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**Pramod Kumar Jaiswal and ors. Vs. Bibi Husn Bano and ors.**

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**SooperKanoon Citation** : sooperkanoon.com/654797

**Court** : Supreme Court of India

**Decided On :** May-03-2005

**Reported in** : AIR2005SC2857; 2005(5)ALLMR(SC)784; 2005(2)AWC1697(SC); 2005(3)BLJR1976; 2006(2)BomCR855; (SCSuppl)2005(4)CHN58; 2005(2)CTC809; [2005(3)JCR153(SC)]; JT2005(5)SC79; (2006)2M

**Judge** : R.C. Lahoti, C.J.,; G.P. Mathur and; P.K. Balasubramanyan, JJ.

**Acts** : Transfer of Property Act - Sections 44, 105, 109, 108 and 111; Bihar Buildings (Lease, Rent and Eviction) Control Act; Uttar Pradesh Urban Buildings 9Regulation of Letting, Rent and Eviction) Act, 1972 - Sections 21(1); Kerala Buildings (Lease and Rent Control) Act; Rent Control Act

**Appeal No.** : Civil Appeal No. 336 of 2004

**Appellant** : Pramod Kumar Jaiswal and ors.

**Respondent** : Bibi Husn Bano and ors.

**Advocate for Def.** : Anil Nauriya, ; Hemantika Wahi and ; Sumita Hazarika, Adv

**Advocate for Pet/Ap.** : M.K.S. Menon and; K. Rajeev, Advs

**Prior history** : From the Judgment and Order dated 10.10.2002 of the Patna High Court in C.R. No. 1329 of 2002

**Books referred** : Oxford Dictionary; Black's Law Dictionary

**Judgement** :

**P.K. Balasubramanyan, J.**

1. A building, as defined in the Bihar Buildings (Lease, Rent and Eviction) Control Act, (hereinafter referred to as 'the Act'), was taken on rent from one Quasim, the predecessor of the respondents, by Ram Babu Jaiswal, the predecessor of the appellants, some time in the year 1958. Rent was enhanced and a fresh rent deed was executed on 7.4.1970. That tenancy continued. Quasim, the landlord died. His rights devolved on his heirs. It is the case of the appellants that they have taken assignment of the rights of certain heirs, being co-owner landlords, on 29.12.1988. The respondents in this appeal, the heirs of Quasim, filed House Control Case No.33 of 1993 under the Act, for fixation of fair rent. By order dated 22.3.1994 the House Controller fixed the fair rent at Rs.4,950/- per month. The plea based on assignment of the reversion by some of the legal representatives of Quasim, the landlord, and the consequential extinguishment of the lease was rejected. An appeal preferred by the appellants against the order fixing the fair rent as H.C. Appeal No.3/94-95 was also dismissed. It is the case of the appellants that they have filed a revision under the Act against the order fixing fair rent and the same is pending.

2. On 13.8.1997, the respondents herein filed a suit, T.S. (Eviction) No.80/97, seeking eviction of the appellants on grounds of non payment of rent and the bona fide need of the landlords for their own occupation. On 13.9.1998, an application for the issue of a direction to the tenants to pay the rent in arrears, was also filed by the landlords. The trial court, directed the defendants-tenants, to deposit rent at the rate of Rs.600/- per month, on the basis that it was the last rent that was paid. The suit was subsequently transferred. The trial court issued a subsequent direction to the tenants to deposit the rent at the rate of Rs.4,950/- p.m., being the fair rent fixed under the Act. This was challenged in revision by the appellants, before the High Court. The High Court, by the impugned order, dismissed the revision finding against the only contention on behalf of the appellants that since a revision filed by them against the order fixing the fair rent was pending, they could not be asked to deposit the rent at the rate at which the fair rent was fixed. It is this

order that is challenged in this appeal.

3. In this appeal, the only ground taken was that the tenants having taken an assignment of the rights of certain co-owners, being the heirs of Quasim, the original landlord, the lease or the tenancy over the building must be taken to have been extinguished and since there was no subsisting relationship of landlord-tenant between the parties, there could be no direction to deposit the rent in terms of the Act. On behalf of the appellants a decision of this Court in Abul Alim v. Sheikh Jamal Uddin Ansari was relied on. The Bench before which the matter came up, noticed that the decision relied on by the appellants was in conflict with another decision of a co-equal Bench of this Court in T. Lakshmipathi and Ors. v. P. Nithyananda Reddy and Ors. : [2003]3SCR173 and referred the matter for being heard by a Bench of three Judges. The appeal is thus before this Bench.

