

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 9th May, 2020**

+ **RSA 146/2005**

GAURI SHANKAR **..... Appellant**

Through: Mr. Pankaj Vivek and Mr. Bidya
Rani, Advocates.

Versus

RAKESH KUMAR & ORS. **..... Respondents**

Through: Mr. Anupam Dwivedi and Mr.
Pradeep Dwivedi, Advocates.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) impugns the judgment and decree [dated 3rd February, 2005 in RCA No.98/1997 of the Court of Additional District Judge, Delhi] partly allowing the First Appeal under Section 96 of the CPC filed by the respondents/defendants against the judgment and decree [dated 27th September, 1997 in Suit No.436/1996 of the Court of Civil Judge, Delhi] allowing the suit filed by the appellant/plaintiff against the respondents/defendants, for dissolution of partnership, rendition of accounts and recovery of possession of Shop No.47 U.B., Jawahar Nagar, Delhi. The First Appellate Court, while has upheld the decree insofar as of dissolution of partnership and rendition of accounts, has set aside the decree for recovery of possession of the shop aforesaid.

2. This second appeal came up first before this Court on 20th May, 2005, when while issuing notice thereof, vide *ex-parte* ad-interim order, the respondent/defendant No.3 Balmukand Verma was restrained from alienating in any manner, Shop No.47 U.B., Jawahar Nagar, Delhi. However, vide order dated 21st February, 2006, upon the counsel for the appellant/plaintiff absenting, the appeal was dismissed in default and for non-prosecution and the interim order vacated. The appellant/plaintiff applied for restoration of the appeal and on 26th April, 2006 notice of which application was ordered to be issued. The appellant/plaintiff not only failed to serve the respondents/defendants inspite of repeated opportunities, but also again failed to appear on 27th August, 2008 and resultantly the application filed for restoration of the appeal already dismissed in default and for non-prosecution, was also dismissed. The appellant/plaintiff again applied for setting aside of the order dated 27th August, 2008 and when the said application came up before this Court on 24th October, 2008, informed that the respondent/defendant No.3 Balmukand Verma had died on 14th January, 2007. The process of substitution of the legal representatives (LRs) of the respondent/defendant No.3 Balmukand Verma thereafter began. Ultimately, vide order dated 22nd July, 2010, the order dated 27th August, 2008 of dismissal of the application for restoration of this second appeal already dismissed in default, was recalled and the application for restoration of the appeal restored to its original position. Vide subsequent order dated 18th November, 2011, the LRs of the deceased respondent/defendant No.3 Balmukand Verma were brought on record and the appeal restored to its original position. Vide yet subsequent order dated 2nd December, 2013, holding that this second appeal did not entail any substantial question of

law, this second appeal was dismissed. The appellant/plaintiff applied for review of the said order but the review application was also dismissed vide order dated 22nd August, 2014.

3. The appellant/plaintiff preferred SLP(C) Nos.29019-29020/2015 to the Supreme Court, challenging the orders dated 2nd December, 2013 of dismissal of the appeal as not entailing any substantial question of law and order dated 22nd August, 2014 of dismissal of the application filed for review of the order dated 2nd December, 2013, and which SLP was granted and converted to Civil Appeal Nos.4513-4514/2017 which were disposed of vide order dated 29th March, 2017 of the Supreme Court. The Supreme Court set aside the order dated 2nd December, 2013 of this Court of dismissal of this second appeal as not entailing any substantial question of law and relegated the parties to this Court for a fresh consideration of this second appeal on its own merits in accordance with law, and more so the substantial questions of law formulated by the appellant/plaintiff in the memorandum of this second appeal, leaving it open to this Court to formulate the substantial questions of law or permit the parties to urge any further substantial question of law that may require consideration.

4. Pursuant to the aforesaid order of the Supreme Court, the Trial Court records earlier requisitioned in this Court and which had been sent back, were re-requisitioned. The counsel for the appellant/plaintiff and the counsel for all the respondents/defendants were heard on 6th July, 2018 as well as on 9th July, 2018 and the proceedings adjourned to 23rd July, 2018. Though it was expected that by 23rd July, 2018 I would be able to study the law on the subject, to be in a position to dictate the order in the open Court

on 23rd July, 2018, but the same remained to happen. The counsels, during the hearing, agreed that considering the time for which the appeal had already remained pending and further considering the fact that in none of the orders of this Court after remand by the Supreme Court also, the substantial questions of law had been framed, this Court in the judgment disposing of the appeal also formulate the substantial questions of law. Since on 23rd July, 2018, no order reserving the appeal for judgment was passed, this judgment is being pronounced now after telephonically intimating the counsels.

5. The appellant/plaintiff, on 6th June, 1984 instituted the suit from which this appeal arises, pleading (i) that the appellant/plaintiff and the respondent/defendant No.1 Rakesh Kumar, vide Deed dated 3rd September, 1975 entered into a partnership, to start a firm in the name and style of M/s Neel Jewellers, to carry on business of repair and sale of silver jewellery and repairing and making of gold ornaments, at Shop No.47 U.B., Jawahar Nagar, Delhi which was jointly taken, on rent by the appellant/plaintiff and the respondent/defendant No.1 Rakesh Kumar for partnership business, from the respondent/defendant No.2 Maya Devi, who was the mother of the respondent/defendant No.1 Rakesh Kumar; (ii) that the appellant/plaintiff and the respondent/defendant No.1 were lawful tenants in respect of the said shop; (iii) that it was a term of the Partnership Deed that if any other business was carried on from the shop aforesaid in any other name, then that business also will be in partnership between the parties; that the appellant/plaintiff and the respondent/defendant No.1, after a few days of starting the business of M/s Neel Jewellers, started another firm in the name and style of M/s Verma Sons, for carrying on the business of sale, purchase

