

SAURASHTRA HIGH COURT

Karsandas Ramji

Vs

Karsanji Kalyanji

Civil Revn. Applns. Nos.121 and 184 of 1951

(Shah, C.J. and Baxi, J.)

13.10.1952

JUDGMENT

Shah, C.J.

1. These revision applications are filed against the judgment and decree of the District Judge, Halar Division, in three appeals which arose from two suits under the Bombay Rent Restriction Act as adapted and applied to Saurashtra. The tenant Karsandas Ramji filed suit No.466 of 1949 against the landlords Karsanji Kalyanji and Hirji Kalyanji for fixing the standard rent of the premises the rental whereof was Rs.1401/-, the premises concerned being a theatre at Jamnagar. The landlords disputed the claim on the ground that the premises being a theatre the Rent Act did not apply and that as the lease was for a fixed period of five years the application for fixing the standard rent was not maintainable. They also raised certain other contentions, and subsequently they filed suit No.266 of 1950 for eviction of the tenant and for arrears of rent on the ground that the tenant had sublet the premises to one Laxmichand Shah in breach of an express condition in the lease not to sublet and that he was in arrears of rent. Laxmichand was impleaded as a party defendant to the suit. The tenant Karsandas Ramji contended in that suit that he was always ready and willing to pay the rent but that the landlords had refused to receive the rent which would become payable under the provisions of the Rent Act. He denied having sublet the premises to Laxmichand or having committed breach of any of the conditions of the lease and contended that he and Laxmichand had entered into a partnership for running the theatre. He deposited Rs.7800/- in the Court at the rate of Rs.450/- per month towards the rent. Laxmichand raised similar contention, and denied that the premises were sublet to him.

2. During the pendency of this suit the partnership between Karsandas Ramji and Laxmichand was terminated and a new agreement was entered into by Karsandas with one Jayantilal Jhatakia on 31-3-1950, and the plaintiff landlords having come to know of it they impleaded Jayantilal Jhatakia as a party defendant to the suit and amended the plaint alleging that Karsandas Ramji had sub-let the premises to the said Jayantilal and had thereby committed a breach of the conditions of the lease and the plaintiffs had, therefore, become entitled to recover possession of the premises from all the defendants. Jayantilal contended that the premises were not sublet to him but that he was merely the Manager of the theatre belonging to Karsandas Ramji, that he

was in no way liable for the plaintiff's claim and that he was wrongly impleaded in the suit.

3. The learned trial Judge held that Karsandas Ramji had sublet the theatre in breach of the condition of the lease against subletting and that he had also failed to pay rent in accordance with the terms and conditions of the lease. He, however, held that a notice under Section 111(g), Transfer of Property Act, was necessary before instituting the suit and that as such notice had not been given the suit for eviction was not maintainable. According to him the notice was necessary because the breach of the covenant in the lease had occurred after the Transfer of Property Act came to be applied to Saurashtra. He held that the Rent Act did not apply to the lease of a cinema theatre, and he therefore declined to determine the standard rent of the premises. In the result he granted a decree for arrears of rent as prayed for by the plaintiffs but dismissed the suit for eviction of the tenant and he also dismissed the application for fixing the standard rent of the premises. Cross appeals were filed by the parties against the decree in suit No.266 of 1950 and the landlords also filed a miscellaneous appeal against the decree in suit No.466 of 1949 contending that the standard rent could not be determined as the Rent Act did not apply to a theatre.

4. In appeal the learned District Judge held that the Rent Act applied to the premises in dispute and he proceeded to determine the standard rent which he fixed at Rs.396/- per month. He also held that by the agreement, Exh.23 Karsandas Ramji had transferred some of his interest in the premises to Laxmichand is clear violation of S.15 of the Rent Act and that he was, therefore, liable to be evicted by virtue of the provisions of Section 13(e) of the Rent Act. In respect of the subsequent agreement, Exh.25, between Karsandas Ramji and Jayantilal Jhatakia which came to be entered into after the termination of the agreement between Karsandas Ramji and Laxmichand, the learned Judge held that it was clearly a transfer of Karsandas Ramji's interests in the premises. On a construction of the pleadings in both the suits, the learned Judge held that the landlords were entitled to a decree for eviction. The learned Judge, however, rejected. the landlord's plea for eviction on the ground that the tenant had been in arrears of the payment of the rent. He also held that the tenant had deposited into the Court from time to time a sum which was in excess of the sum due for rent at the rate of the standard rent, viz., Rs.383/- per month due till 31-3-1951, and in this: view he did not make any order as to arrears of rent.

