IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-
The Hon'ble Justice Madhuresh Prasad
And
The Hon'ble Justice Supratim Bhattacharya

F.M.A. 1588 of 2016
With
CAN 3 of 2015 (Old CAN 5848 of 2015)
CAN 4 of 2015 (Old CAN 5849 of 2015)
CAN 5 of 2017 (Old CAN 1232 of 2017)
CAN 6 of 2017 (Old CAN 1942 of 2017)
CAN 10 of 2023
CAN 11 of 2024

Gautam Mondal and others

Versus

Rani Birla Girls' College and others

For the appellants	:	Mr. Sakti Nath Mukherjee, Sr. Adv., Mr. Surajit Nath Mitra, Sr. Adv., Mr. Dip Narayan Mukherjee, Mrs. Ananya Chakraborty, Mr. Subhojit Mookherji, Mr. Amiya Narayan Mukherjee
For the respondent no.1:		Mr. Subir Sanyal, Sr. Adv., Mr. Amiya Kumar Dutta, Mr. Swadesh Priya Ghosh, Mr. Sourojit Mukherjee, Mr. Trijit Mitra
For the Calcutta University:		Mr. Nilotpal Chatterjee, Mr. Sourabh Sengupta
Judgment on	:	August 14, 2025.

Madhuresh Prasad, J.:

1. One Title Suit No. 1054 of 2004 was filed by one Smt. Labanya Koley along with 14 others (hereinafter referred to as "plaintiffs") seeking the relief of eviction and recovery of Khas possession of lands and buildings erected thereupon at premises No. 38, Theatre Road now Shakespeare Sarani forming a part of Holding No. 7 in Block Nos. 5 and 6 of the South Division of the Town of Calcutta from one Hindusthan Charity Trust (hereinafter referred to as "Trust") along with 7 others. The Trial Court passed the decree in favour of the plaintiffs on 21.11.2005.

2. One Rani Birla Girls' College ("College" for short) is running from the suit premises since 02.01.1979. The College which was not a party to the Title Suit resisted the delivery of possession pursuant to the decree dated 21.11.2005 and filed an application invoking Order XXI Rule 101 C.P.C. being Miscellaneous Case No. 2841 of 2006 (hereinafter referred to as "Misc Case"), represented by the Principal of the College, for setting aside the decree passed in Title Suit No. 1054 of 2004.

3. The College claims to be a lawful tenant of the plaintiffs/ decree holders. Further, declaration was sought by the petitioner that Labanya Koley and others (plaintiffs) in the suit have obtained a collusive and fraudulent decree in collusion with O.P. No. 16 to 22 the defendants (Trust) therein; and as such the petitioner (College) is not bound by the decree. The petitioner also prayed for setting aside the fraudulent and

collusive decree dated 21.11.2005 passed in Title Suit No. 1054 of 2004 and an order restraining the plaintiffs from executing the decree.

4. The College was established in July 1961 by the Trust as a Women Undergraduate College and was then situated at 78, Sayed Amir Ali Avenue, Calcutta. The College was subsequently shifted to the present suit premises on 02.01.1978 and claims to be a tenant holding lawful possession of the suit property for a monthly rental of Rs. 7,500/- according to the English Calendar Month. It further claims that it has also paid taxes due to the Kolkata Municipal Corporation.

5. It is the case of the petitioner (College) that rent was paid till September, 2001. Thereafter, when plaintiffs refused to accept rent from the petitioner, then rent was tendered by sending account payee cheque which also was not accepted by the owners of the property. The petitioners thus kept the monthly rent in a separate bank account. The petitioner is still willing to pay the amounts lying therein as well as the current rent to the O.P. No. 1 to 15.

6. The College has asserted that Trust is not a tenant in respect of the suit property. The Trust never paid any rent from its own funds. The rents were paid by the College funds, but through the Trust. The College is lawful tenant in possession of the suit property and paying rent for the tenancy in question. Therefore, institution of the suit by plaintiffs against the Trust was collusive. The fact that Trust surrendered the tenancy right in favour of the plaintiffs is glaring proof of collusion

between the parties, since Trust was not a tenant in respect of the suit premises since 01.10.2001. The tenancy rights of Trust was surrendered by an earlier written communication dated 21.09.2001, with effect from 31.09.2001 to the plaintiff. The petitioner has thus alleged that the parties to the suit, in collusion with each other have practiced fraud upon the Court in Title Suit No. 1054 of 2004.

7. The plaintiffs filed written objection against the application under Order XXI Rule 101 C.P.C. They have alleged the petition to be devoid of any merit, misconceived and not maintainable at the instance of the College which had no existence independent of Trust, and as such there was no scope for the College to invoke remedy under Order XXI Rule 101 C.P.C. The petition was filed only to harass the plaintiffs, who are owners of the property, by trying to frustrate execution of the decree in question. They have alleged that filing of the petition under Order XXI Rule 101 C.P.C. by the College is an abuse of the process of law. They have thus sought rejection of the same with exemplary cost.

8. The Trial Court has allowed the Miscellaneous Case No. 2841 of 2006 (hereinafter referred to as "Misc Case") filed by the College and held that the College was in actual possession of the suit premises. The Trust was not in possession and was aware that they were not paying the rent which was being paid by the College.

9. The Trial Court has thus found that the judgment and decree passed by the learned Court in T.S. No. 1054 of 2004 is not binding upon the

College, casting no obligation upon the College, to vacate khas possession of the suit premises in favour of the plaintiffs. The Trial Court has held that without discussing the matter with the College, tenancy was surrendered by the Trust and as such the decree in T.S. 1054 of 2004, in respect of the suit property, without giving any opportunity to the College is legally unsustainable and not binding upon the College. Misc Case filed by the College has been allowed on contest and thus disposed of in favour of the College.

