

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

CIVIL REVISION PETITION NO.2521 OF 2016

Between:

-

Cheela Narayanarao and another.

.... Petitioners

Vs.

R. Ajay Kumar

.... Respondent

DATE OF JUDGMENT PRONOUNCED: 08.07.2016.

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

1. Whether Reporters of Local newspapers may
be allowed to see the Judgments? -
2. Whether the copies of judgment may be marked
to Law Reports/Journals Yes
3. Whether Their Ladyship/Lordship wish to see the
fair copy of the Judgment? Yes

JUSTICE RAMESH RANGANA1

*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

+ CIVIL REVISION PETITION NO.2521 OF 2016

% Dated 08-07-2016

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Cheela Narayanarao and another.

.... Petitioners

Vs.

\$ R. Ajay Kumar

.... Respondent

! Counsel for petitioners: Sri J. Prabhakar, Learned Counsel
appearing on behalf of Sri J. Venkateswara Reddy

^ Counsel for respondent: Sri Manu

<GIST:

> HEAD NOTE:

? Citations:

- 1) (1990) 4 SCC 286
- 2) (1995) 6 SCC 580
- 3) AIR 1994 Delhi 212
- 4) (2002) 6 SCC 1 = AIR 2002 SC 2562
- 5) AIR 1988 SC 1365
- 6) (2006) 1 ALT 103 (DB) = 2006 (1) LS 54
- 7) AIR 2008 (NOC) 1341 (Mad.)

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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CIVIL REVISION PETITION No.2521 of 2016

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ORDER:

Aggrieved by the order passed by the Additional Chief Judge, City Small Causes Court, Hyderabad in RA No.192 of 2015 dated 06.04.2016, dismissing the appeal preferred by the respondent-tenant against the order of the Additional Rent Control, Secunderabad in RC No.112 of 2013 dated 15.09.2015, this revision, under Section 22 of the A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960 (hereinafter called 'the Rent Control Act'), is filed by the tenant in R.C. No.112 of 2013. Parties shall, hereinafter, be referred to as they are arrayed in R.C. No.112 of 2013.

The petitioners-landlords filed R.C. No.112 of 2013, under Section 10(2)(ii)(a) and 10(3)(a)(iii)(b) of the Rent Control Act, seeking a direction to the respondent-tenant, and all others claiming under or through him, to vacate and deliver vacant, peaceful, physical and legal possession of the petition schedule premises to them. The petitioners filed R.C. No.112 of 2013 claiming to be the absolute owners of premises No.2-1-1 and 2-1-192

(old Mulgi No.1222), consisting of the ground and first floors admeasuring 810 square feet situated at General Bazaar, Secunderabad, by virtue of a Will executed by their grandmother Smt. Cheela Kanakalakshmi in their favour on 10.12.2006; Smt. Cheela Kanakalakshmi was the owner of the petition schedule property by virtue of a registered sale deed dated 03.05.1957 executed by her vendor in her favour; Smt. C. Kanakalakshmi expired on 17.02.2008; they entered into a registered partition deed on 29.10.2013; the subject property was let out by their grand-mother to the grand-father of the tenant i.e., R. Kanakaiah and, after his death, his son R. Laxman Rao carried on business in the said property; the respondent-tenant was in occupation of the petition schedule property paying a monthly rent of Rs.950/-; the respondent owned several commercial properties in the same locality; he had filed R.C.No.170 of 2002 against their grand mother Smt. C. Kanakalakshmi and their father Sri C. Ramulu, for deposit of monthly rent of Rs.950/-, which was allowed; the first petitioner needed the entire premises for his personal requirement for commencing textiles and readymade garment business; the petitioners do not have any other non-residential premises, except the petition schedule property in the twin cities of Secunderabad and Hyderabad; the second petitioner is in private service, and has no objection to the first petitioner carrying on the proposed business; the second petitioner may also join as a partner in the said business; the respondent-tenant had illegally sublet a major portion of the ground floor of the subject mulgi to a third party who was carrying on business under the name and style of "**Saheli Suits**"; the respondent had also allowed several petty vendors to carry on business in front of the premises by collecting a hefty license fee per day; he was not revealing details of the sub-tenant, and the quantum of rent being collected by him; the petitioners came to know, through reliable sources, that the respondent was collecting Rs.750/- per day from the said third party i.e., "**Saheli Suits**"; and subletting of the subject property by the respondent was without the written or oral consent of the landlords, and was unlawful.

