

# **BOMBAY HIGH COURT**

Treasurer of Charitable Endowments

Vs.

S.F.B. Tyabji

O.C.J. Appeal No. 66 of 1947: Suit No. 701 of 1947

(M.C. Chagla, C.J. and Bhagwati, J.)

10.02.1948

## **JUDGMENT**

### **M.C. Chagla, C.J.**

1. This is an appeal from the judgment of Mr. Justice Coyajee by which he dismissed the plaintiff's suit. The facts leading up to this litigation may be briefly stated. On May 1, 1933, the plaintiff let to Fifi Frenais flat No. 4 in Candy House situated at Mandlik Road, Fort. On March 1, 1939, he let to her flat No. 2 in the same building. With regard to flat No. 2 the terms of the tenancy were reduced to writing and the terms were that she was to be a monthly tenant at L 155 per month with one month's notice ending with the calendar month given "by either party to terminate the tenancy and the rent was to be paid in advance every month on or before the 10th of each month. The tenant also agreed not to sub-let or re-let the premises without written consent. Parties were agreed that the same terms of tenancy also applied to the letting of flat No. 4. On June 11, 1946, Fifi died. On November 6, 1946, Messrs. Section F. B. Tyabji & Co. wrote to the plaintiff stating that they were going to sell the business of the deceased which was carried on by her in the name of Madame Cecile as a milliner with the goodwill and also the premises and they asked the plaintiff to state that they had no objection to the purchaser of the business continuing on the premises as his tenant. On November 8, 1946, plaintiff replied stating that he could not accept anybody who came forward as the purchaser of the shop as the tenant. He pointed out that the purchaser must have his previous consent and he would have to deposit three months' rent in advance. On November 16, 1946, letters of administration to the estate of Fifi were issued to the defendant in this suit. The rents of these two flats were paid up to December 31, 1946. On December 18, 1946, the defendant assigned to one Mrs. Safiabai Cassum. Ahmed flat No. 4. The deed of assignment shows that L 255 was charged for the assignment of the tenancy relating to Hat No. 4. On December 19, 1946, the defendant informed the Secretary of the plaintiff that he had assigned the flat. On December 21, 1946, the defendant assigned flat No. 2 to the same Mrs. Safiabai Cassum Ahmed. It seems that there was an auction sale at the office

of the defendant at which the stock, furniture, goodwill and the benefit of the tenancy in this flat were all sold first to one M. Rashid who ultimately sold it to Mrs. Safiabai Cassum Ahmed and Mr. Rashid executed the deed of assignment as a confirming party. The deed of assignment shows that the benefit of the tenancy was sold at L 500. On December 27, 1946, Messrs. Wadia Ghandy & CO., solicitors for the plaintiff, gave notice to the defendant terminating the tenancy of flats Nos. 2 and 4 and calling upon him to deliver over peaceful and vacant possession of those flats on January 31, 1947. On February 10, 1947, on behalf of Mrs. Safiabai Cassum Ahmed, the assignee, the solicitors Section F. B. Tyabji & Co. tendered rent to the plaintiff in respect of both the flats for the month of January, 1947, and on February 11, the plaintiff's attorneys replied to that letter pointing out that Mrs. Safiabai Cassum Ahmed was not the tenant of the plaintiff and refusing to accept the rent. On March 12, 1947, Safiabai tendered rent for the month of February 1947 in respect of both the flats and on March 17 the plaintiff's solicitors wrote to her pointing out that she was not the tenant of these flats and that their client did not recognize her as such, and the cheque which was sent by Safiabai in respect of the rent was returned by Messrs. Wadia Ghandy & Co. On March 17, 1947, the plaintiff filed the suit from which this appeal arises against the defendant for ejectment and for rent for January 1947 and compensation for use and occupation from February 1, 1947, till possession was handed over.

2. The main contention of the defendant, which has been argued before us in appeal and which found favor with the learned Judge, is that the plaintiff's suit against the defendant as the lessee was not maintainable inasmuch as there was an assignment of the lessee's interest in favor of the assignee. It has been urged upon us by Mr. Taraporewalla that the notice to quit served by the plaintiff upon the defendant was not a valid notice which terminated the tenancy. According to Mr. Taraporewalla, on the assignment being executed, the notice should have been served upon the assignee. It was further contended by Mr. Taraporewalla that a decree for ejectment could not go against the lessee inasmuch as on the assignment taking place, it was the assignee who was entitled to be in possession of the premises and all interest in those premises vested in the assignee and no interest was left outstanding in the lessee.