10. The present appeal has been filed by the Trust assailing the order dated 10.06.2014 passed in the Misc Case.

11. Heard Mr. Sakti Nath Mukherjee, Sr. Adv., Mr. Surajit Nath Mitra, Sr. Adv., Mr. Dip Narayan Mukherjee, Mrs. Ananya Chakraborty, Mr. Subhojit Mookherji, Mr. Amiya Narayan Mukherjee Advocates for the appellants (plaintiffs). Mr. Subir Sanyal, Sr. Adv., Mr. Amiya Kumar Dutta, Mr. Swadesh Priya Ghosh, Mr. Sourojit Mukherjee, Mr. Trijit Mitra advocates appeared and made submissions on behalf of the College. The Calcutta University is represented by learned Advocate Mr. Nilotpal Chatterjee, Mr. Sourabh Sengupta.

12. Mr. Mukherjee Learned Senior Counsel on behalf of the appellant submits that the order passed by the Trial Court in the Misc Case is not sustainable. He has taken the Court through the order as well as the other relevant material on record including the pleading of the respective parties and the evidence and documents relied upon.

13. Mr. Mukherjee has submitted the College has not produced any rent receipt and it is an admitted position that payment of rent has been done by the Trust. The claim of the College that rent was being paid by them, but through the Trust means nothing. It is specific case of the College, recorded in the impugned order dated 10.06.2004 that it was established by the Trust and was earlier functioning from a different location at 78 Syed Amid Ali Avenue. The Trust shifted the College to the suit premises only on 02.01.1979, though tenancy of the suit premises was actually created in favour of the Trust much prior thereto in the year 1961. The petitioner/College in fact is one of the subsidiary business carried on by the Trust and, therefore, Trust decided to interchange the location of the College with the Modern High School for Girls which then was being run from the suit premises. It is by virtue of such decision of the Trust that the College was shifted by them to the present suit premises and the College came to occupy the suit property. Such possession of the College, which has no separate identity, independent from the Trust cannot be elevated to the status of a right based on which the College can raise objection under Order XXI Rule 101.

14. The possession of the College is in fact possession of the Trust. In support of such submission he has relied upon the definition of lease under Section 105 of the ***Transfer of Property Act, 1882, from Mulla, 11th Edition 2013***. Referring to the same Ld. Senior Counsel has submitted that transfer of a right to enjoy property in favour of a person

is a pre-requisite for the person claiming the right to enjoy the property in question. In the present case, the right of the College to enjoy the property in question is by virtue of tenancy created in favour of the Trust. As per Section 105 of the Transfer of Property Act, 1882 an exclusive right is created in favour of the Trust to possess and enjoy the suit property by virtue of being a tenant of the suit property in question. The College has not claimed or alleged that there was any contract with them. It is thus submitted that there is no basis for the College to claim any privity of contract with the plaintiffs.

15. The Trial Court which has allowed the miscellaneous case of the College under Order XXI Rule 101 C.P.C., has not recorded any finding regarding the College being a tenant, or how the tenancy shifted upon the College. In absence of any contract with the appellant there is no basis for the College to claim that they have any direct and independent relationship with the plaintiffs, let alone there being any tenancy. In support of such contention, he has also relied upon decision of the Apex Court in the case of ***H. Seshadri vs. K.R. Natarajan and Another*** reported in ***(2003) 10 SCC 449***, ***AIR 1962 SC 557***.

16. Mr. Mukherjee, has referred to decision of the Apex Court in the case of ***Biswanath Poddar vs. Archana Poddar and Another*** reported in ***(2001) 8 SCC 187*** to submit that the West Bengal Premises Tenancy Act required prior consent of the landlord as also intimation in writing in the manner prescribed under the Act for creation of a sub-tenancy. It is not the case of the College that the procedural

requirements for creation of sub-tenancy has been followed. The College has not complied with the statutory obligations to perfect its right as a tenant/ sub-tenant. In such circumstances there was no requirement of impleading the College as a respondent in the suit for eviction. For obtaining a decree for eviction the Plaintiff was required to implead only the Trust, which it has done. The College being a subsidiary of Trust claiming through it was not a necessary party to the suit, and would be obliged to comply with the decree passed against its principle, the Trust. The allegation of fraud and collusion in obtaining the eviction decree, therefore, as per submission of Mr. Mukherjee is devoid of any substance.

17. Insofar as the issue regarding change in the Management Committee by virtue of the College being taken over under the provisions of the Calcutta University Act 1979 it is submitted by Mr. Mukherjee, learned Senior Counsel that takeover of the management does not mean takeover of the College. He has taken us through the provisions contained in Section 22(x) as also Section 52 (h) of the Calcutta University Act, 1979. As also the provisions contained in statute No. 93 of the Calcutta University Statute, 1979 regarding Constitution of the Governing body.

18. It is thus submitted that upon takeover of a College, the statutes of the university required a particular constitution of a governing body as per statute No. 93 so as to ensure appropriate control over the affairs of the College being taken over and its functioning in the best public

interest. Mere reconstitution, or constitution of governing body in terms of statute No. 93 does not in any way adversely affect the status of the Trust vis-à-vis the College in question. The property where the College is situated has not been acquired. Any acquisition of the property would entail compliance with the provisions contained in Article 300 A of the Constitution of India, which has not been done. In support of such submission he relies upon the case of ***Municipal Committee, Amritsar and Others vs. State of Punjab and Another*** reported in ***(1969) 2 SCC 823.*** He submits that in the present case it is an admitted position that there is no compliance with the constitutional provisions regarding acquisition of property. It is nobody's case that any compensation has been paid. The acquisition of the management of the College in question, therefore, does not in any way alter the proprietorship and tenancy rights with respect to the property which remains in favour of the plaintiffs/ appellants and Trust respectively.

