

Smt. Madalsa Devi Vs. Smt. Mridula Chandra

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Court : Patna

Decided On : Sep-30-1992

Judge : Sachidanand Jha and Aftab Alam, JJ.

Acts : Evedence Act, 1872 - Sections 92; Bihar Buildings (Lease, Rent and Eviction) Control Act, 1983 - Sections 11 and 11(1)

Appeal No. : Appeals from Appellate Decree Nos. 191 and 192 of 1979

Appellant : Smt. Madalsa Devi

Respondent : Smt. Mridula Chandra

Advocate for Def. : A.B. Ojha, Sr. Adv., S.B. Pandey, Ashok Kumar Sinha and Nirmal Chandra, Adv.

Advocate for Pet/Ap. : K.D. Chatterjee, Sr. Adv., Ramjee Sharan and Mahendra Prasad Bhartee, Adv.

Disposition : Appeal dismissed

Judgement :

Aftab Alam, J. 1. These two appeals which have been heard together and are being disposed of jointly arise out of a common judgment by the first appellate court in the following circumstances.

2. The plaintiff-respondent instituted a suit for eviction of the defendant from the suit premises, in addition, arrears of rent and damages or unauthorised occupation were also claimed. The trial court disallowed the reliefs of eviction and damages for unauthorised occupation. It, however, allowed the suit only in respect of the claim for the arrears of rent. The plaintiff filed an appeal against the trial Court's judgment. The defendant also went in appeal. These two appeals were heard and disposed of by the 1st appellate court by a common judgment whereby it dismissed the defendant's appeal and allowed the plaintiff's appeal decreeing the suit in whole. This necessitated filing of these two separate appeals before this court which have been heard together and are being disposed of by this judgment.

3. The facts of this case are very brief and can be stated as follows: Admittedly the defendant was inducted into the suit premises on the basis of a registered deed of lease executed by the mother of the plaintiff on 2-9-1948, in favour of the defendant. This deed was for a period of 65 years commencing from 8-8-1948. As the judgment proceeds this deed will come in for a closer examination. The plaintiff claimed that after the death of her mother on 13-6-1967 and his father on 25-6-1958 and on the basis of two partitions in the family she became the exclusive owner of the suit property and the defendant also recognised her as the landlord by tendering to her, for a while, the monthly rent for the suit premises. The defendant denied that she was the exclusive owner of the suit property and resisted the suit also on the ground of nonjoinder of the other co-sharers, namely, the plaintiff's sister and the plaintiff's grandmother. This objection of the defendant however, stands concluded by the findings of the two courts below. The plaintiff further stated and the defendant did not deny that the defendant had defaulted in payment of the monthly rent from August 1970 to March, 1971. The defendant sought to explain that the rent for those months could not be paid as no one from the side of the plaintiff came to collect, them. It was further stated in this regard that the rent for the months of August to December, 1970 was later remitted to the plaintiff by money order which she refused to accept unreasonably and unjustifiably. The plaintiff also said that as a consequence of the default in payment of rent she gave a notice under Section 106 of the Transfer of Property Act determining the tenancy of the defendant and asking her to hand over vacant possession of the suit premises to the plaintiff. The defendant however, refused to oblige. The

defendant admitted the service of the notice under Section 106 of the Transfer of Property Act but maintained that it was wholly misconceived and irrelevant. The defendant being a lessee for a fixed term the lease could not be terminated by a notice under Section 106 of the Transfer of Property Act but could only be determined in terms of Section 111 of the Act. On the basis of the admitted default in payment of the monthly rent the plaintiff sought eviction of the defendant in terms of Section 1 I(i)(d) of the Bihar Buildings (Lease Rent and Eviction) Control Act (hereinafter referred to as 'the Rent Act'). The defendant claimed that on the facts and in the circumstances of this case the Rent Act had no application and her rights and obligation were governed by the provision of the Transfer of Property Act. The defendant pleaded that she was in occupation of the suit premises on the basis of a lease for 65 years. She further stated that what was leased out to her was not any building but vacant land with the right to make constructions therein. In furtherance of her right under the lease agreement she had made constructions over the land at considerable expense. It was further pointed out that there was no forfeiture clause in the lease and any default in payment of the monthly rent would not lead to the forfeiture of the lease but would only attract interest on the unpaid rent at the rate of 1 per cent per annum. It was also pointed that contrary to a forfeiture clause there was a clause in the lease which made the lessor power less to terminate the lease before the expiry of the stipulated period.

4. It was the endeavour of the defendant before the courts below to take the case away from the purview of the Rent Act and to persuade the courts that this case would be governed only by the provisions of the Transfer of Property Act. To this end, the defendant had advanced two lines of submissions (i) first, that the subject matter of the lease was not a building but vacant land to which the Rent Act did not apply and (ii) secondly, in a fixed term lease having no forfeiture clause (that is to say, default in the payment of monthly rent not having been made a ground for the determination of tenancy) Section 11 of the Rent Act would have no application and the lease could be determined only in terms of Section 111 of the Transfer of Property Act. These are the two arguments which had been advanced on behalf of the defendant before the trial court and the first appellate Court and we have also listened to the same arguments of course, in the hands of Mr. K.D.