3. The lessee has been given the right to transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property demised by Section 108 (j) of the Transfer of Property Act. It was the contention of the appellant that as a matter of fact on the true construction of the letter of the tenancy, to which I have referred, it was not open to the tenant to assign without the written consent of the lessor. We have not gone into that matter and the appeal has been argued on the assumption that the lessee had the right to assign without the consent of the lessor. But I may point out that the law is clear that even where the consent of the lessor is required and the lessee assigns without such consent, the assignment is valid and operative, and the only right that the lessor has is to sue the lessee for damages for breach of covenant: see my judgment in *Nadjarain v. Trist*<sup>1</sup>

4. The question that arises for determination in this appeal is what are the rights and liabilities of

the lessee when he has transferred absolutely his interest in the property. Clause (j) of Section 108 expressly provides that the lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease. It is clear that as far as the privity of contract is concerned, the only person liable as between the lessor and the lessee is the lessee himself. There is no privity of contract established by the assignment executed by the lessee in favor of the assignee. But there comes into existence a privity of estate between the assignee and the lessor. But although such a privity of estate comes into existence between the lessor and the assignee, the lessee

1(1944) 47 Bom L.R. 209

continues to remain liable in respect of all his covenants by reason of privity of contract which still continues to subsist as between the lessor and the lessee. In my opinion, if there is no contract, then the provisions of Section 108 would apply and all the statutory obligations cast upon the lessee by Section 108 would bind the lessee notwithstanding his transferring his interest absolutely to another person. The latter part of clause (j) is in my opinion very plain. It lays down that the lessee shall not cease to be subject to any of the liabilities attaching to the lease by reason only of the fact that he has transferred his interest. Therefore, all the liabilities attaching to the lease to which he was subject would continue notwithstanding the transfer or assignment. To put it in a different language, a lessee cannot by his unilateral act, by assigning his interest in the leasehold premises, put an end to the obligations which he has undertaken either by the contract of lease or under the statute under Section 108.

5. Mr. Taraporewalla has argued that on the assignment taking place, all those covenants which run with the land have to be observed only by the assignee in whom the property is vested and that the lessee is relieved of his obligations to discharge those covenants. According to him after the assignment he is only liable to perform those obligations which are personal in their character. Both the English law and the law here, as I shall presently point out, is clear on this point that on an assignment taking place, if the lessor chooses to accept the assignee as his tenant, then as far as the obligation to pay rent is concerned, it may be that the lessee would be freed from that obligation. With regard to the covenants that run with the land on the assignment taking place, the lessor would have the right to go against the assignee to enforce those covenants. But this does not mean that his right to go against the lessee would be in any way impaired. By reason of the assignment the assignee also would be made liable. Mr Taraporewalla is wrong when he says that by reason of the assignment, only the assignee would be liable on covenants which run with the land. Just as the lessor by reason of the privity of estate between him and the assignee could enforce against the assignee those covenants which run with the land, similarly the assignee in his turn can enforce against the lessor covenants which run with the land. Therefore these rights and obligations are mutual and co-related.

6. One of the statutory obligations of a lessee is to be found in Section 108 (q), and that is that on the determination of the lease the lessee is bound to put the lessor into possession of the property. It is undoubtedly a liability attaching to the lease, and under clause (j) of Section 108 it is clearly