19. It is thus submitted by Mr. Mukherjee, learned Senior Counsel that relationship of landlord and tenant between the plaintiffs and Trust was not affected by takeover of the management of the College in question by the university. The plaintiffs are, therefore, entitled to a decree for eviction against the Trust on the grounds as are available under the statutory provisions contained in West Bengal Premises Tenancy Act.

20. Insofar as the claim of the College that surrender by the Trust without delivery of possession is ineffective, he has placed reliance on

the Apex Court decision in the case of ***Calcutta Credit Corporation Ltd., and Another vs. Happy Homes (P) Ltd.*** reported in ***AIR 1968 SC 471***. It is thus submitted that surrender of possession is not required for determining a tenancy.

21. Having made his submissions as noted above, Mr. Mukherjee, learned Senior Counsel submits that under similar circumstances when the Apex Court was inclined to pass an eviction order against a College, the College was granted sometime so that the imparting of education and the interest of the students and the institution was safeguarded. In this connection, he refers to decision of the Apex Court in the case of ***Gojer Brothers Private Limited and Another vs. State of West Bengal and Others*** reported in ***(2013) 16 SCC 660***.

22. On behalf of the College, learned Senior Advocate, Mr. Subir Sanyal has also taken us through the pleadings in Title Suit No. 1054 of 2004, and other material on record including the material brought on record by way of additional evidence under Order XLI Rule 27 CPC.

23. He submits that Trust, which was earlier managing the College was desirous of bringing the College under a Pay Packet Scheme of the Calcutta University so that the salary of the teaching and non-teaching staff could be paid according to scale of pay recommended by the University Grants Commission (UGC). In the process of soliciting the Pay Packet Scheme for the College one communication from the Trust dated 13.03.1990 (Exhibit-3) is relevant. As per the said letter a clear

representation was made that the Trust shall not at any time after issuance of the letter dated 13.03.1990 claim that the College continues to be administered by a religious or linguistic minority. Referring to another letter dated 19.08.1994 (Exhibit-4) from the Trust to Inspector of College it is submitted that the Trust held out in unequivocal terms that the College set up by it is running from the suit premises and will continue to run at the said premises. The Trust had clearly represented that continuous occupation of the College was not by virtue of any transfer or sub-tenancy. The tone and tenor of exhibit-4 is clear in its intent that in so far as occupation of the premises in question is concerned, the same was, and shall continue to be of the College. These representations were made to solicit the Pay Packet Scheme for the College. It is on such representation that the Government of West Bengal agreed to bring the College in question within the Pay Packet Scheme.

24. Relevant extract of this communication dated 19.08.1994 Exhibit-4 reads:

> *"As you are already aware that the Trust is a tenant under the Land Lords (Kolays) in respect of the premises No. 38, Theatre Road, Calcutta. Since inception of the tenancy, that is since several decades ago with the knowledge and concurrence of the land lords the premises is being used for the purposes of carrying on educational activities, viz. imparting education to Girl Students. <u>Rani Birla Girls' College set-up by the Trust is being run and will continue to be run at the said premises. No transfer or sub-tenancy is involved and as such further concurrence by Kolays (the Owners) is not relevant.</u> However, for your satisfaction to further ensure that Rani Birla College continues to peacefully occupy and use the said premises the Trust is ready and willing to execute a leagally binding assurance. In this connection, we have forwarded a draft deed for your consideration. You may have the said draft examined by your*

> *Legal Department. If they have any observations we will be pleased to discuss with them."*

25. Introduction of Pay Packet Scheme was subject to certain terms and conditions to be found in the letter of the State Government dated 23.07.1998 (Exhibit-5). This communication is addressed to the Principal of the College and not the Trust. It requires the College to constitute a Governing Body in terms of Statute No. 93 of the Calcutta University First Statute, 1979.

26. The autonomy of the College from the Trust is evident from the three communications dated 13.03.1990, 19.08.1994 and 23.07.1998, Exhibits- 3, 4 and 5 respectively. The College thereafter proceeded to manage its affairs in accordance with the provisions of the statutes of the Calcutta University. The College was taken over and the Pay Packet Scheme implemented in the College prior to filing of the Title Suit No. 1054 of 2004 wherein the collusive decree was obtained by the plaintiff. The Governing Body of the College stood dissolved and the power of administering the College was vested in the administrator upon take-over of the College by the University of Calcutta, and appointment of the administrator on 22.09.2001, by the university.

27. These three communications between the Trust and the State Government leaves no room for doubt that in fact it was the Trust which initiated and ensured severance of its control over the College for the purpose of availing the benefit of the Pay Packet Scheme of the State Government for its Teachers and Staff.

28. Learned Senior Counsel, Mr. Sanyal has taken us through the application and documents brought on record by way of additional evidence, under Order XLI Rule 27 bearing No. CAN 10 of 2023.

