can be construed as creating a periodic lease, irrespective of assent of parties. There is undoubtedly reference to periodic lease in Section 106 but there is nothing in the section to indicate that it operates to create periodic lease without the common volition of the parties. The section on the contrary postulates that there is a lease but the contract between the parties does not provide as to what shall be the duration of the lease and in such a case, the section says that a term shall be implied that the lease is from year to year or from month to

[6]1830(1) B and Ad 135

[7]11 Bom. 644

month according to as the purpose of the lease is agricultural or manufacturing purpose or same other purpose. Section 106 is in a sense complementary to Section 105 and the definition of lease in Section 105 is carried into Section 106 with difference only in regard to duration of the lease. Where there is a lease and the contract between the parties provides that the lease shall be for a certain term or in perpetuity, it would be a lease as contemplated by Section 105. But where the contract between the parties is silent as to the duration, Section 106 comes to the aid and provides that the lease shall be deemed to be a lease from year to year or from month to month according to its purpose. The lease contemplated in both section is a contractual lease created by act of parties. This is emphasized by the opening words "in the absence of a contract to the contrary" in Section 106. These words suggested that the parties may also agree that a lease for agricultural or manufacturing purpose shall be from month to month or that a lease for any other purpose shall be from year to year. A periodic lease, whether its periodic nature is agreed upon between the parties or, in the absence of a contract to the contrary, implied by Section 106, is thus as much a creature of contract as a lease for a certain term or in perpetuity. That is also borne out by Section 107 which provides that a lease from year to year can be made only by a registered instrument a lease made by a registered instrument would be plainly a contractual lease. There is, therefore, not only privity of estate but also privity of contract between lessor and lessee in a periodic lease.

5. We may now proceed to consider the true nature and character of a periodic lease. It is evident that the duration of the term in a periodic lease is continuous from period to period. The interest of the lessee does not terminate at the end of the period but continues indefinitely from period to period until determined by a notice to quit given by the lessee. The characteristics of a periodic tenancy from year to year have been stated with great clarify and precision by the Court of Exchequer Chamber in the early case of *Grandy v. Jubbar*[8]*,*

> "There frequently is an actual demise from year to year so long as both parties please. The nature of this tenancy is discussed in 4 bac. Abr. Lit. Leases and terms for years pp. 838, 839, 7th ed., and the article has always been deemed of the highest authority. It seems clear that the learned author considered that the true nature of such a tenancy is that it is a

> lease for two years certain, and that every year after it is a springing interest arising upon the first contract and parcel of it, so that if the lessee occupies for a number of years, these years by computation from the time past, make an entire lease for so many years, and that after the commencement of so many years, and that after the commencement of each new year it becomes an entire lease certain for the years past and also for the years so entered on, and that it is not a relating at the commencement of the third and subsequent years. We think this is the true nature of a tenancy from year to year created by express words, and that there is not in contemplation of law a recommencing or relating at the beginning of each year."

When one period comes to an end and the tenancy goes into the next period, it does so by virtue of the original contract of lease and as a direct consequence of it and not because of any fresh contract of relating. There is no common assent between the lessor and the lessee arrived at afresh for continuing the tenancy into the next period. The tenancy goes

[8]9 B andS. 15

on from period to period by force of the original contract of lease until the contract is determined by notice to quit on the part of either lessor or lessee. Now where there are two or more co-owners who have granted a periodic tenancy, the contract of tenancy can be put an end to only by the joint action of all co-owners and the notice to quit must, therefore, be given by or on behalf of all co-owners. What has commenced under the common volition of all co-owners can be brought to an end only by a fresh common volition on their part. Vide the observations of Sir Lallubhai Shah, J. in *Maganlal v. Bhudar*[9], No one co-owner who is a tenant-in-common can also terminate the tenancy as to his undivided share alone, for the contract of tenancy is one and indivisible and it cannot be split up except by consent of all who are parties to it. Vide *Baraboni Coal Concern Ltd. v. Gokul Anand*[10], It is, therefore, obvious, on first principle, that all co-owners must join in giving notice to quite determining a periodic tenancy. This would appear to be so also on a plain reading of Section 106 in cases falling within that section. Section 106 says that in the circumstances there mentioned, a lease shall be deemed to be a lease from year to year or from month to month terminable on the part of either lessor or lessee by notice to quit. Now singular includes the plural and, therefore, where there are two or more lessors, the notice to quit must be given by all lessors. We cannot construe the words "on the part of lessor" as if they were "on the part of.... lessor or any one of the lessors where there are more than one lessor." Vide the reasoning of Warrington J., in Re Viola's Indenture of lease, 1909(1) Ch. 244 as explained by Somervell, L.J. in Leek & Moorlands Building Society v. Clark (supra).

6. We find that this view which we are taking is supported by an almost unanimous opinion of all High Courts in this country. We may mention only a few of the decisions : *Gopal Ram v. Dhakeshwar*[11], *Chhoti Dei v. Gangadhar*[12], *Abdul Hamid v. Bhuwaneshwar Prasad*[13], and *Chhaju Mal v. Om Prakash*[14], The same view was also taken by a Division Bench of the Bombay High Court in an early case, namely, Balaji Bhikhaji v. Gopal Bin Reghu, 3 Bom. 23. There it was held that one of several tenants-in-common, joint tenants or co-partners is not at liberty to

enhance the rent or eject the tenant at his own pleasure. Sir Lallubhai Shah, J. explained the rational behind this view in Maganlal v. Bhudar (supra) by saying that it is based on the rule that "a fresh and common volition of co-owners" is required "to put an end to that which commenced under their common volition". The only dissent from this view is to be found in an old decision of a single Judge of the Bombay High Court in Ebrahim Pir Mahomed v. Cursetji (supra). Mr. Justice Jardine held in this case that one co-owner can determine a periodic tenancy by giving notice to quit to the lessee even though other co-owners may not join in giving such notice. The learned Judge recognised that "the Indian decisions have usually treated the relation created by contract with several joint landlords as continuing until there exists a new and complete volition to change it" but instead of following the line adopted by Indian decisions, he preferred to apply the rule of English law enunciated by Lord Tenterden in Deo dem Aslin v. Summersett (supra). That was a case of lease from year to year held by the lessee from two joint lessors. A notice to quit was served signed by one only of the joint lessors. It was argued that the other lessor had adopted the notice but Lord Tenterdon who delivered the judgment of the Court of Kings Bench held that without any such adoption a notice to quit by one of the joint lessors, who are joint tenants would put an end to the tenancy as to both. The ratio of the decision is to be found