4. Learned counsel for the appellants, Mr. M.K.S. Menon submitted that the ratio of the decision in Abul Alim v. Sheikh Jamal Uddin Ansari (supra) should be accepted and approved by this Court and the decision in T. Lakshmipathi and Ors. v. P. Nithyananda Reddy and Ors. (supra) deserves to be overruled. Counsel submitted that once a tenant acquires even the right of a co-owner landlord, or a fraction of the reversion, the tenancy comes to an end and it could not be postulated that there could be a continuance of the lease or the subsistence of the relationship of landlord and tenant between the parties. He also referred to the decision in Jagdish Dutt and Anr. v. Dharam Pal and Ors. : [1999]2SCR576 in support, pointing out that therein, this Court upheld an order of remand to investigate the quantum of shares purchased by the tenant in occupation. Counsel submitted that in T. Lakshmipathi and Ors. v. P. Nithyananda Reddy and Ors. (supra) where a contrary view was taken, the effect of Section 44 of the Transfer of Property Act had not been considered. Learned Counsel for the respondents, on the other hand, submitted that the matter has been elaborately discussed in T. Lakshmipathi and Ors. v. P. Nithyananda Reddy and Ors. (supra) and the view taken therein was consistent with Section 111(d) of the Transfer of Property Act and the settled position in that regard. He also brought to our notice the decision in the India Umbrella Manufacturing Co. and Ors. v. Shagabandei Agarwalla (dead) by Lrs. Savitri Agarwalla (Smt.) and Ors. : AIR 2004 SC1321 in support of his

position.

5. On the admitted facts and based on the arguments, the only question that requires to be considered is the effect of the purchase of the rights of certain co-owner landlords by the tenants of the building, on the lease originally taken by them and on the basis of which they held the building. A lease in terms of Section 105 of the Transfer of Property Act gets determined on the happening of one of the events referred to in Section 111 of the Transfer of Property Act. The clause relevant for our purpose is admittedly clause (d). Insofar as it is relevant, the Section reads:

'Section 111: Determination of lease - a lease of immovable property determines -

(a) x x x x

(b) x x x x

(c) x x x x

(d) In case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right.

(e) x x x x

(f) x x x x

(g) x x x x'

On a plain reading of the provision, it is clear that in a case where a tenant takes an assignment of the rights of the landlord or the reversion, the lease is determined, only in a case where by such assignment, the interests of the lessee and the lessor in the whole of the property, become vested in the tenant. The emphasis in the Section is clearly on the coalescing of the entire rights of the lessor and the lessee in the whole of the property in the hands of the lessee. The above provision incorporates the doctrine of merger at common law. According to Blackstone (as quoted in Broom's Legal Maxims):

'when a less estate and a greater estate, limited subsequent to it, coincide and meet in one and the same person without any intermediate estate, the less is immediately annihilated; or in the law phraseology, is said to be merged, that is sunk or drowned in the greater; or to express the same thing in other words, the greater estate is accelerated so as to become at once an estate in possession'.

In Cheshire and Burn's Modern Law of Real Property, 16th Edition, it is stated,

'The term 'merger' means that, where a lesser and a greater estate in the same land come together and vest, without any intermediate estate, in the same person and in the same right, the lesser is immediately annihilated by operation of law. It is said to be 'merged', that is, sunk or drowned, in the greater estate. '

It is further stated :-

'The essentials are that the estates shall unite in the same person without any intervening estate, and that the person in whom they unite shall hold them both in the same right.

To illustrate the first essential, if A, who is tenant for life, with remainder to B for life, remainder to C in fee, purchases and takes a conveyance of C's fee, the intervening life interest of B, since it is vested, excludes the possibility of merger.' (see page 993).