Chatterjee, learned counsel for the appellant the two points assumed much greater refinement and sophistication.

5. However, before considering the submission advanced on behalf of the defendant appellant, it is desirable to have a look at the findings recorded by the courts below. The trial courts found that the plaintiff, as claimed by her, had become the owner of the suit premises. However, the defendant had recognised her as such by tendering rent for several months to her and accepting receipts issued by her. Hence, the suit was maintainable at the behest of the plaintiff and the defendant could not raise any objection regarding nonjoinder of the alleged co-sharers. It further found that what had been leased out to the defendant was a house. She might have got it repaired but on the basis of the materials on the record it could not be said that no house was given in lease to her. It further observed that default in payment of rent was an admitted position. The trial court then went on to consider whether the defendant was liable for eviction under Section 11 of the Rent Act, notwithstanding the lease being for a fixed period. In this regard, it took note that there was no forfeiture clause in the lease and any default in the payment of monthly rent attracted only interest @ 1% per annum on the unpaid rent. It then answered the question in the negative holding that a lessee for a specified period was not liable to be evicted unless the lease was determined under Section 111 of the Transfer of Property Act. The trial court accordingly held that defendant could not be evicted upon any of the grounds mentioned in the plaint (in other words, on the ground of default in the payment of two months rent as contained in Section 11 of the Rent Act.)

6. The lower appellate court agreed with the trial courts finding that the plaintiff was the exclusive owner in respect of the suit premises and the suit was not bad for nonjoinder of parties. Further, the first appellate court, on a construction of the lease, held that what was let out to the lessee was a building and not any vacant land. The court also found that the main building was still being utilised. Next, the default in payment of rent being admitted the first appellate court held that the defendant-lessee, was liable for eviction in terms of the Rent Act. The first appellate court held that Section 111 of the Transfer of Property Act had no application to a proceeding for eviction of a tenant for default in the payment of

rent. The lower appellate court was of the view that the Rent Act was a self-contained Act and a complete code in itself for dealing with the situation of the present kind. On these findings the appellate court below decreed the plaintiffs suit in its entirety.

7. Mr. K.D. Chatterjee, learned counsel for the defendant appellant, made the same endeavour to escape from the purview of the Rent Act. Basically on the same grounds as were urged before the courts below he first submitted that the subject-matter of the lease was not a building but vacant land to which the Rent Act had no application. He next submitted that default in payment of two months rent as a ground for eviction (as envisaged under Section 11(1)(d) of the Rent Act) could not be invoked in case of a lease for a fixed period specially when there was no forfeiture clause and the parties to the lease had agreed that any default in payment of the monthly rent would attract only an interest on the unpaid rent.

8. In support of his first contention Mr. Chatterjee relied upon clauses (e), (f), (g) and (o) of the lease deed (Ext. 5). He also assailed the finding of the lower appellate court in this regard and submitted that the courts below erred in allowing any oral evidence to be led on this aspect of the matter and taking it into consideration in arriving at the finding that the subject-matter of the lease was a building and not vacant land. According to him, it was manifest from the deed itself that the demised property was vacant land and not any building and any oral evidence regarding the subject-matter of the lease was inadmissible in terms of Section 92 of the Evidence Act. However, before advertng to the clauses relied upon by Mr. Chatterjee I would like to have an overall view of the lease deed.

9. The lease executed by the mother of the plaintiff in favour of the defendant on 2-9-1948 has been subjected to a minute scrutiny and the arguments of the contending counsel have centred mainly around its various provisions. The subject-matter of the lease has been described as 'All that piece of parcel of land measuring more or less about 12 kathas situated in mohalla holding No. 17 within the Patna City Municipality Houndary of which is With all structures, buidling, houses, outhouses, well, fixtures, fittings, trees, easement etc. and appertenances'. It is further stated as follows: 'whereas the lessor hereby executed

the lease for sixty five years and the said lessee takes on lease all that brick built premises dwelling houses with that attached roofs compound trees etc. more fully described in the schedule here to be annexed, on the following terms and conditions'. In the schedule the demised property is described as follow : 'All that piece of land measuring more or less roughly about 12 khatas, twelve khatas together with all the existing structures, houses, outhouses, compound wall well with materials, trees, right of easement appendages as per boundry bearing holding No. 17 within Patna City Municipality.'

10. The lease deed was preceded by a deed of agreement (Ext. B), and was followed by a deed of rectification (Ext. C). The deed of rectification was also produced before us. This was executed on March 30, 1950 and its execution was necessitated on account of a typing mistake in the lease deed where by holding number and ward number of the demised premises were wrongly mentioned. What is, however, relevant for the purpose in hand is not the mistake of holding number or its rectification by this deed but the rectials standing 'whereas the rectifier has executed a deed of lease on 2-9-1948 which was registered on 13-9-1948 in favour of the Rectifiee by the said deed of lease, the lessor rectifier had leased out to the lessee Rectifiee about 12 kathas of land having a tiled house, outhouses and vacant land standing on holding No. 171. Circle No. 9 Ward No. 2, Rajendra Path, Patna within Patna City Municipality'.

