MADHYA PRADESH HIGH COURT

B.P. Pathak

Vs.

Riyazuddin

Second Appeal No. 623 of 1970
(P.K. Tare C.J. and Shiv Dayal, J.)

09.10.1975

JUDGMENT

Shiv Dayal, J.

1. "Whether a transferee of part of the property leased can terminate the lease with respect to the part transferred to him by giving quit notice to the tenant."

2. The plaintiff, Dr. Riyazuddin, averred in the plaint that he purchased a portion of Nazul Plot No. 40/2, measuring 39' X 108', from its pervious owner E. Ashok Rao and others, by a registered deed of sale. The vendors simultaneously delivered possession of the plot. The suit plot had been taken on lease by B.P. Pathak (defend No. 1) from the plaintiff's predecessor-in-title for storing coal, etc. on a monthly rent of Rs. 5/-, when he worked as a coal contractor. Later on, B.P. Pathak unauthorisedly erected temporary structures and sublet the same to defendants Nos. 2 and 3 for being used for residential purposes, keeping a portion for himself. The remaining portion of land is being used for growing vegetables by defendant No. 4, at the instance of defendant No. 1. The occupation of defendants Nos. 2 and 3 is unauthorised and unlawful. Defendant No. 1 is in arrears of rent from October 17, 1966 to June 30, 1968, which he has not deposited in spite of notice. The plaintiff, who is a Doctor of Medicine requires the aforesaid accommodation to build his clinic and dispensary and such building could not be constructed without the accommodation (plot) being vacated. The plaintiff has terminated the tenancy of defendant No. 1 by notice.

3. One of the pleas in defense was that the notice terminating the tenancy was not valid. It was alleged that the defendant Pathak was a tenant of plot, measuring 50' x 350' and the plaintiff, being an assignee only of a part of the demised premises, cannot

terminate the tenancy with respect to the part assigned to him.

4. The trial Court framed the following issues:-

> "(1) Whether the defendants had taken the Nazul Plot No. 40/2 from its owner on a permanent lease?
> (2) Whether the defendant No. 1 is in arrears of rent from 17-10-1966 to 30-6-68?
> (3) Whether the plaintiff determined the tenancy by valid notice?
> (4) Whether the defendants are liable to be evicted under Section 106 of the Transfer of Proper Act read with Section 12 of the Accommodation Control Act?
> (5) Whether the previous owner of the suit plot has created a license in favor of defendant No. 1 to occupy the suit plot with a grant to construct permanent structure thereon?
> (6) Whether the license has been irrevocable?"

5. The trial Court passed a decree for ejectment of all the defendants from the suit plot and for arrears of rent. Vacant possession was directed to be delivered after demolishing the structure thereon.

6. Defendant No. 1 Pathak appealed. The learned Additional District judge affirmed the judgment and decree of the trial Court with the modification that the claim for rent and mesne profits was disallowed.

7. Defendant No. 1 Pathak preferred this second appeal. By his order dated July 28, 1971, Pandey, J., remitted the case to the trial Court for determining the following issues:

> "(a) What was the land let out to defendant No. 1 (B.P. Pathak)?
> (b) Whether a part of the land let out was subsequently sold to the plaintiff Dr. Riyazuddin."

The trial Court reported its finding in favor of the plaintiff, concluding that the suit land itself was leased out to defendant No. 1 and was subsequently sold to the plaintiff.

8. The learned referring Judge has, on a fresh appreciation of evidence, held that the lease created by Nageshwar Rao in favor of Pathak was at least of area 49' x 108', so that the plaintiff is purchaser of only a part of the demised premises. While dealing with this reference, we are not concerned with the correctness of the finding reached by the learned referring Judge. We have to answer the question of law stated at the outset.

9. Singh, J, has referred the point for decision by a larger Bench because he has found that in his own unreported earlier decision in *(Dwarkaprasad v. Khemchand*),[1] he answered the question in the negative and held that a transferee of a part of the property leased, cannot terminate the lease with respect to he part transferred to him, but his decision is in conflict with an earlier reported decision of Bhave, J. in *Subhashchandra v. Radhavallabh* [2] which was not brought to his notice when he decided Dwarkaprasad's case. Bhave, J. had answered the question in the affirmative.