[9]29 Bombay Law Reporter 222 at page 226
[10]61 I.A. 35 at page 39
[11]35 Cal 807
[12] AIR 1953 Oris 245
[13] AIR 1953 Nag18
[14] AIR 1959 Jam and Kas 80

in the following sentence :

> "Upon a joint demise by joint tenants (i.e. the lessors in that case) upon a tenancy from year to year, the true character of the tenancy is this, not that the tenant holds of each the share of each so long as he and each shall please but that he holds the whole of all so long as he and all shall please; and as soon as one of the joint tenants gives a notice to quit, he effectually puts an end to that tenancy....."

Mr. Justice Jardine accepted this ratio and applied it to a periodic lease governed by Indian law. We do not think he was right in doing so. We cannot assent to the view taken by him. In the first place, it may be pointed out that though a period of about eighty years has elapsed since the date when this decision was given by Mr. Justice Jardine. It has not been followed in any other case decided by a High Court in India. Moreover, it is in direct contradiction to the earlier decision of the Division Bench in Balaji Bhikhaji v. Gopal bin Raghu (supra). The reasoning on which it is based also does not appear to us to be correct. We find it difficult to accept the proposition that, in the case of a lease by co-owners, the lease "holds the whole of all so long as he and all shall please: and if one of the co-owners "wishes it not to continue beyond the end of a period", it does not continues into a new period. The true nature of a periodic tenancy, as we have already pointed out is that it continues from period to period until the contract of tenancy is determined by notice to quit. The continuance of the tenancy from period to period does not depend on fresh common volition of co-owners at the beginning of each period. The tenancy continues because of the original common volition expressed at the time of commencement of the tenancy and it can come to an end only when "all shall please". This is also borne out by the language of

Section 106 which says that, in circumstances specified in that section, a lease shall be deemed to be a lease from year to year or from month to month terminable on the part of either lessor or lessee by notice in quit. We cannot, therefore, accept the English rule on the point and we must hold that the decision in Ebrahim Pir Mahomad v. Cursetji (supra) does not lay down the correct law. The difference between the English law and the rule adopted by Courts in India has been admirably summarised by Sankaran Nair, J. in Sri Raja Simbadri Appa Rao v. Prattipati Ramavya, 19 Madras 29 :

> "The difference between the English and the Indian cases appears to be that where there is a relation created by contract with several joint landlords, according to the English cases, that relation subsists, only so long as all of them wish it to continue, while, according to the Indian cases, it subsists until all of them agree to put an end to it : and it is not competent to any one of them to determine a contract which is entire, unless there are any special circumstances in the case, like collusion between a tenant and one of the lessors, etc."

We prefer to accept the rule adopted in Indian cases.

7. This conclusion was however strenuously resisted on behalf of the plaintiff and it was contended that, in view of the decision of the Supreme Court in *Kanji v. Trustees of the Port of Bombay*[15], this conclusion cannot be sustained. It was pointed out that in this case it was clearly and expressly decided by the Supreme Court that when there is a lease in favor of joint tenants, notice to one of the joint tenants is sufficient to determine the

[15] AIR 1963 SC 468

tenancy and a suit for eviction can also be maintained against one of the joint tenants without joining the others and it must therefore follow inferentially that in the converse case also, where there is a lease by co-owners, notice given by one of the co-owners is sufficient to put an end to the tenancy and a suit for eviction can be maintained by one co-owner alone. We do not think this contention is well founded. It is based on a misreading of the observations of the Supreme Court in this case. It is no doubt true that the Supreme Court observed in this case that "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" though it was filed only against one of the joint tenants. But these observations must be read in the context of the facts of the case before the Supreme Court. The question before the Supreme Court arose out of the lease executed by the Trustees of the Port of Bombay in favour of two persons called Moreshwar Narain Dhotre and Dinshaw Rustomji Ogra. These two persons in course of time assigned their interest in lease to Rupji Jeraj and Kanji Manji as joint tenants and this assignment was accepted by the lessors. The lessors thereafter addressed a notice to Rupji Jeraj and Kanji Manji terminating the lease and calling upon them to hand over vacant and peaceful possession of the demised premises. The notice was served only on Kanji Manji and not on Pupji Jeraj, as the latter was dead at the date when the notice was given. The notice was not complied with and a suit was filed by the lessors for recovery of possession of the demised premises from Kanji Manji and Rupji Jeraj. Later,

however, it was discovered by the lessor that Rupji Jeraj had died much earlier and his name was accordingly struck off from the plaint. On these facts two contentions were *inter alia* raised on behalf of Kanji Manji in answer to the suit. One was that the notice was invalid "inasmuch as it had been servied only upon one of the lesses (Kanji Manji) and not upon the heirs and legal representatives of Rupji Jeraj" and the other was "that the suit was bad for non-joinder of the heirs and legal representatives of Rupji Jeraj, who were necessary parties." Both contentions were negatived by the Supreme Court and while rejecting them, the Supreme Court made the aforesaid observations which are strongly relied upon on behalf of the plaintiff. Now if these observations are read in the light of the contentions raised, it will be apparent that they are not intended to lay down an absolute rule of law that whenever there is a lease in favour of joint tenants, notice to one of the joint tenants is sufficient and a suit for eviction can be maintained against one joint tenant. They are observations made in reference to the facts of the case. The Supreme Court first examined the deed of assignment and found that Kanji Manji and Rupji Jeraj were joint tenants. The legal consequence of this finding was that on death of Rupji Jeraj, his interest in the lease did not pass to his heirs and legal representatives but devolved on Kanji Manji by survivorship. It was for this reason that the Supreme Court held that notice to the heirs and legal representatives of Rupji Jeraj was not necessary nor were they necessary parties to the suit and observed that notice to one of joint tenants, namely, Kanji Manji, was sufficient and the suit against him was also good. This decision of the Supreme Court does not therefore lay down any proposition of law from which assistance can be derived by the plaintiff.