5. The first question arising for consideration is whether the premises being a theatre they do not fall within the definition of that expression contained in Section 5(8)(b) of the Rent Act. Premises are there defined as meaning any building or part of a building let separately (other than a farm building) including, among other things, any furniture supplied by the landlord for use in such building or part of a building, and also including any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof. Now the lease, Exh.10, of the theatre includes furniture and electric fittings and also a generator for generating electricity, which was a fitting affixed to the building having been fitted in the theatre. There can be no question that it was affixed for the more beneficial enjoyment of the theatre and this has not now been seriously disputed. It is obvious, therefore, that the theatre did amount to premises within the meaning of Section 5(8)(b) of the Rent Act. Mr. Bakshi, however, contended that the agreement, Exh.10; dated 31-12-46 does not amount to a lease and that the question whether the lease is of premises as defined in Section 5(8)(b) of the Act or otherwise is, therefore, of secondary importance. However this plea has not been made in the lower Courts and it is not open to the plaintiffs to make it for the first time in revision. There is also no substance in the merits of the contention. It is urged that there was no letting inasmuch as the agreement refers to the use of a generator and'

also stipulates that in case the theatre was to remain closed. for any reason rent was not to be paid for the period of the closure unless the closuer was for seven days only, and the agreement also stipulates for reserving certain seats for the landlords. There are, however, terms and conditions of the lease and in no way do they affect the nature of the agreement which essentially is a lease. In fact the plaintiff landlords have all along proceeded on the basis that it was a lease and have asked for eviction of Karsandas Ramji on the footing that he was a lessee and it is too late now to resile from that position. This contention must accordingly be rejected as unsustainable. The other grounds on which it was contended in the lower Courts, viz., that the premises were not let for business as contemplated by S.6 of the Rent Act and, therefore, the provisions of part II of the Act did not apply has not been pressed before us. It must be held, therefore, that the Rent Act applies and that the case is governed by the provisions of part II of the Act.

6. The next question is whether the tenants: has contravened the terms and conditions of the lease and the main condition of which the breach is complained of is the condition against sub-letting without the landlord's consent. It is urged that the first agreement entered into by Karsandas Ramji was with Laxmichand, and whereas it is urged for the plaintiffs that this amounted to sub-letting it is contended for the defendants that the agreement was one of partnership between them. The document Exh.23 purports to be a document of partnership and states that Karsandas Ramji and Laxmichand were entering as partners in the business belonging to Karsandas Ramji running in the name and style of Krishna Picture. The terms and conditions of the partnership, inter alia, were that each was to have a half share in the partnership, but Karsandas was not to be responsible for any loss incurred therein, that the partnership was to continue till the expiry of the period of the lease of the two theatres which Karsandas had entered into with the respective landlords and till the time Karsandas continued in possession of the theatres by holding over. Laxmichand was to run the two talkies and to keep the accounts, etc., and to generally work as the managing partner. He was to pay to Karsandas Ramji Rs.20,000/- without interest, Karsandas's share of the net profits was to be credited towards this sum, and Karsandas was not to receive any profits in cash till the repayment of the said sum of Rs.20,000/-. Laxmichand was to pay Rs.625/- per month to Karsandas in lieu of good will for taking him up as a partner. The machinery, furniture etc., were to remain of Karsandas' ownership and were to be returned to him on the termination of the partnership. The management of the partnership was not to be entrusted to any one else excepting with the written consent of both the partners, nor could any of the partners transfer his interest in the partnership without the other partner's written consent. The learned trial Judge has held that this agreement in reality was not a partnership, but was an agreement to sublet the premises to Laxmichand. The learned District Judge, on the other hand, holds that as one of the conditions of the agreement provides that Karsandas was to get a half share of the profits, and as Karsandas had retained the ownership of the machinery and furniture, it would be unreasonable to hold that no partnership was created. At the same time the learned Judge finds that because Karsandas had handed over the entire business to Laxmichand, Karsandas should be taken as having transferred part of his interest in the premises or the lease or the premises to Laxmichand, and that the provisions of Section 15 of the Rent Act were therefore contravened and that this entitled the landlords to recover possession by virtue of Section 13(e) of the Act. We are unable to accept this finding of the learned District Judge. The terms of the partnership deed, which we have set out above, no doubt show that Laxmichand was to run the entire business; all the same they do not indicate that Karsandas had parted with his interest in the premises. Laxmichand was, in our opinion, constituted the managing partner and for all practical purposes he was to look after the business; even so Karsandas did retain his interest in

