

MADHYA PRADESH HIGH COURT

Sardarilal

Vs.

Narayanlal

Second Appeal Nos. 445 and 446 of 1975
(G.P. Singh, C.J., C.P. Sen and B.C. Verma, JJ.)

13.03.1979

OPINION

G.P. Singh, J.

1. Second Appeal Nos. 445 of 1975 and 446 of 1973 were heard together by Sohani, J. who, by his order dated 20th February 1978, referred to a full Bench the following common question of law arising in these appeals :

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

2. The facts giving rise to the aforesaid question are as follows :

Rai Bahadur Seth Hiralal was the owner of an open plot of land bearing Municipal No. 15, situated at Nalia Bakhal, Indore. The plot was let out to Sardarilal who is the appellant in both these appeals on a monthly rent of Rs. 50/-. Narayanlal purchased southern half portion of the plot from Seth Hiralal on 16th September, 1967. The remaining half of the plot was sold on the same date by Seth Hiralal to Mohanlal. Narayanlal and Mohanlal issued separate notice on 16th February, 1968 determining the tenancy of Sardarilal with respect to the half portion of the plot purchased by each with effect from 31st March, 1968. The notice issued by Narayanlal was on his behalf and signed by him alone, and similarly the notice issued by Mohanlal was on his behalf and signed by him alone. Two separate suits were then filed, one by Narayanlal and the other by Mohanlal, on the same date for ejection of Sardarilal. The suit filed by Narayanlal relates to the half portion purchased by him, and similarly the suit filed by Mohanlal relates to the other half portion purchased by him. The appellant Sardarilal in both the suits challenged the validity of the notices terminating his

tenancy. It was contended by him that a transferee of a part of the leased property could not alone terminate the tenancy with respect to the part transferred to him; and as the notices were separate notices with respect to the parts transferred to each of the transferees, the notices were invalid. This contention was negated by the trial Court and both the suits were decreed. The decrees were upheld by the first appellate Court. Sardarilal then filed the second appeals. The same contention was repeated before Sohani, J. when the appeals came up for hearing before him. The point was concluded against the appellant by a Division Bench decision in *B.P. Pathak v. Dr. Riyazuddin*¹, Sohani, J. however, was of opinion that the said decision required, reconsideration by a full Bench. It is for this reason that he made this reference.

3. Before we take up the consideration of the question of law referred, we may state that the learned counsel appearing for the respondents in these appeals submitted before us that the two notices should be read together and that the effect of the two notice is that the whole of the tenancy of the appellant stood terminated by a joint action taken by the transferees. In our opinion, it is not open to us to examine this submission. The learned single Judge in the order of reference considered this argument and came to the conclusion that it was not correct to read the notices together and to convert them into a composite notice issued by both the transferees covering the entire leased property. To quote his words : "By combining the two notices given separately by each plaintiff to the defendant, a Court would be reconstructing a notional notice and on the basis of such a notional notice, it cannot be held that the defendant's tenancy was validly determined." The reference made to the full Bench by the learned single Judge does not cover the correctness of this finding reached by him. We can only answer the question of law referred to us on the assumption that the view taken by the learned single Judge that the two notices cannot be read together so as to constitute them as one notice is correct.

4. The relevant statutory provision bearing upon the question referred is Section 109 of the Transfer of Property Act, 1882, which read as follows :

"109. If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer, cease to be

subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him :

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor (2) the lessee shall not be liable to pay such rent over again to the transferee. The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased."

5. Section 109 applies when the lessor transfers the property leased, or any part thereof, or any part of his interest therein. When the transfer is of the entire property leased, there is no difficulty and the transferee gets all the rights of the lessor including the right to terminate the tenancy by issuing a quit notice. In such a case, there is no severance of tenancy and the transferee like the lessor can terminate the tenancy. There is also no difficulty when the lessor transfers a part of his interest in the property, leased. By "any part of his interest" is meant not a fractional share but something less than the entire interest of the lessor. If the lessor sells the property, the transferee gets the whole of the lessor's interest; but if the lessor, instead of selling the property, mortgages or leases the property, the interest so transferred is a part of his interest in the property leased. In such a case also the mortgagee of the lessor or the lessee of the lessor can terminate the lease in the same manner in which the lessor could have terminated the lease *Barjorji v. Shripatprasadji*,² *Manikham v. Ratnaswami*,³

6. The difficulty arises only when the lessor transfers a part of the property leased or any part of his interest in a part of the property leased. The question that then arises is whether the transferee can by a quit notice terminate the lease in respect of the part of the property transferred to him. The argument of Sri Sanghi, learned counsel for the appellant, is that a lease is indivisible and a transferee of a part of the property leased cannot terminate the tenancy of the part transferred to him as that would amount to affecting the integrity of the lease. The argument of the learned Advocate General on behalf of the respondents is that in such a situation Section 109 effects severance of the tenancy in respect of the part transferred by the lessor and the transferee of the part can terminate the lease of the part by a quit notice. It is common ground that apart from statute, a transfer of a part of the property leased does not effect a severance of

the tenancy entitling a transferee of the part of the property leased to terminate the tenancy of the part transferred to him.