and work of embroidery of sarees at the aforesaid shop; (iv) that the partnership was initially for a period of five years but was continued by the parties after the expiry of five years and became a partnership at will; (v) that owing to the conduct of the respondent/defendant No.1, the appellant/plaintiff was left with no alternative but to discontinue the partnership business; resultantly, the appellant/plaintiff got issued a notice dated 4th October, 1983 to the respondent/defendant No.1, of dissolution of partnership; (vi) that the respondent/defendant No.1 sent a false reply dated 8th November, 1983 to the said notice; (vii) that though the said notice was meant to be with respect to partnership in the name and style of M/s Neel Jewellers as well as the partnership in the name and style of M/s Verma Sons, but the appellant/plaintiff by way of abundant caution got issued another notice dated 21st April, 1984 to the respondent/defendant No.1 and to which the respondent/defendant No.1 failed to reply; (viii) that with the issuance of the said notices, both the partnership firms stood dissolved and the appellant/plaintiff became entitled to accounts and the money found due on taking accounts; (ix) that the respondent/defendant No.1 was in possession of the books of account and had otherwise also misappropriated the assets of the firm; (x) that the respondent/defendant No.1 even after issuance of the notices continued the partnership business at the same shop, without paying any share of the appellant/plaintiff therein; (xi) that the tenancy of the shop in favour of the appellant/plaintiff and the respondent/defendant No.1 was never surrendered to the landlady respondent/defendant No.2; (xii) that the tenancy and possession could be surrendered jointly by the appellant/plaintiff and the respondent/defendant No.1 and not otherwise; (xiii) that the appellant/plaintiff had never

consented to surrender the tenancy or possession of the shop aforesaid; and, (xiv) that the plea of the respondent/defendant No.1, of the respondent/defendant No.2 landlady, after surrender of tenancy aforesaid and possession, having delivered possession of the subject shop to her husband respondent/defendant No.3 Balmukand Verma, is not tenable in law. The appellant/plaintiff thus sought dissolution of the partnership firms namely M/s Neel Jewellers and M/s Verma Sons; rendition of accounts; recovery of monies found due on taking accounts; and, possession of shop along with respondent/defendant No.1.

6. All the three respondents/defendants filed a joint written statement contesting the suit, pleading (a) that the suit was barred by time; the firm was dissolved in February, 1978; the tenanted premises was surrendered to the respondent/defendant No.2 landlady and the business was altogether closed; the stocks of trade were sold and the debts of the firm cleared and the accounts finally settled in the year 1980 and nothing remained payable by any party to the other; (b) denying that the appellant/plaintiff and the respondent/defendant No.1 were tenants in the shop; the shop was surrendered to the respondent/defendant No.2 in 1978; (c) that the business of the partnership was closed in February, 1978 and the goods of the partnership were sold and the debts of the firm cleared; according to the settlement of accounts, the goods were sold and the liabilities of the firm were cleared; (d) that the shop had been let out to the respondent/defendant No.3 Balmukand Verma who was doing business therein in the name and style of Enamel Art Jewellers.

7. The appellant/plaintiff filed a replication, denying the contents of written statement and reiterating the contents of the plaint.

8. After instituting the suit aforesaid, the appellant/plaintiff instituted another suit, being Suit No.435/1996, against the respondents/defendants, for permanent injunction restraining the respondents/defendants from making any addition, alteration in the shop and from transferring possession of the shop to any other person.

9. The two suits, vide order dated 13th July, 1988, were consolidated and the following consolidated issues framed in the suits:

- “1. Whether the suit is barred by limitation? OPD*
- 2. Whether the suit is bad for mis-joinder of parties and cause of action? OPD*
- 3. Whether the suit is not properly valued for the purposes of court fees and jurisdiction? OPD*
- 4. Whether the partnership firm is dissolved in 1983?*
- 5. Whether the defendant No.1 is the accounting party? OPD*
- 6. Whether the plaintiff is entitled to relief of possession against the defendant No.2&3?*
- 7. Whether the plaintiff is entitled to relief of injunction in suit No.228/87?*
- 8. Relief.*

Another issue was framed on 13.2.97:

ISSUE

- 1. Whether the pltf. is entitled to rendition of accounts as prayed for? OPP.”*

10. The Suit Court, on the basis of the evidence led by the parties, found/observed/held (I) that the respondents/defendants, to prove that the partnership was dissolved in the year 1978, filed on record the slip issued by the Income-Tax Department showing that in income-tax return furnished in the year 1978, it was stated that it is a closed firm; however, the counsel for the appellant/plaintiff claimed that the income-tax return signed by both the partners had not been produced and only the slip was produced; (II) that the case of the respondents/defendants was that under the Partnership Deed, the partnership was for five years with option even prior thereto to either party to remove himself by giving three months' notice in case the firm incurred losses; however it was not the case of the respondents/defendants that the respondent/defendant No.1 at any time in the year 1978, gave a three months' notice; (III) the appellant/plaintiff had proved that the joint account in the name of the firm still subsisted and no notice of closure of that account was given to the bank and balance to that account was transferred by the bank for non-operation for ten years; the said amount belonged to the appellant/plaintiff and the respondent/defendant No.1 and it belied the plea of the respondents/defendants that there was any settlement of accounts in the year 1980; (IV) that the appellant/plaintiff had also proved four cheques signed by both the partners and last of which was issued in the year 1984; the respondents/defendants though admitted the cheques, but claimed that the same were issued as blank at the time of settlement of account and had been filled up subsequently, but had failed to prove the same; (V) that there was plenty of evidence to show that the firm was dissolved by giving a notice dated 4th October, 1983 by the appellant/plaintiff and therefore, the suit filed on 6th June, 1984, was within limitation; (VI) accordingly, issues

No.1&4 were decided in favour of the appellant/plaintiff and against the respondents/defendants; (VII) that the appellant/plaintiff had rightly joined the causes of action and the parties, and accordingly, the issue No.2 also had to be decided in favour of the appellant/plaintiff and against the respondents/defendants; (VIII) that the valuation of the suit for the purposes of court fees and jurisdiction, for the reliefs of dissolution of partnership, rendition of accounts and recovery of possession of tenanted shop was in accordance with law; issue No.3 was decided in favour of the appellant/plaintiff and against the respondents/defendants; (IX) that on the basis of the evidence led, the issue No.5 and the additional issue No.1 were also decided in favour of the appellant/plaintiff and against the respondents/defendants; (X) that the case of the appellant/plaintiff was that the appellant/plaintiff and the respondent/defendant No.1 were joint tenants of the shop, as evident from the rent receipt in the joint names of the appellant/plaintiff and the respondent/defendant No.1, and the appellant/plaintiff had never surrendered or consented to or acquiesced in the surrender of possession of the said shop; (XI) that on the contrary, the case of the respondent/defendant No.1 was that he had, in the year 1978, after the dissolution of the firm, surrendered the tenancy by making an endorsement on the back of the rent receipt under his signatures only, on the instruction of the appellant/plaintiff; (XII) that the plea of the respondent/defendant No.1 of dissolution of partnership in the year 1978 had not been accepted; (XIII) that the surrender of tenancy by the respondent/defendant No.1 alone to the landlady respondent/defendant No.2 who was the mother of the respondent/defendant No.1 and subsequent creation of tenancy of the shop by the respondent/defendant No.2 in favour