11. As against this Mr. Chatterjee invited our attention to clauses (e), (f), (g) and (o) which are enumerated in the lease deed as the terms and conditions of the lease. Clauses (e), (f), (g) and (o) are as follows:--

'(e) That the lessee shall be entitled to construct such houses shops etc. and to utilise them in any way she likes without interference on the part of the lessor.

(f) That the price of the existing materials of the house and outhouses on the land which is leased out is fixed at Rs. 1000/- only. The lessor a sum of Rupees three hundred by cheque No. 130304 on 8-8-1948 on Noakhali Union Bank Ltd. Patna on the day of deed of agreement of lease was executed by the lessor, and got a receipt of the same and the balance of rupees seven hundred is paid today by the lessee to the lessor through cheque No. 60431 dated 2nd Sept. 1948, 2-9-1948 on

the National Union Bank Ltd. Patna. The lessee shall utilise the materials in anyway she likes and the lessor shall have no right to those materials. The lessor acknowledged receipt of the said amount of rupees seven hundred.

(g) That the lessor shall pay the ground rent of the leased out land and shall keep the lessee indemnified from all the charges.

(o) That the lessor guarantees that the land leased out is free from any incumbrances and if found otherwise the lessor will have to pay damages and compensation to the lessees'.

12. Mr. Chatterjee argued that the materials of the house and the outhouses were given in outright sale to the lessee for a consideration of Rs. 1,000/- only and she had the right to utilise the materials in anyway she liked. It is thus manifest that it was open to the lessee to demolish the existing structures and to cart away the materials thereof. He further submitted that for the same reason the lessee was not obliged to surrender back to the lessor the then existing structures on the land on the expiry/determination of the lease. According to him, the existing buildings, therefore, could not form part of the demised premises; for, in any lease it is inherent that once the lease expires or is determined the lessee must surrender back to the lessor the demised property and the subject-matter of the lease. Thus, on the basis of these clauses Mr. Chatterjee argued that it was patent that the subject-matter of the lease was not any building but vacant land and the courts below • erred in allowing any oral evidence to be led on the point and in taking into consideration that evidence to record a finding that the demised property was a building.

13. The case of the plaintiff-respondent in this regard is that it was not all the structures over the land the materials of which had been sold in terms of the lease. It was only a fallen down house and the dilapidated outhouses, the materials of which were sold. The main building on the land was actually the subject-matter of the lease and it had continued in existence till the present time and had remained under the occupation of the lessee and various other persons after the execution of the lease.

14. At this stage, it may also be noted that in this regard the plaintiff had also sought an amendment in the plaint. The amendment was allowed by the trial court by order dated 27-3-1974 and a new paragraph 5(a) was incorporated in the plaint. In this paragraph it was stated that towards east of the existing bungalow, there used to be a house which was in a fallen down state and in the north-west corner of the land there were outhouses which were in a dilapidated condition; the materials of these two structures only were sold and clause (f) of the lease deed referred to these two fallen down structures. It appears that the amendment was allowed when the parties had closed their respective cases. After the amendment was allowed the plaintiff examined one more witness. The court specifically gave an opportunity to the defendant appellant to lead any rebuttal evidence. The offer, however, was turned down on behalf of the defendant, who said that she did not wish to examine any more witness as is apparent from the order dated 27-3-1974.

15. Mr. A.B. Ojha, learned counsel appearing on behalf of the defendant respondent drew our attention to paragraph 17 of the appellate court judgment where the court had discussed and considered the deposition of PW 3, Mr. Ohja further submitted that while considering the deposition of DW 3 it must also be borne in mind that at the time when the suit was being contested in the trial court it was he who was in actual occupation of the suit premises and he was contesting the suit on behalf of the defendant on the basis of a power of attorney executed by the defendant. From the evidence of DW 3 it appears that the main building over the land was of a bungalow type consisting of several rooms and verandahs etc. It had been used all along as a dwelling house and was still in existence. It was originally occupied by Mr. K.P. Upadhyaya, the husband of the lessee and thereafter in 1951 it was let out by Mr. Upadhyaya to Mr. Justice A.B.N. Sinha, who at that time was a practising advocate. Mr. Justice Sinha occupied this house till 1964 and shifted out to an official residence only after he was elevated to the Bench. Thereafter it was tenanted by Akra Cold Drinks who were in occupation of the house at the time of the trial of the suit. It is, thus, the admitted position that the main building over the land was never demolished or pulled down but was always used as a dwelling house although with some repairs from time to time over a period of years. On the basis of the evidence of D.W.3 it is difficult to accept that the materials of the main building also were sold by virtue of Clause (f) of the lease

deed and it was not the building but the vacant land only which formed the subject-matter of the lease.

