

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

+ **RFA No. 249/2006**

% **14th September, 2018**

SH. RANBIR YADAV

..... Appellant

Through: Mr. H.L. Narula, Advocate
(Mobile No.9811269166).

versus

LIFE INSURANCE CORPORATION OF INDIA

..... Respondent

Through: Mr. Mohinder Singh, Mr. Ankur
Goel and Mr. Lovekesh Agarwal, Advocates
(Mobile No. 9810037765).

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff/landlord impugning the Judgment of the Trial Court dated 30.11.2005 whereby the trial court has dismissed the suit for the claim of the appellant/plaintiff/landlord towards damages/*mesne* profits for the

period after termination of tenancy, on the ground that the tenancy of the respondent/defendant did not stand legally/validly terminated in terms of the appellant's/plaintiff's Notice dated 04.04.2001. The issue of damages/*mesne* profits was for the period from 01.05.2001 till the respondent/defendant admittedly vacated the suit by depositing the keys in the Court on 19.07.2003.

2. I may note that originally the suit filed by the appellant/plaintiff/landlord was for both the relief of possession as well as *mesne* profits, but since possession of the suit/tenanted premises was surrendered, by depositing the keys of the suit premises in Court on 19.07.2003, the issue, therefore, remained only with respect to the claim/entitlement of the appellant/plaintiff/landlord for damages/*mesne* profits from 01.05.2001 till 19.07.2003.

3. I may also note that though the trial court did not grant any damages for the period 01.05.2001 to 19.07.2003, however, in terms of the existing agreement between the parties, the trial court granted an increase of 15% on the figure of rent of Rs. 10/- per sq.ft. with effect from 09.03.2000 till 08.03.2003 and thereafter further increase of rent of Rs. 15/- per sq.ft. with effect from 09.03.2003 to

19.07.2003. This amount of increased rent, granted by the trial court, to the appellant/plaintiff/landlord, was not an increase of rent in lieu of damages but, the increased amount was granted on the ground that there existed a relationship of landlord and tenant between the parties till 19.07.2003 and hence the increased rent was payable under the terms of the agreement between a landlord and a tenant.

4. The limited issue for consideration before this Court whether the tenancy of the respondent/defendant/Life Insurance Corporation of India (LIC) stood validly terminated by the appellant/plaintiff/landlord in terms of his Legal Notice dated 04.04.2001 (Ex.PW1/2). Whereas the appellant/plaintiff/landlord claims that Legal Notice dated 04.04.2001 validly terminated the tenancy of the respondent/defendant of the suit premises being property no. 56, Jawala Heri, New Delhi, having an area of 2645 sq.ft., the respondent/defendant contends that appellant/plaintiff/landlord was only one of the many co-owners of the suit/tenanted premises and thus he could not have singularly and on his own terminated the tenancy, in the absence of the consent of the other co-owners.

5. Learned counsel for the appellant/plaintiff/landlord has argued that since the lease has been admittedly created only by the appellant/plaintiff/landlord in favour of the respondent/defendant, and the same is proved by the Letter dated 09.03.1987/Ex.PW1/D2 addressed by the respondent/defendant to the appellant/plaintiff/landlord solely, and also the handing over and taking over possession of the tenanted premises, having taken place only as between the appellant/plaintiff/landlord and the respondent/defendant vide Ex.PW1/D1, therefore the respondent/defendant cannot argue that appellant/plaintiff/landlord was not the sole person entitled to terminate the tenancy.

6. The counsel for the respondent/defendant then argued in response that though originally the suit premises were let out to the respondent/defendant by the appellant/plaintiff/landlord only, however, subsequently, an agreement was entered into between the appellant/plaintiff/landlord with his three brothers on 03.01.1997, and that after this agreement was entered into, the appellant/plaintiff/landlord by his Letter dated 03.01.1997 addressed to the respondent/defendant that the total rent of the suit property be

divided equally between the four co-owners i.e. the four brothers, one brother being the appellant/plaintiff/landlord. Therefore, it is argued on behalf of the respondent/defendant that since after the lease was originally entered into, the number of owners/landlords was increased from 1 to 4, therefore the appellant/plaintiff/landlord solely and without the consent of the other three co-owners, could not have terminated the tenancy by the Legal Notice dated 04.04.2001.