provided that by reason only of a transfer of interest by the lessee to his transferee this obligation on the part of the lessee does not come to an end. Therefore, notwithstanding the two assignments in this suit, the lessee continued under an obligation on the determination of the lease to put the lessor into possession of the property, Mr. Taraporewalla has argued that once there was an assignment of the tenancy, it was not open to the lessor to terminate that tenancy without giving notice to the assignee. The fallacy to my mind underlying that argument is this. What was assigned to the assignee by the lessee was the interest in a monthly tenancy. A monthly tenancy is a tenancy which is liable to be determined by a notice of one month given by the lessor to the lessee. Therefore, the term that was assigned to the lessee was a term which was liable to be determined and put an end to in that manner. It is important to note that a monthly tenancy is determined by a notice given by a lessor to the lessee, and therefore by reason of the assignment this contractual term in the tenancy agreement was not and could not be affected. The right remained in the lessor to put an end to his tenancy by giving a proper and valid notice. I do not see why there was any obligation on the lessor to give a notice to the assignee. He was not his tenant, there was no contractual obligation between him and the assignee, the privity of estate did not necessitate the giving of a notice to him. His right to give a notice arose under the contract to his own tenant, and, notwithstanding the assignment, the lessee continued to be his lessee and, in my opinion, it was perfectly competent to the lessor to terminate the monthly tenancy by giving a proper and valid notice to the lessee. In this case it is not disputed that the notice was a valid and proper notice. The only objection taken to it is that it should not have been addressed to the lessee but should have been addressed to the assignee.

7. It is also to be borne in mind, as I have already pointed out, that the obligation to hand over possession of the property on the determination of the tenancy was not upon the assignee but upon the lessee. If that was so, the proper person to whom the notice should have been addressed was the person on whom was the ultimate obligation to hand over possession of the property. I see no difference in principle between a lease for a fixed period which would expire by efflux of time and a monthly tenancy. In the case of the former what is transferred to the assignee is the interest for the term. On the expiry of the period the lease comes to an end and the interest of the assignee also comes to an end. In the case of a monthly tenancy there is no term fixed. But it is liable to be determined by a month's notice given by the lessor to the lessee, and that is the interest which the assignee takes, and, as soon as that notice is given and the notice expires, the tenancy comes to an end, and with that the interest of the assignee also ceases,

8. I shall now very briefly review the authorities bearing on the point which were cited at the bar. I shall first look at the text books and see what is the statement of the law which they have enunciated. Halsbury, Vol. XX, para 434, p. 359, states this:

The assignment of the lease does not prejudice the personal contract between the lessee and the lessor and accordingly the lessee remains liable on the covenant for payment of rent and the other covenants on his part contained in the lease unless the lease otherwise

provides; but as regards the covenants which run with the land, the assignee also becomes liable to the lessor by reason of privity of estate.  
(Note the expression also).

And again at p. 364, para 440:

The liability of the lessee to the lessor continues notwithstanding that the lease has been assigned, and that the lessor has a remedy against the assignee for the rent and on the covenants running with the land. The remedy as against the lessee is founded on privity of contract; and as against the assignee on privity of estate.

9. Therefore, the distinction made after the assignment is that whereas the lessee remains liable by reason of privity of contract, the assignee is liable only by reason of privity of estate.

10. Platt on Leases, Vol. II, p. 352, says this;

It is perfectly settled by a multitude of decisions, that, notwithstanding an assignment of his lease, the lessee continues liable, on the personal privity of contract, to the payment of the rent and the performance of the covenants, during the whole term; although the lessor concur in the assignment, or, by acceptance of rent, or otherwise, recognize the assignee as his tenant; and although the breach be committed after the assignment; and although a tender be made by the assignee of the very rent for which the lessee is sued; for if a plea of assignment and tender could be supported, the lessor might be compelled to accept an assignee contrary to his inclination.

In Hill and Redman on Landlord and Tenant (10th edn.) at p. 518 the statement of the law is to the same effect:

The assignment of the lease does not prejudice the personal contract between the lessee and the lessor, and, accordingly, the lessee remains liable on the covenants for payment of rent and the other covenants on his part contained in the lease unless the lease otherwise provides; but as regards covenants which run with the land, the assignee also becomes liable to the lessor by reason of privity of estate.

11. And Lord Mansfield in *Boot v. Wilson*<sup>2</sup> has succinctly stated the true position (p. 316:)

A lessee cannot by his own act, without the assent of the lessor, destroy the tenancy; and therefore, until such assent is given, the lessor may avow upon the lessee as his tenant, notwithstanding an assignment has been made, and the assignee is actually in possession of the land,

12. Mr. Taraporewalla's argument, if it were to be accepted, would result in the language of Lord Mansfield in the destruction of the tenancy, because although the lessor entered into the contract of tenancy with the lessee, although there was a statutory obligation upon the lessee to hand over possession to him at the termination of the tenancy, according to Mr. Taraporewalla, it was competent to the lessee unilaterally, without the assent of the lessor, by merely assigning the lease to destroy a most important term of the lease, divest himself of the obligation to return the property at the end of the tenancy, and throw that obligation upon some one else whom the lessor has never recognized.

