

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

Appeal Suit Nos.87, 88, AND 89 of 2008

WRIT APPEAL NO.87 OF 2008:

Between:

M/s. Meridian Medical Projects Limited, rep., by its Director, Dr. G.V. Mohan Prasad, S/o Mallikarjuna Rao, Aged about 47 years, r/o C/o. Dolphin Medical Services Ltd., Ramchandra Rao Road, Vijayawada – 2.

..... Appellant/(Defendant No.1)

And

Tilak Enterprises, a registered firm rep., by its Managing Partner Kakarla Siva Gangadhar Tilak, S/o Sivarama Krishna Prasad Rao, Hindu, 53 years, r/o Vijayawada and another.

... Respondents (Plaintiff-Defendant No.2)

DATE OF JUDGMENT PRONOUNCED: 08.10.2018

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE N.BALAYOGI**

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
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?

JUSTICE RAMESH RANGANATHAN

*** HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
* THE HON'BLE SRI JUSTICE N.BALAYOGI
+ Appeal Suit Nos.87, 88, AND 89 of 2008**

% Dated 08-10-2018

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! Counsel for the Appellant: Sri C. Raghu, Learned Counsel for the appellant-1st defendant

^ Counsel for respondents: Sri B. Srinivas Rao, Sri S. Srinivas Reddy

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> HEAD NOTE:

? Citations:

- 1) (2002) 2 SCC 50 = AIR 2002 SC 569
- 2) AIR 1949 FC 124 = (1949) F.C.R. 262
- 3) AIR 1998 SC 3085
- 4) (1995) 5 SCC 698
- 5) AIR 1988 SC 1470
- 6) AIR 1973 SC 508
- 7) AIR 1972 SC 819
- 8) AIR 1962 Patna 446
- 9) AIR 1951 SC 285
- 10) AIR 1961 SC 1067
- 11) 1992 Supp. (2) SCC 29
- 12) AIR 1959 Pat 1 (FB)
- 13) AIR 1994 Delhi 212
- 14) AIR 1967 SC 174
- 15) ILR 1943 Patna 513
- 16) AIR 1947 Nagpur 188
- 17) AIR 1959 Punj 564
- 18) AIR 1959 Pat 562
- 19) AIR 1933 PC 29

- 20) AIR 1915 PC 96
- 21) 1977 MPLJ 335
- 22) 2012 (5) SCC 370



**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE N.BALAYOGI**

Appeal Suit Nos.87, 88, AND 89 of 2008

COMMON JUDGMENT : (per Hon'ble Sri Justice Ramesh Ranganathan)

These three appeals are preferred against the common judgment passed by the IV Additional Senior Civil Judge (FTC), Vijayawada, in O.S.Nos.201, 202 and 203 of 2001 dated 26.12.2007. A.S.No.87 of 2008 is preferred against the judgment passed in O.S.No.202 of 2001; A.S.No.88 of 2008 is preferred against the judgment passed in O.S.No.203 of 2001; and A.S.No.89 of 2008 is preferred against the judgment passed in O.S.No.201 of 2001. This Court passed an order in CRP No.4991/06 dated 13.07.2007 directing the trial court to club all the three Suits and to record evidence in O.S. No.203/2001. Consequently evidence was recorded in O.S. No.203/2001, which was read into the two other Suits. It would suffice, therefore, to refer to the pleadings and the issues framed in O.S.No.203 of 2001. The appellant herein is the 2nd defendant in O.S.No.203 of 2001. The parties shall, hereinafter, be referred to as they are arrayed in A.S. No.88 of 2008 preferred against the judgment passed in O.S. No.203 of 2001.

O.S. No.203 of 2001 was filed by the respondent-plaintiff seeking eviction and recovery of arrears of rent from 01.05.2000 to 31.08.2000 at Rs.35,769.60 paise per month i.e, a sum of Rs.1,43,078/-, and from 01.09.2000 to 31.01.2001 at Rs.42,923.52 per month i.e. a sum of Rs.2,14,670-60 paise, totally for a sum of Rs.3,57,695-60 besides damages from 01.02.2001 at Rs.85,847.04 paise. The respondent-plaintiff contended that the

first plaintiff in the Suit was a body corporate constituted under the Indian Companies Act, rep. by its G.P.A; the 2nd plaintiff was a registered firm and owner of the building bearing No.29-12-13A, situated in Ramachandra Rao Road, Vijayawada; the 2nd plaintiff got constructed the said building in the site taken on lease from CSITA; the 1st defendant was the monthly tenant in the eastern portion of the ground floor of the Suit premises; the present rent payable for the suit premises is Rs.42,923.52 paise per month as per the agreed terms; the first plaintiff is a proforma party; the tenancy month commenced on the 1st of every calendar month, and the rent was payable by the 10th day of the succeeding calendar month; inspite of repeated requests, the 1st defendant was irregular in payment of rent for the last two and half years; the 1st defendant paid rent till 30.04.2000; the rent for the month of February, 2000 was paid by Pay Order No.920719 of Federal bank, under receipt dated 15.05.2000; the rent, for the month of March, 2000, was paid on 28.06.2000 by way of cheque of the Federal Bank; the April month rent was paid in the month of September, 2000 by way of cheque of the Federal bank; the clerk of the 1st defendant's office himself wrote the receipts with ante-dates for reasons best known to him; the 1st defendant failed to pay the rent from 01.05.2000; and, hence, the first defendant was liable to pay interest also for delayed payment.

It is stated in the plaint that the 2nd plaintiff got issued a Quit Notice on 28.12.2000 terminating the tenancy, and called upon the 1st defendant to vacate and hand over vacant possession of the suit premises by the end of January, 2001, in proper condition by removing the unauthorized construction; the first

defendant was called upon to pay arrears of rent along with interest at 24% per annum, besides electricity charges, for water supplied from the bore-well, and water charges of the municipal tap; the first defendant acknowledged receipt of the notice and got issued a belated reply on 28.01.2001 with false allegations; and, hence, the suit for eviction and recovery of arrears of rent with interest and damages. The 2nd plaintiff (1st respondent herein) estimated the damages, for use and occupation, at double the rent payable as the suit premises was situated in a prime locality of Vijayawada having high commercial activity; if the premises was let out on the date of filing the Suit, it would have fetched more than double the payable rent; and, hence, damages was estimated at Rs.85,847.04 paise per month.

It is further stated that, by virtue of the order dated 15.02.2005 passed in I.A.No.318 of 2004 in the Suit, the Church of South India Trust Association Krishna – Godavari Diocese (CSITA-KGD), rep. by its power of attorney holders i.e B. Yohan and S. Babu Vitor were brought on record as the second defendant, without prejudice to the rights and contentions of the plaintiff in the suit, though, according to the plaintiff, it was neither a necessary nor proper party for effective adjudication of the issues that arose for consideration in the Suit; and the plaintiff reserved its right to file appropriate rejoinder after a written statement was filed by the 2nd defendant.

It is submitted by the 2nd plaintiff that, though the lease agreed upon was upto 31.08.2000, that right was forfeited for reasons of non payment of rent since 01.05.2000 as per clause- III of the registered lease deed; the 2nd plaintiff got issued the Quit

Notice dated 28.12.2000 terminating the tenancy, and calling upon the 1st defendant to vacate and hand over vacant possession of the tenanted premises by the end of January, 2001 in proper condition, after removing the unauthorised constructions and paying arrears of rent along with interest at 24%; though the 1st defendant had acknowledged the same, he had not complied with the request and, instead, got issued a belated reply dated 28.01.2001 with false allegations; and, hence, the Suit for eviction and recovery of arrears of rent with interest and damages.

The appellant-first defendant submitted its written statement contending that the Suit was ill-motivated with malicious intention to harass the first defendant; the 2nd plaintiff was put to strict proof of the allegations made in the plaint; Dr. K Siva Gangadhara Tilak, the 2nd plaintiff, had no locus standi to file the suit, because he was neither the lessor of the first defendant, nor the owner of the suit schedule property; he could not represent plaintiff No.1 also; the 2nd plaintiff had approached the Court with unclean hands, and has no cause of action to file the suit; the 1st defendant got constructed the total structure of the suit schedule property; the 2nd plaintiff had interest only on the basic pillars, and slab of the suit premises, constructed in the year 1992; the 1st defendant had spent approximately Rs.83,14,752/- for Dolphin Medical Services Ltd., and Rs.10,52,029/- for Meridian Projects Ltd., upto 31.03.2001 for construction and development of the Suit schedule property; the first defendant had informed the second plaintiff of the amounts spent by him by way of reply notice dated 28.01.2001; the Church of South Indian Trust Association (CSITA), Chennai was the first lessor of the 1st defendant; CSITA

had, in fact, executed a lease deed in favour of the first defendant, along with the second plaintiff as the second lessor; the 2nd plaintiff was in the status of a second lessor, and he was neither the owner of the property nor the landlord of the suit schedule property; the original owner of the property, who was the first lessor of the first defendant, had terminated the lease of the second plaintiff through legal notice dated 02.06.2000; the second plaintiff had received the said notice; as such the second plaintiff has no locus standi to file the Suit; CSITA had issued the legal notice to the first defendant and other tenants of the suit schedule property, and had demanded the first defendant to pay monthly rent to it directly; the allegations that first defendant was due arrears of rent was a complete falsehood; the first defendant had been paying rent directly to CSITA; as such the question of default did not arise; the second plaintiff had no locus standi to demand arrears of rent; the 2nd plaintiff had voluntarily disconnected amenities to the first defendant's premises time and again, and was harassing the first defendant; he had disconnected water supply, and had got constructed a wall in between, thereby prohibited parking of vehicles of the first defendant and its patients; as the second plaintiff had disconnected amenities, the first defendant was paying rent of Rs.18,000/- per month only; as per the agreement the rent and amenities were proportionately decided in equal halves; the claim of damages by the second plaintiff was unlawful; the period of lease was still existing as per the lease agreement; the present rent was, by itself, excessive; such rent was not prevailing in the vicinity; and, hence, in these circumstances the Suit may be dismissed.

The second respondent-second defendant submitted its written statement denying the averments in the plaint. It contended that the second plaintiff had no locus standi to represent CSITA; he had tried to create an impression that he was the real owner of the premises; the CSITA had let out the suit property to the 2nd plaintiff, during the year 1986, for construction of a Nursing Home-cum-Shopping Complex, by way of lease for a period of 33 years commencing from 12.08.1986; the terms of the lease were reduced into writing on 12.08.1986, and was registered subsequently; except the registered lease, there were no other arrangements in between CSITA and the 2nd plaintiff; as on 01.04.2000, the 2nd plaintiff had become due arrears of rent of Rs.6,86,100/-; the 2nd plaintiff had inducted five tenants, and had sub-let a part of the Suit premises to third parties without consulting CSITA, and in violation of the terms and conditions of the lease deed; the 2nd plaintiff, instead of running a nursing home, had sub-let the premises to the 1st defendant for the same purpose; CSITA had terminated the lease through Quit Notice dated 02.06.2000, and had demanded the second plaintiff to vacate the suit premises, and hand over the building with all structures in its possession by 30.06.2000; it had also demanded payment of arrears of rent of Rs.6,86,100/- with interest at 24% per annum; they had demanded damages at Rs.1,000/- per day for unauthorised use and occupation; the second plaintiff, having received the notice, kept quiet for a long period, and had replied on 19.10.2000 with untenable contentions; the 1st defendant had also replied to the said notice on 07.02.2001; and the Income-Tax Office, by its letter dated 19.06.2000, sought certain clarifications.

The second defendant further contended that the 2nd plaintiff was not in physical possession of the suit schedule property at any point of time; since inception of the lease, a major portion of the building in the ground, first and second floor was sub-let to defendant No.1; after terminating the lease of the second plaintiff, CSITA had accepted the first defendant as a direct tenant; as per CSITA's demand, the 1st defendant has been paying rent to it directly; mis-stating all these facts, the 2nd plaintiff had filed this and two other Suits; the 2nd defendant came on record pursuant to the directions in a petition filed under Order I Rule 10 CPC; the 2nd plaintiff was no more the tenant of CSITA, and he was not in physical, constructive or symbolic possession of the premises after 30.06.2000; CSITA had filed O.S. No.69 of 2004 on the file of the II Additional District Judge, Vijayawada against the second plaintiff, the Commissioner of Income-Tax, and the 1st defendant for eviction and damages; there was no privity of contract between the 2nd plaintiff and the 1st defendant; and there was a contract between the 1st defendant and the 2nd defendant only.