In Megarry's Manual of the Law of Real Property, 8th Edition, it is explained as follows:-

'Merger is the counterpart of surrender. Under a surrender, the landlord acquires the lease, whereas merger is the consequence of the tenant retaining the lease and acquiring the reversion, or of a third party acquiring both lease and reversion. The principle is the same in both surrender and merger: the lease is absorbed by the reversion and destroyed.

For merger to be effective, the lease and the reversion must be vested in the same person in the same right with no vested estate intervening.'

This is based on the principle that a man cannot be a lessee of himself. The House of Lords in Rye v. Rye [1962] A.C. 496 said that a person cannot grant himself a lease of the land of which he is the owner.

According to the Woodfall on Landlord and Tenant,

'It may be laid down as a general rule that whenever the particular estate and that immediately in reversion are both legal or both equitable, and by any act or event subsequent to the creation of the particular estate become for the first time vested in one person in the same right, their separate existence will cease and a merger will take place.'

An extinguishment of a tenancy by merger is thus a counterpart of surrender by the tenant to the landlord. In Puran Chand v. Kirpal Singh, ( : 2000(8)SCALE463, this Court stated that a landlord could not become his own tenant and

'when a landlord transfers his rights in the leased property to his tenant there would be a merger of the rights of the tenant in his property to his higher rights as owner and the tenancy would come to an end under Section 111(d) of the Transfer of Property Act.'

Thus, the ingredients are that two immediate estates should come into the hands of the same person at the same time and it must be rights in the whole of the property. A merger is prevented if there is an intermediate estate outstanding with another at the relevant time.

6. Obviously, the taking of an assignment of a fraction of the reversion, or the rights of a co-owner landlord, does not and cannot bring about a determination of the lease in terms of Section 111(d) of the Transfer of Property Act. Faquir Baksh v. Murli Dhar (58 Indian Appeals 75). Their Lordships after so That a lease is not extinguished because the lessee purchases a part of the reversion was laid down by the Privy Council tinting out the terms of Section 111 of the Transfer of Property Act quoted with approval the statement of the law made by the trial Court in that case that for a merger to take place, 'The fusion of interests required by law is to be in respect of the whole of the property.' This Court in Badri Narain Jha and Ors.

v. Rameshwar Dayal Singh and Ors. held that if a lessor purchases the whole of the lessee's interest, the lease is extinguished by merger, but there can be no merger or extinction where one of several joint holders of the mokarrari interest purchases portion of the lakhraj interest. It was held that when there was no coalescence of the interest of the lessor and the lessee in the whole of the estate, there could be no determination of the lease by merger. We do not think that it is necessary to multiply authorities in the face of the plain language of the provision and the authoritative pronouncements of the Privy Council and of this Court referred to above. The position emerging from the relevant provision of the Transfer of Property Act is that the lease or tenancy does not get determined, by the tenant acquiring the rights of a co-owner landlord and a merger takes place and the lease gets determined only if the entire reversion or the entire rights of the landlord are purchased by the tenant.

7. In Abul Alim v. Sheikh Jamal Uddin Ansari (supra) relied on by the learned counsel for the appellants, the question has not been considered with reference to the relevant provision of the Transfer of Property Act referred to above. There is also no discussion on this question. It appears that in that case, an application filed by the landlord under Section 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 for release of the building from the tenant, was held to be not maintainable because the tenant had in the meanwhile acquired co- ownership in the demised shop. It is simply stated

'that the change of status of the tenant to that of being an equal co-owner of the un-partitioned property, would, therefore, lead to an irresistible conclusion that the release application was not maintainable. It is not disputed that there has been no partition of the suit premises till date. The High Court was under the circumstances not justified in upsetting the findings of the trial court and the appellate court in exercise of its powers under writ jurisdiction.'

With respect, we cannot consider this decision as laying down a proposition of law that on a tenant acquiring the right of a co-owner landlord, the tenancy of a building gets extinguished and the landlord cannot seek eviction of the tenant under the Act or the fixation of fair rent under the Act. It must be pointed out that

the observations as above are made even without referring to Section 111(d) of the Transfer of Property Act which governs such a case and the earlier decisions of this Court. The observation runs counter to the statutory provision. Hence, the decision must be held to be not correctly decided on this question. The decision in Jagdish Dutt and Anr. v. Dharam Pal and Ors. case (supra) is also of no assistance to the appellants since that was a case to which, according to this Court, Section 111(d) of the Transfer of Property Act had no application. Their Lordships stated in paragraph 6 of the Judgment therein,

'We need not examine the scope of Section 111(d) of the Transfer of Property Act inasmuch as Respondent No.2 is held to be trespasser and not a lessee.'