In his counter the respondent-tenant denied the allegations contending that the petitioners were not his landlords and neither had he ever paid rent to them nor had they claimed rent at any time as owners of the subject property. While admitting that the subject property belonged to Smt.

C. Kanakalakshmi, the respondent-tenant contended that her son C. Sriramulu, (father of the petitioners-landlords) was the person collecting rents; the subject property was let out to his grandfather who had constructed the subject premises thereon at his cost with the consent of the original owner Smt. C. Kanakalakshmi, and her son Sri C. Sriramulu; the respondent was a tenant of the petition schedule property on a monthly rent of Rs.950/-; he was regularly paying rents to Sri C. Sriramulu who failed to collect the rents that were due in the year 2002; as such he was compelled to file the petition in R.C. No.192 of 2002 for deposit of rent; the said R.C. was allowed, and the respondent was depositing the entire one year rent in advance, from the date the said petition was allowed; the deposited amount in the said R.C was withdrawn by Sri C. Sriramulu by filing a cheque petition; rent of Rs.11,400/- was paid by cheque No.5361104; Sri C. Sriramulu received rent from Court for Rs.36,100/- by way of cheque No.536071; the relationship between the respondent and Sri C. Sriramulu was that of tenant-landlord; the petitioners, who claimed to be the sons of Sri C. Sriramulu, had failed to prove their rights over the subject property; the petitioners grand-mother Smt. Cheela Kanakalakshmi did not execute any Will in their favour as she died intestate; the subject Will was not even registered; the age of the testatrix, when the Will was executed, was 93 years; neither the Will nor the physical and mental condition of the testatrix was verified by any medical practitioner; the said Will bears her thumb impression as the testatrix was an illiterate lady; the name of the person, who was the scribe of the Will, was not even mentioned; neither had he sublet the subject mulgi to others nor had he collected huge rents; and he was permitted in writing, both by Smt. C. Kanakalakshmi and Sri C. Sriramulu, to carry on business either in his individual capacity, or in partnership with any third party as partners, by executing an agreement.

In his order in R.C. No.112 of 2013 dated 15.09.2015, the Rent Controller held that the petitioners, who were the sons of Sri C. Sriramulu and the grandsons of Smt. C. Kanakalakshmi, were legally entitled to receive rents from the petition schedule property in view of Section 2(vi) of the Act; the respondent-tenant could not question the validity of the Will as no right was conferred on him to do so; it was not open to him to contend that

the petitioners had no valid title; the question of title was not germane to the rent control case; the Will was not required to be proved; the jurisdiction of the Rent Controller was limited; the validity of the Will or the succession of the parties or question of title would not be examined in Rent Control proceedings; there was no specific denial by the respondent-tenant that the petitioners-landlords would not require the subject property for their bonafide requirement; the petitioners had pleaded that they did not have any non-residential premises except the subject property in Hyderabad and Secunderabad; this assertion was not denied by the respondent in the counter; the respondent did not plead that the petitioners were in occupation of other non-residential premises in the twin cities; his contention was that the petitioners had colluded with Sri C. Sriramulu who was the son of Smt. C. Kanakalakshmi; it was not the case of the respondent-tenant that Sri C. Sriramulu was not the son of Smt.C. Kanakalakshmi or that the petitioners were not his sons; the father had asked for the bonafide requirement of his son, as the property was owned by them; the respondent had admitted that Sri C. Sriramulu used to collect rents even after the demise of Smt. C. Kanaka Lakshmi; the tenancy was admitted; the person, who was collecting rents from the respondent, was none other than the father of the petitioners; the respondent was paying rents to him without any protest; and, therefore, the jural relationship of the parties was proved.