The 2nd defendant further stated that CSITA was a body corporate constituted under the Indian Companies Act, having its registered office at Chennai; CSITA appoints Power of Attorneys from time to time for the administration and management of its property; likewise Dr. Tilak was appointed for the specific purpose of construction of the structure and leasing it out; this power ceased to operate after the limited purpose was over; the power of attorneys were changed from time to time; at present there are four power of attorneys as per document No.356/2003 of Triplicane, Chennai dated 25.09.2003 which is valid for two years from the

date of registration; any two among the four are entitled to represent CSITA, in CSI-KGD, regarding matters relating to Krishna-Godavari Diocese; the schedule property is situated in the local jurisdiction of CSI-KGD diocese; it has been administered and managed by CSITA through its Power of Attorney; Dr. Tilak cannot represent CSITA now; the second plaintiff had filed the Suit, after its termination suppressing real facts; there was no cause of action for filing the Suit; and, hence, the Suit may be dismissed.

Based on these pleadings the following issues were framed:

- i) Whether Dr. K. Siva Gangadhara Tilak is G.P.A. Holder of the 1st plaintiff and has locus standi to file the Suit?
- ii) Whether the 2nd plaintiff was only a lessor of the plaint schedule property and the lease in his favour was terminated?
- iii) Whether the 2nd plaintiff has locus standi to file the present Suit?
- iv) Whether the 2nd plaintiff has right to terminate the lease agreement?
- v) Whether the plaintiffs are entitled for a decree of eviction against the defendant?
- vi) Whether the plaintiffs are entitled for arrears of rent and damages as claimed for?
- vii) To what relief?

Dr. K. Siva Gangadhara Tilak, the Managing Partner of the 2nd plaintiff-firm, was examined as P.W-1 and a chief examination affidavit was filed by him reiterating the averments in the plaint. Exs.A-1 to A-4 were marked in evidence. In cross-examination, he stated that he was the owner of the entire structure of the building over the site; even though Vijayawada Municipal Corporation had approved the sanction plan in his name, he did not submit the same with the plaint; one of the lease deeds mentioned two lessors,

the first lessor was the CSITA and he was the second lessor; it was not true to suggest that he was not regular in paying rent, and the second defendant was the owner of the suit schedule property; it was true that CSITA had issued letter dated 02.06.2000 terminating the lease with effect from 01.07.2000; in the said notice defendant No.1 was directed to pay rent directly to the 2nd defendant; it was not true to suggest that, after termination of tenancy from 01.07.2000 onwards, D-1 had started paying rent to D-2, and later he deposited rent into Court; it was true that he had disconnected water supply to the premises in occupation of the 1st defendant; this was because the 1st defendant was due a huge amount towards water charges; it was not true to suggest that he had constructed a wall separating the parking area, and the building, and had thereby not allowed the 1st defendant the amenities of parking place; Vijayawada Municipal Corporation had approved the plan on 13.02.1990; the portion of the land, earmarked in blue lining, had not been left as a parking area, while obtaining permission for construction of the building; in the sanctioned plan marked as Ex.B-1, there was no wall separating the blue marked portion and the other premises; the suggestion that 50% of the rent was towards amenities was not true; the blue marked portion of Ex.B-1 was still vacant as on date; he had raised a wall on four sides of the said land, and had kept it locked; he got the walls constructed before execution of the lease deed in favour of D-1; Defendant No.1 had to park vehicles on the margin of the road opposite the building; the entire left side margin of the road had been left for parking by the Traffic police which was in force for the last 10 years; it was not true to suggest that, while putting

D-1 in possession of the schedule property, he got constructed only the pillars, and had merely laid the slab over the pillars; it was not true to suggest that the entire construction of the outer walls, and the internal walls, was got done by the first defendant spending Rs.83,14,752/-; and it was he who had spent nearly 90 lakhs for construction of the building.

The 2nd plaintiff further stated that he had paid the lease amount to the owner of the land upto date, but the owner had refused to accept rent from 2001 onwards; since the owner has refused to accept the rent, he had opened a separate bank account, and had deposited the rent continuously with the knowledge of owner of the site; he did not know whether the Quit Notice was got issued by D-2 to D-1; it was not true to suggest that, because the owner of the site had terminated the tenancy, he cannot issue a Quit Notice to D-1; the application filed by him, for withdrawal of the rent deposited by D-1, had been rejected; because of collusion between D-1 and D-2, the said application was rejected; it was not true to suggest that the Suits were bad for mis-joinder of parties; he had paid rent to KGD under Exs.A-13, A-15 and A-16, and there was no mention in these documents that the rent was received on behalf of CSITA; it was not true to suggest that CSITA and KGD were one and the same; as per the clauses of Ex.A-11, after expiry of the lease, the entire structures would revert back to KGD; he took the lease with the intention of setting up a nursing home; it was not true to suggest that, except the Nursing Home, no other construction should be made on the site; Ex.B-1 was approved for construction of a Nursing Home only; apart from D-1, he had let out portions to other tenants, who were

not connected with the medical field; and it was not true to suggest that he was never in possession of the suit schedule property.

The second plaintiff admitted that he received the Quit Notice got issued by D-2 on 02.06.2000. He denied the suggestion that he was due arrears of rent of Rs.6,86,100/-. He also denied the suggestion that he had sub-let the premises to five other tenants without the permission of the owner. He stated that he got the construction completed in the year 1994, and the rent was payable from that year onwards. He denied the suggestion that there was no privity of contract between plaintiff No.2 and D-1.

On completion of the evidence of the plaintiff, Dr. G.V. Mohan Prasad was examined as DW-1 on behalf of D-1. In his evidence, DW-1 reiterated the averments in the written statement in all the three suits. He admitted that the Lease Deed in O.S. No.203/2001 was a registered document, whereas the lease deed of two other suits was unregistered. He admitted that the schedule, to the lease deed, did not include the adjacent vacant site, and did not include any parking place; the 'X' marked portion, as per Ex.B-1, was not clearly earmarked as a parking area; as per clause No.3 of Ex.A-1, the rent was payable to Tilak Enterprises only; and as per Clause No.7, water cess was also liable to be paid to M/s. Tilak Enterprises.

DW.1 admitted that he did not issue any legal notice to M/s. Tilak Enterprises with regards the alleged disconnection of water supply. He admitted that P.W-1 had claimed arrears of water charges to the tune of Rs.80,000/-, and at the interference of the police Rs.40,000/- was paid. He stated that as per clause No.9 of Ex.A-1, he was permitted to make improvements to the building at

his own cost, and remove such improvements from the building at his own cost without causing damage to the flooring walls and other fixtures while vacating the premises. He admitted that he did not submit any accounts showing the expenditure incurred by him for causing improvements. He also admitted that defendant No.1 did not pay the rent to Tilak Enterprises from 01.05.2000 till the date of filing the Suit, and he did not deposit the rent before any Court of law. He admitted that, as per the notice got issued by CSITA, the lease had been terminated from 30.06.2000. He stated that he did not pay the rent because lakhs of rupees of deposit was available with M/s. Tilak Enterprises, which could be adjusted towards the rent. He admitted that, as per the clauses of the agreement, he was supposed to pay interest @ 24% per annum over the rent, which he did not pay; and as per clause No.3 of the agreement, eviction could be sought when there were arrears of rent. He denied the suggestion that the quit notices, issued by P.W-1 in all the three suits, were valid and binding on defendant No.1; and he did not address any letter to CSITA, Chennai seeking clarification as to whom he was supposed to pay the rent. He admitted that the handwriting in the receipts, from 17.02.1999 to 10.05.2000, were that of his clerk. He denied the suggestion that, by looking at the receipts, it could be said that defendant No.1 was regularly irregular in payment of rent. He also denied the suggestion that he was liable to pay damages from 01.02.2001 in all the three suits. He admitted that, as per Ex.A-17, he was asked to deposit arrears of rent into the competent court of law. D.W-1 also admitted that there was no written lease agreement between D-1 and D-2 and CSITA in all the three suits; there was some open

space between the road and the building wall, with an elevated platform, where the vehicles were being parked; and there was a building belonging to CSITA opposite the tenanted premises. He admitted that he got issued the reply notice, to the quit notice of Dr. Tilak, stating that he had no right to demand eviction, and he could not file bank account statement as demanded by the plaintiff under Order 12 Rule 8 CPC. He admitted that, as per the clauses of the lease deed, he was not supposed to sub-let the premises to anybody. On being confronted with an invitation card got printed by VIMTA Laboratories, marked as Ex.A-49 and another news clipping published in Vaartha Newspaper marked as Ex.A-50, he denied the suggestion that he had sub-let the premises to VIMTA Laboratories. He further denied the suggestion that he was liable to vacate and handover vacant possession of the schedule premises to P.W-1.

Sri Singavarapu Babu Victor, the Power of Attorney of CSITA, was examined as DW.2. He stated, in his chief-examination affidavit, that, being a GPA, he was supposed to look after the affairs of CSITA KGD. He explained as to how CSITA was registered, and how the lease deed came into existence between CSITA and Dr. Tilak. He also explained, in his affidavit, that KGD was one of the 20 dioceses of CSITA. The substance of his chief-examination was that CSITA and CSITA KGD were not independent but were one and the same entity. He further stated that, in view of termination of the tenancy by Quit Notice dated 02.06.2000, Dr. Tilak ceased to be a tenant, and as such he could not maintain the suit. In his evidence, Exs.B-30 to B-38 were marked.

In cross-examination, DW.2 stated that he was not given a Power of Attorney when the Lease Agreement, under Ex.A-11, was executed. The Power of Attorney holder, who had signed on behalf of CSITA, i.e Sri Satya Raju was not alive. He was not sure whether the 2nd power of attorney holder, Mr. Christopher was alive or not. He stated that there was no GPA dated 13.12.1991, executed by CSITA in favour of Tilak Enterprises. He admitted that he did not verify the office records, of the Sub-Registrar, Kankipadu, to ascertain whether or not a GPA dated 13.12.1991 was in existence. He denied the suggestion that each diocese had its own constitution and by-laws.

On being confronted with the GPA dated 13.12.1991 he denied the suggestion that it was the only GPA executed by CSITA in favour of Dr. Tilak. He denied the suggestion that the GPA was not executed by CSITA in favour of Tilak in the year 1986. He admitted that he did not know whether D-1 had addressed any letter to D-2 to get himself attorned to D-2. He also did not know whether CSITA, Chennai had addressed any letter to him asking him to collect rent from D-1. He admitted that there was no endorsement on the receipts issued by D-2 stating that the amount was received under protest. He admitted that O.S. No.733/91, on the file of the Court of the Principal Senior Civil Judge, Vijayawada, was filed against CMS, London and CSITA, India, wherein it was pleaded by CSITA, Chennai that each diocese had its own written constitution.

In further cross-examination he admitted that Ex.B-1 to B-42 did not belong to Smt. Satya Murthy. He denied the suggestion that the signature of Smt. Satya Murthy over Ex.A-60

was different when compared to her signature over Ex.B-41. He stated that he does not know whether CSITA had put forth any conditions while taking D-1 as the lessee. He admitted not to have submitted a copy of the Lease Deed allegedly executed by CSITA in favour of D-1. He denied the suggestion that no Lease Deed was executed by CSITA in favour of D-1. He denied the suggestion that D-1 had not made an application to CSITA to accept him as the lessee, and CSITA had not executed any Lease Deed in favour of D-1 in the year 2001. He admitted that CSITA or CSITA KTGD had the right to collect rent from D-1, and to accept D-1 as a direct lessee. He further denied the suggestion that D-1 and D-2 were jointly liable to compensate for the loss sustained by the plaintiff.