Their Lordships proceeded to say that they had to find out the effect of the purchase of divided interest of some of the coparceners in the family of the decree-holder in respect of the property that was the subject matter of execution. In view of the fact that, that was not a case dealing with merger under Section 111 of the Transfer of Property Act, we do not think it necessary to consider the correctness or otherwise of the above decision, though there may be merit in the submission on behalf of the respondents that the said decision cannot be said to lay down the correct law, even in respect of the effect of acquisition of co-ownership rights by a person, claiming to obstruct the execution of a decree for eviction especially since that was also a claim of right by a judgment debtor who had been directed to be evicted by the decree.

8. In T. Lakshmipathi and Ors. v. P. Nithyananda Reddy and Ors. (supra) this Court considered the question in detail in the context of Sections 105 and 111 of the Transfer of Property Act and came to the conclusion that there is no determination of the lease in terms of Section 111(d) of the Transfer of Property Act where a tenant acquires only partial ownership interest. After referring to the decision of the Privy Council, the decision of this Court and other relevant materials, this Court held that the lease cannot be said to have been determined by merger so long as the interests of the lessee, the lesser estate and that of the owner, the larger estate, do not come to coalesce in full. This Court also noticed that merger was largely a question of intention dependant on certain

circumstances and the courts will presume against it when it operates to the disadvantage of a party. With respect we find that the position has been correctly stated in T. Lakshmipathi and Ors. v. P. Nithyananda Reddy and Ors. (supra). The subsequent decision in India Umbrella Manufacturing Co. and Ors. v. Shagabandei Agarwalla (dead) by Lrs. Savitri Agarwalla (Smt.) and Ors. (supra) also proceeds on the same lines and supports the above position. We approve the principle of law stated in T. Lakshmipathi and Ors. v. P. Nithyananda Reddy and Ors. (supra).

9. Learned counsel for the appellants referred to the decision in Nalakath Sainuddin v. Koorikadan Sulaiman : [2002]SUPP1SCR1 and submitted that the ratio of that decision supports his arguments. That was a case where a lessor granted a building consisting of two rooms on lease to a tenant. The tenant, in his turn sub-let one of the rooms to another and continued to be in possession as a tenant of one of the rooms. The sub- tenant of one of the rooms, purchased the entire reversion or the rights of the landlord from the original owner, the head lessor. On the strength of the assignment of the reversion, the sub-tenant of one of the rooms sued his lessor the original tenant, for eviction under the Kerala Buildings (Lease and Rent Control) Act. What the sub-tenant of a part of the building had in his hands was only sub-tenancy regarding that portion and the reversion of the entire original lease in his hands. The original lease granted was still outstanding and it had to be terminated and the assignee sub-tenant had approached the Rent Control Court for extinguishment of the tenancy granted by the landlord in favour of the original tenant and for possession of the portion or the room in the hands of the original lessee. It could not be said to be a case where the entire rights of the lessor and the lessee in the whole of the property had come into the hands of the sub-lessee. Therefore, there could be no merger in the eye of law. In an identical situation this Court in Indra Perfumery v. Moti Lal and Ors. : AIR1969 Delhi14 ) held that Section 111(d) of the Transfer of Property Act would have no application. This Court stated:

'Section 111(d) of the Transfer of Property Act, on which the appellant relied, does not assist his case. That clause provides that a lease of immoveable property determines in case the interests of the lessee and the lesser in the whole of the

property becomes vested at the same time in one person in the same right. The clause has no application, unless the interest of the lessee and the lessor in the whole of the property is vested in the same person. The appellant is the owner of the house, he is also a tenant of a part of the house of which the respondents are tenants from Mohd. Shafi.'