The Rent Controller observed that, in the present case, the petitioners had pleaded that they required the subject property to start a readymade garment business; a blanket denial by the respondent that the petitioners did not require the subject property, and had no experience in textile business, could not be accepted; Smt. C Kanakalakshmi died in the year 2008; from the year 2008 till the date of filing the present R.C, the respondent did not take any steps to file a petition under Section 9(3) of the Act if he entertained any doubt regarding ownership of the subject property by the petitioners; the respondent could not challenge the Will in the status of a tenant; the respondent had failed to establish that the petitioners were in possession of some other non-residential building which was suitable for commencing their new business; the requirement of the petitioners was for their bona-fide personal requirement to commence textile and readymade garment business in the subject property as the entire locality was purely a

readymade garment business locality; and the respondent was liable to be evicted from the petition schedule property on this ground.

The Rent Controller further observed that Ex.P-7 photograph showed that there were petty vendors in front of the subject property; Ex.P-7 gave a clear picture of the petty vendors, and also that of “Saheli Suits shop” in the ground floor of the subject property; and this was enough to establish that the respondent had sublet the ground floor of the subject property. The Rent Controller concluded that there was a jural relationship between the petitioners and the respondent; the petitioners, who were the grandsons of the original owner Smt. C. Kanakalskshmi, were entitled to receive rents from the respondent; the petitioners had also proved that their requirement of the subject property, to commence textile and readymade garment business, was bona-fide; they had also proved that the respondent had sublet the ground floor of the subject property to “**Saheli Suits**”; and, on these grounds, the respondent-tenant was liable to be evicted from the petition schedule premises. The respondent-tenant was directed to vacate the premises within sixty days from the date of the order, failing which the petitioners-landlords were given liberty to evict him from the subject property in accordance with law.

On the respondent-tenant carrying the matter in appeal, the Additional Chief Judge, City Small Causes Court, Hyderabad, in his order in R.A. No.192 of 2015 dated 06.04.2016, held that the respondent, who was only a tenant in the subject property, had no right to question the validity of the Will; persons, who were entitled to question the validity of the Will, were only the legal heirs of Smt. C. Kanaka Lakshmi; the jurisdiction of the Rent Controller and the Appellate Authority was limited and it could not, as a Civil Court, decide the dispute relating to title over the property; the respondent-tenant had suggested to PW.2 (father of the petitioners-landlords), during cross-examination, that he was not present at the time of execution of the Will by his mother; PW.2 denied the suggestion and this indicated that, according to the respondent-tenant, the mother of PW.2, who happened to be the paternal grandmother of the petitioners-landlords, had executed the Will, and at the time of execution PW.2 was not present; in his evidence PW.2 had stated that, by virtue of Ex.P3 Will, the petitioners had become the

owners of the subject property and its landlords; the respondent-tenant automatically became the tenant of the petitioners and, in between them, a jural relationship came into existence; they had every right to ask for the subject property for their personal bona-fide occupation; the respondent-tenant had failed to furnish any details of the non-residential accommodation which he alleged was owned by the petitioners; even if the first petitioner had no experience in textile business, the petitioners, being the owners of the subject property, were entitled to seek eviction of the respondent-tenant from the subject property on the ground of personal bona-fide requirement; and they were able to place convincing evidence to establish that their personal bona-fide requirement was genuine.

The Appellate Court further held that the photographs in Ex.P7 disclosed the existence of "**Saheli Suits**" in the subject property; the respondent-tenant did not deny the contents of Ex.P7 photograph; according to him, the business of "**Saheli Suits**" was being carried on by him in partnership, and he relied on Ex.R-1 in this regard; he further stated that he did not sublet it to any one as alleged; in his evidence in chief-affidavit, the respondent-tenant had mentioned that he had carried on business under the name and style of "**R.S. Enterprises**" in the subject property; as he had himself claimed that he was carrying on business in the name and style of "**R.S. Enterprises**", there was no necessity for him to enter into a partnership with "**Saheli Suits**"; his evidence was self-contradictory; if really he was in partnership with others, and was carrying on business under the name and style of "**Saheli Suits**" in the subject property, he would have mentioned the names of his partners, and would have stated whether the partnership was oral or in writing; and the contradictory versions in the evidence in chief of the respondent-tenant indicated that he had sublet the petition schedule property to a third party i.e. "**Saheli Suits**". The Appellate Court dismissed the appeal without costs confirming the eviction order passed, in R.C. No.112 of 2013 dated 15.09.2015, by the Additional Rent Controller, Secunderabad. The respondent-tenant was directed to vacate and handover vacant possession of the subject property to the petitioners-landlords within two months from the date of the judgment, failing which, the petitioners-landlords were given liberty to seek his eviction under due process of law.