8. We must also refer to one other decision which was strongly relied upon of behalf on the plaintiff. That was the decision of *Harihar Banerji v. Ramshashi Roy*[16], We have carefully gone through this decision but we do not see how it can possibly help the plaintiff to make good his contention. The only question before the Privy Council in this case was whether notice to quit served on some of the joint tenants, when there was no

[16] AIR 1918 PC 102 : 46 I.A. 222

proof of service on the other joint tenants, was sufficient to determine the tenancy. While dealing with this question, the Privy Council observed : "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." This observation, far from helping the plaintiff, goes against him. It postulates that notice to quit must be given to all joint tenants but says that if it is shown that notice to quit is served upon one joint tenant, it would be *prima facie* evidence that it was reached the other joint tenants. It would be open to the other joint tenants to rebut tis *prima facie* evidence and show that in fact the notice to quit has not reached them and if they do so, the notice to quit given by the landlord would be ineffective to determine the tenancy. Moreover, the question before us is whether one of several co-owners can determine a tenancy by giving notice to quit and not whether notice to quit must be given to all joint tenants, where there are more tenants than one. This decision of the Privy Council cannot therefore be regarded as having any compelling authority to effect us from the view we are

taking.

9. We may now summarize our conclusions and state the law on the subject as we apprehend it to be. Where two or more co-owners have granted a periodic tenancy, it can be determined only by a notice to quit given by all co-owners. This would be so, irrespective whether the co-owners are joint tenants or tenants-in-common and whether the periodic nature of the tenancy is agreed upon between the parties or, in the absence of a contract to the contrary, is implied by Section 106. Of course, if the contract between the parties provides that any one of the co-owners may give notice to quit determining the tenancy, the contract would put an end to the tenancy. Now when we say that the notice to quit must be given by all co-owners, it is not necessary that it should be signed by all co-owners. It is sufficient if it is given by someone acting as agent on behalf of the co-owners. The agent may be one of the co-owners himself or he may be a third person such as, for example a solicitor or an Advocate. Such an agency may be express or implied. So long as the agency is established, notice to quit given by the agent would be a valid notice determining the tenancy. But the authority of the agent, express or implied, must exist at the date when the notice to quit is given " subsequent satisfaction of the notice to quit by the co-owners would not be sufficient to determine the interest of the tenant. Vide Illustration (a) to Section 200 of the Contract Act. Now where an agent gives notice to quit on behalf of the co-owners, a question may arise whether the notice to quit must show on the face of it that it is being given on behalf of the co-owners or it is sufficient if the agent giving the notice to quit has in fact authority to do so on behalf of the co-owners. This question does not present any difficulty of solution for the law on the subject is now well-settled. If the agent is acting under a special authority, he must give notice to quit in the name of the principal or expressly as an agent on behalf of the principle : but if he is acting under authority incidental to the general agency to manage the deemed property, he may give it in his own name. Vide Fos's General Law of Landlord and Tenant, (Eighth Edition) page 606, Article 961 : *Jones v. Phipps*[17]*, Lemon v. Lardeur*[18]*,* It would, therefore, seem that where a co-owner is, by common consent of all co-owners, entrusted with the management of the leased property, he may give notice to quit in his own name and the notice to quit need not show on the face of it that he is

[17]1868 LR 3 Q.B. 567
[18]1946 K.B. 613

acting as agent on behalf of the other co-owners. But in other cases, if
the notice to quit is given by a co-owner, it must appear from the notice to quit that it is given by the co-owner acting on behalf of himself and the other co-owners. In either case, the authority of the co-owners to give notice to quit on behalf of the other co-owners, if disputed, would have to be established and if the co-owner giving the notice to quit is not in a position to establish it to the satisfaction of the Court the notice to quit given by him would not be sufficient to determine the tenancy. This would appear to be the clear and undoubted position in law where two or more co-owners have granted a periodic tenancy and the question arises as to whether one of them can give notice to quit determining the tenancy. The same position would also obtain where a

periodic tenancy is granted by a landlord who is the sole owners of the leased property and by testate or intestate succession on his death, or by transfer inter vivos, the leased property comes to be owned by two or more co-owners.

10. But there are two categories of cases which stand apart and to them the rules stated by us would have no application. One category of cases is where the landlord grants lease to the tenant claiming to be the sole owner of the property leased, though in fact he is only one of the co-owners and the other category of cases is where the landlord is a co-owner but while granting the lease, does not disclose that he is acting as a co-owner on behalf of himself and the other co-owners and grants the lease by himself. These two categories of cases are governed by different considerations. The rule of estoppel comes into play in these two types of cases and it has an overriding impact on the question whether the co-owner, who has granted the lease can alone give notice to quit determining the tenancy or other co-owners must join in giving such notice. The rule of estoppel which precludes a tenant from denying the title of his landlord at the commencement of his tenancy is embodied in Section 116 of the Evidence Act. This rule, on the plain terms of the section, applies only during the continuance of the tenancy but it has now been held by decisions of the highest Court that it also continues to operate subsequent to the determination of the tenancy, so long as possession of the leased property has not been handed over by the tenant to the landlord. The result is that so long as the tenant is in possession of the leased property, he is precluded from denying that his landlord had, at the beginning of the tenancy, a title to the leased property. This rule of estoppel would clearly apply where the landlord, in the two types of cases referred to by us, gives notice to quit determining the tenancy and files a suit for eviction against the tenant and the tenant seeks to raise a contention that the landlord is not the sole owner of the leased property but is only one of the co-owners and that the notice to quit given by him alone is insufficient to determine the tenancy and the suit filed by him is not competent. The tenant would, in these two types of cases, be estopped from contending that the landlord who granted him the lease was not the sole owner of the leased property and that the leased property belonged to him and the other co-owners. The tenant having obtained the lease from the landlord cannot be permitted to deny the exclusive title of the landlord to the leased property. This was established long ago by an early decision of a Division Bench of the Bombay High Court in *Jamsedji Sorabji v. Lakshmiram Rajaram*[19], where Birdwood J. speaking on behalf of the Division Bench held, relying on two earlier judgments of the Bombay High Court, that it is not open to a tenant taking a lease from one of several co-sharers to