16. However, the objection of Mr. Chatterjee is precisely against taking into consideration the evidence of D.W. 3 in order to understand the lease. According to him Clause (f) of the lease makes it quite clear that the materials of all the structures over the land were sold and hence the subject-matter of the lease would only be the vacant land and not any structures standing thereon.

17. I am unable to accept Mr. Chatterjee's submission that Clause (f) makes it clear that the lease was in respect of the vacant land alone. On reading the various other parts and clauses it appears to me that Clause (f) at best creates a confusion and an ambiguity as to the subject matter of the lease. In order to clear this ambiguity it would be quite legitimate and reasonable to find out as to how the parties to the deed understood its various provisions and in what manner did they act following the lease. I thus find that in the facts and circumstances of this case it was quite in order that oral evidence be considered in terms of proviso (6) to Section 92 of the Evidence Act. I am supported in my view by a decision of the Supreme Court in the case of *Raj Kumar Rajindra Singh v. State of Himachal Pradesh*, AIR 1990 SC 1833. In paragraph 17 of this decision their Lordships expounded the law as follows:--

'Counsel for the defendants, however, contended that it was not open to the court in view of the prohibition contained in Section 92 of the Evidence Act to take into account the subsequent facts and circumstances to determine the extent of the grant under the patta of 14 the Maghar 1999 Bikrami. He submitted that where a claim is based on a written document, the terms of the document must be interpreted without the aid of extrinsic evidence, it is true that ordinarily the intention of the parties which the relevant terms and conditions are couched and no oral evidence can be permitted with a view to varying or contradicting the terms of the document. To put it differently, if the terms of the document are clear and unambiguous, extrinsic evidence to ascertain the true intention of the parties is inadmissible because Section 92 mandate that in such a case the intention must be gathered from the language employed in the document. But if the language

employed is ambiguous and admits of a variety of meanings, it is settled law that the 6th proviso to the section can be invoked which permits tendering of extrinsic evidence as to acts, conduct and surrounding circumstances to enable the Court to ascertain the real intention of the parties. In such case such oral evidence may guide the Court in unravelling the true intention of the parties. The object of admissibility of such evidence in such circumstances under the 6th proviso is to assist the Court to get to the real intention of the parties and thereby overcome the difficulty caused by the ambiguity. In such a case the subsequent conduct of the parties furnished evidence to clear the blurred area and to ascertain the true intention of the blurred area and to ascertain the true intention of the authority of the document. If any authority is needed in support of this proposition reference may be made to the case to *Abdulla Ahmad v. Animendra Kissen*, 1950 SCR 30 at p. 46 : (AIR 1950 SC 15 at p. 21) we find the following passage:

'The evidence of conduct of the parties in this situation as to how they understood the words to mean can be considered in determining the true effect of the contract made between the parties extrinsic evidence to determine the effect of an instrument is permissible where there remains a doubt as to its true meaning. Evidence of the acts done under it is a guide to the intention of the parties in such a case and particularly when acts are done shortly after the date of instrument (Vide para 343 of *Hailsham Edn of Halsbury*, Vol. 10, p. 174).

'In the present case the patta of 14 Maghar 1999 Bikrami is admittedly lost-Reliance was, therefore placed on Exh. P. 6 which incorporates the order No. 5158 of even date. The entry of Exh. P. 6 mention the Khata Kha-tauni of the 106 Plots granted to the plaintiff and the area thereof is shown to be 263.4 bighas and part of the incultivated jagir. Since a doubt, arose whether the disputed Khasra numbers formed part of the uncultivated Jagir referred to in Exh. P. 6 the parties, led oral as well as documentary evidence with a view to enabling the Court to ascertain the extent of the Jagir granted to the plaintiff. Since the words part of the uncultivated Jagir were ambiguous extrinsic evidence aliunde and grant became necessary to explain the coverage of those words. We, therefore, do not see any merit in the objection.'

18. I, thus, find no fault with the Courts below taking into consideration the oral evidence of D.W. 3 and other witnesses on this point. When the deposition of D.W. 3 (and other witnesses) are taken into consideration there remains hardly any doubt that the lease was in respect of the main building standing over the land and I find no reason to interfere with the findings recorded by the Court below in this regard.

19. Mr. Chatterjee next contended that a lease holding on the basis of a fixed term lease could not be evicted for non-payment of the two months rent as envisaged under Section 11(1)(d) of the Rent Act, specially when default in payment of monthly rent was not a ground for forfeiture in terms of the lease. Learned counsel submitted that any application of the provisions of Section 11 of the Rent Act to a fixed term lease would defeat the very object of the Act. It was stated that Section 11 of the Rent Act was contemplated as a protection was required most in respect of periodic tenancies (e.g., monthly, yearly etc.) which having no protection under the Transfer of Property Act were quite precarious from the tenants point of view. A lessee under a fixed term lease had his rights protected in terms of the lease and hence he did not require any further protection in terms of the Rent Act. Accordingly, any application of Section 11 of the Rent Act to a fixed term lease (having no forfeiture clause would mean no additional protection but only additional liabilities for the leases. This would not restrict but further enlarge the rights of the landlord. This according to Mr. Chatterjee would be against the very spirit of the Rent Act. In support of his contention Mr. Chatterjee relied upon decisions reported in AIR 1989 SC 1510; AIR 1968 SC 933 and 1969 BLJR 850.