Before this Court Sri J. Prabhakar, Learned Counsel appearing on behalf of Sri J. Venkateswara Reddy, Learned Counsel for the respondent-tenant, would submit that there is no jural relationship of landlords and tenant between the petitioners and the respondent; in the absence of a jural relationship, R.C. No.112 of 2013 was not maintainable; while a tenant was no doubt disentitled to dispute the Will more so in rent control proceedings, it was open to him to show that the Will was not genuine to show lack of jural relationship between the petitioner and himself as landlords and tenant; as the claim of respondent-tenant is bona-fide, the petitioners-landlords should have been relegated to the remedy of a civil suit, and not to invoke the jurisdiction of the Rent Controller; there was no attornment of the tenancy by the respondent; the proviso to Section 10 of the Rent Control Act bars institution of proceedings for three months from the date of acquisition; the attornment took place only when the father of the petitioners-landlords entered into the box, and not earlier when the Rent Control case was filed; the respondent-tenant was never informed, at any time before the present rent control proceedings were instituted, that the petitioners had become the owners of the subject property; the burden of proving their bona-fide requirement was on the petitioners-landlords; mere assertion that they intend starting a readymade garment business is insufficient; some proof ought to have been adduced to show that their claim is genuine; the vague statement of PW.1, of opening a garment shop would not constitute sufficient proof of bona-fide requirement; both the Courts below erred in holding that there were hawkers outside the premises; the burden of establishing that the respondent-tenant had sublet the premises was on the petitioners-landlords; both the Courts below had misconstrued the lease-deed; the finding recorded by the Court below were perverse as the burden was shifted by them on to the tenant; and proceedings not on record cannot be considered in the present revision petition.

On the other hand Sri Manu, Learned Counsel for the petitioner-landlords, would submit that the landlady, the original owner of the subject property, expired in the year 2008; by virtue of the Will, the petitioners became the owners of the subject property; it is not open to the tenant to dispute the title of the landlords in proceedings under the Rent Control Act;

there is no provision under the Rent Control Act contrary to Section 109 of the Transfer of Property Act ("TP Act" for short) prescribing attornment by the tenant as a pre-condition for instituting proceedings for eviction thereunder; there was no denial by the respondent-tenant, in his counter, regarding the petitioners-landlords bona-fide requirement of the subject property; the concurrent finding recorded by both the Courts below establish that the respondent-tenant had sublet the premises; and, as these findings are not perverse, this Court would not interfere therewith in proceedings under Section 22 of the Rent Control Act.

Section 10 of the Rent Control Act relates to eviction of tenants and sub-section (1) thereof stipulates that the tenant shall not be evicted, whether in execution of a decree or otherwise, except in accordance with the provisions of Sections 10, 12 or 13 of the Act. The proviso thereto stipulates that, where the tenant denies the title of the landlord, the controller shall decide whether the denial or claim is *bonafide* and, if he records a finding to that effect, the landlord shall be entitled to sue for eviction of the tenant in a Civil Court, and the Court may pass a decree for eviction on any of the grounds mentioned in the said Section, notwithstanding that the Court finds that the claim is unfounded. In the present case both the Courts below have held that the respondent-tenant's denial of title of the petitioner-landlords was unfounded i.e., it was not *bonafide*; and the petitioners were the landlords of the subject property of which the respondent was the tenant.

In proceedings for eviction of a tenant, the Court will take only a *prima facie* decision on the collateral issue whether the applicant was the landlord. The Court is only required to satisfy itself that the person seeking eviction is a landlord who has, *prima facie*, the right to receive the rent of the property in question. In order to decide whether denial of the landlord's title by the tenant is bona fide, the Court may have to go into the tenant's contention on the issue, but the Court is not to decide the question of title finally as it has only to ascertain whether, in the circumstances of the case, the tenant's denial of title of the landlord is bonafide. (**LIC v. India Automobiles & Co.**^[1]; **Ranbir Singh (Dr) v. Asharfi Lal**^[2]).