[19]13 Bom. 323

dispute his lessor's exclusive title to receive the rent or sue in ejectment. The same view has also been taken in a number of decisions of different High Courts in India of which we may cite only two, namely *Allmaddin v. Alluaddin*[20], and *Mathura Prasad v. Gokal Chand*[21], The decision of the Madras High Court in *Vinjamuri Venkatanarasimhacharyulu v. Gangaraju*[22], also lays down the same principle. That was a case where the tenant sought to establish that the entire land leased to him did not belong to the landlord but a part of it belonged to the landlord's mother and since he had paid the proportionate rent to the landlord's mother, there was no default by him in

payment of rent and the landlord was not entitled to evict him. The attempt of the tenant obviously was to show that in giving the lease the landlord acted on his own behalf as to a part of the land and as agent of his mother as to the other Patarjali Sastri, J. held that the tenant was precluded by the rule of estoppel from showing that in granting the lease, the landlord acted as agent of another person who was the owner of the property but without disclosing his agency and that the liability to pay the rent was discharged by payment to that owner. The learned Judge pointed out that the tenant cannot establish such a plea without showing that the person to whom he paid the rent and not his lessor was the owner of the property leased, which is exactly what the estoppel is intended to prevent him from showing. It will, therefore, be seen that in the two types of cases to which we have referred, the notice to quit given by the landlord who has granted the lease would be held sufficient to determine the lease by reason of the doctrine of estoppel which prevents the tenant from showing that the landlord is not the exclusive owner of the leased property.

11. The result, therefore, is that where there are two or more co-owners of property and either they grant a lease acting together or any one of them grants a lease on behalf of himself and acting as agent on behalf of the other co-owners, no one single co-owner can give notice to quit determining the lease. The notice to quit must be given by or on behalf of all co-owners in accordance with the rules which we have just discussed. The same would be the position where a lease is granted by a landlord who is the sole owner of the leased property and thereafter, by testate or intestate succession or by transfer into vivos, the leased property comes to be owned by two or more co-owners. But where a lease is granted by a co-owner professing or claiming to be the sole owner of the leased property or one of the co-owners grants the lease without disclosing that he is also acting on behalf of the other co-owners, the doctrine of estoppel would apply and the tenant would be precluded from showing that his landlord was not the exclusive owner of the leased property but was only one of the co-owners and that the notice to quit given by him is, therefore, not sufficient to determine the lease.

12. That takes us to the next question whether one out of several co-owners is entitled to maintain a suit for eviction against the tenant. There are two aspects of this question which require consideration. One is based on the definition of "landlord" in Section 5 sub-section (3) of the Rent Act and the other arises under the general law of landlord and tenant. We shall first consider the question from the point of view of the definition of "landlord" in Section 5 sub-section (3) of the Rent Act, for if the argument of the plaintiff founded on that definition is correct, it would become unnecessary to consider the position obtaining under the general law of landlord and tenant. Section 5 sub-section (3)

[20] AIR 1918 Cal 220 [22] AIR 1941 Mad 607

[21] AIR 1919 All 217

of the Rent Act defines "landlord" to mean any person who is for the time being receiving, or entitled to receive, rent in respect of any premises whether on his own account or on

account, or on behalf, or for the benefit of any other person or as a trustee, guardian, or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant and to include any person not being a tenant who from time to time derives title under a landlord and, in respect of his sub-tenant, a tenant who has sublet any premises. Section 12 imposes restrictions on the right of the landlord to recover possession of the premises from the tenant on the determination of the tenancy. It says, omitting portions immaterial :

> "12. (1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act.
> (2) No suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in Section 16 of the Transfer of Property Act, 1882.
> (3)(a) Where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted in arrears, if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the period of one month after notice referred to in sub-section (2), the Court may pass a decree for eviction in any such suit for recovery of possession.
> (b) In any other case, no decree for eviction shall be passed in any such suit if, on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due and thereafter continues to pay or tender in Court regularly such rent and permitted increases till the suit is finally decided and also pays costs of the suit as directed by the Court.
>
> xxx xxx xxx xxx

Section 13 sub-section (1) provides that notwithstanding anything contained in the Rent Act "a landlord shall be entitled to recover possession of any premises" if the Court is satisfied that a ground specified in anyone of clauses (a) to (1) exists. The grounds specified in clauses (g) and (hh) are material. They may be reproduced as follows :

> "(g) that the premises are reasonably and *bonafide* required by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purpose of the trust."
> "(hh) that the premises consist of not more than two floors and are reasonably and *bonafide* required by the landlord for the immediate purpose of demolishing them and

such demolition is to be made for the purpose of erecting new building on the premises sought to be demolished."

Then there is an explanation to sub-section (2) of Section 13 which says in clause (b) :-

"*Explanation* : For the purposes of clause (g) and sub-section (1) –

xx xxx xxx xxx

(b) the expression 'landlord' shall not include a rent-farmer or rent-collector."