10. Relying on the reasoning in Dwarkaprasad's case, S. A. No. 461 of 1971 (Mdha Pra) (supra), it is urged by the learned counsel for the appellant that there can be no splitting of the lease merely because of an assignment of a part of the demised premises. As the lessor himself had no right to terminate a part of the lease and to require the tenant to quit a part of the demised premises, the transferee cannot get that right under Section 109, T. P. Act. Singh, J. had relied on *Daulatsingh v. State of Bombay* [3] and *Smt. Durga Rani Devi v. Mohiuddin* [4]

11. It seems to us fundamental that as between the lessor and the lessee there can be no splitting of tenancy and even the Court or the Rent Controlling Authority cannot, by its decree or order, split up a tenancy, unless there is a specific provision in the statute for splitting tenancy. In *Miss S. Sanyal v. Gian Chand,* [5] their Lordships quoted the decision in *Kanwar Behari v. Smt. Vindhya Devi,* [6] where, while considering Section 13 (1) (e) of the Delhi and Ajmer Rent Control Act, it was held:-

> "Where the building let for residence is the entire premises it is not open to the Court to further sub-divide the premises and order eviction with respect to part thereof".

The Supreme Court said:-

> "In our view that judgment of the Punjab High Court was right on the fundamental ground that in the absence of specific provision incorporated in the statute the Court has no power to break up the unity of the contract of letting and attribute incidents and obligations to a part of the subject-matter of the contract which are not applicable to the rest."

(Underlined by us)
This was followed by a Division of this Court in *Shantaram v. Shyam Sunder* [7] where it was held:-

> "Even if any one of the landlords establishes his *bona fide* requirement under Section 12 (1) (e) the decree for eviction must follow for eviction of the tenant from the entire premises demised."

A "specific provision incorporated in the statute" was found by a Full Bench of this Court in *Nathulal v. Ratansi* [8] was sub-clause (8) of clause 13 of the C. P. and Berar Letting of Houses and Rent Control Order, 1949, which reads as follows:-

> "When a landlord applies to the Controller under item (vii) of sub-clause (3), the Controller shall enquire into the needs of the landlord and if on enquiry the Controller is satisfied that the needs of the landlord will be met by the occupation of a portion of the house he shall give permission in respect of such portion only."

The Full Bench held:-

> "In our opinion, under sub-clause (8) of clause 13, there is room for permission for vacating only a portion of the premises, and it is not necessary in every case that the landlord must be given permission to terminate the entire tenancy if he himself wants only a portion. Even if the landlord wants the entire portion, the words of sub-clause (8) enable the Rent Controller to decide what portion of the house would meet the needs of the landlord and he can make order only in respect of that portion."

12. Another fundamental principle is that neither party to a lease can substitute for himself a third party during the subsistence of the contract without the consent of the

other; all the three must mutually agree. But this will be subject to statutory provision incorporated in a statute. A statutory provision overrides a contract, unless the statute permits to contract out of the statute, in which case, there must be such a contract to the contrary, if the contract is to be saved from the effect of the statute. The effect of Section 109 of the Transfer of Property Act is that if a lessor transfers the property leased or any part thereof, or any of his interest therein, the transferee acquires all the rights of the lessor as to the property or part transferred. However, the lessor's liabilities do not cease, unless the lessee elects to hold the transferee liable. The last paragraph of Section 109 is a corollary to the transferee acquiring "all rights of the lessor" when a part of the property leased is transferred; the transferee is entitled only to proportionate rent, i. e., in respect of the part so transferred. If all the three - the lessor" the lessee and the transferee-do not mutually come to an agreement as to the proportion of the rent payable in respect of the part transferred, it may be determined by the Court. The provision recognizes splitting of the rent, when a part of the property is transferred.

13. The proviso to the section creates an exception, that the transferee is not entitled to rent due before the transfer.