13. To the same effect is a decision of the Madras High Court in *Kunhanujan v. Anjelu*<sup>3</sup> In that case Mr. Justice Muttusami Ayyar stated the law in the same terms as I have been indicating and the learned Judge considering Section 108 (j) at p. 297 says that that clause provides that the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or part of his interest in the property, and the lessee shall not, by reason of such transfer, cease to be subject to any of the liabilities attaching to the lease. But from this, says the learned Judge, it does not follow that the transferee is not also liable. The lessor may at the same time sue the lessee upon his express covenant, and the assignee upon the privity of estate, though he can have execution against only one.

14. Mr. Taraporewalla has strongly relied on a decision of Sir Lawrence Jenkins in  
<sup>2</sup>(1807) 8 East 311

<sup>3</sup>I.L.R. (1889) 17 Mad. 296

*Basarat Ali Khan v. Manirulla*<sup>4</sup> In that case the lease contained an express covenant that the lessee was not entitled to transfer the land leased in any way without a letter from the lessor giving the necessary permission. The lease did not contain a provision with regard to the right of re-entry. The lessee assigned her interest under the lease without any permission from the lessor, and Sir Lawrence Jenkins, Chief Justice and Mr. Justice Mookerjee held that the assignment was operative notwithstanding the covenant. Looking to the facts of this case, what happened was that defendant No. 2 was the permanent tenant of defendant No. 1 and defendant No. 2 sold to the plaintiffs her interest in the leasehold. Thereafter, defendant No. 1 the landlord brought a suit against defendant No. 2 for arrears of rent, obtained a decree, and in execution of the decree he purchased the leasehold property at an auction sale. The plaintiff then filed the suit alleging that defendant No. 1 did not get any interest at the auction sale as defendant No. 2 had no interest left in the leasehold property, and Sir Lawrence Jenkins and Mr. Justice Mookerjee holding that the assignment was valid came to the conclusion that from that it followed that the title of defendant No. 2 passed to the plaintiff and that defendant

15. No. 1 took nothing by his purchase in the execution proceedings. With very great respect, I entirely agree with what is stated in this judgment. So long as the assignment continues, it is perfectly true that all the right, title and interest of the lessee vests in the assignee. But that question has nothing whatever to do with the obligations of the lessee after the assignment has taken place. In this case also so long as the monthly tenancy lasted, the defendant had no interest

in that tenancy, but his obligation to hand over possession of the premises on the termination of the tenancy continued notwithstanding the assignment.

16. Then Mr. Taraporewalla has relied on two judgments of this Court to which Sir John Beaumont Chief Justice was a party. The first is one reported in *Abdul Rehman v. Sir Phiroze Sethna*<sup>5</sup> and the other is *Bombay Municipality v. Vasantlal*<sup>6</sup>, In the first case Mr. Justice Wadia who tried the case held that the lessee had been discharged from his obligation to pay the rent. In appeal Sir John Beaumont and Mr. Justice Blackwell held that the liability of the lessee to pay the rent continued notwithstanding the assignment and notwithstanding the fact that the lessor had accepted rent from the assignee. Far from the decision helping Mr. Taraporewalla, the observations of Sir John Beaumont at p. 64 go against him, because on that page, after setting out the provisions of Section 108, what the learned Chief Justice says is this:

That provision seems to me to introduce the English rule, which is well established, that the lessee remains liable on his covenants contained in the lease notwithstanding an assignment. That English rule, to my mind, admits of no doubt whatever. It has been established in a great many cases, and is referred to in all the text books,

17. Then he discusses the old English eases which turned on the action for rent on the reddendum as an action of debt which depended upon the privity of estate, and in those cases it was held that on an assignment such an action would not lie. But Sir John Beaumont points out that where there is a direct covenant by the lessee to pay the rent

<sup>4</sup> I.L.R. (1909) 36 Cal. 745

<sup>6</sup> AIR 1938 Bom 360 : (1938) 40 Bom LR 497

<sup>5</sup>(1935) 38 Bom. L. Rule 34

during the whole currency of the term the lessor can enforce that covenant notwithstanding the assignment.