7. The point for consideration is thus : whether Section 109 is a statutory provision effecting severance of the tenancy in such cases. The point is not free from difficulty. However, having given our anxious consideration to the problem, we are of opinion that Section 109 has to effect of severing the tenancy in respect of the part of the property transferred by the lessor and the transferee can terminate the tenancy of the part transferred to him. An indication of this is found in the last clause of Section 109 which provides for apportionment of rent in respect of the part transferred even without the consent of the lessee. As enacted therein, the lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.

8. The effect of this clause is to enable apportionment of rent with respect to the part transferred without the consent of the lessee by order of the Court. The provision for apportionment of rent without the consent of the lessee is an indication that Section 109 intends to effect a severance of the lease. A right to terminate the lease by a quit notice is a right of the lessor. The transferee as provided in Section 109 gets 'all the rights' of the lessor by virtue of the transfer 'as to the property or part transferred'. The section thus enables the transferee to exercise all the rights of the lessor including the right to terminate the lease. But then it is argued that the transferee of a part of the property leased only gets all the rights of the lessor in respect of that part and as the lessor himself could not have terminated the tenancy of a part of the property leased, the transferee of the part cannot also terminate the tenancy of the part transferred to him. In our opinion, this is too narrow a construction of Section 109 which fails to take notice of the intention evidence by the last clause to sever the tenancy.

9. Further, if this construction is accepted it would lead to many difficulties. A transferee would be unable to terminate the lease of the part of the property transferred to him unless the lessor agrees to join him in terminating the entire tenancy. The transferee would have no remedy if the lessor refuses, howsoever unreasonably, to terminate the entire lease. It was suggested that the difficulty would be removed by the transferee filing a suit for compelling the lessor to join him in terminating the

lease. But such a suit, even if theoretically possible, would lead to multiplicity of litigation. On the other hand, by holding that Section 109 creates a severance of tenancy when the lessor transfers a part of the property leased, there would be no difficulty and the statute would work harmoniously in the interest of all concerned. If there are two views possible of a statutory provision, it is a well-recognized canon of construction that the view which leads to injustice and inconvenience should be rejected, and the one which is in consonance with justice and convenience should be preferred.

10. It was pointed out by Sri Sanghi that in spite of the transfer the lessor remains subject of the liabilities imposed upon him by the lease unless the lessee elects to treat the transferee as the person liable to him. It was submitted that this shows that there is no severance of tenancy unless the lessee consents. We are unable to agree with this submission. The provision in Section 109 to continue the liabilities of the lessor imposed upon him by the lease unless the lessee elects otherwise is on the principle that a person can only transfer rights and not liabilities unless the person for whose benefit the liabilities exist consents. The provision so made in Section 109 applies even when the transfer is of the whole of the property leased and when the transferee admittedly can terminate the tenancy by a quit notice. Therefore, the continuance by Section 109 of the liabilities of the lessor does not show that there is no severance of the lease when a part of the property leased is transferred and that the transferee of the part cannot terminate the lease of the part transferred to him.

11. It was submitted by Sri Sanghi that if a lessor transfers a fractional share in the property leased, the transferee of the fractional share will also get all the rights of the lessor in respect of the share so transferred to him; and if Section 109 is given a construction permitting the transferee of a defined part to terminate the lease of the part, the transferee of a share in the property leased would also get the same right and would be able to terminate the tenancy of the share transferred to him and that if it is accepted that the transferee of a share cannot terminate the tenancy of the share transferred to him, the transferee of a specific part of the property cannot also terminate tenancy of the part; otherwise, Section 109 will have to be construed differently in these two types of cases for which there is no justification. In our opinion, there is no such difficulty in the application of Section 109 because it does not apply to a case where only a share in the property leased or a share in any part thereof is transferred.

12. We have earlier pointed out that the words "any part of his interest therein" as used in Section 109 do not refer to any fractional share but only to an interest which is not the entire interest of the lessor but something less than that; for example, where the lessor, instead of selling the property leased or a part thereof, mortgages or leases the same it would be said that he has transferred a part of his interest therein. Cases where there is only a transfer of a fractional share in the property leased or in a part thereof would be governed by Section 37, and not by Section 109. A transferee of a share in the property leased or in any part thereof will become a co-owner with the lessor and will stand in the same position as a co-lessor. It is well settled-and this legal position is not disputed before us that a co-lessor cannot terminate the lease and that an effective quit notice for terminating the lease has to be given on behalf of all the co-lessors. See *Nanlal v. G.J. Motorwala*,⁴ and *Abdul Hamid v. Bhuneshwar Prasad*,⁵. The difficulty in the construction pointed out by Sri Sanghi, therefore, does not arise if Section 109 is so understood.