29. Referring to decisions of the Apex Court in the case of ***Union of India vs. Ibrahim Uddin and Another*** reported in ***(2012) 8 SCC 148*** and in the case of ***Sanjay Kumar Singh vs. State of Jharkhand*** reported in ***(2022) 7 SCC 247***, he submits that application for additional evidence under Order XLI Rule 27 is required to be considered and the additional evidence to be taken into consideration as the following documents in spite of due diligence could not be brought in the suit and would enable the Court to pronounce judgment:

i. *Permanent Account Number of Rani Birla Girls' College,*

ii. *Agreement for Sale dated 31.05.1996,*

iii. *Agreement dated 04.03.1993,*

iv. *Letter dated 04.09.1995 from plaintiff to Inspector of Colleges, University of Calcutta,*

v. *Letter dated 11.04.1996 written by the University of Calcutta to the plaintiff,*

vi. *Letter dated 06.05.2022 from plaintiff to the Vice Chancellor, University of Calcutta.*

vii. *Letter dated 27.10.1998, 18.03.1999, 22.04.1999, 09.07.1999, 22.11.1999, 12.01.2001, 24.02.2005, 16.02.2012, 01.11.2013, 06.09.2016 being the letters issued by the College regarding appointment, pay, placement and promotion of the teaching, non-teaching staff of the College,*

viii. *Salary slips,*

ix. *Letter dated 01.09.1969.*

30. He submits that the plaintiff was all along conscious of the fact that the respondent is an entity having an independent tenancy interest, separate from the Trust. He has drawn attention of the Court towards the two agreements dated 04.03.1993 and 31.05.1996.

31. The agreement dated 04.03.1993 was a tripartite agreement executed between owners of the suit property including 11 of the plaintiffs of Title Suit No. 1054 of 2004 as land owners of the first part, Trustees (Trust) of the second part, and the Governing Body of the College (College) of the third part. This agreement was executed with object of erecting two buildings in the suit premises. One building being the College unit for the use of the College. The second building was to be constructed as a commercial unit intended to be sold, leased or let out. In this agreement the plaintiffs have recognized the existence of a right of tenancy of the College, independent of the Trust.

32. The other agreement dated 31.05.1996 is an agreement for sale of the suit property. This agreement is also an agreement executed by one of the plaintiffs of Title Suit No. 1054 of 2004, namely Smt. Shikha Kolay, plaintiff No. 12, as the vendor. The Trust is a party to this agreement. The College was also made a party to this agreement. This agreement was executed for sale of the vendor's undivided share of the suit premises. In this agreement also, the plaintiff/ vendor has

acknowledged the existing tenancy rights of the College, independent of the Trust.

33. Mr. Sanyal has also referred to the two letters, one dated 04.09.1995 written by the owners of the suit property to the Inspector of Colleges of Calcutta University, and the other letter dated 11.04.1996 was written by the Inspector of Colleges to the Trust. These letters show that the plaintiffs had full knowledge and notice of the fact that the college was an independent juristic entity, and under the control of the Calcutta University.

34. It is submitted that even after the College was taken over vide communication dated 21.09.2001, tenancy rights of the premises in question continues with the College, but as an alter-ego of the University. In this connection, one more letter dated 06.05.2002 written by the land owners has also been enclosed with the application filed under Order XLI Rule 27 CPC.

35. The Trust, was responsible for severing its relation, let alone control with the respondent College, for availing the benefit of the Pay Packet Scheme. The plaintiff as well as the Trust were conscious of the independent tenancy right of the College as explicit from these documents. Being conscious of such tenancy rights and being conscious of the fact that the respondent College had assumed a new identity, independent and distinct of the Trust, the present suit was filed, without impleading the College as a party, by resorting to

misrepresentation and wilful and deliberate suppression of the above facts by both parties to the suit.

36. Mr. Sanyal has further submitted that the Trust upon its own volition has stated in the written statement, that since the negotiations for enhancement of rent did not yield any result, the plaintiff had by a letter dated 14.09.2001, served on the defendant, demanded rent @Rs. 3,75,000/- (rupees three lakh seventy five thousand only) per month exclusive of municipal taxes and commission surcharges. Though no such figure was stated by the plaintiff, the defendant Trust has thus explained the case of the plaintiff in the suit, which also is a clear indication of collusion between the plaintiff and the defendant.

37. Mr. Sanyal has further submitted that apart from collusion the issue of fraud also arises in the present case. The plaintiff and Trust have in fact played a fraud upon the Court. Having resorted to misrepresentation and suppression in the pleadings, knowing well that the Trust was not in possession of the suit premises, the two parties have orchestrated a surrender of the tenancy right without delivery of possession, which is impermissible in law. Surrender of tenancy rights can only be expressed through delivery of possession, as is manifest from decision of the Apex Court in the case of ***Shah Mathuradas Maganlal & Co. vs. Nagappa Shankarappa Malage and others*** reported in ***(1976) 3 SCC 660***. In support of his submissions regarding collusion and fraud Mr. Sanyal has relied upon decisions reported in ***AIR 2002 Cal 108*** in the case of ***Mehta Suraya vs. United***

Investment Corporation. He has also placed reliance on decision in the case of ***Ram Chandra Singh vs. Savitri Devi and others*** reported in ***(2003) 8 SCC 319*** to submit that misrepresentation made by the plaintiff in the plaint itself amounts to a fraud on Court.

38. In the plaint the plaintiff has used expressions such as *"the defendants used to run a girls' College known as Rani Birla Girls College in the suit premises since many years back and was in-charge of the administration of the said College and used to pay rent to the plaintiffs and taxes to the Calcutta Municipal Authorities."* This statement has been made in the paragraph 4 of the plaint in the Past Tense because the plaintiff was conscious of the fact that the Trust used to run the College in the past. The plaintiff has thus consciously refrained to assert that at the time of going to the Court, by filing the plaint that the Trust was still running the respondent College; and has thus resorted to deception.