18. In the other case Mr. Justice Kania, the trial Judge, had held that the lessors had by their conduct impliedly released the original lessees from their covenant to pay rent. The Court of Appeal reversed the decision of Mr. Justice Kania, and, at p. 504, Sir John Beaumont says that he did not agree with the view of the learned trial Judge about the lessee being released from his covenant. Then he sets out what the learned Judge relied on for coming to that conclusion and at the bottom of the page he ends up by saying:

...references to the assignee as a lessee are not, in my opinion, nearly strong enough to justify an inference that the lessors released their claim against the original lessees." And he proceeds to say:

After the lessees assigned the lease, which they were entitled to do, the lessors were bound to recognise the assignee as their tenant, and it would be in accordance with normal practice for them to refer to the person entitled to the lease as a lessee.

19. Now, says Mr. Taraporewalla, that Sir John Beaumont has held that in every case of an

assignment, the lessors were bound to recognize the assignee as their tenant. Sir John Beaumont has done, with respect, nothing of the sort, because he is merely in this part of his judgment meeting the arguments advanced by Mr. Justice Kania in the trial Court, and he points out that in this particular case where the lessee had the right to assign without the previous consent of the lessor and the lessee did assign, the natural thing would be for the lessor to recognize the assignee as his tenant. He is dealing with the facts of the case before him and the arguments advanced before him and he is not laying down any statement of general law.

20. The other case of this Court on which Mr. Taraporewalla has relied is a decision reported in *Gopal v. Shrinivas*<sup>7</sup>. That is a decision of Mr. Justice Beaman and Mr. Justice Heaton. There, there was a permanent tenancy and the tenant assigned the tenancy. The landlord filed a suit for ejectment against the assignee on the ground that there was a forfeiture of the lease because the tenant had denied the title of his landlord and Mr. Justice Beaman and Mr. Justice Heaton held that the mere repudiation by the tenant of the plaintiff's title did not work as a forfeiture against the assignee. Strong reliance is placed on certain observations of Mr. Justice Beaman at p. 832. This is what the learned Judge says:

Now, along with the assignment of a lease go all covenants running with the land and there remain only in the assignor personal covenants or obligations which may be enforced against him by the lessor,

21. With very great respect, this observation was not called for the decision of that case and again with very great respect this observation is contrary to the statement of the law to be found in the text-books and the authorities to which I have already referred. As Mr. Justice Heaton points out in his judgment, that decision was really based on the fact that under Section 115 of the Transfer of Property Act the result of a forfeiture is that all

<sup>7</sup>(1918) 20 BOM LR 830 : 47 Ind. Cas. 635

under-leases are annulled as a result of forfeiture and as Mr. Justice Heaton points out, as Section 115 merely refers to under leases and does not refer to assignments, therefore the Legislature did not intend that the result of the forfeiture should be the annulment of all assignments but restricted the operation of the forfeiture to merely under-leases.

22. Mr. Taraporewalla has also relied on a decision of the Privy Council reported in *Ram Kinkar Banerjee v. Satya Charan Srimani*<sup>8</sup> Their Lordships in that case held that a mortgagor does not assign to a mortgagee the whole of his interest, because the equity of redemption still remains in the former, and therefore when a mortgagor assigns his interest under a lease to a mortgagee, he does not transfer an absolute interest, and consequently the mortgagee does not become liable for the burdens of the lease by privity of estate. Mr. Taraporewalla has relied on the observations in the judgment of the Board delivered by Lord Porter (p. 58):

By English law and by Indian law an assignee of a lease is liable by privity of estate for

all the burdens of the lease, burdens which are imposed upon him by the mere assignment, whether he enters into possession or not.

23. What their Lordships are laying down here is the obligation of an assignee and it is not disputed, as I have already pointed out, that on an assignment the assignee does become liable to the covenants which run with the land, and their Lordships go on to say (p. 58):

The ground upon which he (i.e. the assignee) is held liable is that the whole of the assignor's interest has passed to him by the deed of assignment and that the assignor, having no longer any interest, cannot be liable by privity of estate, though he still remains liable by contract, if he was party to the original lease.