The argument of the plaintiff founded on these provisions was that when the tenant fails to comply with the conditions set out in sub-section (1) of Section 12 or any grounds specified in clauses (a) to (1) of Section 13 sub-section (1) exists, a right to recover possession of the premises arises to the 'landlord'. This right arises under Section 12 sub-section (1), as the case may be, and is conferred on the 'landlord' mentioned in these provisions. Now the word 'landlord' is defined in Section 5 sub-section (3) and, therefore, whenever it is used in any provision of the Rent Act, it must be given the meaning assigned to it in the definition. The definition extends the meaning of the word 'landlord' and includes within its connotation certain categories of persons who would not be landlords according to the accepted connotation of that word. A co-owner who is for the time being receiving rent in respect of leased premises on his own account as also on behalf of the other co-owners would be a 'landlord' within the meaning of the definition. So also would be a rent-farmer who receives rent on his own account and a rent-collector who receives rent on account of the owner or co-owners. The word 'landlord' in Section 12 sub-section (1) and Section 13 sub-section (1) would, therefore, include a co-owner receiving rent on behalf of himself and the other co-owners as also a rent-farmer and a rent-collector and such a co-owner, rent-framer or rent-collector and such a co-owner, rent-farmer or rent-collector would be entitled to maintain a suit to enforce the right to recover possession given to him under these sections. This argument urged on behalf of the plaintiff was sought to be supported by two decisions of this Court, one, a decision of S.H. Sheth, J. *M/s. Heirs of deceased Madhavlal v. Motising*[23], and other, a decision of a Division Bench consisting of J.M. Sheth & B.K. Mehta, JJ. in *F. Mahmadbhai v. B.N. Bhatt*[24], These two decisions undoubtedly support the contention of the plaintiff but, with the greatest respect to the learned Judges who decided them, we do not think they lay down the correct law. We must express our dissent from these two decisions.

13. Now in the first place we need not be unduly obsessed by the definition of 'landlord' in Section 5 sub-section (3). It is well settled that a definition clause is not to be taken as substituting one set or words for another or as strictly defining what the meaning of a term must be under all circumstances, but rather as declaring what may be comprehended within the term where the circumstances require that it should be so comprehended. If, therefore, a definition clause gives an extended meaning to a word, it does not follow as a matter of course that if that

word is used more than once in the statute, it is on each occasion used in the extended meaning and it would always be a matter for argument whether or not the definition clause is to apply to the word as used in the particular clause

[23]1971(XII) GLR 241

[24] AIR 1972 Guj 9

of the statute which is under consideration. The artificial meaning given in the definition clause would apply only if there is nothing repugnant in the subject or contest. This is emphasized by the opening words "unless there is anything repugnant to the subject or context" which occur at the commencement of the definition section. We must, therefore, have regard to the subject and context to determine what is the meaning in which the word 'landlord' is used in the relevant provisions of the Rent Act. Is it used in the ordinary sense in which it is understood in the general law of landlord and tenant or is it used in the extended sense given in the definition ?

14. To answer this question it is necessary to appreciate the object and reason underlying the enactment of Sections 12 and 13. When a tenancy is created by contract between the landlord and the tenant, the tenancy continues in force so long as it is not determined in the manner provided by law and whilst the tenancy continues to subsist, the tenant has full protection of the contract and cannot be evicted by the landlord. But when the tenancy is determined by any of the modes provided in Section 111 of the Transfer of Property Act, the landlord becomes entitled to possession of the premises and as provided in Section 108 clause (q) of the Transfer of Property Act, the tenant is bound to hand over possession of the premises to the landlord. Now the right to possession which arises to the landlord on the determination of the tenancy must be distinguished from the right to recover possession. The right to recover possession, as pointed out by the Supreme Court in *Punjilal v. Bhagwatiprasad*[25], follows the right to possession and arises when the tenant does not make over possession as he is bound to do under law and there arises a necessity to recover possession through Court. It is obvious, having regard to the extreme shortage of housing accommodation prevalent in most of the urban areas that if the right of the landlord to recover possession of the premises from the tenant were free and unfettered, the tenants would be completely at the mercy of the landlords and the landlords would be in a position to take undue advantage for themselves by exploiting the tenants. The Legislature, therefore, thought it necessary to protect the tenants by placing restrictions on the right of the landlord to recover possession of the premises under the ordinary law of landlord and tenant and with this end in view, enacted the Rent Act. The preamble of the Rent Act shows that it was enacted to amend and consolidate the law relating *inter alia* to the control of evictions. The Legislature provided in Section 12 sub-section (1) that a landlord shall not be entitled to recover possession of any premises so long as the tenant pays or is ready and willing to pay, the amount of the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy. The landlord would, but for Section 12 sub-section (1), be entitled to recover possession of the premises from the tenant on the determination of the tenancy, but Section 12 sub-section (1) says that this right to recover possession shall not be enforceable by the landlord against the tenant, so long as the tenant complies with the conditions set out in that sub-section. The language of the sub-section and particularly the words "so long as" show that

the bar against the enforcement of the right to recover possession operates only so long as the tenant complies with the conditions set out in the sub-section. So soon as the tenant ceases to comply with those conditions, the bar is removed and the landlord can then proceed to enforce his right under the ordinary law of landlord and tenant to recover possession of the premises. Section 12 sub-section (1) does not confer on the landlord a right to recover possession of the premises which he did not possess under the ordinary law of landlord and tenant. It is not a section which, to use the

[25] AIR 1963 SC 120

words of the Supreme Court in Punjilal v. Bhagwatprasad (supra) creates "a new right in the landlord to evict the tenant when the tenant does not pay his rent." The words used are words of injunction to prevent a landlord from doing that which he would otherwise be entitled to do but for the injunction. It is as if the right of the landlord to recover possession of the premises is (sic) for the time being so long as the tenant complies with the conditions prescribed by the statute. Once this eclipse is removed by the failure of the tenant to comply with those conditions, the right to recover possession which was eclipsed and, therefore, lying dormant is revived and becomes enforceable against the tenant. It is, therefore, obvious that Section 12 sub-section (1) applies only to a landlord who is otherwise entitled to recover possession of the premises. The subject and the context clearly indicate that the landlord referred to in Section 12 sub-section (1) is the landlord who would, but for the injunction contained in the sub-section, be entitled to recover possession of the premises and that would be determined by the general law of landlord and tenant and the extended definition of "landlord" in Section 5 sub-section (3) would have no application.