39. It is also submitted by Mr. Sanyal that Section 2(1) and 2(5) of the Calcutta University Act contains the definition of 'affiliated College' and 'constituent College'. From reading of the definition clause of these two expressions in the statute, it is obvious that there is no distinction between the affiliated College and the constituent College under the statute. Once the respondents became an affiliated College upon fulfilling the requisite compliance for the same they assumed an identity as an affiliated/ constituent College of the University. According to him a statute namely The Calcutta University First Statutes, 1979 was

framed under the provisions of Section 59(2) of the Calcutta Universities Act. Statute No. 93 thereof lays down the constitution of a Governing Body of the affiliated/constituent College. The Trust has ensured that the Governing Body has been constituted in terms thereof and the process of severance of all control from the Trust was thus complete. The College became a juristic person in view of affiliation under the provisions of the statute, and such identity is acknowledged by both parties to the suit, which is apparent from the various documents referred above.

40. The assumed identity of the College as an affiliated College of the University is under a statute. The College now is itself a juristic person. It is an integral part of the Calcutta University. In one sense an alter ego of the University. The Trust stood divested of all control as would be evident from statute No. 97 of the 1979 statute. In this regard, he has placed reliance on decisions of the Apex Court in the case of ***Maharishi Markandeshwar Medical College and Hospital and Others vs. State of Himachal Pradesh and Others*** reported in ***(2017) 6 SCC 675*** (para 30), in the case of ***Som Prakash Rekhi vs. Union of India and Another*** reported in ***(1981) 1 SCC 449*** (para 26). Relying upon decision of a Division Bench of this Court in the case of ***M.S. Ram Singh vs. Bijoy Singh Surana and Another*** reported in ***AIR 1972 Cal 190*** it is submitted that though the College was a creation of a Trust, after its affiliation, the Trust had no control over its affairs and management. College was all along a lessee or tenant directly under the

original lessor (plaintiff). The College thus could not be bound by a surrender of tenancy rights of the Trust.

41. Relying upon decision of the Apex Court in the case of ***Shreenath and Another vs. Rajesh and Others*** Reported in ***(1998) 4 SCC 543*** it is thus submitted that having an identity of a juristic person distinct from the Trust, College was entitled to resist the taking of possession by the plaintiff pursuant to the decree which was not binding upon the College, as it was not made a party to the suit for eviction. The College has thus rightly invoked the jurisdiction of the executing Court to resist delivery of possession and calling upon the Court to adjudicate upon the application under Order XXI Rule 101 C.P.C.

42. Referring to the pleadings filed in the suit, it is submitted that from a reading of the same, along with the written statement filed by the Trust /defendant therein, keeping in background the above noted submissions, it is obvious that the plaintiff and the defendant were in collusion. The plaintiffs thus made out a case that they claimed enhancement of rent from the Trust under a letter dated 14.09.2001. The Trust showed its inability to enhance the rent as per demand of the plaintiff and immediately, within a week, by a letter dated 21.09.2001 they communicated their surrender of the suit premises with effect from 01.10.2001, knowing well that it had no control or possession over the suit property after takeover of the College.

43. From a plain reading of the plaint and written statement the admitted position that emerges is regarding occupation of the College in the suit premises. The Trust has in its written statement acknowledged that it had no control over the management of the College. The Trust has clearly stated in the W.S. that it had surrendered tenancy and was not in a position to deliver vacant possession of the suit premises to the plaintiff. The Trust has not contested the claim for delivery of possession in this suit. It is under such circumstance that a collusive decree of eviction was obtained by the parties in Title Suit No. 1054 of 2004, in absence of the College, which was in actual physical possession as a tenant in the suit premises.

44. On coming to know of the collusive eviction decree, the College took recourse to remedy as provided under Order XXI Rule 101 C.P.C.

45. Learned Senior Counsel Mr. Mukherjee submits in reply that the Trial Court has not recorded any finding regarding any legal status/ title of the petitioner in the Misc Case. The application under Order XXI Rule 101 C.P.C. has been allowed without any finding that the College had any title or claim independent of the Trust. Thus, being the facts apparent from the records he submits that in light of the provisions contained under Order XXI Rule 101 C.P.C. the College is bound by the decree and liable to be removed. In support of his submissions, he relies upon decision of the Apex Court in the case of ***Importers and Manufacturers Limited vs. Pheroze Framroze Taraporewala and Others*** reported in ***AIR 1953 SC 73*** as well as in the case of ***Ragho***

Prasad Gupta vs. Shri Krishna Poddar reported in ***AIR 1969 SC 316***.

46. Dealing with the citations relied upon by the College he submits that decision in the case of ***Mehta Suraya*** (supra) would not apply to the facts and circumstances of the present case. The case of ***Mehta Suraya*** (supra) was a case of altering of a decree. No such question arises in the present case and, therefore, reliance placed thereupon is misplaced in the present proceedings. As regards judgment in the case of ***Ram Chandra Singh*** (supra) relied upon by the learned Counsel representing the College it is submitted that the judgment relied upon has been rendered in a case of *"fraud".* In the present case however, it is apparent from the order passed in Miscellaneous Case No. 2841 of 2006 that the plaintiffs had truthfully laid the entire facts of the case with details in the plaint. The College's occupation was admitted by the plaintiff. The appellants/ plaintiffs have proceeded by making out a case at the trial that the College was established by the Trust and under such circumstances occupied the premises in question as a subsidiary of the Trust. The facts having been disclosed, there is no occasion for the College to assert or allege fraud. As regards reliance placed by the learned Counsel for the College on the case of ***Shah Mathuradas Maganlal & Co.*** (supra) it is submitted by the learned Senior Counsel that in the facts and circumstances of the present case this judgment is inapplicable. It is nobody's case that College is a sub-tenant. Even

the Court has not returned any such finding regarding independent title or claim of the College.