of the respondent/defendant No.3 who was the husband of the respondent/defendant No.2, showed that the same was without the consent of the appellant/plaintiff; (XIV) that the respondent/defendant No.3 had not chosen to file any separate written statement to assert his independent right but had filed a joint written statement with the other two respondents/defendants; (XV) that in the absence of any document recording the consent of the appellant/plaintiff to surrender of tenancy, such possession could not be delivered; (XVI) that commercial tenancy and possession was a valuable right and in the ordinary course of human conduct, if the appellant/plaintiff and the respondent/defendant No.1 had agreed to surrender the tenancy, the signatures of the appellant/plaintiff would have been obtained; (XVII) that the tenancy claimed of the shop in favour of the respondent/defendant No.3 had also not been proved; (XVIII) that the transaction of surrender of tenancy and creation of new tenancy between the respondents/defendants inter se was a sham and intended to defeat the rights of the appellant/plaintiff; (XIX) that the respondents/defendants had failed to prove any valid surrender of tenancy or creation of any subsequent tenancy in favour of the respondent/defendant No.3; (XX) that the appellant/plaintiff was thus entitled to possession of the tenanted shop; (XXI) that surrender of tenancy by one of the tenants was invalid; and, (XXII) that the appellant/plaintiff had however failed to prove entitlement to the relief of permanent injunction claimed in Suit No.435/1996. Accordingly, a decree was passed in favour of the appellant/plaintiff and against the respondents/defendants, (a) declaring that the partnership of M/s Neel Jewellers and M/s Verma Sons was dissolved on 4th October, 1983 and 21st April, 1984; (b) declaring that the

appellant/plaintiff was entitled to rendition of accounts from the respondent/defendant No.1; (c) declaring that the appellant/plaintiff was entitled to possession of shop No.47 U.B., Jawahar Nagar, Delhi along with the respondent/defendant No.1; and, (d) of dismissal of Suit No.435/1996 of permanent injunction.

11. The respondents/defendants preferred First Appeals, being RCA Nos.97/1997 and 98/1997 against the judgment in Suit No.435/1996 and Suit No.436/1996 respectively. During the pendency of the said First Appeals, the respondents/defendants filed application for leading additional evidence and which was allowed and the additional evidence recorded before the First Appellate Court.

12. I may at this stage state that since Suit No.435/1996 filed by the appellant/plaintiff for permanent injunction had been dismissed, it is inexplicable why the respondents/defendants preferred First Appeal being RCA No.97/1997 thereagainst.

13. The First Appellate Court, in the impugned judgment, has found/observed/held (A) that there was overwhelming evidence on record, to show that the partnership had continued beyond February, 1978, contrary to what was pleaded by the respondents/defendants; (B) that the respondents/defendants had not even given suggestions to the witnesses of the appellant/plaintiff, who deposed of continuation of partnership beyond 1978, to the effect that no business of the partnership was being conducted at the shop during the years 1979 and 1980, when the said witnesses had deposed of visiting the shop; (C) that the appellant/plaintiff had also proved opening of an account in the name of M/s Verma Sons with the Kamla

Nagar Branch of the Corporation Bank on 18th December, 1978 and which fact was not disputed by the respondents/defendants; (D) that if the firm had been dissolved in February, 1978, there was no occasion for opening another account in the name of the partnership firm in December, 1978 i.e. after the dissolution of the firm; there was no explanation furnished by the respondents/defendants in this regard; (E) that the respondent/defendant No.1, though in his cross-examination deposed that a document in writing was executed at the time of settling of the accounts in the year 1980, but had no explanation as to why it was not so mentioned in the reply to the legal notice preceding the suit or in the written statement in the suit; (F) that there was no evidence on record to believe the version of respondent/defendant No.1, of such settling of accounts in the year 1980; (G) that if a document had been drawn up and executed by the appellant/plaintiff and the respondent/defendant No.1, of settlement of accounts, it was contrary to human conduct that the same would be left with the appellant/plaintiff only and no copy thereof would be retained by the respondent/defendant No.1; (H) that the respondent/defendant No.1 did not even issue any notice to the appellant/plaintiff, to discover such document, if any on oath; (I) that the respondents/defendants did not lead any evidence whatsoever of execution of any such documents; (J) that the plea was even otherwise vague, as no date or month were mentioned; (K) that there was thus no reason to interfere with the finding of the Suit Court, of the partnership having been dissolved vide notices dated 4th October, 1983 and 21st April, 1984; (L) that the Suit Court had also granted a decree for possession of the shop, 'holding the appellant/plaintiff and the respondent/defendant No.1 were joint tenants' in the shop; (M) 'that there was no dispute that the shop was taken on rent by

both the partners at the inception of the partnership business and they were joint tenants in the shop'; (N) that the question to be determined was, what is the effect of one of the joint tenants surrendering the tenancy, without the authority of the other joint tenant; (O) that the Supreme Court in ***Kanji Manji Vs. The Trustees of the Port of Bombay*** AIR 1963 SC 468 and in ***H.C. Pandey Vs. G.C. Paul*** AIR 1989 SC 1470 has held that service of notice on one of the joint tenants is sufficient; that there is no division of the premises or the rent payable between the joint tenants; and, that a decree of possession passed against one of the joint tenants binds the other; (P) that it must therefore be held, that one of the joint tenants, even if without the authority of the other, is entitled to surrender the tenancy and it is a legal surrender and binding on the other joint tenants; (Q) that the appellant/plaintiff was thus not entitled to seek possession of the shop from the respondents/defendants No.2&3; and, (R) that the tenancy of the shop was not divisible. Accordingly, issue No.6 was decided against the appellant/plaintiff and in favour of the respondents/defendants and the finding of the Suit Court on issue No.6, was reversed, partly allowing the First Appeals.