The fact that the subject property belongs to Smt. C. Kanaka Lakshmi

has been admitted by the respondent-tenant. What has been disputed is the petitioners-landlords claim to ownership of the subject property on the basis of a Will executed in their favour by Smt. C. Kanakalakshmi. The respondent-tenant contends that, consequent on the death of Smt. C. Kanaka Lakshmi, it is her son Sri C. Sriramulu (father of the petitioners) who became the owner of the subject property; as the present proceedings was instituted not by him, but by his sons, there is absence of a jural relationship of landlord and tenant between the sons of Sri C. Sriramulu and the respondent-tenant; and the petitioners are, therefore, not entitled to seek his eviction. Emphasis is placed by Sri J. Prabhakar, Learned Counsel appearing on behalf of the respondent-tenant, on the fact that, way back in the year 2010, it was Sri C. Sriramulu who received the money deposited by the respondent-tenant in the Court. Learned Counsel would rely on **Ranbir Singh (Dr)**² in this regard.

In the petition filed in R.C. No.112 of 2013, the petitioners stated that they were the absolute owners of the subject property by virtue of the Will executed in their favour by their grandmother Smt. C. Kanaka Lakshmi on 10.12.2006, and that Smt. C. Kanaka Lakshmi expired on 17.2.2008. In the counter filed thereto, the respondent-tenant asserted that the petitioners were not the landlords, they had never claimed any rent from him as the owners, the subject property belonged to Smt. C. Kanaka Lakshmi, it was her son Sri C. Sriramulu (father of the petitioners) who was collecting rents from him since a very long time, the relationship between him and Sri C. Sriramulu was that of landlord and tenant and the petitioners, who claimed to be the landlords, had to prove their right over the subject property. While contending that Smt. C. Kanaka Lakshmi died intestate and was not in a condition to execute any Will bequeathing the property in favour of the petitioners, the respondent-tenant also contended that the alleged Will was not registered, and the mental condition of Smt. C. Kanakalakshmi had not been verified by any medical practitioner.

Sri C. Sriramulu was the 2nd respondent in R.C. No.179 of 2002 filed by the respondent-tenant, and Smt. C. Kanaka Lakshmi was the first respondent therein. The order of the Additional Rent Controller, in R.C. No.179 of 2002 dated 25.07.2003, takes note of the assertion of Sri C.

Sriramulu in cross-examination that it was Smt. C. Kanaka Lakshmi who was the absolute owner and landlady of the subject property. The mere fact that, after the death of Smt. C. Kanaka Lakshmi, Sri C. Sriramulu (i.e the 2nd respondent in R.C.No.179 of 2002), had collected the rent, which the respondent-tenant had deposited in Court to the credit of R.C. No.179 of 2002, would not make him the owner of the property or the landlord as the amounts so deposited could also have been collected by him on behalf of the petitioners who became the landlords of the subject property subsequent to the death of Smt. C. Kanaka Lakshmi on 17.02.2008.

Clause (iii) of Section 3 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 defines 'landlord' to mean any person who, for the time being, was receiving or was entitled to receive the rent of any premises, whether on his own account or as an agent, trustee, guardian or receiver for any other person or who would so receive or be entitled to receive the rent, if the premises were let to a tenant. Clause (vii) of Section 3 of the said Act defined 'tenant' as the person by whom or on whose account or behalf rent is or, but for a contract express or implied, would be payable for any premises to his landlord including the person who is continuing in its possession after the termination of his tenancy otherwise than by a decree for eviction passed under the provisions of the Act. While considering these provisions the Supreme Court, in **Ranbir Singh (Dr)²**, observed that the question of title of the property is not germane for a decision in an eviction suit; where the plaintiff institutes a suit for eviction of his tenant, based on the relationship of landlord and tenant, the scope of the suit is limited in which the question of title cannot be gone into; the plaintiff's Suit would be dismissed even if he succeeds in proving his title but fails to establish privity of the contract of tenancy; and in a suit for eviction the Court has only to decide whether the defendant is the tenant of the plaintiff or not, though the question of title, if disputed, may be incidentally gone into in connection with the main question regarding the relationship between the litigating parties.