14. In our country, the expression "privity of estate" is sometimes used to convey the relationship of landlord and tenant. The expression "assignee of the reversion of part" is used to conveniently convey "transferee of the whole of the interest of the lessor, or part of the property demised". The expression "assignee of part of the reversion" is used to conveniently convey "transferee of a part of the interest of the lessor, in the whole of the demised property". Section 109 applies to three cases:-

> (1) Where the lessor transfers the whole property leased;
> (2) where the lessor transfers any part of the property leased (i. e. assignee of the revision of part); and
> (3) where the lessor transfers any part of his interest in the property leased (i. e. assignee of part of the reversion). It is stated in 51 C. J. S. Para 258, at page 672:-
> "Generally the rights and liabilities existing between the grantee and the lessee are the same as those existing between the grantor and the lessee, after the lessee is given notice of the transfer of the property."

And, it is further stated at page 675 :-

> "The grantee may terminate the tenancy in accordance with the terms of the lease and statutory procedure subject to conditions in the contract under which he purchased the land. After the termination or surrender of the lease the grantee has the same rights as the grantor would have had and holds the premises free from encumbrance of the lease".

15. In *Bengal Immunity Co. v. State of Bihar* [9] S.R. Das, Acting C. J., said:-

> "It is a sound rule of construction of a statute firmly established in England as far back as 1584 when 'Heydon's case' (1584) 3 Co. Rep 7a (V) was decided that:-
> '. . . . . for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:-
> 1st. What was the common law before the making of the Act;
> 2nd. What was the mischief and the effect for which the common law did not provide;
> 3rd. What remedy the Parliament has resolved and appointed to cure the disease of the Commonwealth; and
> 4th. The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, 'pro privato commodo', and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, 'pro bono publico'.

16. At common law, an assignment was not complete without attornment by the lessee to the assignee (will apart). Before the enactment of Section 109 of the Transfer of Property Act (1882), in *Ramalall v. Chundrabulli* [10] it was held that the lessor's assignee could not sue for rent without the lessee atoning to him. There is another decision dated June 1, 1880, of a Full Bench of five Judges of the Calcutta High Court *Ishwar Chunder Dutt v. Ram Krishna Das* [11] in which Garth, C. J., spoke for the Court thus:-

> "That a sale of a share in a tenure, which has been let to a tenant in its entirety, does not of itself necessarily effect a severance of the tenure or an

apportionment of the rent; but that if the purchaser of the share desires to have such a severance or apportionment, he is entitled to enforce it by taking proper steps for that purpose.

If he takes no such steps, then the tenant is justified in paying the entire rent, as before, to all the parties jointly entitled to it. But if the purchaser desires to effect a severance of the tenure and an apportionment of the rent, he must give the tenant due notice to that effect, and then, if an amicable apportionment of the rent cannot be made by arrangement between all the parties concerned, the purchaser may bring a suit against the tenant for the purpose of having the rent apportioned, making all the other co-sharers parties to the suit.

No real injustice will be done to the tenant under such circumstances, because the possibility of severance of the tenure by butwara, sale or otherwise, is only one of those necessary incidents of the property which every tenant is, or must be presumed to have been aware of when he took his lease; and as regards costs of any suit which may be brought for the purpose of having the rent apportioned, they would of course be a matter for the discretion of the Court, and would probably depend upon how far in each case the tenant has had a fair opportunity of amicably adjusting the apportionment.

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It appears to us that this case was rightly decided; and that it is impossible upon principle to distinguish cases where a tenure is sold privately from those where it is sold by public auction; or, on the other hand, to distinguish cases where a tenure is severed by different portions of its area being sold to different persons, from those where it is sold to different persons in undivided shares."

When Section 109 is read side by side, it appears as if the section was drafted with this decision in view.

17. If the demised property contains 10 rooms and the lessor transfers 4 rooms out of them, then according to Sri Padhye's argument, the transferee is not entitled to ejectment or to terminate the lease in respect of those four rooms. It will follow that the lessor also cannot determine the lease in respect of those four rooms because he has ceased to have any right in that part of the property. Thus, in respect of those four rooms, neither the lessor, nor the transferee can terminate the lease, unless both join hands. So also in respect of the remaining 6 rooms, the lessor cannot eject the tenant, nor determine the lease because, according to Sri Padhye's argument, it will amount to

splitting of the lease. And, the transferee also cannot eject the tenant in respect of those 6 rooms, obviously because he has not acquired any right, title or interest in those rooms. The net result will be that in respect of the 10 rooms (i. e. 6 and 4), the lease can never be determined and the tenant can never be ejected, if either the transferee or the lessor exercises so to say the veto.