10. When an owner of property grants a lease to another, he retains with himself the reversion and transfers the right as a lessee to the transferee. When that transferee, the first lessee, leases out the building or a part thereof further, that lessee retains with him the reversion of that sub-lease and transfers to the sub-lessee only the rights of a lessee under him. Even in spite of the transfer of the reversion of the first lease by the ultimate landlord to the sub-lessee, the original lessee, on the strength of the tenancy created by him, is entitled to seek eviction of his tenant, namely, the sub- tenant on the strength of his letting. The fact that the sub-tenant had acquired the ultimate reversion, might not stand in the way since so long as the tenancy in favour of the original lessee is not terminated in the mode known to law, that lessee would continue to enjoy the rights of the transfer in his favour by way of lease. The merger takes place in terms of Section 111(d) of the Transfer of Property Act, only in a case where the interests of the lessee and that of the lessor in the whole of the property, become vested at the same time in one person, in the same right. In Nalakath Sainuddin v. Koorikadan Sulaiman (supra) such a sub-tenant had rightly approached the Rent Control Court for eviction of his lessor, the lessee from the landlord, by invoking the relevant provisions of the Rent Control Act on the strength of the transfer of ownership in his favour by the head lessor. The rights under the original lease still continued with the original lessee and the right in the property to possess, outstanding with the lessee had not come into the hands of the sub-lessee merely on the strength of the assignment of the ultimate reversion. It could not, therefore, be said that there was a coalescing of the interest of the lessee and the lessor in the assignee landlord, (the sub-tenant) in respect of the original lease in the whole of the property as contemplated by Section 111(d) of the Transfer of Property Act. The decision in Nalakath Sainuddin v. Koorikadan Sulaiman (supra) is of no avail to the appellants.

11. It is clear from the facts of the case in Nalakath Sainuddin v. Koorikadan Sulaiman (supra) that when the sub-tenant of a part took an assignment of the reversion of the head-lease, an intermediate estate in the form of the original lease was still outstanding not only as regards the room or portion in the possession of the lessee himself but also as regards the portion or room in his possession as a sub-lessee.

12. As the passages from text books extracted in paragraph 6 show, the intervention of an intermediate estate prevents a merger in the hands of the sub-lessee-assignor of the ultimate reversion. The original lease still outstanding, is an intermediate estate. 'Intermediate', according to concise Oxford Dictionary means 'coming between two things in time, place, character etc.' The estate in the leasehold would hence be an intermediate estate coming between the ultimate reversion and the sub-lease.

In Someshwari Prasad Narain Deo v. Maheshwari Prasad Narain Deo, , the owner had acquired the rights of the sub-tenant of a portion of the leased property. The plea of merger raised therein was rejected in the following words:

'The position in Artoka was that the Raj was the superior and had granted the village in lekheraj to certain Baids who had created a mukarrari lease of a portion thereof. This mukarrari was acquired by the Raj. Consequently there could be no coalescence, because there is an intermediate estate of the Braids still in existence to prevent it; and moreover the mukarrari interest was only over a portion of the property.'

Fry, J, stated in Chambers v. Kingham, Law Reports (1878) 10 Chancery 743, 'I take the general rule to be, that where one of the interests is held en autre droit, no merger takes place.' According to Black's Law Dictionary en autre droit means 'in the right of another'. The leasehold interest outstanding with the original lessee would be an interest held by that lessee in his own right standing in the way of merger.

In Madan Pal v. Bashanti Kumar Shit : AIR1989 Cal223, a sub-lessee of a portion had acquired a part of the interest of the superior lessor. The plea of

extinguishment by a merger was raised. The Court held,

'The interest of the lessor and the lessee in the whole of the property should become vested at the same time in one person and in the same right, i.e., there must be the union of the entire interest of the lessor and the lessee. Thus a lease is not extinguished because the lessee purchases a part of the reversion. Again, the union of estate cannot occur if there is any intervening estate. In the instant case the petitioner has acquired only 1/3rd interest of the lessor. Moreover, the petitioner has not acquired the interest of the opposite party, who is his lessee. He has acquired only a partial interest of the superior landlord or the lessor of the first degree. It can not, therefore, be said that there has been the union of the entire interest of the lessor and the lessee. There is no merger even though by virtue of the purchase, the petitioner has become one of the co-sharer landlords of the opposite party but the sub- tenancy created by the opposite party in favour of the petitioner can not be said to have determined.'