14. Now, I come back to the judgment dated 29th March, 2017 of the Supreme Court in appeal aforesaid arising from the order of dismissal of this second appeal. The appellant/plaintiff, before the Supreme Court, formulated the following substantial questions of law and which are reproduced in the judgment of the Supreme Court:

“i. *Whether the tenancy of Respondent No.1 and 2 as created w.e.f. 01.09.1975 in respect of Suit premises No.47, UB, Jawahar Nagar, Delhi – 11006 jointly in*

their name can be said to be joint tenancy as contemplated in the judgment AIR 1988 SC 1470 “S.C. Pandey versus G.C. Paul” which were passed in the context of joint tenancy conferred on the body of the legal heir of deceased or not?

- ii. *Whether the Ld. Appellate Court was duty bound to address all issues and give finding therein after re-appraisal of the facts and was not competent to uphold the finding summarily as sought to be done by the judgment dated 03.02.2005 or not?*
- iii. *Whether the Ld. Appellate Court was duty bound to deal with other issues except Issue No.6?*
- iv. *Whether the Judgment/Decree of the Ld. Appellate Court dated 03.02.2005 was perverse and in breach of its jurisdiction as the appellate court by not giving independent finding passed on re-appraisal of pleading and evidence on record?*
- v. *Whether the Ld. Appellate Court upholding other issues ought to have passed such further direction for passing of the preliminary decree of rendition of account to its logical end as appointment of Local Commissioner and its terms set lapsed by then or not?”*

15. Before me, as also in the pleadings in the suit, both counsels were *ad idem*, that the partnership firm of the appellant/plaintiff and the respondent/defendant No.1 was never a tenant in the shop aforesaid and the appellant/plaintiff and the respondent/defendant No.1 in their personal individual capacity had taken the shop on tenancy from the respondent/defendant No.2, who is the mother of the respondent/defendant No.1. Though the counsel for the appellant/plaintiff, during the hearing on 6th July, 2018, first handed over copies of **Arjun Kanoji Tankar Vs. Santaram Kanoji Tankar** 1969 (3) SCC 555 and **Shashi Kapila Vs. R.P.**

Ashwin (2002) 1 SCC 583 but on enquiry, whether not the said judgments related to partnership property and which is not so in the present case, inasmuch as the counsels admit the tenancy of the shop to be of the appellant/plaintiff and respondent/defendant No.1 in their individual capacity, the counsel for the appellant/plaintiff did not press the same. Similarly, the counsel for the appellant/plaintiff also referred to *Nariman Aspandiar Irani Vs. Adi Merwan Irani* 1989 SCC OnLine Bom 126 but that judgment was concerned with the question, whether relinquishment of leasehold interest by one of the two persons who had taken the premises on rent, in favour of the other, is forbidden by Section 15 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and held that when two persons intending to be partners take premises on lease for business of the partnership, there is no unity of title and the law clearly conceives their interest in severalty in proportion defined by them and relinquishment of interest by one in favour of the other is prohibited by the Rent Act and is thus void; the same is again not found relevant for the present controversy. The judgment of the Full Bench of the Nagpur High Court in *Ratanlal Chunnilal Vs. Ashoka* AIR 1950 Nagpur 259, copy of which was also handed over, was similarly not found to be relatable to the facts of the present case and was not pressed.

16. The counsel for the appellant/plaintiff, during the hearing on 6th July, 2018, then referred to *Kochu Govindan Kaimal Vs. Thayankoot Thekkot Lakshmi Amma* AIR 1959 SC 71, which will be discussed hereunder.

17. Attention of the counsels, during the hearing on that date, was drawn by me to Section 45 of the Transfer of Property Act, 1882 and to Sections 37

to 45 of Contract Act, 1872, as well as to the passages on 'Joint Tenancy' or 'Tenancy in Common' under Section 45 and relating to 'Joint Tenants' under Section 105 of Mulla's Treatise on the Transfer of Property Act, 12th Edition.

18. Per contra, the counsel for the respondents/defendants on that date referred to ***Charanjit Lal Mehra Vs. Kamal Saroj Mahajan*** (2005) 11 SCC 279.

19. The counsel for the appellant/plaintiff, in rejoinder contended that ***Charanjit Lal Mehra*** supra is contrary to the dicta of the larger Bench of the Supreme Court in ***Kochu Govindan Kaimal*** supra.

20. During the hearing on 6th July, 2018, it was also informed that the respondent/defendant No.2, being the owner/landlady of the shop, taking advantage of there being no interim order, after the appeal was dismissed by this Court on 2nd December, 2013, had let out the shop to Amar Sons Watch Co. sole proprietary of Paras Monga, at a rent of Rs.50,000/- per month.

21. In the entire narration aforesaid, the rent at which the shop was taken on rent had not come to the fore. Considering the fact that it is only the tenancies protected from eviction by the provisions of the Delhi Rent Control Act, 1958 i.e. those having rent of less than Rs.3,500/- per month, are of any value and tenancies at rent above Rs.3,500/- per month are terminable at will and are of no value, I had on 6th July, 2018 also enquired the rent at which the appellant/plaintiff and the respondent/defendant No.1 had taken the shop on rent from the respondent/defendant No.2. It was informed that the shop was taken at a rent of Rs.100/- per month. It would thus be a protected tenancy, of some value, eviction with respect whereto

could not be claimed, save on accrual of a ground prescribed under the Delhi Rent Control Act.

22. The counsel for the respondents/defendants, on 9th July, 2018 also invited attention to *Suresh Kumar Kohli Vs. Rakesh Jain* (2018) 6 SCC 708.

23. The counsel for the appellant/plaintiff, on 23rd July, 2018 referred to *U Po Gyi Vs. Lutchmanan Chettyar* 1937 SCC OnLine Rang 1 (FB) and to the phrases “Joint Tenancy” and “Tenancy in Common” in Advanced Law Lexicon.

24. The counsel for the respondents/defendants on that date also handed over written arguments and contended, (i) that the only substantial question of law which can possibly be framed is, whether the tenancy created in the present case, is a joint tenancy or co-tenancy; (ii) that the appellant/plaintiff is a distant relative of the respondent/defendant No.1 and the tenancy was created in a good faith and the entire process was like a family affair; (iii) that both, the appellant/plaintiff and the respondent/defendant No.1, were entitled to use the premises as a whole and not any specific portion individually; (iv) hence the tenancy was a composite one and not a divisible one; (v) that there was unity of title, unity of commencement of title, unity of interest, unity of equal share and possession; (vi) that the tenancy was a joint tenancy; and, (vii) that surrender of tenancy by one joint tenant is binding on the another joint tenant.