7. In view of the aforesaid facts, the issue which arises is whether the tenancy of the respondent/defendant was validly terminated by the appellant/plaintiff/landlord vide Legal Notice dated 04.04.2001 or that the tenancy was not validly terminated because there was no consent of the other three co-owners (since dead and represented by their successors) given to the appellant/plaintiff/landlord for termination of the tenancy. The issue, therefore, really boils down to the fact that whether the appellant/plaintiff/landlord had consent of the other three co-owners for terminating the tenancy of the respondent/defendant of the suit premises.

8. Before I proceed to discuss this aspect, I would like to note that no doubt the appellant/plaintiff/landlord was originally the sole owner of the suit property, and if that sole ownership had continued, the appellant/plaintiff/landlord would surely have been entitled to solely terminate the tenancy. However, once the admitted position on record is that the appellant/plaintiff/landlord, with his other three brothers, namely, Sh. Bal Kishan Yadav, Sh. Dharampal Yadav and Sh. Randhir Yadav, entered into an Agreement dated 03.01.1997 and under the terms of this agreement, all four brothers became co-owners of the property bearing nos. 55 and 56, Jawala Heri, New Delhi, the latter being the suit property, and as per this Agreement, the four brothers had equal co-ownership rights in the suit property. This means that the rent of the suit property was to be equally divided between the four brothers. Therefore, the appellant/plaintiff/landlord could not have unilaterally terminated the tenancy on his own and it must to be proved that the appellant/plaintiff/landlord had the consent of the other three brothers or that the other three brothers did not object, at any point of time, that

the appellant/plaintiff/landlord was authorized to terminate the tenancy by issuing a Legal Notice dated 04.04.2001.

9. I may also note that the rent receipts which have been issued by the appellant/plaintiff/landlord from April, 1995 till July, 1999, proved as Ex.PW1/X-1 to X-27, show that the appellant/plaintiff/landlord was not the sole owner of the suit property and in fact on account of death of the three other brothers, namely Sh. Bal Kishan Yadav, Sh. Dharampal Yadav and Sh. Randhir Yadav, the total co-owners of the suit property had gone up from four in number to nineteen in number. All these nineteen persons have been shown as co-owners from April, 1995 to July, 1999 as per the proved rent receipts Ex.PW1/X-1 to X-27. Therefore, in my opinion, it is not available to the appellant/plaintiff/landlord to argue that he continued to be the sole owner of the suit property, and in view of the admitted Agreement dated 03.01.1997 and the rent receipts Ex.PW1/X-1 to X-27, learned counsel for the appellant/plaintiff/landlord did not vehemently dispute the factum with respect to co-ownership of the suit property of the nineteen co-owners, though of course it is still argued by appellant/plaintiff/landlord that existence of other co-owners did

not mean that the appellant/plaintiff/landlord did not validly terminate the tenancy vide Legal Notice dated 04.04.2001, and as will be discussed hereinafter.

10. The law that only one co-owner cannot terminate the tenancy, once there is objection of the other co-owners, has been recently decided by this Court in the Judgment dated 17.07.2018 passed in RFA No. 544/2017 in the case titled as ***Navin Chander Anand v. Union Bank of India and Ors.*** In the case of ***Navin Chander Anand (supra)*** I have relied upon two judgments of the Supreme Court which hold that once there are various co-owners of the suit property, only one co-owner cannot terminate the tenancy. This short judgment in the case of ***Navin Chander Anand (supra)*** is of seven paragraphs and paras 2 to 7 read as under:-