In a case involving surrender by a sub-lessee in favour of the landlord or the ultimate owner, the Kerala High Court in P. Veeriah v. Mohammed Kunju Koya and Ors., 1991 2 KLJ 96, held that there would be no extinguishment of the original lease granted by the owner by merger and that the lease between the lessor and the lessee will continue. Thus, so long as an intermediate estate was outstanding, it appears to be not possible to say that there would be a merger in the hands of sub-lessee of a portion when he takes an assignment of the interests of the original landlord.

13. Section 44 of the Transfer of Property Act referred to by learned counsel does not enable him to contend that rights of the lessee and the lessor in the whole of the property has vested in the lessee. The right to joint possession acquired by the assignment from a co-owner, under that section still leaves outstanding the rights of the other co-owners in the property and does not bring about a situation enabling the lessee to plead that the entire rights in the whole of the property have come to coalesce in him so as to bring about a merger. There is no merger unless the interests are co-extensive. In other words, there must be a union of the entire interest of the lessor and the lessee. This does not happen when a lessee takes

an assignment of only the rights of a co-owner-lessor. The position emerging from Section 44 of the Transfer of Property Act, therefore, does not make any dent in the ratio enunciated in T. Lakshmipathi and Ors. v. P. Nithyananda Reddy and Ors. (supra).

14. Section 109 of the Transfer of Property Act also does not help the appellant. Section 109 only provides that even without an attornment by the lessee, an assignee of the rights of the lessor would be entitled to proceed against the lessee on the basis that he is his lessee, except as regards arrears of rent already accrued (unless it is specifically conveyed). This statutory attornment, so to say, does not enable the assignee of the reversion to plead that the lease has become extinguished. It would only enable the assignee from the lessor to assert his rights as a lessor notwithstanding that there is no privity of contract between him and the lessee. In a case where he is an assignee of a portion, he could enforce his right to claim eviction or that portion, on the strength of Section 109 of the Act even though the original lessor could not split up the lease himself. Construing the effect of the words of the Section, in connection with the question whether the tenancy gets split up on the assignment of a part of the reversion, this Court in Mohan Singh (Dead by L.Rs.) v. Devi Charan and Ors. : AIR 1988 SC1365, observed:

'It is trite proposition that a landlord cannot split the unity and integrity of the tenancy and recover possession of a part of the demised premises from the tenant. But S. 109, T.P. Act, provides a statutory exception to this rule and enables an assignee of a part of the reversion to exercise all the rights of the landlord in respect of the portion respecting which the reversion is so assigned subject, of course, to the other covenants running with the land. This is the true effect of the words 'shall possess all the rights of the lessor as to the property or part transferred' occurring in S. 109, T.P. Act. There is no need for a consensual attornment. The attornment is brought about by operation of law. The limitation on the right of the landlord against splitting up of the integrity of the tenancy, inhering in the inhibitions of his own contract, does not visit the assignee of the part of the reversion. There is no need for the consent of the tenant for the severance of the reversion and the assignment of the part so severed. This proposition is too well settled to require any further elucidation or reiteration.'

This indicates the effect of Section 109 of the Act. It only does away with the need for an attornment and brings about a splitting up of the tenancy in certain cases. It does not put an end to the tenancy itself as regards the split portion and only leaves the Assignor-lesser to work out the rights against the tenant.

In Vishnu Deo v. Bal Kishan : [2002]1SCR171, this Court considered the availability of a plea based on an attornment by a sub-lessee to the original lessor. In that case, the lessee had sued the sub-lessee for eviction with arrears of rent under the Rent Control Act. The ultimate lessor, the owner, a trust, had sued the lessee for possession. The sub-lessee resisted the suit by his lessor by pleading that he had attorned to the original lesser-owner and since the owner had sued the lessee for possession, the lessee could not seek to evict the sub-lessee and the lessee's suit was not maintainable. This Court repelled the said contention. This Court held that the defence of eviction by title paramount, was not available to the sub- lessee. On the subsistence of the relationship of lessor and lessee between the parties in spite of the attornment by the sub-lessee to the ultimate lessor-owner, this Court held :