Section 2(vi) of the Rent Control Act defines 'landlord' to mean the owner of a building and includes a person who is receiving, or is entitled to receive the rent of a building, whether on his own account or on behalf of another person or on behalf of himself and others or as an agent, trustee,

executor, administrator, receiver or guardian or who would so receive the rent or be entitled to receive the rent, if the building were let out to a tenant. Sri C. Sriramulu, the son of Smt. C. Kanaka Lakshmi, himself deposed as PW.2 that his sons, who were the petitioners in R.C. No.112 of 2013, were the absolute owners of the subject property by virtue of a Will executed in their favour by his mother Smt. C. Kanaka Lakshmi on 10.12.2006 in a sound state of mind; his mother expired on 17.02.2008; and, after 17.02.2008, his sons were the absolute owners and the landlords of the subject property. As has been rightly observed by both the Courts below, it is not open to the respondent-tenant to question the genuineness of the Will, or the title of the petitioners-landlords over the subject property, in rent control proceedings. Both the Courts below rightly held that these are all matters extraneous to the proceedings under the Act. As the petitioners are the owners of the building, having been bequeathed the property under the Will executed in their favour by their grandmother Smt. C. Kanaka Lakshmi, they are entitled, as the landlords, to institute proceedings, for eviction of the respondent-tenant under the Act, before the Rent Controller. The contention, that the petitioners were not the landlords and there is no jural relationship of landlords and tenants between them and the respondent-tenant, does not therefore merit acceptance.

The contention that there was no attornment of the tenancy by the respondent-tenant, the attornment took place only when Sri C. Sriramulu deposed as PW.2 and not before the Rent Control case was filed, and therefore, R.C.No.112 of 2013 is not maintainable, is only to be noted to be rejected. To attorn means to agree to become a tenant of one as the owner, or as a landlord of a property previously owned or held by another, or to agree to recognise a new owner of a property or estate and to promise payment of rent to him. (**Estoppel by Representation by Spencer Bower & Turner-III Edn.**). The word "attorn" means 'transfer: make legal acknowledgment of a new landlord.' "To attorn" merely means to acknowledge the relationship of a tenant to a new landlord. "Attornment" by the tenant would mean acceptance of the new owner as the landlord, and would estop the tenant from disputing the landlord's title thereafter. Payment or non-payment to a new landlord does not affect the relationship created by attornment. "Attornment" also implies continuity of tenancy, though the

landlord might change when title to the property passes by sale or otherwise. (**Mohd. Ilyas v. Mohd. Adil**^[3]; **Black's Law Dictionary; Legal Glossary (1988 Edition) issued by the Ministry of Law & Justice; Concise Oxford Dictionary**).

The common law rule that a landlord cannot split the unity and integrity of the tenancy, so as to result in possession over a part of the demised premises being recovered from the tenant, does not apply in India because of Section 109 of the TP Act which provides a statutory exception to this rule and does away with the need for a consensual attornment. The attornment is brought about by operation of law, and does not need the consent of the tenant. (**Nalakath Sainuddin v. Koorikadan Sulaiman**^[4]; **Mohar Singh v. Devi Charan**^[5]). Section 109 of the TP Act makes it clear that the landlord can transfer his property in favour of a third party during the subsistence of the lease, and the consent of the tenant is not necessary. In the light of Section 109 of the TP Act attornment automatically follows, on the transfer of property, on the same terms and conditions on which the transferor entered into the lease agreement with the tenant unless there is a contract to the contrary. (**Shankaramma v. Mohd. Abdul Hameed**^[6]).

Attornment of tenancy is not a pre-condition, under Section 109 of the TP Act, for a landlord to initiate proceedings against his tenant. Even if no notice is issued by the landlord, after taking a sale deed in his favour in respect of the subject property from the original owner, a Suit for eviction is maintainable. (**Natarajan v. Manimegalai**^[7]). Attornment automatically follows on the transfer of property on the same terms and conditions on which the transferor entered into a lease agreement with the tenant unless there is a contract to the contrary. (**Shankaramma**⁶). The consent of the tenant is unnecessary to transfer the property in favour of a third party.

Since attornment is not necessary under Section 109 of the TP Act, the tenant cannot dispute the right of the transferee to maintain a suit for eviction or to claim rent. A transferee of the landlord's rights steps into the shoes of the transferor-landlord, with all the rights and liabilities in respect of the subsisting tenancy. This Section does not insist that the transfer of the

landlord's rights can take effect only if the tenant attorns. (**Shankaramma**⁶).