24. Therefore, their Lordships clearly stated that the assignor continues to be liable in respect of his obligations by privity of contract though the assignee is liable by privity of estate. To the same effect is a subsequent decision of the Privy Council in *Jagadamba Loan Co, v. Raja Shiba Prasad Singh*<sup>9</sup>,

25. With very great respect to the learned Judge below, he took the view that the whole question between the parties was whether the defendant was entitled to assign and whether the assignment was valid in law. The real question is not whether the assignment is valid, but what are the results that flow from that assignment, and, as I said earlier, the whole of this appeal has been argued on the basis and on the assumption that a valid assignment was executed by the lessee in favor of the assignee. In my opinion, therefore, the plaintiff's suit against his tenant was maintainable notwithstanding the assignment in favor of the assignee. In my opinion also the plaintiff was competent to terminate the monthly tenancy by giving a valid notice to his tenant or his representative as the defendant happened to be, and, in my opinion, on the termination of that tenancy the obligation was upon the tenant to hand over possession to his landlord, an obligation cast upon him by the statute under Section 108 (q). We would, therefore, reverse the decision arrived at by the learned Judge and would pass a decree in favor of the plaintiff in terms

<sup>8</sup>(1938) L.R. 66 IndAp 50

<sup>9</sup>1941-54-LW 43 : 1941-54-LW 3 : (1940) L.R. 68 I.A. 67

of prayers (a), (b) and (c) of the plaint.

26. I may mention that Mr. Taraporewalla conceded that his client was not entitled to the protection of the Rent Restriction Act, and if we held that the notice was validly given and the tenancy validly terminated, no question arose as to his being protected as a statutory tenant under the Rent Restriction Act. Mr Taraporewalla, however, said that the assignee would be entitled to obtain the protection of the Rent, Restriction Act. We are not concerned with the assignee as he is not before us and we are not adjudicating upon his rights.

27. Mr. Kolah has contended that he should be given relief in terms of prayer (d) of the plaint, viz. that in the event of the estate being insufficient to pay rent and, compensation claimed in

prayer (b) of the plaint from the estate of the deceased, he should be allowed to go against the defendant personally. An administrator of a tenant is not liable personally for the rent or compensation unless he enters upon the premises, and, although there is a prayer to that effect in the plaint, there is no averment whatever in the body of the plaint on which this prayer is based. As there was no averment, no occasion arose for the defendant to reply to such an averment in the written statement, and no issue to that effect was also raised before the learned trial Judge. Under the circumstances we do not think that the plaintiff is entitled to relief as asked for in prayer (d) of the plaint.

28. The order, therefore, will be that the appeal is allowed with costs throughout and decree for the plaintiff in terms of prayer (a), (b) and (c) of the plaint,

**Bhagwati, J.**

29. The facts have been stated sufficiently in the judgment just delivered by the learned Chief Justice and I need not repeat the same.

30. It is clear that the assignments of the two flats were made by the defendant in favor of the assignee on December 18, 1946, and December 21, 1946. The rents were paid only up to December 31, 1946, in accordance with the terms of the agreement between the deceased and the plaintiff which provided that the rent was to be paid in advance every month on or before the 10th of each month. After the assignments were executed, the rents for January 1947 became payable on or before January 10, 1947, but neither the defendant nor the assignee tendered the rents for that month until by the letter, dated February 10, 1947, addressed by the attorneys of the assignee to the plaintiffs. The same was the position with regard to the rents for February 1947 which were only tendered along with a similar letter dated March 10, 1947. In the result, the important term of the tenancy, viz. that the rent was to be paid in advance on or before the 10th of each month, was not performed either by the defendant or the assignee. Even though the contention was taken in paragraph 15 of the written statement that the assignee as well as the defendant were entitled to the protection of the Bombay Rent Control Act, 1944, that contention was wisely not pressed by counsel for the respondent, and the only point which was argued before us was the one which was taken in paragraph 11 of the written statement, viz. that after the said assignments of the tenancies the plaintiff was not entitled to serve the said notice requiring the defendant to deliver possession of the said flats on January 31, 1947, and that the said notice was not valid.