15. Where the right of a landlord to recover possession of the premises is enforceable by reason of the bar imposed by Section 12 sub-section (1) having been removed, Section 12 sub-section (2) prescribes the procedure which must be followed by the landlord before he institutes a suit for recovery of possession. Section 12 sub-section (2) provides that no suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant. Here again the 'landlord' referred to is a 'landlord' who is otherwise entitled to institute a suit for recovery of possession and qua him, a restriction is imposed by Section 12 sub-section (2). Section 12 sub-section (2) does not confer a new right to institute a suit for recovery of possession which did not otherwise belong to a landlord. The subject and context of Section 12 sub-section (2) also, therefore, does not permit the application of the extended definition of 'landlord' in Section 5 sub-section (3).

16. Then we come to sub-section (2) of Section 12 which is divided into two clauses. Clause (a) provides that where the rent is payable by the month and there is no dispute regarding the amount of standard rent or permitted increases, if such rent or increases are in arrears for a period of six months or more and the tenant neglects to make payment thereof until the expiration of the

period of one month after notice referred to in sub-section (2), the Court may pass a decree for eviction in any such suit for recovery of possession. This clause, on its plain terms, is confined in its application to "any such suit for recovery of possession", that is, a suit for complying with the procedure laid down in Section 12 sub-section (2) and what is provides is merely this, namely, that a decree for eviction shall be passed in such suit for recovery of possession if the conditions there specified are fulfilled. It does not profess to confer a new right to institute a suit for recovery of possession where there was none. Similarly, clause (b) also does not carry the matter any further. It merely confers a further protection on the tenant and saves him from eviction even though he has failed to comply with the conditions set out in Section 12 sub-section (1). The tenant is given a further opportunity by clause (b) to defeat the right of the landlord to recover possession of the premises provided he fulfils the conditions specified in clause (b). It will, therefore, be seen that none of the provisions in Section 12 confers any new right to recover possession of the premises on a 'landlord' and it is, therefore, not possible to read the word 'landlord' in the different provisions of Section 12 as including the categories of persons artificially included within the meaning of that term as defined in Section 5 sub-section (3). These provisions refer to a 'landlord' who, but for the restriction imposed by them, would be entitled to recover possession of the premises and that would clearly be a 'landlord' under the general law of landlord and tenant.

17. The strong reliance was, however, placed on behalf of the plaintiff on Section 13 and particularly the words "a landlord shall be entitled to recover possession of any premises" in the opening part of that section. The argument was that, whatever be the interpretation of Section 12 sub-section (1), Section 13 sub-section (1) in any event confers a right on a landlord to recover possession of any premises if the Court is satisfied that any of the grounds specified in clauses (a) to (1) exists and, having regard to the definition of 'landlord' in Section 5 sub-section (3), it must be held that a right to recover possession of the premises on any of these grounds belongs to a co-owner receiving rent on behalf of himself and other co-owners or a rent-farmer or a rent-collector. This argument, plausible though it may seem, is, in our opinion, not well-founded and must be rejected. Section 13 must be read with Section 12 : both are parts of a single pattern and must be read together, Section 12 sub-sections (1) and (3)(b) say that notwithstanding that a landlord is entitled to possession of the premises under the ordinary law of landlord and tenant, he shall not be entitled to recover possession so long as the tenant complies with the conditions specified in those sub-sections; but Section 13 sub-section (1) provides that, notwithstanding the Rent Act which would include Section 12 sub-sections (1) and (3)(b), the landlord shall be entitled to recover possession if the Court is satisfied about any of the grounds specified in clauses (a) to (1). Section 13 sub-section (1) uses the expression "a landlord shall be entitled to recover possession of any "premises" to counteract or offset the restriction imposed by Section 12 sub-section (1) that so long as the tenant complies with the conditions there set out, a landlord shall not be entitled to recover possession of the premises. This expression in Section 13 sub-section (1) is intended to override the inhibitory provision enacted in Section 12 sub-section (1), whereas Section 12 sub-section (1) says that "a landlord shall not be entitled to the recovery of

possession", Section 13 sub-section (1) provides that, notwithstanding Section 12 sub-section (1), "a landlord shall be entitled to recover possession". The right to recover possession which is referred to Section 12 sub-section (1) is still the original right of the landlord under the ordinary law of landlord and tenant. Section 13 sub-section (1) merely lifts the restriction imposed by Section 12 sub-section (1) and (3)(b) in the cases specified in clauses (a) to (1). It is, therefore, evident that even when a landlord seeks to recover possession of premises on any of the grounds specified in clauses (a) to (1) of Section 13 sub-section (1) he must be able to show that he is otherwise entitled to possession of the premises he would rely on one or more of the grounds specified in clauses (a) to (1) of Section 13 sub-section (1) only for the purpose of getting over the restrictions imposed by Section 13 sub-section (1) and (3)(b).