“2. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the judgment of the Trial Court dated 22.2.2018 by which trial court has dismissed the suit for possession and *mesne* profits filed by the appellant/plaintiff. It is noted that possession of the suit premises has already been received by the appellant/plaintiff along with other co-owners/co-landlords and who were the defendant nos.2 to 5 in the suit (respondent nos.2 to 5 in this appeal), and therefore, the only issue in this appeal to be decided is as to whether the appellant/plaintiff is entitled to *mesne* profits with respect to period of the alleged illegal stay of the respondent no.1/defendant no.1/tenant on account of alleged termination of tenancy. The suit premises comprises of ground floor and half portion basement of property no.26/2, East Patel Nagar, New

Delhi. It may be noted that subject suit has been dismissed on the ground that the appellant/plaintiff, being only one co-owner/co-landlord cannot claim possession and recovery of damages once the other co-owners being respondent nos.2 to 5 /defendant nos.2 to 5 have not supported the appellant/plaintiff and have in fact opposed the termination of tenancy by the appellant/plaintiff of the respondent no.1/defendant no.1/tenant.

3. Though the trial court has decided the relevant issue no.6 by simply observing in para 21 of the impugned judgment that only one co-landlord cannot terminate the tenancy, and there is no discussion or reference to case law in this regard, however, I have pointed out to the counsel for the appellant/plaintiff the judgments of the Supreme Court in the cases of *Sk. Sattar Sk. Mohd. Choudhari v. Gundappa Amabadas Bukate (1996) 6 SCC 373* and *Jagdish Dutt and Another v. Dharam Pal and Others (1999) 3 SCC 644* and which judgments hold that one co-owner/co-landlord is not entitled on his own, in the face of opposition of other co-owners/co-landlords, to terminate the tenancy.

4(i) The relevant observations of the Supreme Court in the case of *Sk. Sattar Sk. Mohd. Choudhari (supra)* are contained in para 37 of the said judgment and which para 37 reads as under:-

“37. In view of the above discussion, it is obvious that the law with regard to the splitting of tenancy is not what the High Court has set out in the impugned judgment. As pointed out earlier, a co-sharer cannot initiate action for eviction of the tenant from the portion of the tenanted accommodation nor can he sue for his part of the rent. The tenancy cannot be split up either in estate or in rent or any other obligation by unilateral act of one of the co-owners. If, however, all the co-owners or the co-lessors agree among themselves and split by partition the demised property by metes and bounds and come to have definite, positive and identifiable shares in that property, they become separate individual owners of each severed portion and can deal with that portion as also the tenant thereof as individual owner/lessor. The right of joint lessors contemplated by Section 109 comes to be possessed by each of them separately and independently. There is no right in the tenant to prevent the joint owners or co-lessors from partitioning the tenanted accommodation among themselves. Whether the premises, which is in occupation of a tenant, shall be retained jointly by all the lessors or they would partition it among themselves, is the exclusive right of the lessors to which no objection can be taken by the tenant, particularly where the tenant knew from the very

beginning that the property was jointly owned by several persons and that, even if he was being dealt with by only one of them behalf of the whole body of the lessors, he cannot object to the transfer of any portion of the property in favour of a third person by one of the owners or to the partition of the property. It will, however, be open to the tenant to show that the partition was not bona fide and was a sham transaction to overcome the rigours of Rent Control laws which protected eviction of tenants except on specified grounds set out in the relevant statute.

(underlining added)

(ii) The relevant observations of the Supreme Court in the judgment in the case of *Jagdish Dutt (supra)* are contained in para 7 and this para 7 reads as under:-