20. The submission to my mind is based on the mis-apprehension that the Rent Act is intended to protect the tenant in an absolute and unqualified sense. In my view that is not the position. It is quite true that before the Rent Act came a tenant, specially a month to month tenant, was largely at the mercy of the landlord. The Rent Act was intended to remedy this situation and to secure the position of the tenant so as not to leave him at the complete mercy of the landlord. Therefore, many of the provisions of the Rent Act are beneficial to the tenant and curb the contractual rights of the landlord. In this regard an important feature of the Rent Act was to specially enumerate (vide Section 11) the grounds on which alone the

landlord could seek eviction of the tenant. In laying down these grounds the Rent Act did not make any distinction between a tenancy from month to month and a lease for a fixed terms. Consequently, as soon as a tenant's acts of omission or commission are covered by any one or more of the grounds enumerated in Section 11 of the Rent Act he would be liable to be evicted at the instance of the landlord, irrespective of whether the tenancy was from month to month or for a fixed period. It is to be noted that the object of the Act is as follows :

'An Act to regulate the letting of building and the rent of such buildings and to prevent unreasonable eviction of tenants therefrom in the State of Bihar.'

21. Now, the framers of the Act considered (and rightly so) that, (along with a few other grounds) non-payment of two months rent was such a grave lapse by the tenant as to disentitle him from the protection under the Rent act, and the Act does not consider it an unreasonable ground for eviction. The Rent Act rather specifically recognises non-payment of two months rent as a reasonable ground for eviction. It must be realised that while greatly curbing the contractual rights of a landlord in terms of the Transfer of Property Act, Section 11 of the Bihar Rent Act also provides certain limited safeguards to him by laying down the grounds which make a tenant liable for eviction. Further, as regards those grounds for eviction, (including non-payment of two months' rent) the Rent Act does not make any distinction between a month to month tenant and a lessee under fixed term lease. It is, therefore, erroneous to suggest that Section 11 of the Rent Act provides unilateral protection to a tenant. I, thus, find that the submissions advanced by the learned counsel are founded on a misconceived notion regarding the aims and objections of the Rent Act and the nature and extent of protection available to a tenant under the Act. I find myself unable to accept the contention.

22. Now a look at the decisions cited in support of this contention.

23. Mr. Chatterjee first relied upon a decision of the Supreme Court in the case of Modern Hotel, Gudur v. K. Radhakrish-naiah, AIR 1989 SC 1510. In this case the tenant was sued for eviction on the ground of non-payment of rent. The defence was two fold first, that the tenant had in deposit with the landlord a sum of Rs. 5,000/- which had no sanction under the A.P. Rent Act. If this unauthorised deposit

was adjusted towards the unpaid rent then there would be no arrear as the amount of the unpaid rent was much lower than the sum of Rs. 5,000/-. The second ground was that the tenant was holding under a lease for 30 years and eviction had been claimed against a contractual tenant during the subsistence of the lease. Admittedly the lease did not have a forfeiture clause so as to be determined under Section 111(g) of the Transfer of Property Act. The Supreme Court upheld the tenants contention on the question of default and held that the landlord had no authority to hold in deposit the amount of Rs. 5,000/- and if that amount were to be adjusted against the unpaid rent then there would be no default. Therefore in para 11 of the judgment the Supreme Court observed as follows:

'The Second contention advanced before us is equally weighty. The lease being for a term of 30 years is to expire in September, 1999. As we have already said the lease did not stipulate a forfeiture clause and in the absence of a forfeiture clause in the lease leading to termination by forfeiture, contractual tenancy was subsisting under the provisions of the Transfer of Property Act and there cannot be any eviction from such a tenancy.'

The observation of the Supreme Court indeed supports the contention of Mr. Chatterjee. It is, however, to be noted that the corresponding provisions in the Bihar Rent Act and the A.P. Act are vastly different. Section 11 of the Bihar Rent Act in so far as it is relevant to this case is extracted below:

'11(1) Notwithstanding anything contained in any contract or law to the contrary but subject to the provisions of the Industrial Disputes Act, 1947 (Act XIV of 1947), and to those of Section 18 where a tenant is in possession of any building, he shall not be liable to eviction there from except in execution of a decree passed by the Court on one or more of the following grounds.

(a) to (c).....

(d) Where the amount of two months rent, lawfully payable by the tenant and due from him is in arrears by not having been paid within the time fixed by contract, or in the absence of such contract, by the last day of the month next following that for which the rent is payable or by not having been validly remitted or deposited in

accordance with Section 16.

(e) & (f).....

Provided.....'