25. Before I proceed with my discussion and adjudication, I may highlight that though the respondents/defendants had preferred the first appeal against the findings of the Suit Court, insofar as against them, that

the partnership was dissolved vide notice dated 4th October, 1983 and not in the year 1978 as was the case of the respondents/defendants, and though the First Appellate Court passed a decree for rendition of accounts and First Appeal to which extent has been dismissed, but the respondents/defendants have neither filed any appeal against the judgment and decree of the First Appellate Court insofar as against them nor preferred any cross-objections in this second appeal nor have raised any argument before me, as to why the findings of the Suit Court and the First Appellate Court to the said extent are bad for any reason whatsoever. The judgment and decree, negating the case of the respondents/defendants of dissolution of the firms in the year 1978 and holding the firms to have stood dissolved vide notices dated 4th October, 1983 and 21st April, 1984 and directing the respondents/defendants to render accounts of the partnership to the appellant/plaintiff, has thus attained finality. I have wondered, whether that has any impact on the limited question in this appeal, of competence of the respondent/defendant No.1, without the authority of the appellant/plaintiff to surrender the tenancy rights held by them under one deed and under one rent receipt.

26. Though at first blush it appeared that the decree, insofar as negating the claim of the respondents/defendants of dissolution of the firm in the year 1978 and pursuant whereunto the respondent/defendant No.1 claimed to have surrendered the tenancy rights, having attained finality and it having been held that the partnership firm continued carrying on business till 4th October, 1983 from the tenancy premises, the case of the respondents/defendants of surrender of tenancy rights, also goes, and the appeal entitled to be allowed on this ground alone, but on further consideration, I find it not to be so, because:

(A) It is no one's case that the partnership firm was a tenant and it is the case of the appellant/plaintiff as well as the respondents/defendants that the appellant/plaintiff and the respondent/defendant No.1 were tenants in their personal individual capacity and not as partners.

(B) The respondent/defendant No.1 thus, while continuing to be the partner till 4th October, 1983, if entitled in law, could have surrendered the tenancy rights, notwithstanding the continuance of the partnership.

27. I may however mention that the counsel for the respondents/defendants in his arguments on 6th July, 2018, did suggest that the respondent/defendant No.1 had surrendered the tenancy rights as a partner and which one partner is entitled to do. However, that is not the pleaded or proved case and it is not open to the respondents/defendants to, at the stage of second appeal, raise any such factual contention, without any foundation therefor being laid in the pleadings and in evidence. A reading of the judgment dated 29th March, 2017 aforesaid of the Supreme Court in appeal arising from this second appeal also shows the concern to be, the entitlement of the respondent/defendant No.1 in law to unilaterally surrender the tenancy rights held by him jointly with the appellant/plaintiff.

28. The counsels before me also confined their arguments to the aforesaid aspect and did not address on any of the other substantial questions of law formulated by the counsel for the appellant/plaintiff and recorded in the judgment aforesaid of the Supreme Court.

29. I thus frame only the following substantial question of law entailed in this second appeal:

“The appellant/plaintiff and the respondent/defendant No.1 having taken the shop on rent from respondent/defendant No.2 and the rent receipt with respect to the shop being in name of both of them, whether respondent/defendant No.1, without consent of appellant/plaintiff, was entitled to surrender the tenancy of the shop to the respondent/defendant No.2?”

30. Though the thought of another substantial question of law i.e. “If the answer to the above substantial question of law is in the negative, what is the relief, if any which the appellant/plaintiff is entitled to?” crossed my mind but I have refrained from framing the same, since neither the appellant/plaintiff has claimed any relief other than of possession nor have the counsels addressed on the said aspect.

31. I now proceed to answer the substantial question of law arising for adjudication in this second appeal and to decide the appeal in accordance with the answer thereto.

32. The judgments relied upon by the counsels as well as the arguments of the counsels were concentrated on, whether the appellant/plaintiff and the respondent/defendant No.1 were “joint tenants” or “tenants in common” in the shop aforesaid.

33. I may mention that from the judgment of the Suit Court, it does not appear that any arguments were addressed on the nature of the tenancy viz. whether a “joint tenancy” or a “tenancy in common” and the Suit Court passed a decree for recovery of possession in favour of the

appellant/plaintiff, merely reasoning that since the respondent/defendant No.1 together with appellant/plaintiff had taken the shop on rent, the respondent/defendant No.1 could not have alone surrendered possession thereof to the landlord/landlady. No provision of law even was discussed or cited in this respect. However, the First Appellate Court in its judgment has proceeded on the premise “that the Suit Court had found the appellant/plaintiff and the respondent/defendant No.1 to be joint tenants in the shop” and also recorded “that there was no dispute that the shop was taken on rent by both the partners at the inception of the partnership business and they were joint tenants in the shop”. From the records including of the Suit Court and the First Appellate Court, it is not borne out, from where the First Appellate Court held it to be so admitted by the parties or counsels. Neither counsel before me also argued that recording of such admission by the First Appellate Court was erroneous. Be that as it may, the First Appellate Court, treating it to be an admitted position and relying on ***Kanji Manji*** and ***H.C. Pandey*** supra laying down the law with respect to “joint tenancy”, held that the respondent/defendant No.1 being one of the joint tenants, even without the consent of the other joint tenant i.e. the appellant/plaintiff, was entitled to surrender the tenancy and such surrender was binding on the appellant/plaintiff.

34. I have, inspite of best efforts never been able to have clarity of the concept of “joint tenancy” and “tenancy in common”. The concept of “joint tenancy” and “tenancy in common” has its genesis in the English Common Law. I have whenever faced therewith wondered, whether the English Common Law to the said extent is applicable or relevant in the Indian context, especially owing to the codification on this aspect in the Contract

Act and in the Transfer of Property Act and to provisions whereof attention was drawn during the hearing but on which no arguments were addressed.

