

**HIGH COURT OF UTTARAKHAND AT NAINITAL****HON'BLE SRI JUSTICE MANOJ KUMAR TIWARI****Writ Petition Misc. Single No. 2199 of 2024****29 July, 2026**

Rajan Transport Company & another

--Petitioners

Versus

Akhil Kumar

--Respondent

Presence:-Mr. Vijay Bhatt, Senior Advocate, assisted by Mr. Priyank Kharkwal,
Advocate for the petitioners.

Mr. Piyush Garg, Advocate for the respondent.

JUDGMENT

1. Petitioner is tenant in respect of a shop in Arhat Bazar, Dehradun. Owner of the said shop filed application under Section 21 (1) (a) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (U.P. Act No. 13 of 1972) for release of that shop on the ground of personal bonafide need. Said application was registered as P.A. Case No. 15 of 2021, which is pending before Second Additional Civil Judge (Senior Division), Dehradun.

2. Petitioner moved an application in the said case praying for dismissal of release application by contending that owner of the shop executed an agreement to sell in favour of wife of Virendra Pal Singh (petitioner no. 2 herein) on 26.04.2012 and the sale consideration has also been paid to him and a suit for specific performance of the said agreement was filed, which is pending before 9th Additional Civil Judge (Senior Division), Dehradun; the petitioners are in possession over the shop not as tenant but on the



strength of the agreement to sell.

3. Learned Second Additional Civil Judge rejected the application filed by petitioners *vide* order dated 30.07.2024 by holding that in summary proceedings under Section 21 (1) (a) of U.P. Act No. 13 of 1972, dispute regarding title cannot be adjudicated and it is only to be seen whether person filing release application is the landlord or not. This order passed by learned Second Additional Civil Judge is under challenge in this petition filed under Article 227 of the Constitution.

4. Learned counsel for petitioners submits that even though petitioners were tenant earlier, however, their status underwent a change, consequent to execution of agreement to sell in their favour by owner of the shop, therefore, the application for release of shop, filed by respondent is not maintainable. He further submits that a suit for specific performance of the said agreement to sell was filed by petitioner no. 2, his wife and his son, which is pending before Civil Judge (Senior Division), Dehradun and there is fair chance of success in that suit. Learned counsel for the petitioners also relies upon a receipt, alleged to have been issued, by respondent in favour of wife of petitioner no. 2, for contending that possession of the shop was handed over to the petitioners.

5. Per contra, learned counsel for respondent submits that the agreement to sell relied upon by petitioners is a bogus document and respondent never executed such agreement in favour of petitioners. He



further submits that even in the document relied upon by petitioners, it is mentioned on the top of first page that it is 'without possession'. He refers to clause 5 of the said document where it is mentioned that symbolic possession of the property shall be transferred by owner (respondent herein) in favour of wife of petitioner no. 2 at the time of execution of sale deed. Clause 5 of the said agreement is reproduced below for ready reference:-

"5. That ground floor portion of the said property is already under tenancy of M/s Rajan Transport. Symbolic possession of this part shall be transferred to the second party at the time of sale deed. The physical possession of the first floor portion of the said property which is in physical possession of the first party shall be transferred to the Third party at the time of execution of the sale deed."

6. Learned counsel for respondent submits that the document enclosed as Annexure-7 to the writ petition do not support the contention of petitioners that possession of the shop was delivered to them, even if the said document is taken at its face value. He further submits that his client has specifically denied issuance of any receipt to the petitioners.

7. This Court do not find any scope for interference with the order passed by learned Additional Civil Judge.

8. Hon'ble Supreme Court in the case of *H.K. Sharma v. Ram Lal*, reported as (2019) 4 SCC 153 held that lessor-lessee relationship is not terminated merely by execution of an agreement to sell for tenanted premises in favour of the tenant and it is necessary to determine whether the parties intended to surrender the lease on execution of such agreement. It was further held that if the agreement does not contain any



stipulation from which intention of the lessor can be gathered that he did surrender the tenancy either expressly or impliedly in favour of the tenant, then mere execution of an agreement to sell will not result in determination of tenancy and the lessor would be entitled to seek eviction of the tenant from the tenanted premises. Paragraph no. 22 to 34 of the said judgment are reproduced below:-

“22. The question, which arises for consideration in these appeals, is when the lessor and the lessee enters into an agreement for sale/purchase of the tenanted premises where the lessor agrees to sell the tenanted premises to his lessee for consideration on certain conditions, whether, as a result of entering into such agreement, the jural relationship of lessor and the lessee in relation to the leased property comes to an end and, if so, whether it results in determination of the lease.