Since the pleadings in O.S. No.201 of 2001 and O.S. No.202 of 2001 (i.e. the plaint and written statement) are similar, we find no reason to burden this judgment with a repetition of the pleadings. In the order under appeal, the Court below observed that O.S. No.201 of 2001, O.S. No.202 of 2001 and O.S. No.203 of 2001 are Suits of same nature; the relief sought by the plaintiff against the defendants was one and the same in all the three Suits; the issues in all the three suits were one and the same; and, hence, a common judgment was being pronounced.

On issues 1 to 6, the Court below observed that it was an admitted fact that the 1st defendant was the sub-lessee of the plaintiff; and the plaintiff was the lessee of CSITA, Chennai, which had executed a lease in favour of the plaintiff on 27.03.1989; CSITA was the absolute owner of the land over which the suit schedule property and other buildings were constructed by the

plaintiff; originally the lease deed was entered into between the CSITA and the plaintiff on 12.08.1986, but was kept pending registration vide pending document No.P850/86; the said pending document was burnt in the agitation on 26.12.1988; the same document was reproduced on 27.03.1989, was registered on 07.08.1993, and was marked as Ex.A-11; having secured lease of the land, the plaintiff had constructed a building, a portion of which was sublet to the 1st defendant under registered lease deed dated 10.10.1992, which was marked as Ex.A-1.

On the contention of the appellant-1st defendant that Ex.A-2 quit notice, issued by the 1st respondent-plaintiff to the appellant-1st defendant, was not as per Section 106 of the Transfer of Property Act and was, therefore, not binding on the 1st defendant, the Court below held that it was not in dispute that the suit schedule property was immovable property, which was being used for purposes other than agricultural or manufacturing; hence the lease should be treated as month to month; the plaintiff had, admittedly, taken the land on lease from CSITA under Ex.A-11; clause (I) of the said lease deed was for a period of 33 years commencing from 12.08.1986; in clause 5, the plaintiff lessee had agreed to construct the buildings according to its requirements for a Nursing Home, Shopping Complex or for any other purpose within a period of three years from the date of taking over possession by him at a cost of not less than Rs.10,00,000/-; under clause VI(h), the lessee was at liberty to mortgage or sub-lease the premises to other persons, but the subletting should, in no case, be for a period beyond the lease period. As per clause VI(i)(ii)(b), a lessee, by virtue of the provisions of Section 108(J) of the Transfer

of Property Act, had the unfettered right to the super-structure alone, and not the site; the lessee could transfer the super-structure absolutely or by way of mortgage, within the meaning of Section 58 of the Transfer of Property Act, in favour of any bank or other financial corporation subject to the terms and conditions; the various clauses in Ex.A-11 gave unfettered powers to the plaintiff to undertake construction of the super-structure over the land, which was taken on lease for a period of 33 years; and he could let out the building for a Nursing Home, other Commercial Complex, Bank Institution or any other financial institution.

The Court below held that, having been denied absolute right by virtue of Ex.A-11, the plaintiff and CSITA had together executed a lease in favour of the 1st defendant; clause (2) of Ex.A-1 disclosed that the parties had agreed that, during the period of tenancy, the lessee should pay rent to the plaintiff at Rs.2.25 per square foot per month, which worked out to Rs.10.350/- for a plinth area of 4,600 square feet being the leased out premises. Clause (3) specified that the rent so fixed shall be payable to the plaintiff by the lessee for every calendar month on or before the 10th of the next succeeding calendar month. These clauses gave the plaintiff the right to collect rent; various clauses in Ex.A-1 showed that the plaintiff was entitled to receive rent, and was required to be put in possession on termination of the tenancy. CSITA was a formal party to the lease deed; registration of the document was still pending with the Sub-Registrar, Vijayawada, and permissions were required to be taken from the Municipal Corporation and the Urban Development authority; a combined reading of various clauses of Exs.A-11 and A-1 showed that, in so far as the 1st

defendant was concerned, it was the plaintiff who was its lessor; even though CSITA was shown as a lessor in Ex.A-1, there was no direct contract or privity of contract between the 1st defendant and CSITA; and consequently the quit notice, issued by the plaintiff terminating the tenancy of the 1st defendant under Ex.A-1, was a valid document in terms of Section 106 of the T.P. Act.

On the contention of the 1st defendant that the plaintiff was not entitled to issue a legal notice when the lease itself was terminated by the owner of the land under legal notice dated 02.06.2000 marked as Ex.A-17, the Court below observed that the legal notice under Ex.A-17 was issued by the 2nd defendant to the plaintiff terminating the lease; in reply thereto the plaintiff had, by Ex.A-18 letter dated 19.10.2000, furnished several reasons why the termination notice was not binding on them; even otherwise, just because the owner of the land had terminated the lease of the plaintiff did not disable him from terminating the lease of the sub-lessee; the sub-lease was between the plaintiff and the sub-lessee in particular and, for all practical purposes, the plaintiff was the lessor as it was he who was alone entitled to collect rent, and recover possession of the premises from the sub-lessee; the legal notice issued by the owner of the land to the plaintiff had nothing to do with the 1st defendant; as a sub-lessee, he was required to deliver possession to his lessor, as and when he was legally bound to vacate the premises; mere issuance of the termination notice by the owner of the land terminating the lease, would not bring the lease to an end; the original owner of the land was required to take legal steps to recover possession; unless and until possession was restored to the original owner, the plaintiff would continue to be

the lessor of the 1st defendant; and the contention of the 1st defendant that the plaintiff could not issue a legal notice was not tenable.

Thereafter the Court below noted the admission of the 1st defendant that he had received the legal notice issued by the plaintiff terminating the tenancy under Ex.A-2; in the said notice the plaintiff had claimed not only arrears of the lease amount, but also damages at double the actual rent; the 1st defendant had issued a notice to the plaintiff under Ex.A-19, to which the plaintiff had furnished a reply vide Ex.A-20; therein the plaintiff had denied the allegations made by the 1st defendant regarding lack of amenities; the contention that the blank area in Ex.B-1 was the parking area meant for the schedule premises could not be accepted, as the approved plan did not disclose any particular space having been earmarked for parking; even in the lease deed there was no mention of a particular place being left for parking; the Advocate Commissioner's report in Ex.A-57 disclosed that lot of garbage, thorns, bushes and stones were found in the open space; the said area was, therefore, not fit for parking vehicles; in his notice in Ex.A-17 dated 02.06.2000, the 2nd defendant had himself asked the plaintiff why the space was kept vacant; in the absence of any clause in the lease deed for a parking area, the 1st defendant could not claim the facility as a matter of right, or unilaterally withhold one half of the lease rent towards amenities, and parking facilities; and the first defendant ought to have obtained the consent of the plaintiff before withholding one half of the lease amount.

With regards disconnection of water supply by the plaintiff to the 1st defendant, the Court below noted that, during the course of his cross-examination, D.W-1 had stated that, because of interference by police, the dispute with regards water cess had been settled; instead of paying arrears of Rs.80,000/-, a settlement was arrived at that the plaintiff should receive Rs.40,000/- and restore water supply; as a result, the plaintiff had accepted Rs.40,000/- towards full and final settlement of the water cess due to the plaintiff; as per the lease deed, and the memorandum of understanding marked as Ex.A-61, the 1st defendant was irregular in paying water cess to the plaintiff which led to disputes between them; these documents showed that the 1st defendant was supposed to pay water cess and electricity charges; the 1st defendant had admitted discontinuing paying half the lease amount, and claimed that the said amount was withheld because the parking area was cut down, and because of disputes regarding water cess; and since the 1st defendant did not have any right to claim parking area, and as it was liable to pay water cess, it was evident that the 1st defendant had unjustly withheld payment of the lease amount, and had thereby defaulted in payment.

On the claim of the 1st defendant that, since CSITA had issued a notice to him directing that he pay rent directly to it, he did not pay rent to the plaintiff, the Court below referred to Section 108(q) of the Transfer of Property Act, and held that the lessee was not entitled to attorn the lease directly to the paramount title holder; the lessee or the sub-lessee was liable to hand over possession only to his lessor, and none else; likewise the lessee or the sub-lessee was required to pay the lease amount to their lessor

alone, and nobody else; it was not in dispute that the 1st defendant had taken the subject property on lease from the plaintiff; just because CSITA was the owner of the land, they could not directly ask the 1st defendant to pay the lease amount to them; the 1st defendant was liable to pay the lease amount to the plaintiff, inspite of the demand made by CSITA to pay it directly; in any event the 1st defendant was obligated to ascertain, and seek clarification from the plaintiff when they received the notice from CSITA directing payment of rent directly; and they were not entitled to claim that they would pay the rent directly to the 2nd defendant.

After referring to **Vashu deo v. Balkishan**¹, the Court below observed that the 1st defendant was not liable to pay directly to CSITA, and on that excuse could not avoid payment of rent to the plaintiff; and this also established that the 1st defendant was in default in payment of rent. On the claim of the 1st defendant that CSITA had accepted them as a direct tenant, the Court below noted that reliance was placed by the 1st defendant on Ex.A-41 letter issued by CSITA enclosing the resolution passed by CSITA, Chennai in the year 2004 (whose genuinity the plaintiff had disputed); and by these resolutions, CSITA, Chennai, had accepted the 1st defendant as a direct tenant.

While the plaintiff claimed that the signatures of the authorized person on Ex.B-41 was forged, the Court below did not consider it proper to probe into the genuineness of Ex.B-41 based on the available signature and, instead, examined whether CSITA was entitled to pass such a resolution accepting the 1st defendant

¹ (2002) 2 SCC 50 = AIR 2002 SC 569

as a direct lessee. The Court below held that, while CSITA was the paramount title holder, it could not accept the sub-lessee of the plaintiff as a direct lessee. It also disbelieved CSITA having accepted the 1st defendant as a direct lessee, holding that the letter in Ex.B-40 had no signature; and while Ex.B-40 was issued in the year 2004, the alleged attornment was in the year 2001.

Thereafter the Court below observed that the 1st defendant had completely stopped payment of the lease amount to the plaintiff from May, 2000; while they claimed that stoppage of payment of the lease amount was in view of receipt of a notice under Ex.A-17 from the 2nd defendant, and they had started paying the lease amount to the 2nd defendant, no documentary evidence was filed to substantiate payment of the lease amount directly to the 2nd defendant; meanwhile the plaintiff had filed a petition seeking a direction for deposit of rent in the Court; the 1st defendant did not comply with the order of the Court; instead of depositing the admitted lease amount, he had deposited only one half, that too after deducting TDS from October, 2001; there was no record as to what happened to the lease amount for the period from May, 2000 to December, 2000; and the 2nd defendant did not also state that they had received the lease amount for this period. On analysis of the evidence, the Court below observed that the 1st defendant did not only fail to pay the lease rent and the water cess, but had also sublet the premises contrary to the terms and conditions of the lease deed; and the plaintiff was, therefore, justified in terminating the lease of the 1st defendant.

On the contention of the 1st defendant that the plaintiff had no locus standi to maintain a Suit, the Court below observed that

CSITA had been included as the lessor in Ex.A-1 only for a limited purpose, as the lease deed entered into between the plaintiff and CSITA was pending registration by that date; and that apart, the 2nd defendant had given a consent letter on 14.06.1989 stating that, because the ULC permission was yet to be obtained, they were permitted to pay the lease amount only after commencement of the proposed business. The Court below also noted that Ex.A-1 contained a clause that CSITA should not interfere with payment of rent to the plaintiff by the 1st defendant, and the only condition was that, on expiry of the lease period of 33 years, the plaintiff should hand over possession to CSITA; and the terms of the lease under Ex.A-1, and the covenants of Ex.A-11, made it clear that the 2nd defendant had no right to question the contract between the plaintiff and the 1st defendant.

The Court below, thereafter, held that, in terms of Section 105, 108 and 111 of the Transfer of Property Act, a person who was entitled to collect the rent, and who was entitled to claim back possession from the lessee, is called a lessor; and he is the one who is entitled to seek eviction of the lessee or the sub-lessee; and the contention that the plaintiff could not maintain the Suit was therefore not tenable.