35. The Contract Act, in Chapter IV titled “Of the Performance of Contracts” thereof, under the head “By Whom Contracts Must Be Performed”, in Sections 42 to 45 thereof provides as under:

“42. Devolution of joint liabilities.—When two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons, during their joint lives, and, after the death of any of them, his representative jointly with the survivor or survivors, and, after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

43. Any one of joint promisors may be compelled to perform.—When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any [one or more] of such joint promisors to perform the whole of the promise.

Each promisor may compel contribution.—Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Sharing of loss by default in contribution.—If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Explanation.—Nothing in this section shall prevent a surety from recovering from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

Illustrations

(a) A, B and C jointly promise to pay D 3,000 rupees. D may compel either A or B or C to pay him 3,000 rupees.

(b) A, B and C jointly promise to pay D the sum of 3,000 rupees. C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one-half of his debts. C is entitled to receive 500 rupees from A's estate, and 1,250 rupees from B.

(c) A, B and C are under a joint promise to pay D 3,000 rupees. C is unable to pay anything, and A is compelled to pay the whole. A is entitled to receive 1,500 rupees from B.

(d) A, B and C are under a joint promise to pay D 3,000 rupees, A and B being only sureties for C. C fails to pay. A and B are compelled to pay the whole sum. They are entitled to recover it from C.

44. Effect of release of one joint promisor.—Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors; neither does it free the joint promisors so released from responsibility to the other joint promisor or joint promisors.

45. Devolution of joint rights.—When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly.

Illustration

A, in consideration of 5,000 rupees, lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life, and after the death of C with the representatives of B and C jointly."

36. A lease is nothing but a contract between the lessor/landlord and the lessee/tenant. Law relating to leases of immovable property is otherwise

codified in the Transfer of Property Act. Section 4 of the Transfer of Property Act, which was enacted later in point of time, provides that the Chapters and Sections of the Transfer of Property Act which relate to contract shall be taken as part of the Contract Act. Chapter V, titled “Of Leases of Immoveable Property”, of the Transfer of Property Act does not provide for relations *inter se* lessee, if more than one i.e. of performance of obligations of a lessee under the lease. However the same under Section 111 titled “Determination of Lease” provides for termination of lease *inter alia* by express or implied surrender. However it does not provide, whether surrender of lease, in the event of lease in favour of more than one person, has to be by all or even one of them is capable of so surrendering the lease and which surrender would bind the others as well. Mention may also be made of Section 108 titled “Rights and Liabilities of Lessor and Lessee”, in the absence of a contract to be contrary, and which vide Section 108(B)(q) provides it to be a liability/obligation of the lessee to, on determination of lease, put the lessor into possession of the property. Here, there is no pleading or evidence of any contract between the appellant/plaintiff and the respondent/defendant No.1 as lessees on the one hand and respondent/defendant No.2 as lessor on the other hand, having contracted to the contrary. I had during the hearing also referred the counsels to Section 45 of the Transfer of Property Act which provides that when immovable property is transferred for consideration to two or more persons, they are, in the absence of a contract to the contrary, entitled to interests in such property equivalent to the proportion of the consideration paid by them and in the absence of evidence thereof, to equal interest in the property. A lease of property is a contract of transfer of property within the meaning of

Section 45 of the Act. Here, it is the admitted position, that the respondent/defendant No.2 transferred leasehold rights in the shop aforesaid in favour of appellant/plaintiff and the respondent/defendant No.1. Since there is no pleading or evidence of the ratio in which the said leasehold interest was held by the appellant/plaintiff and the respondent/defendant No.1, the presumption under Section 45 is that the appellant/plaintiff and respondent/defendant No.1 had 1/2 undivided leasehold interest each in the subject shop.

37. In my view, Section 43 of the Contract Act reproduced above, is a complete answer to the question as has arisen, without going into the question of “joint tenancy” and “tenancy in common”. Thereunder, the appellant/plaintiff and the respondent/defendant No.1, as lessees are deemed to have made a joint promise to the respondent/defendant No.2 as landlady, to on determination of the lease put the respondent/defendant No.2 back into possession of the shop. Under Section 43 of the Contract Act, the respondent/defendant No.2 landlady was entitled to compel such promise jointly made by the appellant/plaintiff and the respondent/defendant No.1 to her against either of the appellant/plaintiff or the respondent/defendant No.1 by accepting possession of the entire shop from either of the two.

38. Thus, in my view, the substantial question of law is answerable in the affirmative merely by referring Section 43 of the Contract Act.

39. However, for the sake of completeness, I proceed to discuss the judgments cited at the bar:

(A) ***Kochu Govindan Kaimal*** supra was a case of a joint Will by three persons in favour of same beneficiary. The question for

adjudication was, whether on the death of one of the testators, his/her property bequeathed under the said joint Will, vested with the other two testators or shall devolved immediately on the beneficiary. On an interpretation of the joint Will and finding that the three testators owned separate properties and in some of the properties each had a share, it was held that each of them was entitled to execute separate Will with respect to his property including property owned along with others and that the beneficiary, on demise of any of the three testators, would be entitled immediately to the properties and share of the said testator.

In my view, this judgment also has no application whatsoever to the matter in controversy.

(B) *U Po Gyi* supra along with two minor great grandnephews brought a suit, for recovery of balance due on a Promissory Note, executed by the defendants in favour of U Po Gyi and his two great grandnephews. It was the defence of the defendants that U Po Gyi had signed a Composition Deed with the defendants under which he received various payments from the defendants and he and his minor great grandnephews were thus not entitled to sue. The Full Bench of the Rangoon High Court was constituted to answer the query “In the absence of fraud, intimidation or undue influence, can a joint payee of a Promissory Note effectively discharge the maker from liability thereunder, so as to bar a claim against the maker by the other joint payees?”. The High Court of Rangoon noticed that the Indian Contract Act has codified the Law of Contract so far as India is

concerned. It was further noticed that under Section 43, when two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any of the joint promisors to perform the whole of the promise. Sections 44 and 45 were also noticed and it was observed that Sections 42 to 44 embodied exceptions to the Common Law and Section 45 was consistent only with, joint promisees being regarded as tenants in common. Reference was also made to Section 165 of the Contract Act which provides that if several joint owners of goods bail them, the bailee in the absence of contract to the contrary, may deliver them back to one joint owner without the consent of the all. Various judgments of the High Courts of India holding that in India the law, by virtue of Section 43 was that one of the several payees of a negotiable instrument could give a valid discharge of the entire debt without the concurrence of the other payees. However, after noticing the said position of law in India, the High Court of Rangoon opted to follow the English judgments to the effect that payment to one of the several joint promisees cannot “in this country” discharge the promisors so as to deprive the other promisees of their share of the debt. Accordingly, the question aforesaid was answered in the negative.