18. It is settled law that one of the joint lessors cannot alone terminate a lease. Lease must be determined by all the lessors. If one of the lessors desires to determine the tenancy and the other does not, the former has to effect a partition and get his share separated. Then, in respect of the part, which the former acquires by partition, he becomes the sole lessor vis-a-vis the lessee. A partition between co-owners is a transfer of the respective parts of the property within the meaning of Section 109 although, strictly speaking, in respect of the part acquired by a particular co-owner, there is "surrender" by the others of their interest. See *Vinayak v. Moreshwar,* [12] *Pyarelalsa v. Garanchandsa* [13] *Skattar Singh v. Rawela* [14] and *Banarsilal v. Bhagwan* [15] A partition brings about splitting of the tenancy and the co-owner in respect of the part of the property allotted to him in the partition is entitled to eject the tenant. In that case, his right to determine the lease or to eject the tenant will not be dependent on the other separated co-owners joining hands with him; otherwise, the partition will have no meaning and it will amount to this that if one of the co-owners does not want a tenant to be ejected, he could never be ejected either during the continuance of joint owner-ship or even after partition. This demonstrates that the law recognizes splitting of tenancy in circumstances where the original tenancy is substituted either by contract or by statutory effect. It cannot be the law that one of the co-owners can absolutely do feat the right of the other co-owners as regards ejectment of the tenant. He can exercise his veto so long as he continues to be a joint owner. But, after partition, his veto is abolished along with his interest in the part not allotted to him. In *Manikkam v. Rathansami,* [16] it was held:-

> "The words used are 'all the rights' and the expression is very comprehensive. There does not seem to be any reason why the words should be held not to include the right to recover possession by terminating the tenancy of a previous lessee by giving the necessary notice to quit. That is one of the rights of the lessor as to the property transferred."

It has been held that one of the several joint lessors, who had become separately

entitled to a share of the land leased, is entitled to enforce the forfeiture clause in the lease deed separately as regards his share of the lands. It gives sufficient cause of action to the lessor to bring a suit for ejectment. See *Korapalu v. Narayana* [17] where *Cutting v. Derby* [18] and *Doe De Whayman v. Chaplin* [19] have been referred to. See also *Syed Ahmad v. Magnesite Syndicate Ltd.* [20]

19. All these problems are solved by Section 109. In our opinion, that section creates what may be called statutory attornment which substitutes, and has the same effect, as contractual attornment, so that because of a transfer of the leased property, or a part thereof, the transferee *ipso facto* acquires "all the rights" of the lessor, and a new relationship is created between the transferee and the lessee. Letter of attornment is not necessary to complete title to the assignee of the reversion under Section 109. Title of the assignee is complete on the execution of the deed of assignment and is not postponed till the notice of the assignment. See *Pulin Bihary v. Miss Lila Dey* [21] This relationship is statutory. It is not dependent on the consent of the lessee (liabilities of the lessor apart). This is by force of the statute. There is no absolute bar to splitting up of tenancy. What is not permissible is that the lessor cannot unilaterally split up the tenancy and claim ejectment in respect of a part only of the property leased. This is because the lessor cannot create transfer in his own favor of a part of the leased property; nor effect a partition with himself. Therefore, either the tenancy must be determined as a whole or not at all; either the tenant can be ejected from the whole of the property leased or not at all. That is the effect of their Lordships' decision in *Miss S. Sanyal v. Gian Chand AIR 1968 Supreme Court 438* (supra). See also *Harihar Banerji v. Ramsashi Roy* [22] However, the Supreme Court decision itself recognises an exception to the rule when there is a specific provision in the statute. That specific provision is contained in Section 109. By virtue of Section 109, proprio vigore, transfer of a part of the property leased itself splits up the tenancy.