the business of running the theatres, and there is nothing in any of the terms to show that he had transferred it away to Laxmichand. The terms of Exh.23 are no doubt onerous so far as Laxmichand is concerned, in that he was required to pay Rs.20,000/- in lump but it was no gift to Karsandas and was to be repaid by Karsandas's half share in the profits as they accrued. Rs.625/- which were to be paid to Karsandas per month are no doubt termed as good will, but clause 10 at the same time says that it was for admitting Laxmichand as a partner. The document nowhere says expressly or impliedly that Karsandas had ceased to be a partner and on a proper construction thereof it seems to us that the agreement between Karsandas and Laxmichand constituted a partnership and did not amount to either sub-setting or a transfer of Karsandas's interests in the premises. The Rent Act does not prevent a tenant, who has taken business premises on rent, from taking partners and carrying on a partnership business. The restriction is against subletting, assignment or transferring of the premises and there is no restriction against a tenant allowing the use of the premises to his partners for carrying on the business. Therefore so far as Exh.23 is concerned it does not constitute any violation of the terms and conditions of the lease.

7. As for the subsequent agreement between Karsandas and Jayantilal, Exh.25, it appears that Karsandas and Laxmichand could not carry on the partnership for more than three or four months and Laxmichand demanded the repayment of Rs.20,000/- which he had given to Karsandas as a loan without interest. It was in order to repay Laxmichand that this new agreement with Jayantilal was entered into. The agreement no doubt opens with a clause that Jayantilal was to manage the two cinemas from 1-4-1950 and appears to create an impression that he was constituted a manager of the business, but the remaining terms of the agreement leave no doubt that this was a clear case of transfer of Karsandas's interests in the lease to Jayantilal. The furniture and the machinery etc. in the two theatres were sold away outright to Jayantilal for Rs.32,000/-. Jayantilal was to bear the expenses of the management and was to give to Karsandas a lump sum of Rs.850/- per month out of the profits. He was to bear the losses and even in case of loss he was to pay the said sum of Rs.851/- to Karsandas. Jayantilal was to take 20 per cent. of the profits in lieu of expenses and 30 per cent thereof in lieu of management and to give the remaining 50 per cent to Karsandas in addition to the above sum of Rs.851/- per month. Jayantilal was to accept the terms of the agreements between Karsandas and the Film Companies in respect of the pictures to be received from them. He was to pay to Karsandas the sum which the latter might thereafter deposit into Court in respect of the pending suits for fixing the standard rent, and was to reimburse Karsandas for the sums which Karsandas might be required to pay to the landlords. Karsandas was to hold over possession of the theatres as long as he could and was not to surrender possession to the landlords without Jayantilal's consent. There was to be a first charge on the machinery and furniture (sold to Jayantilal) in respect of the payment of Rs.851/- and the 50 per cent of the profits, and Jayantilal was not to create any charge on the furniture and the machinery without Karsandas's written consent and was not to transfer it otherwise. The last clause 13 says that in case Jayantilal failed to carry out the terms of the agreement Karsandas could cancel the authority for the management by a month's notice. The agreement is no doubt drafted at some places so as to say that Jayantilal was constituted a manager, but reading its terms as a whole and considering the main operative provisions thereof, there can be no doubt that the real arrangement was one of transfer of the lease to Jayantilal. These principal conditions are altogether inconsistent with Jayantilal being a mere manager of the business, and it is inconceivable that a man would outright purchase the machinery and furniture of the theatre for Rs.32,000/-, and undertake the other heavy responsibilities for being

constituted a mere manager of the business, which position was liable to be terminated by a month's notice from Karsandas. Clearly, therefore, this agreement constitutes a transfer of Karsandas's interests in the leased premises and it offends against the provisions of S.15 of the Rent Act, with the result that the plaintiff landlords become entitled to possession of the premises by reason of Section 13(e) of the Act.