47. Regarding decision in the case of ***Som Prakash Rekhi*** (supra) it is submitted that the same is inapplicable as this judgment relied upon by the College arises out of a service dispute. He reiterates his submission regarding their being no finding of the College having a legal entity independent of the Trust and, therefore, this decision would not apply to the facts and circumstances of the present case. In this decision the Apex Court was considering the authorities or entities that may come within the definition of State under Article 12 of the Constitution of India, in the context of enforcement of fundamental rights for the purposes of part III of the Constitution of India. He thus submits that this judgment is also inapplicable to the facts of the present case.

48. Mr. Mukherjee, learned Senior Counsel has also submitted that an affiliation cannot create any interest in or charge on the property and, therefore, the College cannot take any advantage of the fact of affiliation to assert that by virtue of such affiliation any interest stood transferred from the Trust to the College or university. In this connection, he has placed reliance on decision reported in ***(1937-38) 61 IA 388*** in the case of ***Pir Bakhsh (Defendant) and Mahomed Tahar (Plaintiff).***

49. Regarding the Agreement for Sale dated 31.05.1996 (Annexure B of application filed under Order XLI Rule 27 C.P.C.) and other documents

filed by way of additional evidence, it is submitted that the agreements were not acted upon and thus cannot be relied upon to claim that the College acquired any distinct, juristic entity, independent of the Trust,

50. Mr. Mukherjee has also placed reliance on decision reported in ***(1937-38) 65 IA 45*** in the case of ***Secretary of State for India in Council and Kuchwar Lime and Stone Company Limited*** to submit that no transfer of interest has been claimed or effected by any registered document in favour of the College. Any transfer of interest claimed by the petitioner is therefore ineffective and unsustainable.

Analysis

51. Upon hearing the learned Counsel for the parties and perusal of the records of the Miscellaneous Case we observe that the claim of the petitioner in the Miscellaneous Case under Order XXI Rule 101 C.P.C. is required to be considered by examining a question whether the petitioner had any right, title or interest independent of the Trust. If such right, title or interest emerges, the decision of the Trial Court in the Misc Case would not require any interference. If on the other hand, we come to a conclusion that the petitioner has failed to establish any right, title or interest independent of the Trust then the petitioner would not be entitled to any relief under Order XXI Rule 101 C.P.C. and would be bound by the decree of eviction passed in Title Suit No. 1054 of 2004.

52. One of the grounds taken by the petitioner in the Miscellaneous Case is that the parties have obtained the decree by collusion. Being

conscious of existence of an independent interest of tenancy in favour of the College, the plaintiff and the Trust in the suit have proceeded to obtain the decree without making the petitioner a party to the suit. The suit was filed relying upon a surrender of tenancy by the Trust three years prior to filing of the suit, vide letters dated 21.09.2001; whereafter the Trust ceased to be in possession of the suit property.

53. Upon perusal of the judgment and decree passed in the Title Suit, we find that the Court has taken note of an admitted position emerging from the stand of the parties recorded in the decree based on specific assertions made in the plaint as well as written statement filed therein, that the Trust *"used to run the petitioner College".* We find that the Trust took a specific stand in the suit that the College is under management of the Calcutta University and that the Trust has no control over management and administration of the College. The Trust has specifically stated that it is not possible to deliver vacant possession of the suit premises in favour of the plaintiff. The Court has also recorded a finding on the basis of submissions made before the Court that the suit premises is now occupied by the petitioner (College).

54. In this connection, we consider it appropriate to quote paragraphs 4 and 5 of the Plaint filed in the Title Suit which read:

> *"4. That the <u>defendants used to run a Girls' College</u> known as Rani Birla Girls' College in the suit premises since many years back and <u>was in charge of the administration of the said College and used to pay rent to the plaintiffs and taxes to the Calcutta Municipal authority.</u> Since the rent of the suit premises was not increased for several years a Demand was made by the plaintiffs and proforma defendants nos.8 & 9 by their letter dated 14.09.2001 for the enhancement of rent but the said letter*

failed to attain any success as the defendant by it's letter dated 21.09.2001 informed the plaintiffs and the said proforma defendants regarding it's inability to comply with the requisition for the enhancement of the rent and surrendered the tenancy under the plaintiffs and proforma defendants on and from 1st October, 2001.

5. That the said surrender of tenancy by the Defendants on and from 1st October, 2001 was not accompanied by delivery of possession of the suit premises as a result the plaintiffs and the said proforma defendants were completely deprived from getting the fruits of the Surrender of Tenancy by the Defendant and since no arrangement was made by the defendant to deliver vacant possession of the suit premises the defendants are liable to be evicted and no notice under Section 106 of the Transfer of Property Act is required to be served upon the Defendants since the Surrender of the tenancy made by the defendants was unqualified and acted upon without reserving any modification or change and their continuing conduct has already clearly made that the Surrender of tenancy without delivery of possession is acted upon and for non-delivery of possession the defendants are liable to be evicted. And since they failed to deliver possession on and from 1st October, 2001, they are now in illegal occupation. Since the proforma defendant nos.8 & 9 being co-owner to the extent of 2.5% share and 3.125% share respectively in the suit premises having right to evict the defendant are all necessary parties and figure as proforma defendants since they are not available at present as such no relief is claimed against them."

55. The averments made in the Written Statement filed by the Trust (defendant) is in the same terms. Paragraphs 2 and 3 of the Written Statement is useful to quote:

"(2) …

(i) That the Defendant No.1 being a Trust used to run a College known as Rani Birla Girls' College in the suit premises as a tenant under the plaintiffs, who are the owners of the suit premises, and used to pay rent regularly. Since the suit premises is situated on a big plot of land measuring about 20,000 sft. approx. in area with building measuring 15,000 sft. more or less standing thereon or part thereof in a prime location of the city, several demands were previously made for the enhancement of the rent at the instance of the plaintiffs but the negotiations to this effect yielded no result.