31. It is argued by counsel for the respondent that once the assignment was made by the lessee in favor of the assignee, there was no interest in the property left in the lessee, that notice determining the lease could only be given by the lessor to the person in whom the property had vested, viz. the assignee, and that therefore the notice, which was given to the lessee who had no interest in the property left in him after the assignment, was not valid or was not sufficient in law to determine the lease, and that, therefore, there being no valid determination of the lease in

accordance with the provisions of Section 111(h) of the Transfer of Property Act, the plaintiff was not entitled to maintain the suit. It is argued that you must divide all the liabilities attaching to the lease in two distinct compartments, (1) the liabilities which may be described as comprised in the personal covenants, and (2) the liabilities which can be described as comprised in the covenants running with the land. There is, no doubt, privity of contract between the lessor and the lessee, but when once the lessee, in exercise of the power reserved to him in that behalf under Section 108(j), executes the assignment of his interest in the lease-hold property in favor of the assignee, privity of estate ceases to exist between him and the lessor. The privity of estate is thereafter established between the lessor and the assignee. It is argued that as a result of this position the lessee ceases to be liable in respect of all the covenants which run with the land. He loses all interest in the property and he continues to be liable to the lessor only in respect of those covenants which may be described as personal covenants inclusive of liability to pay the rent in respect of the property.

32. The position in law has been sufficiently set out in the judgment just delivered by the learned Chief Justice, and it is not worthwhile repeating the same. What we are concerned with here in particular are the provisions of Section 108 of the Transfer of Property Act. It has been said over and over again that when the sections of the Statutes here are clear, they are the only things to be referred to and it is no use deriving any assistance, even though considerable aid may be otherwise derived, from the principles of the English law particularly in matters where the law is laid down by the statutes enacted by the Indian Legislature : vide *Mulraj v. Vishwanth*<sup>10</sup> I shall, therefore, confine my observations in the later part of my judgment only to the consideration of the provisions of Section 108 and the relevant provisions of the Transfer of Property Act. Section 108 lays down:

In the absence of a contract or local usage to the contrary, the lessor and the lessee of Immovable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased : " and Section 108(j) which is important in connection with this case lays down:

The lessee may transfer absolutely or by way of mortgage or sublease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease.

Sections 108 (k) to (17) contain provisions which define and lay down the liabilities of the lessee. The liability to pay rent and the liability also on the determination of the lease to put the lessor into possession of the property are two of the prominent liabilities which are enacted in Section 108, Sub-sections (k) to (q). These are the liabilities attaching to the lease and Section 108(j) lays down specifically that the lessee shall not, by reason only of such transfer, cease to be

<sup>10</sup>(1912) 15 Bom. L.R. 9, P.C

subject to any of the liabilities attaching to the lease. There is no distinction drawn in this Section 108 between what has been urged by the counsel for the respondent, as, the personal liabilities or the covenants as on a privity of contract and the covenants running with the land which are the result of the privity of estate being established between the parties. All the liabilities attaching to the lease are the subject-matter of this enactment, and when it is specifically laid down that by reason only of the transfer the lessee shall not cease to be subject to any of the liabilities attaching to the lease, it is inconceivable to my mind how by any act of assignment on the part of the lessee the lessee can divest himself of the liability which is laid down specifically in Section 108(q), viz. that of putting the lessor into possession of the property on the determination of the lease. This, to my mind, is a sufficient answer to all the arguments which have been addressed by the counsel for the respondent. This is the position which is also in consonance with the passages from the English text books which have been set out in the judgment of the learned Chief Justice. This is also the position which has been set out in the judgments of the High Courts in India and also the Privy Council which have been referred to therein, and there is no doubt that so far as the position in law is concerned, unless there are circumstances which can be proved before the Court which would go to show that the lessee is released from any of the liabilities, attaching to the lease, even though by reason of the privity of the estate which is established between the lessor on the one hand and the assignee on the other, the assignee becomes liable in respect of the covenants running with the land, the lessee does not cease to be liable in respect thereof and his liability in respect, thereof to the lessor is not put an end to or discharged in any manner whatever. By reason of the privity of estate being established between the lessor and the assignee the lessor obtains the additional advantage of being able to pursue the assignee in respect of the covenants running with the land. That does not mean that there is the cessation of the liability of the lessee to the lessor which was the liability created by the terms of the indenture of lease itself if it contained any of these provisions or by virtue of the provisions of Section 108 of the Transfer of Property Act which do attach, in the absence of a contract or local usage to the contrary.