“7. When a decree is passed in favour of a joint family the same has to be treated as a decree in favour of all the members of the joint family in which event it becomes a joint decree. Where a joint decree for actual possession of immovable property is passed and one of the coparceners assigns or transfers his interest in the subject matter of the decree in favour of the judgment debtor, the decree gets extinguished to the extent of the interest so assigned and execution could lie only to the extent of remaining part of the decree. In case where the interest of the coparceners is undefined, indeterminate and cannot be specifically stated to be in respect of any one portion of the property, a decree cannot be given effect to before ascertaining the rights of the parties by an appropriate decree in a partition suit. It is no doubt true that the purchaser of the undivided interest of a coparcener in an immovable property cannot claim to be in joint possession of that property with all the other coparceners. However, in case where he is already in possession of the property, unless the rights are appropriately ascertained, he cannot be deprived of the possession thereof for a joint decree holder can seek for execution of a decree in the whole and not in part of the property. A joint decree can be executed as a whole since it is not divisible and it can be executed in part only where the share of the decree holders are defined or those shares can be predicted or the share is not in dispute. Otherwise the executing court cannot find out the shares of the decree holders and dispute between joint decree holders is foreign to the provisions of Section 47 CPC. Order XXI Rule 15 CPC enables a joint decree holder to execute a decree in its entirety but if whole of the decree cannot be executed, this provision cannot be of any avail. In that event also, the decree holder will

have to work out his rights in an appropriate suit for partition and obtain necessary relief thereto. Various decisions cited by either side to which we have referred to do not detract us from the principle stated by us as aforesaid. Therefore, a detailed reference to them is not required.”

(underlining added)

5. A reading of the ratio of the aforesaid two judgments makes it clear that when there are various co-owners/co-landlords, only one co-owner/co-landlord cannot terminate the tenancy for seeking possession of the tenanted property and/or *mesne* profits

6(i) Learned counsel for the appellant/plaintiff has placed reliance upon the judgment of the Supreme Court in the case of ***Om Prakash and Another v. Mishri Lal (dead) represented by his legal representative Savitri Devi (2017) 5 SCC 451*** to argue that one co-owner can file a suit for possession, and in this regard paras 32 to 34 of the said judgment are relied upon and which paras read as under:-

“32. It is no longer *res integra* and is settled by this Court in *Sri Ram Pasricha v. Jagannath, Dhannalal v. Kalawatibai* and *India Umbrella Manufacturing Co. v. Bhagabandei Agarwalla* that a suit for eviction of a tenant can be maintained by one of the co-owners and it would be no defence to the tenant to question the maintainability of the suit on the ground that the other co-owners were not joined as parties to the suit. The judicially propounded proposition is that when the property forming the subject matter of eviction proceedings is owned by several co-owners, every co-owner owns every part and every bit of the joint property along with others and thus it cannot be said that he is only a part owner or a fractional owner of the property and that he can alone maintain a suit for eviction of the tenant without joining the other co-owners if such other co-owners do not object. In the contextual facts, not only the compromise decree, as aforementioned, has declared the Appellants to be the joint owners of the suit premises, their status as such has not been questioned at any stage by anyone interested in the title thereto.

33. Further, the original Defendant having accepted Smt. Chameli Devi as his landlady and thereafter continued to pay rent to her son Bhola Nath, the father of the Appellants, in terms of the definition of "landlord" in Section 3(j) of the Act, he during his life time and after his demise, the Respondents are estopped Under Section 116 of the Indian Evidence Act, 1872 to

dispute the status of the Appellants as their landlord in a suit for his eviction from the tenanted premises.

34. That a tenant during the continuance of the tenancy is debarred on the doctrine of estoppel from denying the title of his landlord through whom he claims tenancy, as is enshrined in Section 116 of the Indian Evidence Act, 1872, is so well-settled a legal postulation that no decision need be cited to further consolidate the same. This enunciation, amongst others is reiterated by this Court in *S. Thangappan v. P. Padmavathy* and *Bhogadi Kannababu v. Vuggina Pydamma*. In any view of the matter, the Appellants, being the son of Bhola Nath, who at all relevant time, was the landlord vis-a-vis the original Defendant and the Respondents in terms of Section 3(j) of the Act, their status as landlords for the purpose of eviction under the Act, could not have been questioned so as to non suit them for want of locus.”