'The tenant's tenancy with the trust will not come to an end unless and until a decree for eviction on one of the grounds available under the Rajasthan Act has been passed against him and termination of his tenancy upheld by a judicial verdict. Till then he would remain a tenant of the Trust. Mere institution of a suit for eviction by the Trust, the owner of the property; against the tenant does not bring the tenancy of the tenant to an end. The tenant cannot be said to have been evicted by paramount title holder. It cannot be said that the tenant does not have any defence nor can he lawfully resist the suit filed by the owner Trust. The plain and simple legal position which flows is that the sub-tenant must discharge his statutory obligation to put his landlord, that is, the tenant in possession of the premises in view of the latter's entitlement to hold the tenancy premises until his own right comes to an end and the tenant must discharge his statutory obligation to put his own landlord, that is, the Trust, in possession of the tenancy premises on his entitlement to hold the tenancy premises coming to an end.'

(Head Notes. Emphasis supplied)

This Court also re-emphasized the obligation of the sub-tenant to surrender to his lessor in terms of Section 108(q) of the Transfer of Property Act.

15. Here in this case, the lessee has acquired only the rights of certain co- owner landlords and may have the right to work out his rights against the others. The right to work out his rights would not enable him to plead that the two rights in the whole of the property has come to vest in him. What is involved in the present case is the question whether on the acquisition of the rights of some of the co-owner landlords by the tenant, there is an extinguishment of the tenancy by merger as postulated by Section 111(d) of the Transfer of Property Act. T. Lakshmipathi answers that question and with respect, answers that question correctly.

16. A plain and grammatical interpretation of Section 111(d) of the Transfer of Property Act leaves no room for doubt that unless the interests of the lessee and that of the lessor in the whole of the property leased, become vested at the same time in one person in the same right, a determination of the lease cannot take place. On taking an assignment from some of the co-owner landlords, the interests of the lessee and the lessor in the whole of the property do not become vested at the same time in one person in the same right. Therefore, a lessee who has taken assignment of the rights of a co-owner lessor, cannot successfully raise the plea of determination of tenancy on the ground of merger of his lessee's estate in that of the estate of the landlord. It is, thus, clear that there is no substance in the contention of the learned counsel for the appellants that in the case on hand, it should have been held that the tenancy stood determined and the application of the landlord for a direction to the tenant to deposit the rent in arrears should have been dismissed. The position of the appellants as tenants continue and they are bound to comply with the requirements of the Rent Control Act under which the order for deposit has been passed against them. The High Court has rightly dismissed the revision.

17. Thus, there is no merit in this appeal. Confirming the order of the High Court the appeal is dismissed.

R.C. Lahoti, C.J.

18. I have gone through the judgment proposed by brother P.K. Balasubramanyan, J. I find myself in agreement with the conclusion arrived at by him and also with the reasonings assigned by him excepting for his opinion formed on the case of Nalakath Sainuddin v. Koorikadan Sulaiman : [2002]SUPP1SCR1, with which opinion I have not been able to pursuade myself to agree and in that regard I am constrained to record my separate opinion.

19. The decision of two-Judges Bench of this Court in Indra Perfumery v. Moti Lal and Ors. : AIR1969 Delhi14 was not brought to the notice of the two-Judges Bench deciding Nalakath Sainuddin's case (supra); else the former decision would have certainly received consideration of the Court in the latter case. I propose to deal with these two cases.

20. With respect to the learned Judges who decided Indra Perfumery's case (supra), I have certain comments to offer on the case. It is a brief judgment which does not deal with the law in-depth. The impact of Section 109 of the Transfer of Property Act has not been considered. The doctrine of merger, well-accepted and well-established, has also not received the consideration of the Court in its expanse and then applied to the facts of the case. A very brief statement of law is to be found contained in para 4 thereof and therein the Court has said that Section 111(d) of the Transfer of Property Act has no application, unless the interest of the lessor and the lessee in the whole of the property is vested in the same person. The Court has gone on to observe that the appellant is the 'owner' of the house and is also a 'tenant' of a part of the house of which the respondents were tenants from Mohd. Shafi.