There is no specific provision under the Rent Control Act providing for a situation contrary to Section 109 of the TP Act. The concept of attornment of tenancy governed by Section 109 of the TP Act, and the lessor and lessee relationship, are applicable to proceedings under the Rent Control Act also. (**Shankaramma**⁶). The transferee of a landlord is thus entitled to collect rent as of right and he is a landlord under the inclusive definition in Section 2(vi) of the Rent Control Act. (**Shankaramma**⁶). A transferee of the landlord's rights steps into the shoes of the transferor-landlord with all the rights and liabilities in respect of the subsisting tenancy. The statute does not insist that transfer of the landlord's rights can take effect only if the tenant attorns. Attornment by the tenant being unnecessary, to confer validity on the transfer of the landlord's rights, the tenant cannot dispute the right of the transferee-landlord to maintain an application for eviction or to claim rent. (**Shankaramma**⁶). As attornment by the respondent-tenant is unnecessary, the petitioners-landlords were entitled to institute proceedings under the Rent Control Act for eviction of the respondent-tenant and the contention, that the Rent Control proceedings in R.C.No.112 of 2013 was not maintainable, in the absence of attornment prior to its institution, therefore necessitates rejection.

Under the proviso to Section 10(3) of the Act, a person who becomes a landlord after the commencement of the tenancy by an instrument *inter vivos* shall not be entitled to apply under this clause before the expiry of three months from the date on which the instrument was registered. Reliance placed by Sri J. Prabhakar on the aforesaid proviso is misplaced as the rent control proceedings were instituted in the year 2013, more than five years after the death of Smt. C. Kanakalakshmi in the year 2008, and nearly seven years after the Will was executed on 10.12.2006 by Smt. C. Kanakalakshmi in favour of her grandsons i.e., the petitioner in the rent control proceedings. While the petitioners no doubt became the landlords after commencement of the tenancy (as the subject premises was let out to the respondent's grand father by Smt. C. Kanakalakshmi), their title to the property is in terms of the Will which is not compulsorily registerable. The proviso to Section 10(3) of the Act has, therefore, no application.

Section 10(3)(a)(iii)(b) of the Rent Control Act enables a landlord, subject to the provisions of clause (d), to apply to the Controller for an order directing the tenant to put the landlord in possession of the building, in case it is a non-residential building, if the landlord is not capable of occupying a non-residential building in the city, which is his own or to the possession of which he is entitled whether under the Act or otherwise for the purpose of a business which, in the opinion of Controller, the landlord *bonafide* proposes to commence.

The specific assertion in the petition filed in R.C.No.112 of 2013, that the first petitioner required the subject property for his personal requirement i.e to commence a textile readymade garments business, was not denied in the counter filed by the respondent-tenant. In his evidence as PW.1, the first petitioner stated that he needed the subject property for his personal requirement for commencing a textile readymade garments business. In cross-examination the first petitioner denied carrying on printing press business. Sri C. Sreeramulu, in his evidence as P.W-2, deposed that the subject property was required by the petitioners to commence a textile and readymade garments business. Both the Courts below were satisfied that the petitioners required the subject property to start a readymade garments business, and their requirement was bonafide. I see no reason to take a different view from that of the Courts below as the aforesaid findings are supported by the evidence on record.

Section 10(2) of the Act stipulates that a landlord, who seeks to evict his tenant, shall apply to the Controller for a direction in that behalf. Section 10(2)(ii)(a) of the Act provides that if the controller, after giving the tenant a reasonable opportunity of showing cause against the application, is satisfied that the tenant has, without the written consent of the landlord, transferred his right under the lease or has sub-let the entire building or any portion thereof if the lease does not confer on him any right to do so, the Controller shall make an order directing the tenant to put the landlord in possession of the building and, if the controller is not so satisfied, he shall make an order rejecting the application.