8. That raises the question whether in a suit for possession governed by section 13 of the Act, the lease requires to be determined by a notice under section 111(g), Transfer of Property Act. Mr. Bakshi has urged that the Rent Act has abrogated the corresponding provisions contained in Sections 108 and 111, Transfer of Property Act, and that if the landlord was able to satisfy the Court that the requirements of any of the clauses of Section 13 had been complied with, he was entitled to recover possession without determining the lease. Now Section 13(1) provides that notwithstanding anything contained in the Rent Act, but subject to the provisions of Section 15, a landlord shall be entitled to recover possession of the premises if the Court is satisfied that the tenant has committed any act mentioned in the sub-clauses of the Section or if the requirements of the other sub-clauses are fulfilled. Now the tenant here is a contractual tenant as opposed to a statutory tenant whom the Rent Act recognizes and to whom it gives protection. In the case of a contractual tenancy as long as the contract subsists the landlord cannot eject the tenant. If the suit was governed by the provisions of the Transfer of Property Act alone then no cause of action will accrue as long as the tenancy does not terminate or is not determined by either party. The cause of action in a suit for possession before or after the Rent Act is the same. But by virtue of the provisions of the Rent Act, a landlord is not entitled to recover possession unless he makes out a ground to the satisfaction of the Court that the tenant has committed an act falling under clauses (a) to (e) and (1) of Section 13 or that the facts stated in the remaining clauses exist. In substance the landlord can recover possession provided any of the sub-clauses of S.13 applies, but these are conditions for enabling him to recover possession, and they do not dispense with the basic requirement that the cause of action in a suit to recover possession will arise provided that the lease is first determined. Under the general law, subject of course to the contract between the parties, a landlord can evict a tenant on the valid termination of the tenancy. The Rent Act, however, says that the landlord cannot evict his tenant although he may be entitled to do so under the general law and under the terms of the lease, unless the provisions of the Rent Act in this behalf are also satisfied, which means that he cannot avail himself of the grounds of eviction under Section 13 of the Act, unless he is otherwise entitled to evict the tenant under the general law, and this latter will not happen unless the tenancy is duly determined either by notice to quit or by efflux of time or under any of the other clauses of Section 111, Transfer of Property Act. The following observations at p.115 of "Rent Acts" by Magarry (Fifth-Edition) are pertinent and may be quoted :

"The Acts do not interfere with leases and tenancy agreements more than is necessary to carry out their purposes; they are 'Acts for the protection of tenants, and not Acts for the penalizing of landlords'. Looked at from the landlord's point of view, the Acts are restrictive, and not enabling. Consequently, if apart from the Acts a landlord is unable to evict his tenant or raise his rent, the Acts do not enable him to do either of these things".

Again at p.139, the learned author says :

"While the contractual tenancy still exists, the landlord cannot obtain an order for possession unless he is entitled to one both under the tenancy agreement and under the Acts. The Acts bring into being no new right to possession which does not exist at common law, but merely superimposes a general restriction which is relaxed in certain specified cases. A contractual tenant may therefore be able to plead any or all of the following defences : (i) That the tenancy has not been determined. (ii) That he should be granted relief under the Common Law Procedure Act 1852, Sections 210-212 (which deals with forfeiture for non-payment of rent) or under the Law of Property Act 1925, Section 148 (which deals with forfeiture for breach of other covenants). (iii) That the Rent Acts do not allow an order for possession to be made where the statutory tenancy has arisen, the position is different. The contractual tenancy having determined either by lapse of time or act of parties, the tenant's sole right to retain possession is that given him by the Acts. Thus (i) and (ii) are no longer open to him as defences, and he can rely upon (iii)".

Therefore in the case of the contractual tenancy the lease has first to be determined.