(ii) The argument urged on behalf of the appellant/plaintiff by placing reliance upon the judgment in the case of *Om Prakash (supra)* is completely misconceived because the judgment of the Supreme Court in the case of *Om Prakash (supra)* as also the judgments which are referred to in para 32 in the judgment, only lay down the ratio that one co-owner can file a suit for eviction against a tenant if there is no opposition of the other co-owners/co-landlords. This is the settled law because in the proceedings for eviction under various Rent Control Acts, any one co-owner can seek possession of the tenanted premises in case there is no opposition to the sole petitioner/plaintiff taking possession of the tenanted premises from the tenant by the other co-owners/co-landlords of the property. However in the present case the other co-owners, being defendant nos.2 to 5/respondent nos.2 to 5, have in fact opposed the termination of tenancy and also of the appellant/plaintiff seeking possession and *mesne* profits of the tenanted premises through the subject suit. Therefore, what will apply in the facts of the present case will be the ratio of the judgments of the Supreme Court in the cases of *Sk. Sattar Sk. Mohd. Choudhari (supra)* and *Jagdish Dutt (supra)* and not the ratio of the judgment in the case of *Om Prakash (supra)*.

7. It is therefore seen that the present appeal is a completely frivolous appeal. The suit was dismissed rightly by the trial court in view of the fact that other co-owners/co-landlords being the respondent nos.2 to 5/defendant nos.2 to 5 did not agree to termination of tenancy

and the eviction of the tenant/respondent no.1/defendant no.1 from the suit property. This appeal is therefore dismissed.”

10. Let us now turn to the aspect as to whether or not there existed the consent of the eighteen other co-owners of the suit property for terminating the tenancy at the time of the issuance of the Legal Notice dated 04.04.2001 sent by the appellant/plaintiff/landlord to the respondent/defendant. In fact, normally consent of the other co-owners is presumed by courts, unless evidence comes on record that the co-owners had in fact objected to the termination of the tenancy solely by one or some of the co-owners but not all the co-owners together. The record of the suit shows that one brother of the appellant/plaintiff/landlord, namely Sh. Bal Kishan Yadav alongwith his sons had filed an application under Order I Rule 10 CPC for being impleaded as a party to the suit and this application was allowed by the court by its Order dated 10.03.2004. These newly impleaded defendants filed a joint written statement. In the joint written statement, at page 2, these defendants categorically stated in para 3 of the preliminary objections that the notice of termination is bad as it has not been issued with the consent of the other co-owners. This para

3 of the preliminary objection of the written statement of Sh. Bal Kishan Yadav with his sons read as under:-

“3. As earlier submitted that the suit property belongs to number of persons and notice of termination of tenancy to the defendant no. 1 has not been issued by all co-owners hence the notice of termination is bad and in turn the suit is bad and is liable to be dismissed. The plaintiff has no right to claim any thing without the consent of the other co-owners particularly when there was strain relations between them. The filing of the suit clandestinely and without authority is unfair, unjust on the part of the plaintiff. Suit deserves to be dismissed.

11. In my opinion, para 3 of the preliminary objection of the written statement filed by Sh. Bal Kishan Yadav and his sons makes it abundantly clear that the appellant/plaintiff/landlord being only one co-owner did not have consent, at least of some of the co-owners, namely Sh. Bal Kishan Yadav and his sons, for terminating the tenancy of the respondent/defendant of the suit premises. The only way in which the appellant/plaintiff/landlord could have shown that the Legal Notice dated 04.04.2001 rightly terminated the tenancy of the respondent/defendant was to show that there existed the necessary documentary evidence on 04.04.2001, that the other co-owners had entitled the appellant/plaintiff/landlord to terminate the tenancy of the respondent/defendant of the suit premises as on 04.04.2001. However, there is nothing on record of the suit to show that there existed the

consent of all other co-owners to terminate the tenancy of respondent/defendant of the suit premises. This Court is not concerned in the facts of this case, with damages for the period on and after the consent was withdrawn vide order dated 03.02.2005 inasmuch as even if there is consent from 03.02.2005, this Court only has to see claim of damages for a much earlier period from 04.04.2001 till 19.07.2003, when the possession was surrendered.