23. In other words, the question that arises for consideration is when the lessor enters into an agreement to sell the tenanted property to his lessee during the subsistence of the lease, whether execution of such agreement would ipso facto result in determination of the lease and sever the relationship of lessor and the lessee in relation to the leased property.

24. In our considered opinion, the aforementioned question has to be decided keeping in view the provisions of Section 111 of the TP Act and the intention of the parties to the lease — whether the parties intended to surrender the lease on execution of such agreement in relation to the tenanted premises or they intended to keep the lease subsisting notwithstanding the execution of such agreement.

25. Chapter V of the TP Act deals with the leases of immovable property. This chapter consists of Section 105 to Section 117.

26. A lease of an immovable property is a contract between the lessor and the lessee. Their rights are governed by Sections 105 to 117 of the TP Act read with the respective State rent laws enacted by the State. Section 111 of the TP Act deals with the determination of lease. Clauses (a) to (h) set out the grounds on which a lease of an immovable property can be determined. Clauses (e) and (f) with which we are concerned here provide that a lease can be determined by an express surrender; in case, the lessee yields up his interest under the lease to the lessor by mutual agreement between them whereas clause (f) provides that the lease can be determined by implied surrender.

27. This Court in Shah Mathuradas Maganlal & Co. v. Nagappa Shankarappa Malage considered the scope of clauses (e) and (f) of Section 111 of the TP Act and laid down the following principle in para 19 as under: (SCC p. 665)

“19. A surrender under clauses (e) and (f) of Section 111 of the Transfer of Property Act, is an yielding up of the term of the lessee's interest to him who has the immediate reversion or the lessor's interest. It takes effect like a contract by mutual consent on the lessor's acceptance of the act of the lessee. The lessee cannot, therefore, surrender unless the term is vested in him; and the surrender must be to a person in whom the immediate reversion expectant on the term is vested. Implied surrender by operation of law occurs by the creation of a new relationship, or by relinquishment of possession. It the lessee accepts a new lease that in itself is a surrender. Surrender can also be implied from the consent of the parties or from



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such facts as the relinquishment of possession by the lessee and taking over possession by the lessor. Relinquishment of possession operates as an implied surrender. There must be a taking of possession, not necessarily a physical taking, but something amounting to a virtual taking of possession. Whether this has occurred is a question of fact.”

28. It is in the light of the aforementioned legal principle, the question involved in this case has to be examined.

29. Perusal of agreement to sell dated 13-5-1993 (Annexure P-1) shows that though the agreement contains 9 conditions but none of the conditions provides, much less in specific terms, as to what will be the fate of the tenancy. In other words, none of the conditions set out in the agreement dated 13-5-1993 can be construed for holding that the parties intended to surrender the tenancy rights.

30. A fortiori, the parties did not intend to surrender the tenancy rights despite entering into an agreement of sale of the tenanted property. In other words, if the parties really intended to surrender their tenancy rights as contemplated in clauses (e) or (f) of Section 111 of the TP Act while entering into an agreement to sell the suit house, it would have made necessary provision to that effect by providing a specific clause in the agreement. It was, however, not done. On the other hand, we find that the conditions set out in the agreement do not make out a case of express surrender under clause (e) or implied surrender under clause (f) of Section 111 of the TP Act.

31. It is for this reason, the law laid down by this Court in *R. Kanthimathi* [*R. Kanthimathi v. Beatrice Xavier*, (2000) 9 SCC 339] has no application to the facts of this case and is, therefore, distinguishable on facts. Indeed, it will be clear from mere perusal of para 4 of the said decision quoted hereinbelow: (SCC p. 341)

“4. As aforesaid, the question for consideration is, whether the status of tenant as such changes on the execution of an agreement of sale with the landlord. It is relevant at this junction first to examine the terms of the agreement of sale. The relevant portions of the agreement of sale record the following:

‘I the aforesaid Mrs Beatrice Xavier hereby agree out of my own free will, to sell, convey and transfer the property to you Mrs R. Kanthimathi wife of Mr S. Ramaswami, 435 Trichy Road, Coimbatore for a mutually agreed sale consideration of Rs 25,000.