33. The next point to consider in this connection is, if there was the liability of the lessee as also that of the assignee in connection with the various liabilities attaching to the lease, how far was the lessor bound to give notice also to the assignee? In this case the notice to quit was given by the lessor only to the lessee. He did not recognize the assignee at all, the assignments having been executed by the lessee against his consent and contrary to the provisions of the terms of the agreement between the parties. If the argument of the counsel for the respondent was correct, the lessor was bound to give the notice to quit to the assignee and not to the lessee because the lessee had divested himself of all interest in the property. It was argued that if the lessee had divested himself of all interest in the property, there was no term of the lease which had got to be determined. A lease being a transfer of property, the property had vested in the assignee. The assignee was the only person in whom the property had vested by reason of the assignment, and

therefore the property also having vested in him, the term could only be determined by notice to quit given by the lessor to him. So far as this argument is concerned, the shortest answer to it is to be found in the provisions of Section 108(q) of the Transfer of Property Act. If the argument is correct, there would be a severance of two things, (1) the determination of the tenancy, and (2) the delivery back of the possession of the property. The first act would have to be done qua the assignee, and the second act would have to be done by the lessee. Realising this difficulty, counsel for the respondent was driven to argue that in those circumstances Section 108 (q) would not come into operation at all. The lessee would no more be in possession of the property, and, therefore, would not be bound to put the lessor into possession of the property. In my opinion there is no warrant for this argument. Section 108 specifically enacts that on the determination of the lease the lessee is bound to put the lessor into possession of the property. The lessor has not got to go all over the place to find out who is the assignee in whose favor the lessee has executed the assignment and to give the notice to quit to the particular assignee whom he may be successful in tracing. If regard be had to the provisions of Section 108(j), they not only sanction the assignment by the lessee in favor of a particular assignee of the whole or a part of his interest in the property, but they also sanction the assignment by the transferee again to another assignee in his turn. By the time a notice to quit be given by the lessor the position may be that by reason of the successive assignments of the whole or part of the interest in the property by the lessee or his assignees, a number of persons may have come to acquire the property either wholly or in part, and if the position is accepted, the lessor may have to find out who the particular assignees are who are in possession of the property. It may involve the lessor into the investigation of the proper position as regards the property with reference to each or all of those assignees and also with reference to the whole or particular parcels of the property in which the property may have been parceled out by the successive assignees in their turn. I do not think that such an absurd conclusion was ever contemplated by the Legislature. The only reasonable construction which I can put on the provisions of Section 108 is that whatever may be the position between the lessee and the assignee or the assignees of the whole or part of the property, so far as the lessor is concerned, he is bound to give notice only to his lessee; the assignee or assignees claim only under the lessee, and even though privity of estate be established between the lessor and the assignee or assignees in particular or conceivable circumstances, it is no part of the obligation of the lessor when he wants to determine the tenancy to find out the assignees and to give notice or notices unto them. This being the position, it was a proper notice which the lessor served on the lessee in this case. It was sufficient in law to determine the tenancy, and, on the determination of the tenancy, the lessee not having delivered over possession to the lessor in accordance with the provisions of section 108 (q) of the Transfer of Property Act, the plaintiff, the lessor, was entitled to bring this suit in ejectment against the lessee.

34. No doubt if the lessor had made the assignee a party to this suit, it might have been better or even more prudent in so far as it might not have involved him into any trouble with regard to the execution of the decree which he would obtain against the lessee. The lessor was, however, not bound to make the assignee a party to the suit. The only contractual relationship which he had by

reason of the agreement of lease was with the lessee. He gave notice to quit determining the tenancy to the lessee as he was entitled to do. The possession of the property was not delivered over by the lessee as the lessee was bound under Section 108(q) to do, and he rightly filed the suit against the lessee in ejectment.

35. I, therefore, agree with the order proposed by the learned Chief Justice.  
Appeal allowed.