(ii) That as negotiations for enhancement of rent did not yield any result mentioned above, the plaintiff by a letter dated 14/9/2001 served on the defendant No.1 demanded rent of Rs. 3,75,000/- per month

exclusive of municipal taxes and commercial surcharges on cancellation of all previous negotiations that continued for more than 8 years.

(iii) That the said letter dated 14/9/2001 was considered by the Trust but being a Charitable Institution it was not possible for the defendant to take the burden of the increased rent as demanded by the plaintiffs and as such the Trust, having no other alternative, decided to take the most painful decision regarding the tenancy that the defendant No.1 had under the Plaintiffs but to surrender the tenancy of the suit premises by sending a letter dated 21/9/2001 whereby the said tenancy of the suit premises was surrendered with effect from 1 October, 2001. Be it mentioned that no rent was in arrear prior to the surrender of tenancy and no liability attached with the Trust prior to the surrender but the tenancy was surrendered without delivery of possession and acted upon for all practical purposes.

(iv) That the defendant has no control over the management of Rani Birla Girls' College at present and had neither any control at the relevant time when the said tenancy was surrendered since the management and administration of the said college along with possession of the said premises was taken over vide Statutory Order contained in Office Note Issued by Administrator appointed vide Order No. C/2091/41-GB dated 21st September, 2001 from the Inspector of Colleges, Calcutta University and now it is under an elected Governing body. Since the defendant have no control over the management of the said College, nothing was possible for the defendant No.1 as tenant to do as required in accordance with terms of surrender of tenancy.

3. That in the light of the facts as enunciated, the defendant is not required to deal with any of the several paragraphs as contained in the plaint as usually required in general written statement, the defendant No.1 accepts the ownership of the plaintiffs as well as other facts touching the inability of the defendant No.1 to deliver vacant possession of suit premises along with surrender of the tenancy to the plaintiff as it has/had no control over the management of the said Girls', College and is not in a position to deliver vacant possession of the suit premises to the plaintiffs."

56. The case of the parties is apparent from the pleadings set out in the Plaint and Written Statement. The plaintiff as well as the defendant are *ad idem* on the issue that the defendant *"used to run the College".* The Plaint as well as the Written Statement acknowledges the fact that the defendant was in control of the College in the past. In paragraph 2(iv) there is a clear admission on the part of the defendant that management

and administration of the College along with possession of the premises was taken over by the Calcutta University and that the College is now being run by a University through a Governing Body constituted in accordance with the relevant statute. It is specifically stated by the defendant that they have no control whatsoever over the College and, therefore, though they acknowledge ownership of the plaintiff, they are not in a position to do as required in accordance with the terms of surrender of tenancy. It is the specific case of the defendant in paragraph 2(iii) that the tenancy was surrendered by them without delivery of possession and that they cease to have any liability towards rent after 21.09.2001, the date on which the letter communicating surrender of tenancy by the Trust was sent.

57. The plaintiff in the suit has sought the relief in the nature of a decree for recovery of khas possession of the suit property, injunction and receiver along with other reliefs such as cost. The possession has been claimed from the defendants 1 to 7 who represent the Trust. In the written statement filed by the Trust it stated in clear terms that it is not in possession of the suit property. Running and occupation of the College in the suit premises is acknowledged in the plaint. Still the plaintiff has not added the College as a party to the suit for eviction and no relief has been claimed against the College. The plaintiffs have also not sought any declaration as regards the nature of occupancy of the College in the suit premises, and its relationship with the plaintiff.

58. As discussed above, the parties were *ad idem* on running of the College in the suit premises. The Trial Court has accepted the plea of the defendant Trust that they have no control over the College in question. There is also no finding by the Trial Court in the eviction suit as regards the status of the College *vis-à-vis* the plaintiff, or *vis-à-vis* the Trust. Without determining the issue whether the College in question was a subsidiary of the Trust and without pronouncing that by virtue of any such relationship with the Trust it would be bound by any decree executed against the Trust, the Trial Court has proceeded to pass a decree exclusively against the Trust directing it to hand over vacant possession knowing well that since 01.10.2001, the Trust ceased to be in possession of the suit property. The decree has been issued against the Trust and is sought to be executed against the College, even though the College was not made a party to the suit and without any decision of the Trial Court as regards there being any such relationship of the College so as to make it bound by a decree executed against the Trust.

59. Thus, when the petitioner invoked the provisions contained in Order XXI Rule 101 C.P.C. resisting and obstructing delivery of possession in compliance of the decree passed in the suit, it was only proper for the Court considering the Misc Case to declare such a decree not to be binding upon the College as has been done in the present case.

60. Neither the plaintiff, nor the Trust has claimed in the suit that there is any document of tenancy executed by the landlords either in favour of the Trust, or in favour of the College. Cross-examination of OPW 2 in

the Misc case on 15.03.2006 reveals that the landlords and the trustees were on good terms and were allowed to use the suit property subject to payment of a monthly rent for their charitable purposes. The College came to occupy the premises on 02.01.1979. More than 15 years thereafter the letter dated 19.08.1994 (Exhibit-4) was written by the Trust wherein it is specifically stated that the College is being run and will continue to be run at the suit premises. The Trust has made a representation to the Inspector of Colleges that no transfer or sub-tenancy is involved and, therefore, concurrence of the owners is not relevant. The letter was written to avail the benefit of Pay Packet Scheme for the staff and teachers of the College.