The Court below, thereafter, observed that, if really the 2nd defendant wanted to recover possession, it could have continued as the plaintiff; as a defendant it could not seek any relief against the plaintiff, particularly in a Suit for eviction; even as per the terms of the lease agreement between the plaintiff and the 1st defendant, the 2nd defendant had no role to play; and the presence

of the 2nd defendant or its absence did to affect the issues to be decided by the Court.

The Court below further observed that the 2nd defendant had filed O.S. No.69 of 2004 on the file of the II Additional District Judge, Vijayawada, seeking eviction of the plaintiff; whatever rights vested with the 2nd defendant could be agitated in the said Suit; whether there was any default on the part of the plaintiff in paying rent to the CSITA, and whether there was any contravention of the terms of the lease, could be examined in that suit; and in a suit between the plaintiff and the sub-lessee, the 2nd defendant had no role to play. After holding that there was collusion between the 1st and 2nd defendants, the Court below held that the 2nd defendant was liable to pay the damages sustained by the plaintiff.

On the plaintiffs' claim for damages at double the agreed rent, the Court below held that the plaintiff did not adduce sufficient evidence in support of such a claim, to show that similar rent was fetched in equivalent premises; however it was evident that the 1st defendant did not pay the agreed rent; lakhs of rupees had accumulated towards arrears of rent; the plaintiff had suffered great hardship because of non-payment of rent by the 1st defendant; it was impossible to secure lease of such a huge premises at the rate which was being paid; and, therefore, the plaintiff was entitled for damages at 50% more than the agreed rent, instead of double the rent claimed by the plaintiff. All the three Suits were decreed with costs.

A memo was filed before this Court by the 2nd respondent and its Counsel on 05.11.2012 wherein it is stated that the Committee of management of the 2nd respondent, pursuant to the

understanding arrived at between the 1st respondent and the 2nd respondent, had passed Resolution No.21 dated 16.02.2012 resolving to withdraw all disputes between the 1st respondent and the 2nd respondent with respect to the aforesaid suit; and as the matter is settled out of Court with the 1st respondent, the 2nd respondent does not wish to contest the appeal vis-à-vis the 1st respondent; and hence this memo. Enclosed to the said memo is an attested copy of the extract of the meeting of the Committee of management of the 2nd respondent in resolution No21 dated 16.02.2012. Thereby the 2nd respondent resolved to withdraw from the internal disputes between the 1st respondent and the appellant as a third party in O.S. No.201 to 203 of 2001. It also resolved to recognize the 1st respondent alone as its lessee with the option of renewal of lease on running increment of rent, and to adhere to the terms and conditions laid down in the original lease agreement.

Elaborate oral and written submissions have been put forth by Sri C. Raghu, Learned Counsel for the appellant-1st defendant and Sri B. Srinivas Rao, Learned Counsel for the 1st respondent-plaintiff. Though Sri S. Srinivas Reddy, Learned Counsel, entered appearance on behalf of the 2nd respondent-2nd defendant, he neither appeared during the course of hearing of the appeals nor were any submissions put forth on their behalf. While contentions, both factual and legal, were urged before the Court below, Sri C. Raghu, Learned Counsel, has confined his submissions in this appeal only to certain legal aspects. We shall confine our examination only to such of those contentions which were urged before us by the Learned Counsel for the appellant and the 1st respondent.

The points which arise for consideration in these appeals are:

1. Whether the 2nd respondent-paramount title holder, merely by issuing a notice terminating the lease granted earlier in favour of the 1st respondent-lessee, and by their unilateral act of recognizing the appellant-sub-lessee as their tenant, can deprive the 1st respondent-lessee of their juridical possession over the subject premises?
2. Can the appellant-sub-lessee, merely as a consequence of the paramount title holder determining the lease of the 1st respondent -lessee, attorn in favour of the 2nd respondent-paramount title holder, thereby denying the title of the 1st respondent-lessee, as the landlord of the appellant, to possession of the subject property?
3. Whether Section 116 of the Transfer of Property Act would disable the 1st respondent-lessee to file a suit seeking eviction of the appellant-sub-lessee, consequent on the lease granted in favour of the 1st respondent-lessee being determined by the 2nd respondent-paramount title holder?
4. Whether failure of the 1st respondent-plaintiff, to amend its plaint or to file a rejoinder referring to the termination of the lease, vide Ex.B-30 dated 02.06.2000, is fatal and would render the suit not maintainable?
5. Whether failure of the appellant to pay rent regularly to the 1st respondent would justify the 1st respondent determining the lease vide notice dated 28.12.2000, and to file a suit for eviction, recovery of arrears of rent besides damages?
6. Can the question, whether or not the 1st respondent-plaintiff has been paying rent regularly to the 2nd respondent, be examined in a suit filed by the 1st respondent-plaintiff seeking eviction of the appellant-sub-lessee?

POINTS 1 TO 3:

Sri C. Raghu, Learned Counsel for the appellant, would submit that the 2nd respondent herein had terminated the lease in favour of the 1st respondent vide Ex.B.30 dated 02.06.2000, and had accepted rent from the appellant; these facts are admitted in the written statements filed by the appellant and the 2nd respondent in the suits; the case falls within the ambit of Section 116 of the Transfer of Property Act; on the lease between the Lessor and the Lessee being terminated/determined by forfeiture under Section 111 of the Transfer of Property Act, the sub-lease between the Lessee and the sub-Lessee also stands terminated,

and both the lessee and the sub-lessee attain the status of a tenant at sufferance; since the 2nd respondent-paramount title holder had accepted rent from the appellant-sub-lessee, and had recognized them as their tenant, by implication a new tenancy is created between the paramount title holder and the sub-lessee within the ambit of Section 116 of the T.P. Act; after determination of the lease by the lessor, he can straight away evict the lessee by filing a Suit, and need not make the sub-lessee a party thereto; this means that the sub-lease, between the lessee and the sub-lessee, also stands terminated; since physical possession of the property is with the sub-lessee, the question of taking physical possession of the property by the paramount title holder from its Lessee, after determination of the lease, does not arise; the law is that, once the lease is determined, the possession of the tenant would be a “juridical possession”; this means that the Lessor can take physical possession of the leased premises, and for the said purpose he can approach a Court; but, when the Lessee is not in physical possession, he need not approach any Court, and the physical possession of the sub-lessee is recognized; the 1st respondent-lessee is a tenant at sufferance, and the appellant-sub-lessee is a tenant holding over; and the sub-lessee, who is a tenant at sufferance, is converted into a tenant with the assent of the landlord. Learned Counsel would rely on **Kai Khushroo Bezonjee Capadia v. Bai Jerbai Hirjibhoy Warden**²; **Raptakos Brett & Co. Ltd. Ganesh Property**³; **R.V. Bhupal Prasad v. State of A.P.**⁴;

² AIR 1949 FC 124 = (1949) F.C.R. 262

³ AIR 1998 SC 3085

⁴ (1995) 5 SCC 698

and **Burma Shell Oil Distribution v. Khaja Midhat Noor**⁵ in this regard.

Sri B. Srinivas Rao, Learned Counsel for the 1st respondent-plaintiff, would submit that, instigated by the appellant, the 2nd respondent had issued a Quit notice to the 1st respondent on 02.06.2000 on the ground of wilful default in payment of rent, ignoring the conditions of the lease; the 2nd respondent had also filed a suit in O.S.No.69 of 2004 before the Court of the Additional District Judge, Vijayawada; in 2013 the 2nd respondent withdrew the Suit, pursuant to a resolution dated 16.02.2012 of the CSITA committee not to interfere in the dispute between the appellant and the 1st respondent; it was also resolved by CSITA to reiterate the legal status of the 1st respondent as its tenant, and also its obligation to renew the lease as per the lease deed; the lease, between the 1st respondent and the 2nd respondent, is subsisting as on date; before the High Court also, the 2nd respondent has filed a memo referring to its resolution not to interfere in the dispute; the trial court has recorded a finding against the appellant that there was no attornment, there was default in payment of rent, the appellant had breached the conditions of lease by sub-letting the premises for sometime, and the complaints of the appellant about water and parking were all false; the trial court had granted a decree of eviction and damages, but only for 50% above the rents after the lease period 31.08.2002, though the agreed condition, admitted in the evidence, is that the rent shall be paid 100% over the existing rent after 31.08.2002, if the appellant overstays in the premises; and though the lease expired on 31.08.2002, the

⁵ AIR 1988 SC 1470

appellant is squatting on the property from 31.08.2002, for almost 16 years causing irreparable monetary loss and mental agony to the 1st respondent.

The 2nd respondent, initially, executed a lease deed in favour of the 1st respondent on 12.08.1986 which was kept pending for registration vide pending document No.P850/86. The said pending document was burnt, during the agitation, on 26.12.1988. It was, thereafter, reproduced on 27.03.1989 and was registered on 07.08.1993. Clause (1) of Ex.A11 lease deed dated 27.03.1989 stipulated that the lease was for a period of 33 years commencing from 12.08.1986. By Clause (6)(h) of Ex.A11, the 2nd respondent granted liberty to the 1st respondent to mortgage or sub-let the premises to other persons with a rider that, in no case, the sub-lease should extend beyond the lease period (of 33 years).

Even before registration of Ex.A-11 lease deed on 07.08.1993, Ex.A1 registered lease deed dated 10.10.1992 was executed, by both the 2nd respondent and the 1st respondent herein in favour of the appellant, sub-letting a part of the premises given on lease to the 1st respondent by the 2nd respondent. Clause (2) of Ex.A1 lease deed dated 10.10.1992 required the appellant to pay lease rent to the 1st respondent at Rs.2.25 per square feet. Clause (3) stipulated that the rent shall be paid by the appellant to the 1st respondent every calendar month on or before the 10th of the succeeding month. In the judgments under appeal, the Court below has held that the 2nd respondent was a formal party to Ex.A1 lease deed, since registration of Ex.A11 lease deed in favour of the 1st respondent was still pending with the Sub-Registrar, Vijayawada; and permissions were required to be taken from the

Municipal Corporation and the Urban Development Authority. This finding of the Court below has not been disputed before us.

The contents of Ex.A1 lease deed make it clear that, in so far as the appellant was concerned, it was the 1st respondent who was its lessor. Even though the 2nd respondent was also shown as a lessor in Ex.A1, there was no privity of contract between the appellant and the 2nd respondent. It is also not in dispute that the 2nd respondent issued a quit notice in Ex.B30 dated 02.06.2000 terminating the lease granted earlier in favour of the 1st respondent with effect from 01.07.2000, and had directed the appellant to pay rent directly to them (i.e., the 2nd respondent). The 1st respondent, in turn, issued a quit notice dated 28.12.2000 terminating the sub-lease granted in favour of the appellant who was called upon to vacate and hand over possession of the suit premises, by the end of January, 2001, to the 1st respondent.

Section 108 of the Transfer of Property Act relates to the rights and liabilities of the lessor and the lessee and stipulates that, in the absence of a contract or local usage to the contrary, the lessor and the lessee of immovable property, as against one another respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased. Clause (q) thereunder provides that, on the determination of the lease, the lessee is bound to put the lessor into possession of the property. Section 111 of the Transfer of Property Act relates to determination of the lease and, thereunder, a lease of immovable property determines (g) by forfeiture, that is to say (1) in case the lessee breaks an express condition which provides that, on breach thereof, the

lessor may re-enter, and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease; or (h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other. Despite the 2nd respondent determining the lease, in terms of Section 111(g) & (h) of the Transfer of Property Act, by issuing quit notice dated 02.06.2000, the 1st respondent did not surrender his juridical possession over the subject property, resulting in the 2nd respondent filing O.S. No.69 of 2004 seeking eviction of the 1st respondent from the subject premises.