9. The learned District Judge has taken the view that the tenancy did not require to be determined and no notice under Section 111(h) or (g) was necessary before instituting the suit for eviction, and for this view he has mainly relied on a decision of the Division Bench of the Madras High Court in - '*Krishnamurthy v. Parthasarathy*'¹, in appeal against the decision of Subba Rao, J., which is reported as - '*Parthasarathy v. Krishnamoorthy*'², It was a case under the Madras Buildings (Lease and Rent Control) Act, 15 of 1946. Section 7 of the said Act relates to eviction of tenants and sub-section (1) thereof says that a tenant in possession of a building shall not be evicted therefrom, whether in execution of a decree or otherwise and whether before or after the termination of the tenancy, except in accordance with the provisions of this section. There are two provisos to sub-section (1), but they are not material for the present purpose. Sub-section (2) says that a landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied that any of the grounds stated in clauses 1 to 5 exists, he shall make an order directing the tenant to put the landlord in possession of the building and if the Controller is not so satisfied, he shall make an order rejecting the application. These grounds are similar to some of those in Section 13(1) of the Bombay Rent Act. Sub-section (3) contains certain other grounds on which a landlord can apply 'to the Controller. Dealing with the landlord's right to evict, Subba Rao, J. held that the main object of the Act is to prevent unreasonable eviction and not to confer any new rights of eviction on the landlord. The Act presupposes the existence of a landlord's right to immediate possession under the general law. Section 7 only provides that no eviction shall lie except on the grounds specified in the section. The provisions of S.7 have not superseded the contractual terms between the parties, and the landlord's right to evict is not governed only by S.7. He further held that there was no express or implied provision in the Act or express words in S.7 repealing the provisions of the Transfer of Property Act in so far as the rights of the landlord and tenant are governed by that Act; that when the legislature says that a tenant in possession of a building shall not be evicted therefrom except in accordance with the provisions of the section, it cannot possibly mean that the landlord can evict them under the Transfer of Property Act. The learned Judge also referred to and relied upon a decision of the same High Court in - '*Narayanan Nair v. Kunhan Mannadiar*'³, which was a case under Section 14, Malabar Tenancy Act, the provisions whereof stated in the main, that no

suit for eviction shall lie at the instance of the landlord except on certain grounds enumerated in the Section, which were more or less similar to those in the Madras Act as also in the Bombay Rent Act. There also the landlord had filed the suit without terminating the tenancy in accordance with law, and it was held that unless and until a tenancy or a lease was determined, a landlord was not entitled to obtain from a Court an order for eviction or possession.

10. On appeal one of the contentions urged on behalf of the landlord was that the Madras Rent Act (No.15 of 1946) was self-contained and that all the provisions of law and procedure necessary for dealing with the cases between a landlord and a tenant that came within the purview of the Act were to be found in the Act and, therefore, the Act pro tanto repealed by implication the corresponding provisions of the Transfer of Property Act. Their Lordships of the Division Bench said that there was something to be said for the argument, but they did not consider the argument on its merits, and they confined themselves to the question whether an application for eviction can be made to the Rent Controller before the tenancy was determined by a notice to quit. They referred to the language of Section 7 and laid emphasis on the word 'before' occurring therein, and held that although it does not make it quite plain that a tenant can be evicted, if the provisions of this section are complied with, it is clear that a tenant can be evicted before the termination of the tenancy, in other words, before the tenancy is determined. They held that S.7 must be given its plain meaning and that if that was done, no question of attempting to reconcile Madras Act

15 of 1946 with the Transfer of Property Act arose. They were satisfied that Section 111(h), Transfer of Property Act, had no place in the scheme of procedure laid down in Section 7 of the Act, and they finally held that an application for eviction can be made to the Rent Controller before the tenancy is determined by a notice to quit.

It will thus appear that this decision is based on the language of Section 7, and it was because the section enabled the landlord to evict the tenant whether before or after the termination of the tenancy provided the conditions contained in the Section were satisfied that the landlord was held entitled to eviction. There is no similar provision in the Bombay Rent Act, and decision is, therefore, no precedent for a case falling under the Bombay Rent Act. The Division Bench referred to - 'AIR 1949 Mad. 127(C)', and distinguished it on the ground that Section 14, Malbar Tenancy Act, did not contain the words "before or after" as were to be found in S.7 of the Madras Act, that section 14 corresponds only to the negative portion of S.7 found in sub-section (1), and that this made a difference between the two cases. Their Lordships also observed

"If Section 7(1) had stood alone, we might have hesitated to hold that notice to quit was not necessary even though the expression "before or after" is found there".