I shall be proceeding to Coimbatore and shall execute the sale deed and present the same for admission and registration before the Registering Authority, accepting and acknowledge payment of the balance of consideration of Rs 5000 (Rupees five thousand only) at the time of registration and shall complete the transaction of sale and conveyance as the property demised has already been surrendered to your possession.” (emphasis in original)

The words highlighted in italics of the agreement were construed by their Lordships for holding that these italicised words in the agreement clearly indicate that the parties had really intended to surrender their tenancy rights on execution of the agreement of sale and bring to an end their jural relationship of the landlord and tenant.

32. As observed *supra*, such is not the case here because we do not find any such clause or a clause akin thereto in the agreement dated 13-5-1993 and nor we find that the existing conditions in the agreement discern the intention of the parties to surrender the tenancy agreement either expressly or impliedly.

33. In the light of the foregoing discussion, we are of the considered opinion that the tenancy in question between the parties did not result in its determination as contemplated under Section 111 of the TP Act due to execution of the agreement dated 13-5-1993 between the parties for sale of the suit house and the same remained unaffected



notwithstanding execution of the agreement dated 13-5-1993,

34. A fortiori, the respondent (lessor) was rightly held entitled to file an application against the appellant (lessee) under Section 21(1)(a) of the U.P. Act and seek the appellant's eviction from the suit house after determining the tenancy in question."

9. Hon'ble Supreme Court in the case of *Som Nath v. Ravinder Kumar (Civil Appeal No. 4484 of 2025)* while dealing with the question whether decree passed in a suit for specific performance in favour of tenant will result in cessation of landlord-tenant relationship held that as per Section 54 of Transfer of Property Act, a contract for sale of immovable property does not *ipso facto* create any interest in or charge on such property to the decree holder and transfer of title would take place only after registration of the conveyance deed. Paragraph nos. 12, 13 & 14 of the said judgment are reproduced below:-

"12. The next submission on behalf of the respondent that in view of there being an agreement of sale and decree of specific performance in favour of respondent the landlord-tenant relationship between the parties ceased to exist, is completely misconceived for the following reasons.

13. As per Section 54 of the Transfer of Property Act, 1882 a contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself create any interest in or charge on such property. Thus, even if the suit for specific performance is decreed, without a specific decree for transfer of the possession of the suit property, the same can be enforced only when the court directs the judgment-debtor to convey the suit property to the decree holder. Special. It is only after registration that the transfer of title would take place from one to the other.

14. In the instant case, admittedly, the decree for specific performance was a conditional decree and the decree holder (the respondent herein) had failed to fulfill the condition and, therefore, the decree could not fructify into a conveyance. In such circumstances, there was no transfer of property from the appellant to the respondent. Thus, there was no termination of landlord-tenant relationship between the parties by virtue of Section 111(d) of the Transfer of Property Act, 1882. In consequence, there was no good reason for the High Court to set aside concurrent findings of fact returned by the two courts below."

10. In the present case, though petitioners filed a suit for specific performance, but, till the time it is decreed and sale deed is executed in their favour, the landlord-tenant relationship is not terminated. An agreement to sell does not in itself, create any interest



in or charge over the property and wife of petitioner no. 2 will become owner of the shop only upon execution of sale deed by respondent in her favour.

11. This Court concurs with the view taken by learned Civil Judge that in summary proceedings under U.P. Act No. 13 of 1972, the Court only needs to determine if a landlord-tenant relationship existed.

12. For the aforesaid reasons, the writ petition fails and is dismissed. Having regard to the fact that the release application is pending for 5 years, learned Civil Judge is requested to make endeavour to decide the release application, within six months.

(Manoj Kumar Tiwari, J.)

29 July, 2026

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NAVEEN CHANDRA