In the judgments under appeal, the Court below, while taking note of the fact that O.S.No.69 of 2004 was filed before the II Additional District Judge, Vijayawada, by the 2nd respondent seeking eviction of the 1st respondent, observed that whatever rights vested with the 2nd respondent could be agitated in the said Suit. While Sri B. Srinivas Rao, Learned Counsel for the 1st respondent, would submit that O.S.No.69 of 2004 was withdrawn by the 2nd respondent in the year 2013 itself, it has not even been contended before us by Sri C. Raghu, Learned Counsel for the appellant, that a decree of eviction was passed in favour of the 2nd respondent, in O.S. No.69 of 2004, by the Learned II Additional District Judge, Vijayawada. It is evident therefore that, while the 2nd respondent had issued Ex.B-30 notice dated 02.06.2000 terminating the lease granted in favour of the 1st respondent with effect from 01.07.2000, they (i.e., the 2nd respondent) have not obtained a decree for eviction of the 1st respondent herein from the subject premises.

As Sri C. Raghu, Learned Counsel for the appellant, would contend that on determination of their lease the 1st appellant became a tenant at sufferance, and was therefore not entitled to determine the lease granted in favour of the appellants, it is necessary to understand what the expressions “*tenant at sufferance*” and “*tenant holding over*” mean. A tenant at sufferance is one who comes into possession of the land by lawful title, but who holds it by wrong after the termination of the term or expiry of the lease by efflux of time. The tenant at sufferance is, therefore, one who wrongfully continues in possession after extinction of a lawful title. **(R.V. Bhupal Prasad⁴)**. A tenancy at sufferance is merely a fiction to avoid continuance in possession operating as a trespass. It cannot be created by contract, and arises only by implication of law when a person who has been in possession, after that title has been determined, without the consent of the person entitled. **(R.V. Bhupal Prasad⁴; Mulla's *Transfer of Property Act* [7th Edn.] at page 633)**. A person, who was lawfully in occupation, does not become a trespasser even if he does not become a tenant holding over but is a tenant by sufferance. **(Badri lal v. Commission of Indore⁶)**.

If the lessee remains in possession, after determination of the term, the common law rule is that he is a tenant on sufferance. A distinction should be drawn between a tenant continuing in possession after the determination of the lease, without the consent of the landlord and a tenant doing so with the landlord's consent. The former is called a tenant by sufferance and the latter class of tenants are called tenants holding over or a tenant at will.

⁶ AIR 1973 SC 508

The lessee holding over with the consent of the lessor is in a better position than a mere tenant at will. The tenancy on sufferance is converted into a tenancy at will by the assent of the landlord, but the relationship of the landlord and tenant is not established until the rent is paid and accepted. The assent of the landlord to the continuance of the tenancy, after the determination of the tenancy, would create a new tenancy. The possession of a tenant who has ceased to be a tenant is protected by law. Although he may not have a right to continue in possession after the termination of the tenancy, his possession is juridical. (**R.V. Bhupal Prasad⁴; Mulla's Transfer of Property Act [7th Edn.] at page 633; Bhawanji v. Himatlal⁷**).

On the determination of a lease, it is the duty of the lessee to deliver possession of the demised premises to the lessor. If the lessee or a sub-lessee under him continues in possession even after the determination of the lease, the landlord undoubtedly has the right to eject him forthwith; but if he does not, and there is neither assent nor dissent on his part to the continuance of occupation of such person, the latter becomes a tenant on sufferance who has no lawful title to the land but holds it merely through the laches of the landlord. (**Pritilata Devi v. Banker Bihari Lal⁸; Karnani Industrial Bank Ltd. v. Province of Bengal⁹; Ganga Dut Murarka v. Kartik Chandra Das¹⁰**).

Even if, on determination of the lease by the 2nd respondent pursuant to Ex.B-30 quit notice dated 02.06.2000, the 1st respondent is held to be a tenant at sufferance, he continues to be

⁷ AIR 1972 SC 819

⁸ AIR 1962 Patna 446

⁹ AIR 1951 SC 285

¹⁰ AIR 1961 SC 1067

in juridical possession of the subject premises till he is evicted in accordance with law, and pursuant to a decree of eviction passed by a competent Civil Court. The law respects possession even if there is no title to support it. No one is permitted to take law in one's own hands and to dispossess the person in actual settled possession without due course of law. The person in possession is in settled possession, and is entitled to remain in possession and make use of the premises for the purpose for which it was demised until he is ejected in due course of law. (**R.V. Bhupal Prasad⁴; East India Hotels Ltd. v. Syndicate Bank¹¹**). On the expiry of the period of lease, the erstwhile lessee continues in possession because of the law of the land, namely that the original landlord cannot physically throw out such an erstwhile tenant by force. He must get his claim for possession adjudicated by a competent Court as per the relevant provisions of law. (**Raptakos Brett and Co. Ltd.³**). Notwithstanding determination of the lease by the 2nd respondent, the first respondent would continue in juridical possession of the subject premises till they either voluntarily surrender possession, or the 2nd respondent obtains a decree of eviction against them.

As noted hereinabove, in all the three Suits filed by the 1st respondent, the Court below has passed a decree of eviction against the appellant, besides arrears of rent and damages. Sri C. Raghu, Learned Counsel for the appellant, would, however, place reliance on Section 116 of the Transfer of Property Act, to contend that the 1st respondent was not even entitled to file a Suit seeking eviction of the appellant, as the lease granted in favour of the 1st

¹¹ 1992 Supp. (2) SCC 29

respondent was determined by the 2nd respondent. Section 116 of the Transfer of Property Act relates to the effect of holding over and, thereunder, if a lessee or under lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in Section 106.

Section 116 of the Transfer of Property Act lays down the effect of holding over. The position of a tenant holding over, by virtue of Section 116, is that, where the lessee of the property remains in possession thereof after determination of the lease granted to him, and the lessor accepts rent from the lessee or under-lessee, or otherwise assents to his (lessee's) continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed. **(Digambar Narain Chaudhury v. Commissioner of Tirhut Division¹²)**. What Section 116 of the Transfer of Property Act contemplates is that on the one side there should be an offer of taking a new lease evidenced by the lessee or sub-lessee remaining in possession of the property after his term was over, and on the other side there must be a definite consent to the continuance of possession by the landlord expressed by acceptance of rent or otherwise. **(Badri Lal⁶; Bhawanji⁷)**.

It is no doubt true that, in terms of Section 116 of the Transfer of Property Act, acceptance of rent by the landlord from

¹² AIR 1959 Pat 1 (FB)

the sub-lessee (under-lessee), after determination of the lease granted by them to the lessee, would, in the absence of an agreement to the contrary, result in a lease being held to have been granted in favour of the sub-lessee in terms of Section 106 of the Transfer of Property Act. The questions which necessitate examination is whether, by mere issuance of a quit notice and without obtaining a decree of eviction from a competent Court, the paramount title holder (i.e., the 2nd respondent-owner of the subject premises) can, by their unilateral act of recognizing the appellant-sub-lessee as their tenant, deprive the 1st respondent-lessee of their juridical possession over the subject premises; and whether a sub-lessee, merely as a consequence of the paramount title holder determining the lease, attorn in favour of the paramount title holder thereby denying the title of the lessee, to possession of the property, as its landlord?

To attorn merely means to agree to become a tenant of one as owner, or landlord of a property previously owned or held by another, or to agree to recognise a new owner of a property or estate and promise payment of rent to him (*Black's Law Dictionary*). To "attorn" is "to agree to become a tenant to one as owner or landlord of any estate previously held by another. In the *Concise Oxford Dictionary*, the word "attorn" is defined to mean 'transfer: make legal acknowledgment of new land- lord. Thus "to attorn" merely means to acknowledge the relation of a tenant to a new landlord, estopping the tenant to dispute the landlord's title thereafter. (**Mohd. Ilyas v. Mohd. Adil**¹³).

¹³ AIR 1994 Delhi 212

Attornment, in its strict sense, is an agreement of the tenant to a grant of the reversion made by the landlord to another, or, as it has been defined, 'the act of the tenant putting one person in the place of another as his landlord. (**Uppalapati Veera Venkata Satyanarayanarau v. Josyulu Hanumayamma**¹⁴). Attornment implies a continuity of the tenancy created by the original landlord in favour of the tenant. It is in these circumstances that the existing tenant, for the rest of the period of his tenancy, agrees to acknowledge the new landlord as his landlord. Such an agreement of the tenant amounts to attornment, and by such an attornment the tenant by his act substitutes the new landlord in the place of the previous one. Such attornment is complete the moment the tenant agrees to acknowledge the new landlord to be his landlord. (**Uppalapati Veera Venkata Satyanarayanarau**¹⁴).

It must, however, be borne in mind that there is a difference between voluntary attornment and attornment under compulsion. A mere voluntary attornment would not enable the tenant pleading eviction by title paramount nor will the mere institution of a suit against the landlord by the true owner be enough. An unexecuted decree for possession obtained by a third party does not per se operate as an eviction of the tenant by title paramount, liberating him from the estoppel against pleading jus tertia. (**Krishna Prasad Singh v. Adyanath Ghatak**¹⁵; **Vashu deo**¹). If A lets land to B, and B enters into possession under the lease, B is bound to return possession to A on the expiry of the lease and he will not be allowed to set up the right or title of a third party C. If A directs B to surrender possession to C that might be a different matter. But

¹⁴ AIR 1967 SC 174

¹⁵ ILR 1943 Patna 513

where there is no direct communication between A and B, and A demanded possession from his lessee i.e., B, this principle has no application (**Vashu deo**¹; **Pusaram Maniklal Izardar v. Deorao Gopalrao Mali (minor) by guardian mother Parawati W/o Gopalrao**¹⁶). As the appellant-sub-lessee claims to have voluntarily attorned in favour of the 2nd respondent-land-lord, on the 2nd respondent having determined the lease granted in favour of the 1st respondent, it, in effect, means that the appellant has chosen to deny that the 1st respondent is its landlord. The question which arises for consideration is whether or not it is permissible for the appellant to do so.

Attornment is one mode of recognising a person as one's landlord, just as payment of rent is another mode for the purpose. The tenant is not allowed to impeach the title of a person to whom he has paid rent, or whose title he has otherwise recognized. Simply by attornment the tenant is estopped from questioning the derivative title of the claimant's successor just as the acceptance of rent will create an estoppel against the landlord from denying the person, who paid the rent, to be his tenant. (**Uppalapati Veera Venkata Satyanarayanarau**¹⁴).

Section 116 of the Evidence Act relates to estoppel of a tenant; and of license of the person in possession and, thereunder, no tenant of immovable property or person claiming through such tenant shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the license of the

¹⁶ AIR 1947 Nagpur 188

person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when license was given. In view of Section 116 of the Indian Evidence Act, it would not be open to the appellant-sub-lessee to deny the title of the 1st respondent-lessee, to possession of the property, at the time when the sub-lease was executed. The obligation of the sub-lessee, on his lease being determined, is to hand over possession of the property to its landlord (1st respondent), failing which it is open to the lessee (1st respondent) to file a Suit seeking eviction of the appellant-sub-lessee; and, pursuant to a decree of eviction, to have such a decree executed in accordance with law.

It is only after the paramount title holder secures a decree of eviction of the lessee, can the sub-lessee thereafter directly attorn to him. To constitute eviction by title paramount so as to discharge the obligation of the tenant to put his lessor into possession of the leased premises three conditions must be satisfied : (i) the party evicting must have a good and present title to the property; (ii) the tenant must have quitted or directly attorned to the paramount title holder against his will; (iii) either the landlord must be willing to be a consenting party, to such direct attornment by his tenant to the paramount title holder, or there must be an event, such as a change in the law or the passing of a decree by a competent Court, which would dispense with the need of consent or willingness on the part of the landlord and so bind him as would enable the tenant handing over possession or attorning in favour of the paramount title holder directly; or, in other words, the paramount title holder must be armed with such legal process for eviction as cannot be lawfully resisted. The

burden of raising such a plea and substantiating the same, so as to make out a clear case of eviction by the paramount title holder, lies on the party relying on such defence. (**Vashu Deo**¹).