18. But if that be so, contended the plaintiff, why should be Legislature have introduced clause (b) in the Explanation to sub-section (2) of Section 13 providing that, for the purposes of clause (g) of sub-section (1), the expression 'landlord' shall not include a rent-former or rent-collector ? It was urged on behalf of the plaintiff that the construction which we are inclined to place on Section 12 sub-section (1) and Section 13 sub-section (1) would render clause (b) of the Explanation redundant and futile and it is a well accepted rule of construction of statutes that the Court should ordinarily avoid a construction which has the effect of rendering any provision of the statute superfluous or meaningless. Now it is true that if the construction which has commended itself to us is the right construction, clause (b) of the Explanation would be superfluous and unnecessary, because even otherwise a rent farmer or rent-collector would not be included in the expression 'landlord' in clause (g) of Section 13 sub-section (1). But it is not uncommon in legislative practice that explanatory provisions are introduced by the Legislature ex-abundanti cautela in order to avoid any possible argument which might be raised in regard to the construction of a statutory provision. The legislative anxiety to make certain that which might otherwise perhaps be susceptible to doubt or debate cannot justify an interpretation of a statutory provision which, on a plain natural construction of its language, it cannot bear. It is quite possible that the Legislature might have introduced clause (b) of the Explanation with a view to eliminating a possible argument, fanciful though it be, that under clause (g) of Section 13 sub-section (1) a landlord shall be entitled to recover possession on the ground that the premises are reasonably and *bonafide* required by his rent-farmer or rent collector for occupation by him. We may point out that though a similar Explanation is not appended in regard to clause (hh) of Section 13 sub-section (1), it is clear from the context in which that clause occurs as also from the provisions of sub-sections (3A) and (3B) of Section 13 read with Rule 2 of the Bombay Rents, Hotel and Lodging House Rates Control (Tribunal) Rules, 1951 that the landlord referred to in clause (hh) cannot be a rent-farmer or rent collector but must necessarily be the owner of the land. No undue emphasis should, therefore, be placed on clause (b) of the Explanation and it cannot deter us from placing what we conceive to be the right interpretation on Section 12 sub-section (1) and Section 13 sub-section (1).

19. We are, therefore, of the view that the extended meaning of the word 'landlord' given in the

definition in Section 5 sub-section (3) cannot be projected into Section 12 and Section 13 sub-section (1). The landlord referred to in Section 12 and Section 13 sub-section (1) is not a landlord as defined in Section 5 sub-section (3) but a landlord who is entitled to possession of the premises on determination of the tenancy under the ordinary law of landlord and tenant. A co-owner receiving rent on behalf of himself and the other co-owners or a rent-farmer or a rent collector is, therefore, not entitled to recover possession of the premises let to a tenant on the strength of the artificial definition of "landlord" in Section 5 sub-section (3). The decisions of S.H. Seth, J. in M/s. Heirs of Deceased Madhavlal v. Motising (supra) and J.M. Seth and B.K. Mehta, JJ. in F. Mahmadhabi v. B.N. Bhatt (supra) which have taken a different view do not, in our opinion, represent the correct law and we must, with the greatest respect to those learned Judges, express our dis-agreement with them. We may also mention that for the same reasons we cannot agree with the view taken by S.M. Shah J. in *Mishrimal Chhogalal v. N.B. Patel*[26], where the learned Judge seems to have held that even a person who is not a 'landlord' under the ordinary law of landlord and tenant but falls within the extended meaning of the word 'landlord' given in the definition can give notice to quit determining the tenancy. This view, with the greatest respect to the learned Judge, is manifestly wrong, for the Rent Act does not deal with the subject of termination of tenancy end there is no provision in the Rent Act providing for termination of tenancy in which the definition of 'landlord' can be read so as to empower a mere receiver of rent to determine

[26]1962(65) Bom. L.R. 15

the tenancy.

20. We must, therefore, proceed to consider whether under the ordinary law of landlord and tenant, one co-owner can file a suit for recovering possession of the property from the tenant without joining the other co-owners in the suit. Now a lease usually contains a covenant on the part of the lease to deliver up the premises on the determination of the tenancy, but even where such express stipulation is absent, the tenant is under an implied covenant to restore possession of the premises to the landlord on the determination of the tenancy. This implied covenant is recognized in Section 108 clause (q) of the Transfer of Property Act which provides that, in the absence of a contract or local usage to the contrary, the lessee is bound, on the determination of the lease to put the lessor, into possession of the property. It is, therefore, obvious that when a lease is determined by any of the modes provided in Section 111 of the Transfer of Property Act, the landlord is entitled to possession of the property under the implied covenant contained in the lease. It is this implied covenant which is sought to be enforced by the landlord when he files a suit to recover possession of the property from the tenant. Now where there are two or more co-owners, this implied covenant would obviously be in favour of all of them and they would all be jointly entitled to enforce this implied covenant. Vide Section 45 of the Contract Act. They must therefore all joint in filing a suit to recover possession of the property from the tenant in enforcement of this implied covenant. This view that all co-owners must join in a suit to recover possession of the property from the tenant has prevailed with the Courts over the last eighty years since the date when it was decided by a Division Bench of the Madras High Court in *K.P. Kanna*

Pisharody v. V.M. Narayanan Somayajipad[27], that except "where, by a special provision of law, co-owners must join in a suit to recover their property. Co-owners may agree that their property shall be managed and legal proceedings conducted by some or one of their number, but they cannot invest such person or persons with a competency to sue in his own name on their behalf, or, if sued, to represent them." The ratio of this decision of the Madras High Court was followed by a Division Bench of the Bombay High Court in *Balkrishna v. Moro*[28], nd Partons, J. speaking on behalf of the Division Bench pointed out in this case that a co-sharer who is manager cannot, even with the consent of his co-sharers, maintain a suit by himself and in his own name to eject a tenant who has failed to comply with a notice calling on him to pay enhanced rent. The principle of agency has no application in such a case. No one can be authorised to use in his own name to enforce a cause of action vested in another. The suit must be instituted by the person in whom the cause of action is vested. That is the invariable rule of procedure. All co-owner must, therefore, be parties in a suit to recover possession of the property from the tenant on the determination of the tenancy.