As against this, it is Section 10 of the A.P. Act that deals with the eviction of the tenant. It is a very long section with various sub-sections and clauses and sub-clauses attached to those sub-sections. Sub-section (3) of Section 10 provides that the landlord may under certain conditions apply for an order directing the tenant to put the landlord in possession of the building. However, Clause (d) of Sub-section (3) lays down that where the tenancy is for a specified period agreed upon between the landlord and the tenant, the landlord shall not be entitled to apply under this sub-section before expiry of such period. There is no similar provision under the Bihar Rent Act.

24. Mr. Chatterjee contends that the afore-quoted observation by the Supreme Court was not made in the particular context of the A.P. Rent Act but is equally applicable to all Rent Acts. He, in fact, maintains that Clause (d) of Sub-section (3) of Section 10 of the A.P. Rent Act has no relevance to the point at issue. I am unable to accept this. For, if the above, quoted observation is not appreciated in the context of the A.P. Rent Act but is sought to be applied generally to all Rent Act then it would be at variance with other decisions of the Supreme Court which I propose to presently notice.

25. Mr. Chatterjee next relied upon the decision in the case of Associated Hotels of India Limited v. S.B. Sardar Ranjeet Singh reported in AIR 1968 SC933. In para 3 of this judgment, the Supreme Court made the following observations:

'A tenant holding premises under the subsisting lease is protected by the lease and needs no protection under the Rent Act. It was open to the appellant to contend that it was protected by the terms of the lease dated August 18, 1939 that the breach, if any, of the conditions of the lease have been waived by the respondents and the lease had not determined. But the appellant deliberately elected to seek permission under Section 13 of the Act only.....'

26. Mr. Chatterjee also relied upon a decision of this Court in the case of *Rajeshwar Prasad Sahi v. Ghulam Rashul Khan* reported in 1969 BLJR 850. It is a Division Bench decision in which the two learned Judges gave concurring, though separate judgments. Shambhu Pd. Singh, J. in his judgment (vide para 2) made the following observations:--

'A tenant for a fixed term cannot be evicted under Clauses (a) to (d) to Sub-section (1) of Section 11 of the Act before expiry of the term not because the provisions of this Act but because of the provisions of Transfer of Property Act. It is now well settled that this Act is not a self contained Act and in absence of any conflict between the two the provisions of Transfer of Property Act would also apply to the tenancies and that no tenant can be evicted unless the tenancy is determined according to Transfer of Property Act. For instance, in case of forfeiture of the tenancy, no eviction can be ordered unless a notice in writing as envisaged under Section 106 of the Transfer of Property Act conveying to the tenant the intention of the landlord to determine the tenancy is served. In cases of lease for fixed term the tenancy is determined only by efflux of time limited by the deed of lease (vide Clause (a) of Section 111 of the Transfer of Property Act), and before that the tenant cannot be evicted under clauses (a) to (d) of Sub-section (1) of Section 11 of the Act. If the provisions of the Transfer of Property Act were there and applicable then a tenant for a fixed term can be also evicted even before expiry of the term on the grounds mentioned in clauses (a) to (d) of Sub-section (1) of Section 11 of the Act.'

27. The observations of the Supreme Court in the case of *Associated Hotels Limited* and those made by this Court in *Rajeshwar Prasad Sahi's* case apparently support Mr. Chatterjee's contention. But these observations do not seem to hold the field now in view of the decision of the Supreme Court in the case of *V. Dhanapal Chettiar v. Yesodai Ammal* which has been followed in the subsequent decisions of the Supreme Court.

28. In *V. Dhanapal Chettiar's* case, AIR 1979 SC 1745 a seven Judges Bench of the Supreme Court had assembled, in the words of Untwalia, J' to resolve the cleavage of opinion between the various High Courts in India as also between

several decisions of this Court, on the question as to whether in order to get a decree or order for eviction against a tenant under any State Rent Control Act it is necessary to give a notice under Section 106 of the Transfer of Property Act.' In considering the question of a notice under Section 106 of the Transfer of Property Act, the Bench went on to examine the entire grant of relationship between the Rent Act and the Transfer of Property Act. The Supreme Court in that section observed (vide para 6) as follows :

'We only observe here that when the State Rent Acts provide under what circumstances and on what grounds a tenant can be evicted, it does provide that a tenant forfeits his rights to continue in occupation of the property and makes himself liable to be evicted on fulfilment of those conditions'.

It further said as follows:

'Once the liability to be evicted is incurred by the tenant, he cannot turn round and say that the contractual lease has not been determined. The action of the landlord in instituting a suit for eviction on the ground mentioned in any State Rent Act will ,be tantamount to an expression of his intention that he does not want the tenant to continue as his lessee and the jural relationship of lessor and lessee will come to an end on the passing of an order or a decree for eviction.'

Again in para 9 of the judgment it was said as follows:

'It will bear repetition to say that under the Transfer of Property Act in order to entitle the landlord to recover possession determination of the lease is necessary as during its continuance he could not recover possession, while under the State Rent Act the landlord becomes entitled to recover possession only on the fulfilment of the rigour of law provided the rein. Otherwise not. He cannot recover possession merely by determination of tenancy. Nor can he be stopped from doing so on the ground that he has not terminated the contractual tenancy. Under the State Rent Control Acts the concept of the contractual tenancy has lost much of its significance and force.'