20. The leading case on this point is *Kannyan v. Alikutti* [23] which was decided by a Full Bench of five Judges. In that case, Wallis C. J. (with whom three other Judges agreed) answered the reference in these words:-

> "I would answer that the lessor is not entitled to eject from a part only of the holding, but that the assignee of the reversion in part of the demised premises is entitled to eject for due cause from such part on payment of the value of the improvements to that part."

(Underlined by us)

The following discussion may be quoted from the opinion of the learned Chief Justice:-

> "A lessor cannot give a tenant notice to quit a part of the holding only and then sue to eject him from such part only, as pointed out quite recently by the Privy Council in *Harihar Banerji v. Ramsashi Rov* [24] Consequently. . . . . such a suit does not lie at all."
> "Other considerations, however, arise, where. . . . . the original lessor has parted in whole or in part with the reversion in part of the demised premises. Under the General law such an assignment effects a severance and entitles the assignee on the expiry of the term to eject the tenant from the land covered by the assignment." "There never was any question about this, but it was held in England that, while the assignee of the reversion in part was entitled to the benefit of the covenants in the lease as regards such part, the result of the severance effected by the assignment was to destroy altogether the conditions in the lease as for re-entry for non-payment of rent . . . . . Under the general law the assignee of the reversion in part of the demised premises is entitled to bring such a suit."

(Underlined by us)

It was thus clearly held by the Full Bench that under the general law, such an assignment effects severance. Then it was observed that the words in Section 109: "transferee shall possess all the rights of the transferor in the part transferred" are wide enough. In his dissenting opinion Seshagiri Aiyar, J. was not quite firm, when he said:-

> "I feel no hesitation in saying that neither under Section 109 Transfer of Property Act nor under the general law of the land it is competent to an assignee of a part of the demised premises to elect the tenant from that portion compulsorily during the period of the tenancy. Even if Section 109 is capable of a different construction, I would hold that its operation should not be extended to agricultural tenancies."

In the discussion contained in the opinion of the learned Chief Justice, it is mentioned that the suit was to recover possession "on the expiry of the term". The words "on the expiry of the term the assignee is entitled to eject the tenant", only mean that a suit would lie when the lease is determined. Under Section 111 of the Transfer of Property Act, eight circumstances are enumerated under each of which a lease is determined. The first is "by efflux of time limited thereby". A lease is also determined, for instance, by forfeiture under clause (g) or on the expiry of the notice under clause (h) of Section 111. What was said by the learned Chief Justice was that a suit to recover possession would lie on the determination of the lease. The requirement is that a "suit can be brought only after the determination of the lease. But it is not the same thing as to say that the assignee will not be entitled to eject the tenant, unless the lease was determined before the assignment.

21. We are clearly of the view that by virtue of Section 109, the transferee entitled to eviction from the part transferred to him, not only when the lease had been determined before the transfer but also when it is determined after the transfer in any of the circumstances enumerated in Section 111 of the Transfer of Property Act.

22. In *Smith v. Kinsev* [25] it was held that after Section 140 of the Law of Property Act, 1925, came into operation, the owner of a severed part of a reversion could give the tenant a valid and effective notice to quit the severed part without obtaining the concurrence of the owner of the other part of the reversion. *Bebington v. Wildman* [26] was no more good law. In Bebington's case Peterson, J., had laid down that where the rent had not been legally apportioned, that is to say, where the tenant had not consented to and so not recognized the severance or division of his tenancy, a notice to quit given by the assignee of part of the reversion only was a bad notice. In Section 140 of the Law of Property Act, 1925 the Legislature has not inserted the words found in Section 3 of the Law of Property Amendment Act, 1959, which confined the right of re-entry in the assignee of part of the reversion to cases where there had been a legal apportionment of the rent. By Section 140 of the Law of Property Act, 1925:-

> (1) Notwithstanding the severance by conveyance . . . . . of the reversionary estate in any land comprised in a lease . . . . . every condition or right of re-entry, and every other condition contained in the lease, shall be apportioned, and shall remain annexed to the severed parts of the reversionary estate as

> severed, and shall be in force with respect to the term whereon each severed part is reversionary . . . . . in like manner as if the land comprised in each severed part . . . . . had alone originally been in the lease."
> "(2) In this section 'right of re-entry' includes a right to determine the lease by notice to quit or otherwise".