21. But there is a line of cases commencing from Maganlal v. Bhudar (supra) where the view has been taken that, on the determination of the tenancy, the tenant becomes a tenant at sufferance and his possession being akin to that of a trespasser, any one co-owner can maintain a suit to eject him. This view has found favour not only with the Bombay High Court in Manganlal v. Bhudar (supra) but also with the Calcutta High Court in Gopal Ram v. Dhakeshwer (supra) and the Allahabad High Court in *Motilal v. Basantlal*[29], We do not think this view is justified on principle and in any event it can have no relevance in

[27]3 Mad 234 [29] AIR 1956 All 175

[28]21 Bom 154

cases governed by the Rent Act. This view is based on the

assumption that a tenant in possession of the property after determination of the tenancy is in the position of a trespasser. Now there can be no doubt that if this assumption is correct, a co-owner can maintain a suit for eviction against the tenant. The rule is well-settled that a co-owner can without joining other co-owners, maintain an action to eject a trespasser. Trespass is wrong against possession and since every co-owner is as much in possession of the whole of the property as the other co-owners, any co-owner can protect his possession against the trespasser by filing a suit to eject him. An act of trespass is an individual wrong against every co-owner and is, therefore, actionable at the instance of each co-owner. This would appear to be clear on principle, but apart from principle, there is ample authority in support of it. We may refer only to one decision, namely, *Shertari v. Magnetic Syndicate Limited*[30], It was held by a Division Bench of the Madras High Court in this case that one of several co-owners can maintain an action in ejectment against a trespasser without joining the other co-owners as parties to the action. But we do not think that a tenant in possession of the property after determination of the lease can be equated to a trespasser. The law in India on this point is different from that in England. The

position of the law in England may be stated as follows. Where a tenant remains in possession of the property after determination of the lease without any statutory right to retain possession and without either the agreement or disagreement of the landlord, he becomes what is known in English law as a tenant at sufferance. A tenant at sufferance has possession, but no suffers him to do so. Now if the tenant continues to remain in possession of the property with the assent of the landlord and otherwise than in reliance on some statutory provision protecting him from eviction, he becomes a tenant at will until some other interest is created, for instance, by the tenancy turning into a monthly or yearly tenancy by payment of rent. But where the landlord does any act showing an intention to take possession, it is sufficient to revest the possession in him so that the tenant becomes a trespasser. The landlord is then entitled to ren-enter and take possession, provided that he can do so peaceably, without contravening the Statutes of Forcible Entry and even if he enters forcibly and is thus liable to criminal proceedings under the statutes, yet the tenant has no civil remedy against him in respect of the entry, or in respect of the eviction, if no more force than is necessary is used. Vide Hill and Redman's Law of Landlord and Tenant, (Thirteenth Edition) page 593, Article 456. But the law in India is essentially different. When a tenant remains in possession of the property, after determination of the lease in India, he undoubtedly becomes a tenant at sufferance but if the landlord accepts rent from him or otherwise assents to his continuing in possession, the tenancy is, in the absence of an agreement to the contrary, renewed from year to year or month to month according to the purpose for which the property is leased. Vide Section 116 of the Transfer of Property Act. Even if the landlord does not assent to the tenant continuing in possession of the property and the tenancy is not renewed as provided in Section 116 of the Transfer of Property Act, the tenant does not become a trespasser. The tenant has juridical possession of the property and no one can deprive him of such judicial possession except in due course of law. The tenant can, as pointed out by Mr. Justice Batchelor in *Rudrappa v. Narsingrao*[31], "recover as against a

[30]39 Mad 501

[31]29 Bom 213

third party who unlawfully disposses him." Even the landlord cannot
suo motu dispossess a tenant without his consent and if he does so, the tenant would be entitled to recover possession from him by resorting to the remedy provided under Section 9 of the Specific Relief Act. The possession of an erstwhile tenant remaining in possession of the property after determination of the lease is thus fundamentally different from that of a trespasser. Whereas a trespasser is never in juridical possession of the property, and he can always be thrown out if the landlord can do so peaceably, the possession of an erstwhile tenant is juridical and he is protected from dispossession otherwise than in due course of law. Therefore, as far as the Indian law is concerned, a tenant remaining in possession of the property after determination of the lease can never became a trespasser. This view is supported by at least two decisions of the Bombay High Court : One is the decision of Jenkins, C.J. and Batchclor J. in Rudrappa v. Narsingrao (supra) and the other is the decision of Chagla, C.J. and Dixit, J. in *K.K. Verma v. Union of India*[32], Moreover it is difficult to see how in cases governed by the Rent Act a tenant remaining in

possession of the property after determination of the lease can ever be regarded as a trespasser. Section 12 sub-section (1) of the Rent Act confers a status of irremovability on the tenant so long as the tenant pays and is ready and willing to pay the amount of the standard rent and permitted increases and observes and perform the other conditions of the tenancy. The tenant is given a right to continue to remain in possession of the property on fulfillment of the above conditions and he becomes a statutory tenant. This statutory tenancy comes to an end when a decree for eviction is passed against the tenant on any of the grounds set out in Section 12 or Section 13. It is inconceivable how a tenant who is a statutory tenant entitled to remain in possession of the property by reason of the protection conferred by Section 12 Act can possibly be regard as a trespasser. It is, therefore, clear that the rule that a co-owner may maintain an action to eject a trespasser without joining other co-owners in such action can have no application where a co-owner seeks to evict a tenant who is in possession of the property after determination of the lease. Such a tenant can be evicted only by an action taken by all co-owners. Here also we must except from the applicability of this general rule, the two categories of cases to which we have referred while dealing with the question as to who can terminate the tenancy by giving notice to quit. The tenant in these two categories of cases would be estopped from denying the exclusive title of his landlord and contending that his landlord is only one of the co-owners and is, in the absence of other co-owners, not entitled to maintain a suit for recovery of possession against him.

22. We, therefore, answer the question referred to us accordingly and the revision application will now go back to a single Judge of this Court for hearing and final disposal in the light of the observations made and the answers given by us in this judgment.
Answer accordingly.
[32]56 Bom Law Reporter 308