Referring specifically to the Bihar Rent Act, the Court went on to say as follows:--

'Identical is the position under the Bihar Act. The definition section permits the tenant to continue as a tenant even after the determination of the contractual tenancy. Section 11 gives him protection against eviction by starting with a non obstante clause and providing further that he shall not be liable to eviction from any building except in execution of a decree passed by the Court for one or more grounds mentioned in Section 11. Does it not stand to reason to say that a decree can be passed if one or more of the grounds exists and such a decree can be passed against an existing tenant within the meaning of the State Rent Act.'

The seven Judges Bench in para 10 of its decision quoted with approval an earlier decision by a constitution Bench of the Supreme Court in *Brij Raj Krishna v. S.K. Shaw and Brothers* 1951 SCR 145 : (AIR 1951 SC 115) which also dealing with the Bihar Rent Act, though in a different context, had said that Section 11 of the Rent Act was a self-contained section and it was wholly unnecessary to go outside the Act for determining whether a tenant was liable to be evicted or not and under what circumstances he could be evicted.

Again in para 11 of the decision in Chettiar's case, the seven Judges Bench held that the earlier Supreme Court decision in the case of *Punjalal v. Bhagwat Prasad*, (1963) 3 SCR 312 : (AIR 1963 SC 120) had not been correctly decided. Para 11 which is reproduced below fully answers the contentions advanced by Mr. Chatterjee in this case.

'11. The first decision of this Court which is necessary to be noticed on the point of notice is the case of *Punjalal v. Bhagwat Prasad*, (1963) 3 SCR 312 : (AIR 1963 SC 120). The case is related to Bombay Rent Act. Raghu-bar Dayal, J. speaking on behalf of the Division Bench of this Court expressed the view at p. 318 thus:--

'We are therefore of opinion that where a tenant is in possession under a lease from the landlord, he not to be evicted for a cause which would give rise to a suit for recovery of possession under Section 12 if his tenancy has not been determined already. It follows that whenever a tenant acts in a way which would remove the bar on the landlords right to evict him it is necessary for the landlord to serve him with a notice determining his tenancy and also serve him with a notice under Sub-section (2) of Section 12 of the Act.'

It is true that the Rent Act is intended to restrict the rights which the landlord possessed either for charging excessive rents or for eviction of tenants. But if within the ambit of those restricted rights he makes out his case it is a mere empty formality to ask him to determine the contractual tenancy before institution of a suit for eviction. As we have pointed out above, this was necessary under the Transfer of Property Act as mere termination of the lease entitled the landlord to recover possession. But under the Rent Control Acts it becomes an unnecessary technicality to insist that the landlord must determine the contractual tenancy. It is of no practical use after so many restrictions of his right to evict the tenant having put. The restricted area under the various State Rent Acts has done away to a large extent with the requirement of the law of contract and the Transfer of Property Act. If this be so why unnecessarily, illogically and unjustifiably a formality of terminating the contractual lease should be insisted upon. In Punjalal's case, if we say so with very great respect, the principle of law laid down by this court in Brij Raj Krishna's case (supra) and by the Punjab High Court in Hem Chand's case was wrongly distinguished. After quoting the passage from the former it was said at page 322 :--

'In the present case, Section 12 of the Act is _ differently worded and cannot therefore be said to be a complete Code in itself. There is nothing in it which overrides the provisions of the Transfer of Property Act.'

The differences in the wordings of Section 11 of the Bihar Act and Section 12 of the Bombay Act does not justify the conclusion that the provisions of the Transfer of Property Act have not been overridden by Section 12 of the Bombay Act reading it with Section 13 etc. This was the ground given for distinguishing. Hem Chand's case also by erroneously painting out the distinction between Section 13(1) of the Delhi and Ajmer Marwara Rent Control Act, 1952 and the Bombay Act. In our considered judgment Pujalal's case was not correctly decided.

Finally the Seven Judges Bench in Chettiar's case authoritatively pronounced that determination of a lease in accordance with the Transfer of Property Act was unnecessary and a mere surplusage because the landlord could not get eviction of the tenant even after such determination. The tenant continued to be so even

thereafter. That being so, making out a case under the Rent Act for eviction of the tenant by itself was sufficient and was not obligatory to found the proceeding on the basis of the determination of the lease by issuing of notice in accordance with Section 106 of the Transfer of Property Act.