To constitute eviction by title paramount, no physical dispossession is necessary. If the true owner is armed with a legal process for eviction which cannot be lawfully resisted, even though the tenant is not put out of possession, the threat to put him out of possession amounts in law to eviction. If, in such circumstances, the tenant openly and to the knowledge of his landlord attorns to the true owner the estoppel is gone. The attornment, however, must be under compulsion. The party evicting must have a good and present title, and the tenant must have quitted against his will. (**Krishna Prasad Singh**¹⁵; **Vashu Deo**¹). Even if he is not actually evicted, if a judgment of eviction has been passed against the tenant, he can repudiate the title of his immediate landlord. But the mere fact of an apprehension that a suit for eviction might be brought by the paramount landlord does not justify denial of title of the landlord, and attornment to the paramount landlord. (**Sain Dar v. Sant Ram**¹⁷; **Vashu Deo**¹). To constitute a good defence of eviction by title paramount, three conditions must be fulfilled : (1) the eviction must have been from something actually forming part of the premises demised; (2) the party evicting must have a good title superior to that of the lessor and that of the lessee, and (3) the tenant must have quitted against his will. (**Gajadhar Lodha v. Khas Mahatadih Colliery Co.**,¹⁸; **Vashu Deo**¹).

¹⁷ AIR 1959 Punj 564

¹⁸ AIR 1959 Pat 562

The tenancy of a tenant, in the suit premises, would not come to an end unless and until a decree for eviction has been passed against him, and termination of his tenancy is upheld by a judicial verdict. Till then he would remain a tenant of his landlord (i.e the paramount title holder). Mere institution of a suit for eviction by the paramount title holder as the owner of the property, does not bring the tenancy of the tenant to an end and he cannot be said to have been evicted by title paramount. It cannot be said that the tenant does not have any defence or that he cannot lawfully resist the suit filed by the paramount title holder. The legal position which flows is that the sub-tenant must discharge his statutory obligation to put his landlord (i.e 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 (i.e the paramount title holder) in possession of the tenancy premises on his entitlement to hold the tenancy premises coming to an end. (**Vashu Deo**¹).

It is only after the lessee either voluntarily restores possession by surrender to his landlord, or is evicted in accordance with law (on a decree of eviction being obtained from the competent Court, and the said decree attaining finality), would the estoppel under Section 116 of the Indian Evidence Act cease to apply. The estoppel continues to operate so long as the tenant has not openly restored possession by surrender to his landlord. It follows that the rule of estoppel ceases to have applicability once the tenant has been evicted. His obligation to restore possession to his landlord is fulfilled either by actually fulfilling the obligation or by proving his

landlord's title having been extinguished by his landlord's eviction by a paramount title holder. Eviction by paramount title holder is a good defence bringing to an end the obligation of the tenant to put the lessor in possession of the property under Section 108(q) of the Transfer of Property Act. The burden of proving eviction by title paramount lies on the party who sets up such defence. (**Vashu deo**¹; **Currimbhoy and Co. Ltd. vs. L.A. Creet.**,¹⁹ and **Mt. Bilas Kunwar v. Desrai Ranjit Singh**²⁰).

To constitute eviction by title paramount, no physical dispossession is necessary. If the true owner is armed with a legal process for eviction, which cannot be lawfully resisted, even though the tenant is not put out of possession, the threat to put him out of possession amounts in law to eviction. If, in such circumstances, the tenant openly and to the knowledge of his landlord attorns to the true owner the estoppel is gone. The attornment, however, must be under compulsion. (**Krishna Prasad Singh**¹⁵; **Vashu deo**¹).

In the present case, neither has the 1st respondent voluntarily surrendered possession to the 2nd respondent nor has the 2nd respondent obtained a decree of eviction against the 1st respondent. Attornment by the appellant to the 2nd respondent is by choice and not by compulsion. Consequently, the estoppel under Section 116 of the Indian Evidence Act continues to operate on the appellant-sub-lessee who cannot, by attorning to the 2nd respondent, deny the title of the 1st respondent to possession over the subject property. In **Vashu Deo**¹, the appellant (sub-tenant) fell into arrears of rent for the period 1-1-1981 to 31-12-1982. The

¹⁹ AIR 1933 PC 29

²⁰ AIR 1915 PC 96

respondent (tenant) served a notice on the appellant (sub-tenant) and then filed a suit for recovery of arrears of rent as also for eviction. On 30-3-1983, the Trust (paramount title holder) also filed a suit for eviction, against its own tenant-the respondent, on the ground of unlawful sub-letting of the premises by the latter, the result of which was not known. The appellant-sub-tenant contended that, subsequent to the institution of the Suit on 30-3-1983 by the Trust against the respondent-tenant, the appellant-sub-tenant had, on 1-4-1983, directly attorned in favour of the Trust, and had entered into a direct tenancy agreement and therefore, w.e.f. 1-4-1983, the right of the respondent-tenant to recover rent and secure eviction of the appellant-sub-tenant had come to an end.

It is in this factual context that the Supreme Court, in **Vashu Deo**¹, was called upon to decide whether a sub-tenant, inducted by a tenant in the premises, could, during the continuance of sub-tenancy and without vacating the premises, attorn in favour of the owner of the premises, and thereby refuse to discharge his obligations towards the tenant who, admittedly, inducted him in the premises. The Supreme Court held that a tenant, in relation to a sub-tenant, is a landlord, and the sub-tenant is a tenant in relation to the tenant who has inducted him on the premises. In spite of the tenancy having come to an end under the provisions of the Transfer of Property Act, or by the terms of contract, the tenant does not cease to be a tenant and continues to hold that status unless and until a decree for eviction has been passed against him; in spite of a threat of eviction by the Trust (paramount title holder) against the respondent (tenant), the respondent-tenant

was neither liable to be evicted nor his status as a tenant liable to suffer adversely except by a judicial pronouncement, and that too on having achieved finality; in so far as the appellant sub-tenant was concerned, the title of the respondent tenant would not come to an end till the passing of a decree for eviction against him; even if the Trust (paramount title holder) has instituted a suit for eviction, the respondent-tenant had a right to contest; the Suit may or may not be decreed; and if the suit is dismissed, it cannot be said that the 'threat of eviction' by the Trust (paramount title holder) had resulted in the respondent-tenant's eviction by title paramount.

On the question whether the appellant-sub-tenant could have directly attorned to the owner-Trust, by-passing the respondent-tenant on 1-4-1983, relying on the event of institution of a suit for eviction by the owner Trust against the respondent-tenant on 30-3-1983, and whether the said event enabled successfully raising of the plea of the respondent-tenant's eviction by paramount title bringing to an end the obligation of the appellant sub-tenant to deliver possession over the tenancy premises to the respondent and to pay rent to him till that date, the Supreme Court, in **Vashu Deo**¹, held that under Section 108 Clause (q) of the Transfer of Property Act, in the absence of a contract or local usage to the contrary, it is an obligation of the tenant to put his lessor into possession of the property on the termination of the lease; Section 116 of the Evidence Act, which codifies the common law rule of estoppel between landlord and tenant, provides that no tenant of immovable property or person claiming through such tenant shall, during the continuance of the

tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; the rule of estoppel so enacted has three main features :

(i) the tenant is estopped from disputing the title of his landlord over the tenancy premises at the beginning of the tenancy, (ii) such estoppel continues to operate so long as the tenancy continues and unless the tenant has surrendered possession to the landlord, (iii) Section 116 of Evidence Act is not the whole law of estoppel between landlord and tenant; the principles, emerging from Section 116 of the Evidence Act, can be extended in their application, and also suitably adapted to suit the requirement of an individual case; the rule of estoppel, which governs an owner of immovable property and his tenant, would also *mutatis mutandis* govern a tenant and his sub-tenant in their relationship *inter-se*; as held by the Privy Council in **Currimbhoy and Co. Ltd.**¹⁹ and **Mt. Bilas Kunwar**²⁰, the estoppel continues to operate so long as the tenant has not openly restored possession by surrender to his landlord; it follows that the rule of estoppel ceases to have applicability once the tenant has been evicted; his obligation to restore possession to his landlord is fulfilled either by actually fulfilling the obligation or by proving his landlord's title having been extinguished by his landlord's eviction by a paramount title holder; eviction by paramount title holder is a good defence bringing to an end the obligation of the tenant to put the lessor in possession of the property under Section 108(q) of the Transfer of Property Act; and the burden of proving eviction by title paramount lies on the party who sets up such a defence. (**Vashu Deo**¹).

Sri C. Raghu, Learned Counsel for the appellant, would however rely on the judgment of the Federal Court in **Kai Khushroo Bezonjee Capadia**²⁾ to contend that the moment a quit notice is issued by the paramount title holder to the tenant, and calls upon the sub-tenant to pay rent directly to it, payment of rent by the sub-tenant directly to the paramount title holder results in creation of a new tenancy in terms of Section 116 of the Transfer of Property Act, and the tenant cannot, thereafter, seek eviction of the sub-tenant.

By reference to the words 'an agreement to the contrary' excluding the operation of the rule, Section 116 of the Transfer of Property Act is based on an implied or presumed contractual and not a statutory relationship for if it were the intention of the Legislature to bring into existence an arrangement by force of the Statute, and independent of the consensus of the parties, one would expect that it would not be made liable to be displaced by an agreement between the parties. (**Kai Khushroo Bezonjee Capadia**²; **Pritilata Devi**⁸⁾). The tenancy, which is created by the "holding over" of a lessee or under-lessee, is a new tenancy in law even though many of the terms of the old lease might be continued in it, by implication. (**Kai Khushroo Bezonjee Capadia**²; **Bhawanji**⁷⁾). Section 116 of the Transfer of Property Act gives statutory recognition to the landlord's assent to the tenant's continuing in possession after determination of the lease, and lays down the effect of such assent. The consequence of the acceptance of rent is that the possession of a tenant holding over becomes legal, and the tenant continues to be a tenant. (**Digambar Narain Chaudhury**¹²⁾). Apart from an express contract, conduct of the

parties may undoubtedly justify an inference that, after determination of the contractual tenancy, the landlord had entered into a fresh contract with the tenant, but whether the conduct justifies such an inference must always depend upon the facts of each case. (**Gangadutt Murarka**¹⁰). The whole basis of Section 116 of the Transfer of Property Act is that, in the case of normal tenancy, a landlord is entitled, where he does not accept the rent after the notice to quit, to file a suit in ejectment and obtain a decree for possession, and so his acceptance of rent is an unequivocal act referable only to his desire to assent to the tenant continuing in possession. (**Bhawanji**⁷).

In examining the applicability of Section 116 of the Transfer of Property Act and the judgment of the Federal Court in **Kai Khushroo Bezonjee Capadia**², it is useful to refer to the facts which arose for consideration in the said judgment, and the law declared by the Federal Court therein. In **Kai Khushroo Bezonjee Capadia**², the question which arose for consideration was whether, on the facts admitted and proved, a case of "holding over" within the meaning of Section 116 of the Transfer of Property Act had been made out by defendants 2 and 3, and they could claim the status of tenants as contemplated by that Section. The appellant-plaintiff was the owner of a residential premises known as "Capadia House" in the city of Bombay. By an indenture of lease dated the 12th of August, 1932, the entire premises were let out by the plaintiff to defendant No.1 for a period of five years commencing from 1st September, 1932, with an option of renewal for a further period of five years on payment of monthly rent. At the end of five years, the lessee exercised the option of renewal and

the' lease continued till the 31st of August, 1942, when it came to an end by efflux of time. During the period of the lease, the first defendant created a sub-lease in favour of the 2nd defendant in September, 1932, in respect of the upper floor of the demised premises, and, on the 1st of May, 1940, he granted a sub-lease of the ground floor to the third defendant. On 21st July, 1942, the plaintiff wrote a letter to the first defendant formally demanding vacant possession of the demised premises by the 31st of August following, when the lease was due to expire, and the first defendant passed this letter on to the 2nd and 3rd defendants requesting the latter to comply with those directions. On the 17th August, 1942, a reminder was sent by the plaintiff to the first defendant. This letter was also forwarded by the first defendant to his sub-tenants. In spite of these letters, defendants 2 and 3 did not vacate the portions of "Capadia House" respectively occupied by them, and the only thing that the first defendant could do, at the expiry of the lease, was to give up those portions of the premises which were actually in his occupation, and he intimated the plaintiff, by letter dated 3rd September, 1942, that it was not possible for him to do anything further as the sub-tenants were refusing to vacate the premises in spite of repeated demands, and were rightly or wrongly claiming protection under the Bombay Rent Act.