In support of their claim that the respondent-tenant had sublet the premises to “**Saheli Suits**”, the petitioners have asserted in their petition that

the respondent-tenant had illegally sublet a major portion of the ground floor of the subject property to a third party, the said third party was carrying on business under the name and style of "**Saheli Suits**", and they came to know that the respondent-tenant was collecting Rs.750/- per day from the said third party. They also asserted that the respondent-tenant had allowed several petty vendors to carry on business, in front of the subject property, on the steps and on the pail, collecting hefty license fee per day. While denying having sublet the premises, the respondent-tenant stated in his counter that Sri C. Kanaka Lakshmi and Sri C. Sriramulu had permitted him in writing to carry on any business either in his individual capacity or in partnership with any third party as partners by executing an agreement. In his evidence affidavit, the respondent-tenant stated that he was carrying on business in the subject premises under the name and style of "**R.S. Enterprises**"; both Smt. C. Kanaka Lakshmi and her son Sri C. Sriramulu had given in writing that the respondent-tenant could be permitted to enter into a partnership with "**Saheli Suits**"; and as such the allegation, that they had illegally and without the written consent of the petitioners sublet the premises, was false.

As has been held by the Appellate Court, the respondent-tenant has taken contradictory stands. On the one hand, he contended that "**Saheli Suits**" was a shop run by him as its owner, and on the other he stated that Smt. C. Kanaka Lakshmi and Sri C. Sriramulu had consented in writing that he could sublet the subject property, and the consent was given on a stamp paper. He denied the suggestion that there was no such document, hence he did not file it before the Court, and he was deposing falsely about the document. In his evidence affidavit, the respondent-tenant stated that he was permitted to let out the subject property by entering into a partnership with "**Saheli Suits**". The fact, however, remains that it is not even his case that he was authorized to sublet the premises to a third party.

The fact that the business was being carried on in the subject premises, under the name and style of "**Saheli Suits**", was admitted by the respondent-tenant during his cross-examination as RW.1. On being shown Ex.P7 photographs, and on being asked whether the persons on the northern side of Ex.P7 Photograph, were the sub-lessees doing business, RW.1 stated that "**Saheli Suits**" was a shop run by him as its owner; and on Sundays he only opens his shop, but he did not know who was doing

business in front of his shop on either side. As the respondent-tenant, in his evidence affidavit, had stated that he was carrying on business in the name and style of “**R.S. Enterprises**”, it is evident that “**Saheli Suits**” was not the name of his shop, and the business being carried on in the name and style of “**Saheli Suits**”, in the subject property, was by a third party and not the respondent-tenant. No evidence was adduced by the respondent-tenant to establish that “**Saheli Suits**” was a partnership firm of which he was a partner. The concurrent findings of fact recorded by both the Courts below, that the respondent-tenant had sublet the premises to “**Saheli Suits**” without permission of the petitioners-landlords, is based on the evidence on record, and does not necessitate interference in revision proceedings under Section 22 of the Act.

Both on the ground of bona-fide requirement, and on the ground that the respondent-tenant had sublet the premises without permission of the petitioners-landlords, both the Courts below were justified in directing his eviction from the subject premises. The order under revision does not necessitate interference. The Civil Revision Petition fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J.

Date: 08-07-2016

After the judgment was pronounced, an oral request has been made by Sri J.Venkateswara Reddy, learned counsel for the respondent-tenant, that the respondent-tenant be granted four months time to voluntarily vacate the said premises.

In case, the respondent-tenant files an affidavit of undertaking before the Court below, within ten days from today, undertaking to voluntarily and unconditionally vacate the premises and hand over peaceful possession thereof to the petitioner-landlords within four months from today, the petitioner-landlords shall not take coercive steps to evict the respondent-tenant from the subject premises. It is made clear that, in case an affidavit of

undertaking is not filed within ten days from today, it is open to the petitioner-landlords to proceed and take action for eviction of the respondent-tenant from the subject premises in accordance with law.

RAMESH RANGANATHAN, J.

Date: 08-07-2016

Note: 1). L.R. copy to be marked.

2). Issue C.C. by 11.07.2016.

B/o
MRKR/CS/JSU

[\[1\]](#) (1990) 4 SCC 286

[\[2\]](#) (1995) 6 SCC 580

[\[3\]](#) AIR 1994 Delhi 212

[\[4\]](#) (2002) 6 SCC 1 = AIR 2002 SC 2562

[\[5\]](#) AIR 1988 SC 1365

[\[6\]](#) (2006) 1 ALT 103 (DB) = 2006 (1) LS 54

[\[7\]](#) AIR 2008 (NOC) 1341 (Mad.)