29-30. The seven Judges' decision of the Supreme Court in Chettiar's case was followed by a Bench of three Judges of the Supreme Court in the case of Pradesh Kumar Bajpaie, AIR 1980 SC 1214 : (1980 All LJ 549). It is important to note that in this case, Chettiar's case was sought to be distinguished by making a submission that the earlier decision had occasion to consider only the question of necessity of a notice under Section 106 of the Transfer of Property Act and it was not an authority as to whether the provisions contained in other sections of the Transfer of Property Act were applicable in a case for eviction. In Bajpaie's case the Supreme Court turned down this contention and found that Chettiar's case had specifically dealt with the question as to whether a tenant was entitled to a double protection, one under the Rent Act and the other under the Transfer of Property Act and had held that any such claim was without any substance. In para 12 of the decision in Pradesh Kumar Bajpaie, it was held as follows:--

'12. Although the question of termination of the lease by forfeiture does not arise on the facts of the case as the learned counsel strenuously contended that even then the tenant is entitled to the benefit of Section 114 of the Transfer of Property Act and that plea was accepted by the trial Court. We would briefly deal with the point raised. During the trial when the arguments of the case were going on and the case was due to be closed, the learned counsel for the tenant prayed that the Court be pleased to confer benefit of Section 114 of the Transfer of Property Act on the defendant. He tendered the full amount of rent along with full costs of the suit and interest as ordered by the Court. The learned counsel for the plaintiff submitted that the defendant should not be allowed the benefit of Section 114. Section 114 of the Transfer of Property Act provides for relief against forfeiture on nonpayment of rent on the following terms:--

'Where a lease of immovable property was determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the

suit, the lessee pays or tenders to the lessor the rent in arrears, together with interest thereon and his full costs of the suit, or gives such security as the court thinks sufficient for making such payment within fifteen days, the court may.'in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture and there upon the lessee shall hold the property leased as if the forfeiture had not occurred.'

If the relief provided for under the section is available, as the lessee had tendered the rent in arrears along with the interest therein and his full costs in the suit, it was open to the Court to pass an order relieving the lessee against the forfeiture. The plea of the learned counsel for the tenant is that this provision should also be read into the U.P. (Temporary) Control of Rent and Eviction Act. In a decision of seven Judges Bench of this Court in *V. Dhanagal Chettiar v. Yasodai Animal*, (1980) 1 SCR 334 at pp. 350-51 : AIR 1979 SC 1745 the question as to whether in order to get a decree for eviction, the landlord under the Rent Control Act should give notice as required under Section 106 of the Transfer of property Act was considered. This Court held that determination of the lease in accordance with the Transfer of Property Act is unnecessary and that, if a case made out for eviction under the Rent Act, it is itself sufficient and it is not obligatory to determine the lease by issue of notice as required in accordance with Section 106 of the Transfer of Property Act. The learned counsel for the tenant submitted that the decision is confined only to the question as to whether notice under Section 106 of the Transfer of Property Act is necessary and did not decide as to whether the provisions of the other sections of Transfer of Property Act are applicable. It is to be noted, however, that the question of determination of a lease by forfeiture under the Transfer of Property Act was specifically dealt with by the Court and it was held that the claim of the tenant that he is entitled to double protection, (1) under the Rent Act and, (2) under the Transfer of Property Act, is without any substance. While ruling thus the Court noted the following passage occurring in *Manujendras* case (1967) 1 SCR 475 : (AIR 1967 SC 1419) and quoted with approval in *Ratan Lal v. Vardesh Chandra*, (1976) 2 SCR 906 : (AIR 1976 SC 588).

'We are inclined to hold that the landlord in the present case cannot secure an order for eviction without first establishing that he had validly determined the lease under the Transfer of Property Act.'

Disapproving this view, the Court framed a question 'why this dual requirement' and answered it as follows:--

'Even if the lease is determined by a forfeiture under the Transfer of Property Act, the tenant continues to be a tenant, that is to say, there is no forfeiture in the eye of law. The tenant becomes liable to be evicted and forfeiture comes into play only if he has incurred the liability to be evicted under the State Rent Act, not otherwise. One has to look to the provisions of law contained in the four corners of any State Rent Act to find whether a tenant can be evicted or not. The theory of double protection or additional protection, it seems to us, has been stretched too far and without a proper and due consideration of all its ramifications.'

In the case before us, it is not in dispute that after the Rent Act came into force, the landlord avails himself of Clause 12 which provides for forfeiture, even if the tenant neglected to pay the rent for over two months. The landlord cannot enter into possession forthwith without notice. The only remedy for him is to seek eviction under the provisions of the Rent Act. In such circumstances the tenant cannot rely on Section 114 of Transfer of Property Act and claim that he should be given an opportunity to pay the arrears of rent, even though the requirements of Section 3(1) had been fulfilled.'

31. Once again in the case of *Shakuntala S. Tiwari v. Hem Chand M. Singhania* the same view were reiterated, vide AIR 1987 SC 1823 (para 5 at page 1825).

32. In view of the decisions of the Supreme Court, I am unable to accept Mr. Chatterjee's contention. I accordingly find and hold that in a lease for a fixed terms also, where the rent is payable on a monthly basis the provision of Section 11(1)(d) of the Bihar Rent Act is equally applicable as a ground for eviction of the tenant notwithstanding the absence of any forfeiture clause in the lease agreement. I should like to state, however, that I do not wish to say anything as to what would be the position in respect of a lease for fixed term where the payment

of rent is not on a monthly basis but on some other basis.

33. I, therefore, find no merit in these two appeals and accordingly dismiss them. There shall be no order as to costs.

S.N. Jha, J.

34. I agree.

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