On the 30th of September, 1942, the second defendant sent a cheque to the plaintiff stating it to be the rent for the month of September in respect of the upper floor of Capadia House which she was occupying, and on the 6th of October following, defendant No.3 also remitted to the plaintiff a cheque as rent for the ground

floor of the premises due for the same month. Both these cheques were returned by the plaintiff, and defendants 2 and 3 were definitely told that they were trespassers, and had no right to pay rent or demand recognition as tenants from the plaintiff. On 2nd November, 1942, the 2nd defendant again sent to the plaintiff two cheques as rent for the months of September and October, 1942, and two cheques were sent by defendant No.3 on the 9th of November following. These cheques were received by the plaintiff without any protest, and they were put into his bank account on 23rd November, 1942, no receipts being given at that time to either of these defendants.

On 3rd December, 1942, defendant No.2 sent a further cheque to the plaintiff as the rent payable by her for the month of November, 1942, and this cheque was sent by the plaintiff to his bank on or about the 5th of January, 1943. On that date, the plaintiff addressed two letters to the two defendants which were worded in an identical manner, and stated that these cheques had been accepted by him as part deposit towards his claim for compensation for illegal use and occupation of the premises by defendants Nos. 2 and 3 since 1st September, 1942, and they were accepted without prejudice to the plaintiff's rights and contentions under the Rent Act. The claim for ejectment, it was asserted, which the plaintiff had made previously would not be affected by receipt of these monies. Stamped receipts acknowledging receipt of these amounts were sent to the two defendants along with the letters. This state of affairs continued right up to the institution of the Suit filed by the plaintiff on the 7th of December, 1945 claiming recovery of possession of the

premises, after evicting defendants 2 and 3 who, it was alleged, were trespassers and whose interest, if any, had come to an end as soon as the lease in favour of defendant No.1 expired. The first defendant was impleaded as a party defendant to this Suit though no relief was claimed against him.

It is in this context that the Federal Court, in **Kai Khushroo Bezonjee Capadia**², held that, on the determination of a lease, it is the duty of the lessee to deliver possession of the demised premises to the lessor; if the lessee, or a sub-lessee under him, continued in possession even after determination of the lease, the landlord, undoubtedly, had the right to eject him forthwith; but if he did not, and there was neither assent nor dissent on his part to the continuance of occupation of such person, the latter became a tenant on sufferance who had no lawful title to the land, but held it merely through the laches of the landlord; if, now, the land-lord accepted rent from such person, or otherwise expressed his assent to the continuance of his possession, a new tenancy came into existence as was contemplated by Section 116 of the Transfer of Property Act; as Section 116 of the Transfer of Property Act expressly mentioned an under-lessee, defendants 2 and 3 would come within the purview of the Section; it was not disputed that they did continue in possession after the lease expired by lapse of time; if it was established, on the facts of the case, that the plaintiff had assented to the continuance of possession of defendants 2 and 3, in respect of the demised premises by acceptance of rent or otherwise, these defendants would certainly acquire the status of tenants under Section 116 of the Transfer of Property Act.

The Federal Court further held that the tenancy, which was created by the "holding over" of a lessee or under-lessee, was a new tenancy in law, even though many of the terms of the old lease might be continued in it by implication; it could not be disputed that, to bring a new tenancy into existence, there must be a bilateral act; what Section 116 of the Transfer of Property Act contemplated was that, on the one side there should be an offer of taking a renewed or fresh demise evidenced by the lessee's or sub-lessee's continuing in occupation of the property after his interest has ceased, and on the other side there must be a definite assent to this continuance of possession by the landlord expressed by acceptance of rent or otherwise; the assent of the land-lord, which was founded on acceptance of rent, must be the acceptance of rent *as such*, and in clear recognition of the tenancy right asserted by the person who pays it; the facts clearly showed that, when the cheques were encashed, it was done without any reservation or condition whatsoever; the protest was not contemporaneous, but a much subsequent event; and if the agreement was already complete by acceptance of rent on 23rd November, 1942, the subsequent conduct of one of the parties could not alter its legal consequences.

The Federal Court thereafter opined that, when money was paid as rent, it did not lie in the mouth of the plaintiff to say that he would receive the money, but not as rent; when money is paid by a debtor with an express intimation, that it is to be applied to the discharge of a particular debt, the creditor may accept the money or not at all; but if he receives and appropriates it, he cannot be allowed to say that he took it wrongfully on some other

account; the ordinary legal consequence of accepting payment as indicated by the debtor, would follow in such cases, however much the creditor might attempt to repudiate them; this being the position, it must be held, on the facts of the case, that money was not only paid as rent by defendants 2 and 3, but was received as rent by the plaintiff; consequently, a monthly tenancy under the provision of Section 116 of the Transfer of Property Act did come into existence; and, so long as this monthly tenancy was not determined in the manner recognised by law, the plaintiff's suit for ejectment must fail.

As noted hereinabove, in **Kai Khushroo Bezonjee Capadia**², on expiry of the lease, the tenant had handed over vacant possession of the demised premises to his landlord, except for the portion of the building which was sub-let to defendants 2 and 3 therein. The 1st defendant-tenant had also forwarded the letter, sent to him by the appellant-landlord, to defendants 2 and 3 asking them to vacate the premises. It was because the 1st defendant-tenant therein had voluntarily surrendered his possession over the subject building to the appellant-landlord, did the question arise as to whether acceptance of rent by the landlord directly from the sub-lessee result in creation of a new tenancy under Section 116 of the Transfer of Property Act.

Unlike in **Kai Khushroo Bezonjee Capadia**², the 1st respondent herein has not surrendered possession to the 2nd respondent, which is evident from the fact that the 2nd respondent filed O.S.No.69 of 2004 before the II Additional District Judge, Vijayawada seeking his eviction. Neither Section 116 of the Transfer of Property Act, nor the law declared by the Federal Court,

in **Kai Khushroo Bezonjee Capadia**², has any application to the facts and circumstances of the present case.

Accepting the contention of Sri C. Raghu, Learned Counsel for the appellant, would result in startling consequences for it would enable the paramount title holder to have an inconvenient lessee illegally evicted, by the mere issuance of a quit notice and accepting rent from the sub-lessee, even without having to approach a competent Court seeking eviction of the lessee. As the sub-lessee would be in physical possession of the premises, this would result in a convenient mode of eviction of an inconvenient lessee by the paramount title holder, without having to approach a Court of law, notwithstanding the juridical possession of the lessee over the subject property.

Apart from **Vashu Devo**¹, wherein the Supreme Court has held that such a course of action is impermissible, a similar view was also taken by the Madhya Pradesh High Court in **Radhey Lal v. Ratansingh**²¹. In the said case, the suit premises was owned by the Municipality, and on 21-11-1960 was taken on rent by the plaintiff. They were let out by the plaintiff to the defendant. On 30-1-1963 the plaintiff determined the tenancy of the defendant, and demanded arrears of rent as also possession. On the defendant's failure, the plaintiff filed a suit. The defendant, while admitting that the suit premises was initially let out to him by the plaintiff, contended that the rules of the Municipality prohibited sub-letting of the premises and, as a dispute was going on between the plaintiff and the Municipality, the defendant had applied to the Municipality for grant of lease to him of the suit premises which

²¹ 1977 MPLJ 335

was agreed to, and since the year 1962 the defendant had become the tenant of the Municipality.

It is in this context that the Madhya Pradesh High Court, referring to Section 108(q) of the Transfer of Property Act, held that the obligation of the tenant to hand over possession to the landlord, on determination of the tenancy, cannot be avoided by the tenant contending that he had entered into a contract of tenancy with a person who has paramount title over his landlord, and by voluntarily entering into a contract with a person from whom his lessor was holding the lease; the landlord's tenancy had not come to an end by operation of law and, therefore, the sub-tenant's voluntarily becoming the tenant of the Municipality, and that too without the consent of the plaintiff (that is, his own landlord), could not be set up as a defence for discharging his obligation under Section 108(q) of the Transfer of Property Act; and the defendant, being in actual physical possession of the premises, was bound to deliver possession to the plaintiff.

As held by the Supreme Court, in **Vashu Deo**¹, the plea of eviction by paramount title is not available to the appellant-sub-tenant for three reasons; firstly, it cannot be said that the 2nd respondent-paramount title holder is armed with a legal process for eviction which cannot be lawfully resisted by the 1st respondent-tenant or to which he had no defence; secondly, the attornment by the appellant-sub-tenant in favour of the 2nd respondent-paramount title holder is voluntary, and not under any compulsion; and, thirdly, it cannot be said that the 1st respondent-paramount title holder had such good and present title against the tenant so as to hold the sub-tenant liable to be evicted against his

will. The title of the tenant, as the tenant of the paramount title holder, (and hence as landlord as against the sub-tenant) would not come to an end unless and until O.S. No.69 of 2004 filed by the 2nd respondent-paramount title holder, seeking eviction of the first respondent-tenant, is decreed and the decree achieves finality. Point Nos.1 to 3 are answered accordingly.

POINT NO.4:

Sri C. Raghu, Learned Counsel for the appellant, would submit that the plaintiff No.2 (i.e the 1st respondent herein) filed the Suits, as if the Church i.e., the lessor together with him, were seeking eviction of the sub-lessee; the 1st respondent claimed himself to be the GPA holder of the church, but the church disputed the same, and got impleaded as the 2nd defendant; they filed a detailed written statement stating that the lease, between the lessor-Church and the 1st respondent-Lessee was terminated under Ex.B30 notice dated 02.06.2000, and the 1st respondent-lessee was not in possession of the property; the Church had recognized the appellant-sub-lessee as its tenant; when the 1st and 2nd defendants have disputed the claim of the plaintiff for eviction simplicitor, the plaintiff did not amend the plaint or file a rejoinder, with regard to termination of the lease by the lessor i.e., the Church vide Ex.B30 dated 02.06.2000; though the plaint was not amended nor was a rejoinder filed, and even without any pleading on the part of the plaintiff, the lower Court had erroneously framed Issue No.2 as to whether the 2nd plaintiff was the Lessor of the plaint schedule property, and the lease in his favour was terminated; the lower Court completely ignored the basic requirement of the pleadings in the plaint which is the foundation

of the case; if the lessee is canvassing that termination of the lease, granted in his favour earlier, is illegal, it should be pleaded in the plaint by way of a rejoinder or an amendment, more so when the 2nd defendant church had specifically stated that the same was terminated; the case of the plaintiff should have been that, inspite of termination of the lease, he still had the right to proceed against the sub-lessee, and the plaint should have been amended accordingly; once the lease is terminated, the sub-lease also gets terminated; any subsequent conduct, which might have extinguished his entitlement to possession, has to be pleaded; the appellant has specifically pleaded with regard to the termination of the lease by the 2nd respondent, and recognition of the appellant-sub-lessee as the 2nd respondent's tenant; similarly the 2nd respondent has pleaded the same; correspondingly there is no amendment or rejoinder to the plaint; and, therefore, the Suit is liable to be dismissed on the ground that there is no foundation for the case in the pleadings. Learned Counsel would rely on **Maria Margarida Sequeira Fernandez v. Erasmo Jack De Sequeira**²².

Sri B. Srinivas Rao, Learned Counsel for the respondent-plaintiff, would submit that, the 1st respondent filed Suits on the ground of wilful default in payment of rents; nothing was suppressed in the Plaint, including the fact that CSITA was the owner of the land, and the 1st respondent was a lease holder; CSITA initially objected to being made the 1st plaintiff, and the Trial Court deleted them from the cause title; and CSITA impleaded itself as the 2nd defendant, and filed their written statement supporting the appellant.

²² 2012 (5) SCC 370

In **Maria Margarida Sequeira Fernandes**²², the respondent had filed a suit for permanent and mandatory injunction against the appellant. Despite the appellant's contention that the respondent's suit for injunction was not maintainable as he could not claim to be in lawful and legal possession of the premises as he was merely in custody of the house on behalf of the appellant, and a caretaker can never sue a valid title holder of the property, the suit filed by the respondent was decreed by the Trial Court and affirmed by the High Court. It is in this context that the Supreme Court observed:

".....A suit can be filed by the title-holder for recovery of possession or it can be one for ejectment of an ex-lessee or for mandatory injunction requiring a person to remove himself or it can be a suit under Section 6 of the Specific Relief Act to recover possession.