In our opinion, the effect of Section 109 of the Transfer of Property Act is the same as that of Section 140 of the English Law of Property Act, 1925. Although the wording is somewhat different, the words "all the rights of the lessor in respect of the part" in Section 109 are comprehensive enough in their natural meaning, and there is no reason to give them any restricted meaning.

23. In *Daulatsingh v. State of Bombay 1957 Nag LJ 625* (supra), much emphasis was laid on the words "on the expiry of the term" in the Madras Full Bench case (supra), and it was observed:-

> "No doubt, the learned Chief Justice has said that certain other considerations arise, where, a part of the demised premises is(transferred but even then the learned Chief Justice did not go further than saying that the right of the assignee to eject the tenant from the land covered by the assignment arose on the expiry of the lease. He did not say that the assignee or the transferee acquired this right during the currency of the lease, that is to say, he did not go so far as to say that the transferee by the mere fact of transfer was entitled to terminate the lease in so far as it related to that portion of the demised premises which was obtained by him by transfer".

In our opinion, it would not possibly be said that 'during the currency of the lease' the transferee can sue for ejectment of the tenant. A suit for ejectment lies only when the lease is determined. But it is also evident enough that in view of the clear language of Section 109, it cannot be said that unless the lease is determined, the lessor cannot transfer the property leased or part thereof. If that had been the intention of the legislature, it would have said so.

24. It is an argument that since the lessor had no right to terminate the tenancy by giving notice to quit a part of the demised premises, he could not transfer such a right to the transferee and what would pass to the transferee, consequent on the transfer,

would be only such right as the lessor himself had. As pointed out above, this proposition would be incontestable, so far as the contract is concerned. But the position would be different, if the contract of tenancy is substituted by the parties themselves and the lessee accepts the transferee as the lessor in respect of the part transferred. In that case, the transferee can sue in respect of the part of the property transferred, on the determination of the lease. The same effect has been brought about by the statute (Section 109), when it lays down that the transferee shall possess all the rights of the lessor "as to the part transferred". It follows that the transferee can exercise the right of ejectment in respect of the part transferred in the same manner as the part transferred had alone been comprise in the lease. By virtue of the transfer, the transferee acquires all the rights not only which existed on the date of the transfer, but also which may accrue to him subsequently. Right of ejectment will accrue on the determination of the lease, by efflux of time or forfeiture or by notice, etc.

25. In *Sm. Durgarani Devi v. Mohiuddin* [27] the decision in *Kannyan v. Allikutti* [28] has been dissented from by a learned Judge (sitting singly) with the following observations:-

> "I respectfully dissent from his observation, if it was intended to lay down that the assignee of reversion in part is entitled to give a tenant a notice to quit in respect of that part. I have shown already that such was not the law in England until 1925 and is not the law in India even now."

For the reasons already stated, and with great respect, we are unable to subscribe to that view of the learned single Judge. It is conceded for the appellant that if a transfer of a part of the property is effected after the lease has been terminated, then the transferee is entitled to ejectment in respect of the part transferred to him. What is transferred is really the right, title and interest of the transferor to the transferee. Once the transferee acquires all the rights of the transferor, he necessarily acquires the right to terminate the lease, and since the right, title and interest, which he acquires are only in respect of a part of the property, he is entitle to terminate the lease in respect of the part transferred to him.

26. Another argument is that on the view we are taking, the lessor can adopt this device to eject the lessee just by a nominal or bogus transfer to another, of his confidence. The answer to this apprehension is two-fold: Firstly, it is always permissible to lift the veil and show the real nature of the transfer. Secondly, how will

it be if the whole property is transferred?