I fail to see, how the aforesaid judgment helps the counsel for the appellant/plaintiff. Rather, the same is against the appellant/plaintiff inasmuch as, after noticing the Indian Contract Act and the judgments of the Indian Courts to be otherwise, the High Court of Rangoon, chose to follow the English view which was found

to be different from the view prevalent in India. Today, I cannot possibly follow the view taken by the Rangoon High Court, when the judgment propounding the said view itself records the view of the Indian Courts to be otherwise.

(C) In ***Charanjit Lal Mehra*** supra, the landlord had let out the shop to father and three sons at a rent of Rs.2,500/-, per month which with successive increases after every three years, under Section 6-A of the Delhi Rent Control Act, stood increased to Rs.3,659/- per month i.e. above Rs.3,500/- per month, to tenancies above which rent, the Delhi Rent Control Act did not apply. The landlord filed a suit for ejectment against the father and three sons on the ground that their tenancy stood determined. The tenants i.e. the father and the three sons contested the suit by contending that there was not one tenancy but four tenancies, each at initial rent of Rs.625/- per month and each of which tenancies, after the statutory increases in rent also was at a rent less than Rs.3,500/- per month and thus enjoyed protection from eviction under the Rent Act. Negating the said contention of the tenants, it was held that the tenancy in question was a joint/composite one and the tenant, faced with ejectment, could not be permitted to so split up the single tenancy.

I fail to see how the said judgment also can be of any relevance to the present controversy or come to the rescue of the respondents/defendants.

(D) ***Suresh Kumar Kohli*** had let out his premises at a rent of Rs.450/- per month to one Ishwar Chand Jain and his son Ramesh

Chand Jain. Suresh Kumar Kohli, after the death of Ishwar Chand Jain, filed a petition for eviction under the provisions of the Delhi Rent Control Act against Ramesh Chand Jain only and an order of eviction was passed and upheld till the Supreme Court. Rakesh Chand Jain, being another son of Ishwar Chand Jain filed objections to the execution of the order of eviction contending that on the demise of Ishwar Chand Jain, he had also inherited the tenancy rights and the petition for eviction filed only against his brother Ramesh Chand Jain and without impleading him as a party, was bad and axiomatically the order of eviction was not liable to be executed, depriving him of the tenancy premises. Though it was held that there was no merit in the contention of Rakesh Chand Jain inasmuch as the estate of Ishwar Chand Jain was sufficiently represented by Ramesh Chand Jain, also an heir of Ishwar Chand Jain, but the judgment contains a discussion on “tenancy in common” and “joint tenancy”. It was held, (i) that fundamentally the two concepts are different and distinct in form and substance; (ii) that joint tenants have unity of title, unity of commencement of title, unity of interest, unity of equal share in the joint estate, unity of possession and right of survivorship; (iii) that in “tenancy in common”, there is unity of possession but no unity of title i.e. the interest are differently held and each co-tenant has different share over the estate; (iv) that the tenancy rights, being proprietary rights, applying the principle of inheritance, the shares of heirs are different and ownership of leasehold rights would be confined to the respective share of each heir and none will have title to the entire leasehold property; (v) therefore, the estate shall be divided amongst

the co-tenants and each tenant in common has an estate in the whole of single tenancy; (vi) that the premises were let out jointly to Ishwar Chand Jain and Ramesh Chand Jain—both of them were joint tenants and upon the death of Ishwar Chand Jain, Rakesh Chand Jain inherited the tenancy as joint tenant only; and, (vii) that it is not necessary for a landlord to implead all legal heirs of deceased tenant.

This judgment also does not take the solution to the *lis* herein, any further.

(E) The Advanced Law Lexicon cited by the counsel for the appellant/plaintiff also only opines that the only practical difference between the estates of “joint tenancy” and “tenancy in common” is the right of survivorship; an estate in joint tenancy is where land or tenements are granted to two or more persons and the important incident whereof is that on the demise of any joint tenant, the entire tenancy vests in the surviving joint tenant; “tenancy in common” has a different concept—there is unity of possession but no unity of title i.e. the interest are differently held, which means that none of the co-tenure holder has title over the entire estate.

40. I find support in my view aforesaid that the matter has to be guided by Section 43 of the Contract Act and not by the concepts of “joint tenancy” and “tenancy in common”, from the following judgments:-

(I) ***Muhammad Askari Vs. Radhe Ram Singh*** 1900 SCC OnLine All 58 (DB)—therein the proforma defendants, being managers of the joint family carrying on business, had created mortgage in favour of the plaintiff and his father, of immovable properties owned and

possessed by the joint family. The plaintiff first sued the proforma defendants only and obtained a decree for sale of the property mortgaged. The other defendants, being members of the joint family aforesaid, filed a suit for declaration that they having not been impleaded as parties to the suit were not affected by the decree and their share in the mortgaged property should not be sold in execution. Such declaration was granted. Thereupon the plaintiff brought a second suit claiming enforcement of mortgage against the family members who had so obtained the decree for declaration, impleading the managers of the family against whom the former suit was filed as co-defendants. The question for consideration was, whether owing to the earlier suit against the managers of the joint family only, the whole cause of action in the case of each mortgage, was merged and could not be made subject matter of a fresh suit against the joint debtors not parties to the earlier suit in which the decree was passed. It was found that the common law principle was that a judgment obtained against a joint debtor is a bar to a further action to be prosecuted against another joint debtor. It was however held that Section 43 of the Contract Act is a departure from the English Law and excludes the right of a joint contractor to be sued along with his co-contractors. The second suit against the members of the family who were not parties to the earlier suit was thus held to be maintainable.

(II) *New Standard Bank, Ltd. Vs. Prabodh Chandra Chakrabarti* AIR 1942 Cal 87 (DB)—it was held, that under the English Law, accord and satisfaction made by one of the several parties jointly

liable or jointly and severally liable to the same creditor for the same debt discharges the claim of the creditor against all; there is no reason why this principle would not apply to cases of joint and several liability under Section 43 of the Contract Act; if any of the two co-obligants paid what was due, it put an end to the obligation of all and set all free.