A title suit for possession has two parts—first, adjudication of title, and second, adjudication of possession. If the title dispute is removed and the title is established in one or the other, then, in effect, it becomes a suit for ejectment where the defendant must plead and prove why he must not be ejected.

In an action for recovery of possession of immovable property, or for protecting possession thereof, upon the legal title to the property being established, the possession or occupation of the property by a person other than the holder of the legal title will be presumed to have been under and in subordination to the legal title, and it will be for the person resisting a claim for recovery of possession or claiming a right to continue in possession, to establish that he has such a right. To put it differently, wherever pleadings and documents establish title to a particular property and possession is in question, it will be for the person in possession to give sufficiently detailed pleadings, particulars and documents to support his claim in order to continue in possession.

In order to do justice, it is necessary to direct the parties to give all details of pleadings with particulars. Once the title is prima facie established, it is for the person who is resisting the title-holder's claim to possession to plead with sufficient particularity on the basis of his claim to remain in possession and place before the court all such documents as in the ordinary course of human affairs are expected to be there. Only if the pleadings are sufficient, would an issue be struck and the matter sent to trial, where the onus will be on him to prove the averred facts and documents.

The person averring a right to continue in possession shall, as far as possible, give a detailed particularised specific pleading along with documents to support his claim and details of subsequent conduct which establish his possession.

It would be imperative that one who claims possession must give all such details as enumerated hereunder. They are only illustrative and not exhaustive:

- (a) who is or are the owner or owners of the property;
- (b) title of the property;
- (c) who is in possession of the title documents;
- (d) identity of the claimant or claimants to possession;
- (e) the date of entry into possession;
- (f) how he came into possession—whether he purchased the property or inherited or got the same in gift or by any other method;

(g) in case he purchased the property, what is the consideration; if he has taken it on rent, how much is the rent, licence fee or lease amount;

(h) If taken on rent, licence fee or lease—then insist on rent deed, licence deed or lease deed;

(i) who are the persons in possession/occupation or otherwise living with him, in what capacity; as family members, friends or servants, etc.;

(j) subsequent conduct i.e. any event which might have extinguished his entitlement to possession or caused shift therein; and

(k) basis of his claim that not to deliver possession but continue in possession..... “ (emphasis supplied).

In the present case the 1st respondent-plaintiff has not denied that the 2nd respondent-2nd defendant is his lessor. He has, in fact, specifically referred in his plaint to a lease having been granted in his favour by the 2nd respondent-2nd defendant (i.e, the 1st plaintiff). While termination of the lease, through quit notice dated 02.06.2000, has not been pleaded, mere issuance of a quit notice by the paramount title holder, as noted hereinabove, would not deprive the lessee of its juridical possession over the subject premises till he either voluntarily surrenders possession, or the paramount title holder obtains a decree of eviction from a competent Court against the lessee.

In case any decree of eviction had been passed in O.S. No.69 of 2004, failure on the part of the 1st respondent-plaintiff to refer to any such decree would have been fatal to the said Suit. As it is nobody's case, including that of the appellant and the 2nd respondent, that a decree of eviction has been passed, and on the other hand Sri B. Srinivas Rao, Learned Counsel for the 1st respondent-plaintiff, would contend that the suit in O.S. No.69 of 2004 was dismissed as withdrawn in the year 2013, failure to refer to the fact, that the lease granted in favour of the 1st respondent vide Ex.A-11 dated 12.08.1996 was determined vide quit notice dated 02.06.2000, would not affect the maintainability of the Suits

filed by the 1st respondent-lessee seeking eviction of the appellant-sub-lessee.

The suits in O.S. No.201 to 203 of 2001 were filed by the 1st respondent-plaintiff seeking eviction of the appellant-1st defendant. As the appellant has not denied that, in terms of Ex.A-1 lease deed, the 1st respondent-plaintiff was its landlord, failure of the 1st respondent-plaintiff to refer to the notice issued by the 2nd respondent-paramount title holder on 02.06.2000, terminating the lease granted earlier in favour of the 1st respondent-plaintiff, matters little, as by mere issuance of a quit notice by the paramount title holder, the title of the 1st respondent-tenant, to possession over the subject premises, does not come to an end, and it is only on a decree of eviction being obtained by the paramount title holder can the 1st respondent-plaintiff be evicted from the subject premises. Point No.4 is answered accordingly.

POINT NO.5:

Sri C. Raghu, Learned Counsel for the appellant, would submit that the appellant has been depositing the lease amounts as per the directions of this Court, and only for the past one year the lease amounts are not being deposited; the total amount paid by the appellant as per lower Court orders is from September, 2001 to April, 2008 i.e for Rs.38,30,755/-; the agreed rent paid, as per the High Court orders from May, 2008 to April, 2017 is Rs.69,53,688/-; the total lease amount paid is Rs.1,07,84,443/-; the trial court has specifically held that it could be understood that the hostility between the plaintiff and the 1st defendant had occurred because of interference by the 2nd defendant, for spoiling the cordial relations between the plaintiff and D1 it is D2 who is

wholly responsible, and if the 2nd defendant did not directly demand D1 to pay the lease amount to it, D1 would have approached and settled its misunderstanding with the plaintiff as he had settled in respect of water cess; these findings clearly show that, since the Church was responsible, the decree is directed against both the defendants in relation to damages; already about Rs.1,07,84,443/- is paid, pending litigation, by the appellant; and therefore, if at all any amounts are liable to be paid, the church would be liable to pay.

Sri B. Srinivas Rao, Learned Counsel for the 1st respondent-plaintiff, would submit that the appellants are two companies; in all the three appeals Sri G.V. Mohan Prasad, the Managing Director of M/s. Dolphin Medical Services Limited and also the Director of Meridian Medical Projects Limited, has been pursuing the matter; before the Trial Court too, he filed a common written statement in all the three Suits, and adduced common oral evidence; the appellant was never regular in payment of rents, in addition to their consistent disputes with the 1st respondent over water charges, electricity charges, parking fees etc., which are all contrary to the conditions of the lease; the lease with the appellant began on 01.09.1992 for 4600 sq. feet in the ground floor (O.S.No.203 of 2001), for 3920 sq feet in the 1st floor (O.S.No.201 of 2001), and 6000 sq. feet in the 2nd floor (O.S.No.202 of 2001); the actual rents were mentioned in the plaints; the 1st respondent paid income-tax on the total rents; both in their written statement, and in the oral evidence, the appellant admitted the actual rents payable for all the three leased areas of the building; the 1st appellant was never regular in payment of rent; the appellant did

not pay rent from 01.05.2000 till 31.12.2000 to anybody; from 01.01.2001 to 31.08.2001 he paid about Rs.3,60,000/- to the 2nd respondent at Rs.45,000/- per month, which is not the agreed rent, and has admitted the same in cross-examination; later from October, 2001 till 30.04.2017, he deposited rents into the Court irregularly, whenever it pleased, and at a rate convenient to it; from 01.05.2017, no rents were deposited at all; the conditional stay order is deemed to have been vacated; thus, after 01.05.2000, the agreed rents were never paid; for the past 5 years, no business is being run in the premises; and the appellant went for a public issue twice, and cheated the public despite not having any running business.

In the judgment under appeal, the Court below has held that the appellant-1st defendant had completely stopped payment of the lease amount to the 1st respondent-plaintiff from May, 2000 continuously; they had not filed any documentary evidence to substantiate payment of the lease amount directly to the 2nd respondent-2nd defendant; the appellant-1st defendant did not comply with the order of the Court for deposit of rent in the Court; instead of depositing the admitted lease amount, they had deposited only one half, that too after deducting TDS from October, 2001; there was no record as to what happened to the lease amount for the period from May, 2000 to December, 2000; it was not even stated by the 2nd respondent-2nd defendant that they had received the lease amount from the appellant-1st defendant for this period; they had also failed to pay water cess in its entirety; they had also sublet the premises contrary to the terms and conditions

of the lease deed; and the 1st respondent-plaintiff was, therefore, justified in terminating the lease of the appellant-1st defendant.

During the pendency of the appeal before this Court, an interim order was passed on 22.02.2008 granting stay of all further proceedings pursuant to the judgment and decree dated 26.12.2007 on condition that the appellant-1st defendant continued to deposit the rent, as was done during the pendency of the Suit, on or before the 10th of every succeeding month to the credit of the Suit. By order dated 07.11.2012, this Court permitted the 1st respondent-plaintiff to withdraw the rent deposited in Court without furnishing any security; the appellant-1st defendant was directed, henceforth, to pay rent to the 1st respondent-plaintiff on or before the 10th of every month; and, on such deposit, the 1st respondent-plaintiff was permitted to withdraw the said amount without furnishing any security. This order was, however, made subject to the final outcome of the appeals, and without prejudice to the rights and contentions of the parties. Sri C. Raghu, Learned Counsel for the appellant, has fairly stated, in his written submissions, that, for the past one year, the lease amounts were not being deposited. The finding of the lower Court that the appellants were not regular in payment of rent, and had defaulted in payment of rent, has neither been disputed before us nor has our attention been drawn to any material on record which discloses payment of rent by the appellant-1st defendant either to the 1st respondent-plaintiff or to the 2nd respondent-2nd defendant for the entire duration of the lease period, and thereafter till date. This point is also answered against the appellant.

POINT NO.6:

Sri C. Raghu, Learned Counsel for the appellant, would submit that the written statement of DW-2 would show that the 1st respondent has committed default in paying the lease amounts to the extent of Rs.6,86,100/- as on 1.4.2000; therefore, at the time of filing the Suit, there was a default in payment of rent by the lessee to the lessor, and the lease was terminated on that ground through quit notice dated 2.6.2000 w.e.f. 30.6.2000; the plaint shows that the appellant has committed default w.e.f. 1.5.2000; and there is no default on the part of the appellant, since the rent of May has been paid to the Church which had issued a notice asking the appellant to pay the amounts.

Sri B. Srinivas Rao, Learned Counsel for the 1st respondent-plaintiff, would submit that the 1st respondent took on lease vacant land of 2000 sq. yards in Vijayawada from the 2nd respondent initially for 33 years from 12.08.1986; the 1st respondent-plaintiff had constructed a building thereupon; according to the lease deed, the 1st respondent-plaintiff can sub-lease the constructed building; till date, the 1st respondent has been paying the agreed rent to the 2nd respondent regularly; there is not even a single default, and not a single month had passed without payment of rent; and several times the rent was paid in advance.

As noted hereinabove, the 2nd respondent-2nd defendant filed O.S. No.69 of 2004 seeking eviction of the first respondent-plaintiff from the suit premises. It is only in the said Suit can the question, of default in payment of rent by the 1st respondent-plaintiff to the 2nd respondent-2nd defendant, be gone into. Inter-se disputes, if any, between the 1st respondent-plaintiff and the 2nd respondent-

2nd defendant can neither be examined in a Suit filed by the 1st respondent-plaintiff seeking eviction of the appellant-1st defendant nor would that justify the appellant-1st defendant refusing to pay lease rent to its landlord i.e. the 1st respondent-plaintiff. The claim of the appellant-1st defendant, regarding non-payment of rent by the 1st respondent-plaintiff to the 2nd respondent-2nd defendant, is extraneous both to the suit proceedings and to these appeals. The scope of examination, in these proceedings, is confined to questions relating to whether the 1st respondent-plaintiff is entitled to seek eviction of the appellant-1st defendant, and whether they are entitled to seek recovery of arrears of rent and damages. Point No.6 is answered accordingly.

CONCLUSION:

Viewed from any angle, we find no error in the judgment under appeals warranting interference in appellate proceedings. All the Appeals fail and are, accordingly, dismissed with costs. The miscellaneous petitions, if any pending, shall also stand dismissed.

RAMESH RANGANATHAN, J

N. BALAYOGI, J.

Date: 08.10.2018.

Note: L.R. copy to be marked
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