13. Shri Sanghi relied upon the case of *In re Bebington's Tenancy Bebington v. Wildman*,⁶ in support of his submission that a transferee of a part of the property leased cannot terminate the tenancy of the part. In that case, following *Prince v. Evans*,⁷ it was held by Peterson, J. that an assignee of a part of reversion cannot validly terminate the tenancy of that part by a quit notice. *Bebington v. wildman* was overruled by Section 140 of the Law of Property Act, 1925 which specifically enables an assignee of a part of the reversion to terminate the tenancy of that part by a quit notice. Moreover, as pointed out by Romer, J.L. in the case of *Smith v. Kensey*,⁸ the true ratio of the decision *In re Bebington's Tenancy* was 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 a part of the reversion terminating the tenancy of that part only was a bad notice.

14. Romer, L.J., further pointed out that Section 3 of the Law of Property Amendment Act, 1859, which entitled an assignee of a part of the reversion to take the benefit in respect of the conditions of re-entry was applicable only when the rent had been legally apportioned, that is, where the tenant had consented to the apportionment and recognized the severance or division of his tenancy. The law in England in those days was materially different from the Indian law as contained in Section 109 of the Transfer of Property Act which specifically provides for apportionment of rent in

respect of the part of the property transferred even without the consent of the lessee. In our opinion, therefore, the ratio of the case in *In re Bebington's Tenancy* is not applicable to the cases governed by Section 109.

15. Shri Sanghi in support of this argument also relied upon *Ram Kanie Mandal v. Gunesh Chunder Sen*,⁹ *Bhimram Marwari Maharanee Hura Soondery Debee*,¹⁰ *Mt. Nepur Kuer v. Bhan Pratap*,¹¹ and *Arun Chandra v. Panchu Modak*,¹² All these cases were decided without reference to Section 109 and are, therefore, not helpful. Reliance was also placed upon the cases of *Sm. Durgarani Devi v. Mohiuddin*,¹³ *Daulat Singh v. State of Bombay*,¹⁴ and *Ram Charan v. State of U.P.*,¹⁵ These cases do support the contention raised by the learned counsel for the appellant. But, with great respect, we are unable to agree with the view taken in them. The cases do not give due importance to the fact that Section 109 provides for apportionment of rent without the consent of the lessee indicating severance of tenancy. The cases also take too narrow a view of the words "all the rights" of the lessor as used in Section 109. For the reasons given earlier by us, we respectfully dissent from the view taken in these cases. We may point out that the Allahabad High Court took a view, similar to that taken by us here in *Ram Chandru v. Ram Saran*,¹⁶

16. A number of cases of the Madras High Court were cited before us. These cases are : *Shri Raja Simhadri Appa Rao v. Praitipali Ram, Ayya*,¹⁷ *Korapalu v. Narayana*,¹⁸ *Ahmed v. Magnesite Syndicate Ltd.*¹⁹ and *Manikkam v. Ratnaswami and Kannyan and Kannyan v. Allicutti*,²⁰ None of these cases covers the point arising before us. The cases of *Manikkam v. Ratanswami (supra)* and *Kannyan v. Allicutti (supra)*, which were strongly relied upon by the learned Advocate General, are clearly distinguishable. In the former case, the transfer by the lessor was of the entire property leased by a subsequent lease of 20 years and the subsequent lessee terminated the prior lease by a notice to quit. The question whether the transferee of a part of the property leased can terminate the tenancy did not arise for consideration in that case. In the latter case, the lease terminated by efflux of time and, therefore, the question whether the transferee of a part of the property leased could terminate the lease by a quit notice did not come up for consideration.

17. As a result of the above discussion, we answer the question referred to us in the affirmative. Both the second appeals shall now be laid before the learned single Judge for final disposal.

Cases Referred.

1. 1976 Rent Control Reporter 106: 1976 MPLJ 9
2. AIR 1927 Bom 145
3. AIR 1919 Mad 1186
4. 1973 Rent Control Reporter 581 (FB) : AIR 1973 Guj 131
5. AIR 1953 Nag 18
6. 1921(1) Ch. 559
7. 1874(29) D.L.T. 835
8. 1936(53) TLR 45
9. 1921(33) Cal. L.J. 513
10. 1921(33) Cal. L.J. 516
11. AIR 1935 Pat 227
12. AIR 1957 Ass 70
13. 1950(86) Cal L.J. 198
14. 1957 Nag. L.J. 625
15. 1969 Rent Control Reporter 855
16. AIR 1978 All 173
17. 1906(1) LR 29 Mad 29
18. AIR 1915 Mad 313
19. AIR 1917 Mad 151
20. AIR 192 Mad 838 (FB)