27. It may also he mentioned that from the judgment of Bhave J., in *Subbash Chandra v. Radha Ballabh (AIR 1972 MP206)* (supra) special leave to appeal was not granted by the Supreme Court (Petition for special leave (civil) No. 176 of 1971, dismissed (on merits) on February 11, 1971). Shri Agrawal has cited two more unreported decisions of this Court, *Chandra Shekhar v. Niyatram* [29] decided by Raina, J., on 2-7-1970, (Gwalior Bench); and *Dhannalal v. Jineshwar Prasad* [30] decided by S.B. Sen, J., on 28-2-1968, (Gwalior Bench), both of which hold that such a suit is competent. See also *Devasy George v. Lekshmi Amma* [31]

28. The above discussion leads to the following conclusions:-

(1) It is settled law that in the absence of a specific provision in the statute, the tenancy cannot be split up by one of the parties without the consent of the other. The Court or the Rent Controlling Authority also cannot split up the tenancy. The lessee can be ejected from the whole of the demised property or not at all. *Miss S. Sanyal v. Gianchand* [32] and *Shantaram v. Shyam Sunder* [33]

(2) If there is a specific provision which gives the Court or the Rent Controlling Authority power to split up the tenancy, the statute will override; for instance, clause 13 (8) of the C. P. and Berar Letting of Houses and Rent Control Order, 1949, (*Nathulal v. Ratansi).*[34]

(3) If the lessor transfers any part of the property leased the transferee, by virtue of Section 109 of the Transfer of Property Act, acquires all the rights of the lessor in respect of that "part of the property". This means that the transferee possesses all the rights in that part of the property as if it had alone originally been comprised in the lease. If not already determined, the transferee is entitled to determine the lease and sue for ejectment.

(4) If the lessor transfers any part of his interest on the property leased, the transferee becomes a co-lessor and as such, the transferee alone cannot determine the tenancy or sue for ejectment without the other co-lessor joining him, or unless and until the transferee gets a partition effected.

(5) For the purposes of Section 109, a partition is a transfer of the part of the property allotted to each co-owner. It automatically splits up the tenancy.

(6) Section 109 creates statutory adornment and has the same effect as if the lessee by contract attorns to the lessor's transferee in respect of the property

transferred (whole or part, as the case may be).

(7) Although the wording of Section 140 of the English Law of Property Act, 1925, is somewhat different from that of Section 109 of our Transfer of Property Act, the effect of the two provisions is the same.

(8) The right of ejectment is inherent in ownership.

(9) A transferee of a part of the property leased can determine the lease in respect of the part transferred, in any of the circumstances enumerated in section 111 of the Act, and sue for ejectment. There is nothing to restrict this right of ejectment to cases where the lease had been determined before the transfer, or to cases where the lease is determined by efflux of time.

Accordingly, we answer in the affirmative the question referred to us.

Reference answered.

Cases Referred.

1. Second Appeal No. 464 of 1971 (MP)
2. 1972 Jab LJ 881 = 1972 MPLJ 651
3. 1957 Nag LJ 625
4. (1950) 86 Cal LJ 198
5. AIR 1968 SC 438
6. AIR 1966 Pun 481
7. AIR 1972 MP17
8. 1957 MPLJ 805 (AIR 1958 MP218 (FB)). It
9. (1955) 2 SCR 603
10. (1870) 13 WR 228
11. (1880) ILR 5 Cal 902 (FB)
12. ILR (1944) Nag 342 = (AIR 1944 Nag 44 (FB))
13. 1964 Jab LJ 436
14. AIR 1952 J. and K. 18
15. AIR 1955 Raj 167
16. AIR 1919 Mad 1186
17. (1915) ILR 38 Mad 445
18. (1776) 96 ER 633
19. (1810) 128 ER 49

20. (1916) ILR 39 Mad 1049
21. AIR 1957 Cal 627
22. 45 Ind App 222
23. (1919) ILR 42 Mad 603 (FB)
24. AIR 1918 PC 102
25. (1936) 53 TLR 45
26. (1921) 1 Ch 559
27. (1950) 86 Cal LJ 198
28. (1919) ILR 42 Mad 603 = (AIR 1920 Mach 838 (FB))
29. S. A. No. 322 of 1967
30. S. A. No. 461 of 1967
31. AIR 1956 Trav Co. 265
32. AIR 1968 SC 438
33. AIR 1972 MP17
34. 1957 MPLJ 805 (FB)