21. If one were to agree with the principle so propounded, certain anomalous consequences will follow, as can be demonstrated. The facts of Indra Perfumery's case show that M was the owner of the house which was let out in its entirety to T. T sub-let a part of the house to IP, the sub-tenant. IP purchased the interest of M, the owner, in the whole of the property and, therefore, IP stepped into the shoes of M. If M would have filed a suit for recovery of possession against T on determination of the latter's lease, then, in that suit T would have been impleaded as a defendant and IP could also have been joined as additional defendant being

a sub-tenant in possession of a part of the tenanted premises. Whether IP was joined as a party to the suit or not, the estate vesting in IP being subordinate to the estate of T, in the execution of decree of eviction passed against T, M would have been entitled to evict T and IP both. Ever since the date of purchase by IP, M can neither determine the tenancy of T nor file a suit for eviction against him as he has lost the title in the property which title has come to vest in IP. The only person who can determine the tenancy and claim recovery of possession is IP inasmuch as the whole of the interest in whole of the property has come to vest in IP by purchase. Now, if IP were to file a suit for eviction against T, would IP, the plaintiff also join IP itself as an additional defendant? Or, would it be the requirement of law that IP, in its capacity as sub-tenant, must first deliver possession to T, the tenant and then, the tenant must deliver possession to IP itself in its capacity as owner? This is what will follow if we were to agree with the observation made by the learned Judges in Indra Perfumery case (supra) that, 'the appellant is the owner of the house, it is also a tenant of a part of the house of which the respondent are tenants from Mohd. Shafi'.

22. The conclusion drawn in Indra Perfumery's case (supra) would have been different if only the attention of the learned Judges would have been invited to Section 109 of the Transfer of Property Act and the doctrines of 'statutory attornment' and of 'merger' with all the ramifications. This was done in Nalakath Sainuddin's case. It has been clearly held on a detailed examination of all the relevant statutory provisions and the doctrine of merger:-

(i) that merger is founded on the principle that two estates - one larger and one smaller cannot - and need not -coexist, if the smaller estate can in equity, and must in law, sink or merge into the larger estate. One cannot be an owner and sub-lessee both at the same time. The smaller estate of sub-tenancy shall sink or drown into the larger estate of ownership as the two cannot coexist;

(ii) that Section 109 of the TP Act does away with the need for consensual attornment. The attornment is brought about by operation of law. The limitation on the right of the landlord against splitting up of the integrity of the tenancy, inhering in the inhibitions of his own contract, does not visit the assignee of the part of the

reversion. The severance of the reversion and the assignment of the part so severed do not need the consent of the tenant. [See - Mohar Singh (dead) by LRs v. Devi Charan and Ors. : AIR 1988 SC1365 ]

23. Ownership of the property which is the subject matter of tenancy is certainly a larger estate than the tenancy itself and naturally larger than the sub-tenancy. If the sub-tenant acquires the entire interest of the owner in the whole of the estate forming the subject matter of sub-tenancy, the sub-tenancy merges into ownership and the estate of sub-tenant stands enlarged into that of a full owner. The sub-tenant cannot be the owner and the sub-tenant both at the same time. Of course, the situation would have been different if the sub-tenant would not have acquired the entire estate of the owner or the ownership interest in the entire estate forming subject matter of sub-lease, as was the case in Badri Narain Jha and Ors. v. Rameshwar Dayal Singh and Ors. : [1951]2SCR153 or in Shaikh Faqir Bakhsh v. Murli Dhar and Ors. .

24. In the case of Nalakath Sainuddin the sub-tenant had acquired not a share only of the landlord-owner's estate nor an ownership in only a part confined to sub-tenancy premises; what he had acquired under the deed dated 12-9-1988 was the full ownership in the entire premises. The right of reversion, vesting in the erstwhile owners, had come to vest fully and entirely in the sub-tenant.

25. In my humble opinion Indra Perfumery case (supra) was not correctly decided and does not lay down the correct law. Subject to this much opinion only, which I am placing on record as my view and which is in divergence with the view expressed by my learned brother P.K. Balasubramanyan, J., I am in agreement that the appeal has no merit and deserves to be dismissed confirming the order of the High Court.

**G.P. Mathur, J.**

26. I am in agreement with the judgment of brother Balasubramanyan, J. that the appeal be dismissed, except on a limited point on which the learned Chief Justice has written a separate opinion, with which I concur.

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