The Ruling of the Division Bench in AIR 1949 Madras 780, was followed in - '*Mohemed Gous v. Karunissa Begum*⁴', where it was held that the provision relating to notice under section 111, Transfer of Property Act, is inapplicable to case of ejection of a tenant coming within purview of the Rent Control Order and that it was not, therefore, necessary for a landlord wishing to proceed under the Rent Control Order to issue notice under the Transfer of Property Act before commencing such proceedings. This decision too is based on the particular provisions of the Hyderabad Rent Control Order and is equally distinguishable.

11. Under the Bombay Rent Act S.12 thereof imposes a restriction on the landlord's right to

recover possession of any premises, while S.13 says that notwithstanding anything contained in this Act, meaning in S.12 and other provisions of the Act, a landlord shall be entitled to recover possession of any premises if he satisfied the Court of the existence of any of the grounds enumerated in the said section. Section 7 of the Madras Act puts it in a negative form, viz., that a tenant shall not be evicted except in accordance with the provisions of the Section and then lays down the conditions. The Division Bench, as I said, has not considered the question whether and if so how far S.7 of the Madras Rent Act repealed the provisions of the Transfer of Property Act. Subba Rao, J. has, however, considered this question and no doubt one of the observations made by him is "Indeed the words of Section 7 are couched in a negative form and it is impossible to read in the Section any such words of repeal". However the fact whether the words are couched in a negative form or in an affirmative form will not make any real difference. The form of expression is immaterial and it is the pith and substance of the Section which required to be considered. In my view it cannot be contended with any justification that because Section 13 is in the affirmative form the landlord's rights are controlled only by the provision of S.13 and not by those of the Transfer of Property Act as well.

12. In - '*Chhotalal v. Abdullabhai*⁵', cited by Mr. Joshi for the tenant, the relevant provision was Section 4, Madhya Bharat Sthan Niyantaran Vidhan, which said that no suit for the eviction of a tenant shall lie except on the grounds contained in the sub-clauses of the said Section, and these grounds are analogous to those contained in S.13 of the Bombay Rent Act. It was a case of a monthly tenancy and the contract of the lease contained a condition that in case the landlord wanted to eject the tenant, he must give one month's notice expiring with the tenancy. Such a notice had been given, but it was held by both the Lower Courts to be invalid. It was held by Mehta, J. that the determination of the lease by a valid notice was necessary for the institution of the suit, and further that in the state of law as modified by the terms of the Sthan Niyantaran Vidhan it becomes necessary for a landlord seeking to evict his tenant to prove not only that the tenant is liable to ejectment under the general law or under the contract of tenancy but also that the tenant cannot claim protection from ejectment by reason of the provisions of the Sthan Niyantaran Vidhan. He further held that before a landlord can sue for eviction of a tenant he must terminate the tenancy, and that unless and until a tenancy is terminated or a lease is determined the landlord is not entitled to obtain possession. Kaul, C.J., dealing with the same point, stated that the provisions of the Sthan Niyantaran Vidhan must be given effect to so far as they do. There is, however, nothing in the Act to suggest that it repeals the whole of the chapter pertaining to leases contained in the Transfer of Property Act, and he quoted the well known observations of Maxwell in his Interpretation of Statutes (p.173 Ninth Edition):

"But repeal by implication is not favoured. A sufficient Act ought not to be held to be repealed by implication without some strong reason. It is a reasonable presumption that the Legislature did not intend to keep really contradictory enactments on the statute-book, or, on the other hand, to effect so important a measure as the repeal of a law without expressing an intention to do so. Such an interpretation therefore, is not to be adopted, unless it be inevitable. Any reasonable construction which offers an escape from it is more likely to be in consonance with the real intention".