12(i). Learned counsel for the appellant/plaintiff/landlord argued that in fact, subsequently, Sh. Bal Kishan Yadav and his sons withdrew their objections to the suit of the appellant/plaintiff/landlord and their names were in fact deleted from the array of parties and they filed Affidavits Ex.C-1 to C-5 that they had no interest in the suit property and therefore once these co-owners had recorded a joint statement in Court on 03.02.2005. Thereafter, an order was passed by the court on 03.02.2005 deleting such persons by holding that they were not contesting the case against the appellant/plaintiff/landlord, therefore, it should be held by this Court that the tenancy of the respondent/defendant was validly terminated by the Legal Notice dated 04.04.2001.

(ii). I cannot agree with this argument urged on behalf of the appellant/plaintiff/landlord for the reason that existence of consent or no objection of the other co-owners was to be shown as on 04.04.2001. The preliminary objection no.3 of the written statement clearly showed the stand and admission of the other co-owners that their consent was lacking for termination of the tenancy of the respondent/defendant as on 04.04.2001. Merely because Sh. Bal Kishan Yadav and his sons subsequently withdrew their objections to the suit, the same cannot have the result of wiping away the admission made by these impleaded defendants in para 3 of the preliminary objection of their written statement, which categorically stated that the termination of tenancy was bad on account of the same not having been issued with the consent of the co-owners, who were Sh. Bal Kishan Yadav and his sons. I, therefore, hold that merely because Sh. Bal Kishan Yadav and his sons subsequently withdrew their objections would not mean that their consent would have existed for termination of tenancy on 04.04.2001 and this, as already stated above is clear from preliminary objection no. 3 of the written statement filed by Sh. Bal Kishan Yadav and his sons.

13(i). Learned counsel for the appellant/plaintiff/landlord sought to place reliance upon the recent judgment of the Supreme Court in the case of ***Kanaklata Das & Ors. v. Naba Kumar Das & Ors., 2018 (2) SCC 352*** to argue that the other co-owners at best would have right to file an independent suit, and that one co-owner/co-landlord is always entitled to continue his suit seeking possession and *mesne* profits against the tenant of the property.

(ii). In my opinion, no ratio is laid down by the Supreme Court in the case of ***Kanaklata Das & Ors. (supra)*** that one co-owner is entitled to terminate the tenancy in the absence of consent of other co-owners. In the facts of the case of ***Kanaklata Das & Ors. (supra)***, the appellants therein had filed a suit for ejectment of tenants, and in that suit one member of the plaintiff's family sought impleadment under Order I Rule 10 CPC. This application though dismissed by the trial court was allowed by the High Court and therefore the matter reached the Supreme Court, and the Supreme Court held that when proceedings are filed under the Rent Control Act being West Bengal Tenancy Act and any person appears and seeks to be added as a party on the ground that he is a co-owner, it would not mean that such a person can be added because such person can always enforce his rights through independent litigation.

14. The ratio of the judgment in the case of ***Kanaklata Das & Ors. (supra)*** only dealt with the issue as to whether a person should or should not be made a party to a litigation under Order I Rule 10 CPC, and therefore, such ratio will not help the appellant/plaintiff/landlord because there is no ratio laid down in the judgment in the case of ***Kanaklata Das & Ors. (supra)*** that a tenancy which has many landlords/co-owners can be terminated by only one co-owner/co-landlord. In fact, as referred to in the judgment passed by this Court in the cases of ***Navin Chander Anand (supra)***, the Supreme Court in ***Sk. Sattar Sk. Mohd. Choudhari v. Gundappa Amabadas Bukate (1996) 6 SCC 373*** and ***Jagdish Dutt and Another v. Dharam Pal and Others (1999) 3 SCC 644*** has held that one co-owner/co-landlord cannot terminate the tenancy individually in the absence of consent of all the co-owners/co-landlords.

15. In view of the aforesaid discussion, I do not find any merit in the appeal and the same is hereby dismissed.

SEPTEMBER 14, 2018

AK

VALMIKI J. MEHTA,J