(III) *Jainarain Ram Lundia Vs. Surajmull Sagarmull* AIR 1949 FC 211—it was held that unlike English Law, the Indian Law as enacted in Section 43 of the Indian Contract Act, makes all joint liability, joint and several, in the absence of agreement to the contrary; in India, it is open to a promisee to sue any one or some of the joint promisors and it is no defence to such a suit that all promisees must have been made parties; the argument, that the contract being joint and indivisible, it was not open to the plaintiffs to give up one of the defendants and proceed against the other two, was rejected.

(IV) *Nandlal Singh Vs. Ram Kirit Singh* AIR 1950 Pat 212 (DB)—the plaintiff and the defendant herein were tenants with respect to a property. The landlord of the plaintiff and the defendant, by suing the plaintiff only had recovered the arrears of rent. The plaintiff thus sued the defendant for recovery of defendant's share of rent. Finding that rent was a matter of contract between the landlord on the one side and the plaintiff and the defendant as the tenants on the other and finding the liability of the plaintiff and the defendant for rent to be joint, it was held that the plaintiff and the defendant were in the

position of joint promisors as regard the payment of rent and the plaintiff was entitled to decree against the defendant for recovery of the defendant's share of rent.

(V) *Gopendra Narayan Bagchi Vs. Golokendra Kumar Chaudhury* AIR 1955 Cal 62—again, finding the plaintiff and the defendant to be jointly and severally liable for rent, invoking Section 43 of the Contract Act, it was held that when the plaintiff made the payment of rent, he discharged the liability of the defendant as co-promisor as well and became entitled to contribution from the defendant in respect of that payment, with the cause of action arising on the date of such payment. The fact that as on that date, the claim for rent was barred against the defendant, was held to be not relevant.

(VI) *Rama Shankar Singh Vs. Shyamlata Devi* AIR 1970 SC 716—yet again the plaintiff's suit for recovery of defendant's share of rent already paid by the plaintiff to the landlord, was decreed.

41. I fail to see, that when under Section 43 of the Contract Act one of the two persons who have together taken a premises on rent, by making payment to the landlord is in a position to discharge the liability of the other tenant also, why the surrender of tenancy by respondent/defendant No.1 herein, who along with the appellant/plaintiff had taken the premises on rent, would not bind the appellant/plaintiff. The appellant/plaintiff, if had intended to the contrary, considering that the landlord was none else but the mother of the respondent/defendant No.1, ought to have contracted to the contrary and which was not done. In the absence of a contract to the

contrary, under Section 43 of the Contract Act, the respondent/defendant No.1 was entitled to surrender the tenancy.

42. I may in this context reiterate that the tenancy of the appellant/plaintiff and the respondent/defendant No.1 under the respondent/defendant No.2 was under the Delhi Rent Control Act. Under the Delhi Rent Control Act, it is the settled principle in law that a petition of eviction by one of the several landlords, without even impleading others, is maintainable and the order of eviction obtained in pursuance thereto executable. I, in ***Chemons India Pvt. Ltd. Vs. Vijay Singh Sandhu*** 204 (2013) DLT 260 (SLP(C) No.6346/2014 titled ***Chemons India Pvt. Ltd. Vs. Vijay Singh Sandhu*** was dismissed on 21st February, 2014) have with reference to the case law cited therein held, that the judgments pronounced under the Rent Act and holding one of the several landlords to be alone competent to sue for eviction of the tenant, had been extended even to tenancies not governed by the Rent Act. Thus, the law is that one of the several landlords can sue one of the several tenants and judgment in which would bind all the landlords/tenants i.e. even those not parties. Once the legal proceedings for eviction would have been maintainable against the respondent/defendant No.1 only, even without impleading the appellant/plaintiff, there is no reason, why surrender of tenancy by the respondent/defendant No.1 would not bind the appellant/plaintiff.

43. I thus decide the substantial question of law framed above in favour of the respondents/defendants and against the appellant/plaintiff.

44. After having reached the aforesaid conclusion, I may also record that in the facts of the present case, the persistence of the appellant/plaintiff to

seek a decree for possession of a tenancy premises which he had taken on rent along with respondent/defendant No.1 from the respondent/defendant No.2, being the mother of respondent/defendant No.1, is not found to be justified. It appears that no effective relief can be granted to the appellant/plaintiff. I say so for two reasons. Firstly, because it has come on record that the premises are let out to Amar Sons Watch Co., sole proprietary of Paras Monga, who is not a party to the present proceedings. Secondly, because the claim of the appellant/plaintiff for possession, even according to the appellant/plaintiff is to possession along with respondent/defendant No.1. It is obvious that the appellant/plaintiff and the respondent/defendant No.1, being inimical to each other, cannot jointly use the property. It will thus not be possible for the appellant/plaintiff to, even if succeeds in getting possession of the premises, to immediately put the premises to any beneficial use; the appellant/plaintiff will have to sue the respondent/defendant No.1 for partition. The parties have already been litigating for the last 35 years and any order/decreed for possession, as sought by the appellant/plaintiff, would only lead to further litigation and would thus not be just.

45. Before parting, I may also record that the appellant/plaintiff, though obviously not in control and possession of the premises, while issuing notices dated 4th October, 1983 and 21st April, 1984 to the respondent/defendant No.1 of dissolution of partnership, though sought accounts of the partnership but did not make any claim with respect to the tenancy premises jointly held by him with the respondent/defendant No.1 and thereby tacitly allowed the respondent/defendant No.1 to remain in possession of and deal with the tenancy premises. Even while instituting the

suit for dissolution of partnership and for recovery of monies found due, in or about June, 1984, no relief of possession claimed. After nearly one year therefrom, in or about August, 1985, a suit for permanent injunction restraining the defendants from dealing with the property was filed and subsequently the suit for dissolution of partnership amended to also seek the decree for possession therein. The appellant/plaintiff by such conduct and delay allowed the respondents/defendants to deal with the tenancy premises and thus in equity also is not entitled to any relief.

46. Resultantly, the appeal fails and is dismissed. However, I refrain from imposing any costs on the appellant/plaintiff.

Decree sheet be drawn up.

MAY, 09, 2020
'bs'

RAJIV SAHAI ENDLAW, J.

मात्यमेव जयते