13. - '*Hasham v. Pazal Begum*⁶', was a case under Section 10, Punjab Urban Rent Restriction Act, (10 of 1941). The said Section placed certain restrictions on the right of the landlord under the general law to eject a tenant by service of a notice to quit. The proviso to the Section made

certain exceptions and enabled the landlord to recover possession on the ground that the premises were required for his personal use and on other grounds and the plaintiff claimed that she could maintain the suit without complying with the provisions of S.10 in the matter of notice. It was held that the proviso to S.10 means that any suit brought for the ejectment of a tenant by a landlord who needs the premises for his own personal use shall be decided according to the ordinary law governing the relations between landlord and tenant and not with reference to the provisions of Section 10, but this did not mean that where the landlord requires the premises for his own use he can eject the tenant without serving on him of a valid notice to quit, and that in such a case without the determination of the tenancy by serving a notice to quit, a suit for ejectment cannot be maintained.

14. I am of the view, therefore, that a tenancy must be duly determined either by a notice to quit or by efflux of time or under one or the other of the clauses of Section 111, Transfer of Property Act before a landlord can sue to evict his tenant on any of the grounds contained in the clauses of Section 13(1) of the Bombay Rent Act as applied to Saurashtra. Therefore a notice determining the tenancy and calling upon the tenant to quit was in this case a necessary prerequisite to the institution of the suit. It is admitted that no such notice was given.

15. Mr. Bakshi has urged another contention which, according to him, is pertinent to the present case. He points out that whereas Section 108(j), Transfer of Property Act, permits a transfer by way of a sub-lease of the whole or any part of the lessee's interest in the property, S.15 of the Bombay Rent Act definitely prohibits a sub-lease after the coming into operation of the Act, and provides that sub-letting shall not be lawful, and Section 13(1)(e) gives to the landlord a ground for evicting the tenant. He argues, therefore, that the corresponding provisions of Sections 108 and 111, Transfer of Property Act, should be treated as repealed pro tanto, and that in such a case the determination of the lease is not necessary for the institution of a suit to evict the tenant. However, a repeal of the relevant provisions of the Transfer of Property Act cannot be implied from the provisions of S.15 or indeed from any other provisions of the Rent Act. A somewhat similar contention was repelled by Subba Rao, J. in 'Parthasarathy's case' (B) and the learned Judge cited the following passage from Maxwell on the Interpretation of Statutes at p.73 (Eighth Edition) :

"One of these presumptions is that the Legislature does not intend to make any substantial alteration in the law beyond what it explicitly declares, either in express terms or by clear implication, or, in other words, beyond the immediate scope and object of the statute. In all general matters outside those limits the law remains undisturbed. It is in the last degree improbable that the legislature would overthrow fundamental principles, infringe rights, or depart from the general system of law, without expressing its intention with irresistible clearness."

The general principle governing the construction of Acts of this nature is that unless the two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time a repeal will not be implied. It was observed by A.L. Smith, J. in - '*Kutner v. Phillips*⁷',

"Now a repeal by implication is only effected when the provisions of a later enactment are so inconsistent with or repugnant to the provisions of an earlier one that the two cannot

stand together Unless two acts are so plainly repugnant to each other, that effect cannot be given to both at the same time, a repeal will not be implied, and special Acts are not repealed by general Acts unless there is some express reference to the previous legislation, or unless there is a necessary inconsistency in the two Acts standing together."

No doubt the Bombay Rent Act makes subletting unlawful and gives to the landlord a ground for evicting the tenant, and therefore it makes available to the Landlord a ground which is not available to him under the Transfer of Property Act, but that does not affect the basic requirement, viz., that before a suit for eviction could be instituted, the tenancy requires to be terminated. Whether by reason of the subletting or on any other grounds the landlord becomes entitled to recover possession the fact does remain that he can do so provided the lease is determined and not until then; and in this respect the ground arising from subletting of the premises by the tenant is as good as any other ground under Section 13(1). This contention of the landlords is therefore untenable.

16. It is admitted that the Transfer of Property Act was not in force in the former Nawanagar State, and that it came to be applied for the first time after the formation of the Saurashtra State. The lease Ex.10 was thus executed before the Transfer of Property Act was made applicable to the territory comprised in the former Nawanagar State. According to Section 2(c), Transfer of Property Act nothing contained in the said Act shall be deemed to affect any right or liability arising out of a legal relation constituted before the Act came into force, or any relief in respect of any such right or liability, which means that the provisions of Section 111, Transfer of Property Act, will not apply to the lease executed before the said Act came into force. The lease in the present case will not, therefore, be governed by the provisions of Section 111(h) or (g), Transfer of Property Act. Leases executed before the Transfer of Property Act came into force will thus be governed by the law that obtained before the Transfer of Property Act came to apply and that law consisted of the common law principles which were usually held applicable by all Courts in India. In cases not governed by the Transfer of Property Act, it is not necessary for a landlord to do any overt act showing an intention to determine the lease nor is any notice to determine the lease necessary. It was held in - '*Isabali v. Mahadu*⁸', that the mere institution of the suit and the assertion in the plaint as to the repudiation of the landlord's title constitutes a sufficient manifestation of the landlord's intention to determine the lease for the purposes of clause (g) of S.111. In - '*Kasturbhai Manibhai v. Hiralal Dayabhai*⁹', it was held that the presentation of the plaint in ejectment suits is a conclusive declaration of intention by plaintiff lessors to determine the lease. Again in - '*Sati Prasad v. Mahesh Bhunia*¹⁰', it was held that where a grant came into existence long before the Transfer of Property Act came into force, no notice to eject a service tenant was necessary. The plaintiffs have alleged in para.7 of the plaint that the defendant had sublet his interest in the lease on account of which the plaintiffs were entitled to recover possession, and again in para.9 it is alleged that the defendant had failed to pay rent regularly and had also failed to pay the arrears in spite of a written demand. Therefore the institution of the suit in this case must be taken as sufficient to prove the landlord's intention to determine the lease on the ground of forfeiture and no separate notice was necessary.

17. It is true that the lease does not reserve to the landlords a right to re-enter in the event of the tenant committing a breach of any of the conditions of the lease but since the suit is quashed by the Rent Act other considerations will apply and if the landlords succeed in showing that the

tenant has transferred his interest in the premises, then the landlords will be entitled to recover possession by reason of Section 13(e) of the Rent Act.

18. The landlords have also sued for eviction on the ground of non-payment of rent, but as the learned Judge has held the tenant was not in arrears of rent, and he had paid into Court more than the arrears of rent calculated at the rate of the standard rent of Rs.396/- per month till 31-3-1951. The quantum of the standard rent fixed by the learned District Judge at Rs.398/-per month is not now disputed, and there is, therefore, no longer any dispute regarding the arrears of rent. Mr. Bakshi has, however, urged, relying on S.7 of the Rent Act, that as the rent agreed to between the parties was the rent allowed by the Nawanagar State Rent Act of Samvat 2003, the landlords were entitled to recover the rent at the said rate. He contended that as the agreed rent could have been recovered under the provisions of the Nawanagar Rent Act before 20-12-1948, viz., the date on which the Bombay Rent Act came to be applied to Saurashtra, the same rent was recoverable even under Section 7 of the Bombay Rent Act. The short answer to this contention is, as stated by the learned Judge, that S.7 of the Bombay Rent Act does not govern this case because there was no provision in the Nawanagar Rent Act for regulating the rent of theatres. It follows, therefore, that the standard rent of the premises in dispute has to be determined in accordance with the definition of standard rent given in the Bombay Rent Act.

19. In the result, therefore, the decrees of the learned District Judge in all the three appeals are correct and are confirmed, and these revision applications are dismissed, but it is directed that the defendants in suit No.266 of 1950 shall give vacant possession of the premises to the plaintiffs of that suit within one month from this date, failing which the said plaintiffs shall obtain possession through Court. Parties to bear their own costs of both the revision applications.

Baxi, J.

20. I agree.

Revision applications dismissed.

Cases Referred.

¹ AIR 1949 Mad 780

² AIR 1949 Mad 387 (B)

³ AIR 1949 Mad 127

⁴ AIR 1951 Hyd 111

⁵ AIR 1952 Mad Bha 121

⁶ AIR 1947 Lah 382

⁷(1891) 2 QB 267

⁸ AIR 1917 Bom 5

⁹ AIR 1921 Bom 307

¹⁰ AIR 1927 Cal 561