61. The College has further placed on record the journal vouchers (Exhibits- 6 Colly) showing debit of the amount of rent from the accounts of the College to the Trust, so as to support its contention that it was actually paying rent through the Trust. The College has also placed on record various receipts issued by the Calcutta Municipal Corporation (Exhibit-11 Colly) to support its contention that it was paying the property tax for the suit property. Therefore, the position that emerges is that the College in question was paying rent through the Trust. Even if the Trust is considered to be paying rent on behalf of the College, it would not, in our opinion make much of a difference. In either case, the College would qualify as a tenant as per the definition of tenancy under Section 2(g) of the West Bengal Premises Tenancy Act, 1997, which reads:

> *"2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—*
>
> *.....*
>
> *(g) "tenant" means any person <u>by whom or on whose account or behalf the rent of any premises is or, but for a special contract, would be payable,</u> (emphasis ours) <u>and includes any person continuing in possession after termination of his tenancy</u> and, in the event of death of any tenant, also includes, for a period not exceeding five years from the date of death of such tenant or from the date of coming into force of this Act, whichever is later, his spouse, son, daughter, parent and the widow of his predeceased son, who were ordinarily living with the tenant up to the date of death of the tenant as the members of his family and were dependent on him and who do not own or occupy any residential premises, and 3[in respect of premises let out for non-residential purpose his spouse, son, daughter and parent who were ordinarily living with the tenant up to the date of his death as members of his family, and were dependant on him or a person authorised by the tenant who is in possession of such premises] but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction:*
>
> *Provided that the time-limit of five years shall not apply to the spouse of the tenant who was ordinarily living with the tenant up to his death as a member of his family and was dependent on him and who does not own or occupy any residential premises,*
>
> *Provided further that the son, daughter parent or the widow of the predeceased son of the tenant who was ordinarily residing with the tenant in the said premises up to the date of death of the tenant as a member of his family and was dependent on him and who does not own or occupy any residential premises, shall have a right of preference for tenancy in a fresh agreement in respect of such premises 1[on condition of payment of fair rent]. This proviso shall apply mutatis mutandis to premises let out for non-residential purpose."*

62. As regards the submission made by the learned Senior Counsel Mr. Mukherjee that there is no declaration by the Court in the Misc Case regarding the status of the College, we proceeded to consider relevance of the material brought on record in the Misc case along with the evidence by way of additional evidence under Order XLI Rule 27 C.P.C. in the present proceedings, as per decision of the Apex Court in the case of ***Ibrahim Uddin and Another*** (Supra) and ***Sanjay Kumar Singh*** (Supra), to ascertain whether the documents are

valuable for considering the status of the College with reference to the suit property. We also examined whether such material has a direct and important bearing on this main issue; and whether the evidence sought to be adduced by the respondents further removes the cloud so as to enable this Court to pronounce a judgment.

63. The three letters dated 13.03.1990, 19.08.1994 and 23.07.1998, Exhibit 3, 4 and 5 respectively make it abundantly clear that the College was a tenant in the suit premises along with the Trust since the time it was shifted to the premises.

64. Insofar as the status of the College *vis-à-vis* the suit property, recitals in the two agreements dated 04.03.1993 and 31.05.1996 sought to be introduced as additional evidence in the present proceedings, are very relevant to this core issue. The agreement dated 04.03.1993 was executed by the land owners (plaintiffs), the trustees as well as the Governing Body of the College. The very fact that the College through its Governing Body is a party to the tripartite agreement is glaring proof of the fact that the College enjoyed occupation of the premises in question, independent of the Trust which was duly acknowledged by the land owners (plaintiffs). In paragraph 2 of the agreement dated 04.03.1993 there is a recital that *"trustees shall transfer the existing monthly tenancy in respect of the said College unit and of the said extended College area as and when the said two portions are ready for occupation in two succeeding phases with the consent of the owners to the parties hereto of the third party (College) and thereafter the owners shall let out the said College unit and the said extended College area of Rani Birla College on a lease for 99 years. …… The parties of the third part (College) hereby*

undertake to vacate existing College building except the Annexe block and handover the possession of the same to the owners immediately with the shifting of the said Rani Birla College to the newly constructed unit." In para 5 of this agreement there is a recital that the owners (plaintiffs) undertake that till such time the new building is constructed they will not disturb the functioning of the College. The independent existence of the College has further been acknowledged in paragraph 6 of this agreement to which the landlord (plaintiff) was a party (first part), which reads:

> *"6. Upon handing over the possession of the College Unit and the existing College Building being vacated, the parties hereto of the Third Part, on behalf of the Rani Birla College, shall pay a monthly lease rent of Rs. 1,500/- for the said College Unit to the owners. They shall also pay the municipal taxes, surcharges, other levies payable for occupation of the said College Unit as well as multistoried building tax etc and all other levies that may be imposed in future solely for occupation of the said College Unit. The rent shall be increased @15% after every five years. Till such time the College Unit is constructed and the College is shifted to the College Unit and temporarily to the Annexe Block as stated above, the Owners shall not disturb the functioning of the Rani Birla College."*

65. The other agreement dated 31.05.1996 is also a multi-party agreement wherein apart from the Trust, the College has also been made a party through its Governing Body. The fact that both Trust and the College were enjoying tenancy rights and that the Trust and College were having identity independent of each other is manifest from the recital made in this agreement.

66. Paragraph 4 of this agreement dated 31.05.1996 is worth considering wherein it has been stated *"The parties hereto of the Third Part on behalf of Rani Birla College shall give the Owners and their builders their servants and agents possession of such portion or portions of the said premises at the site for erection and building of the said messuage as the Owners may from time to time require and the*

Owners shall cause the completion of the said messuage in two succeeding phases having an area of 10,300 Sqft. More or less of effective carpet area excluding passages, stair cases, verandahs etc. (hereinafter called space for 4 Cars and Generator space to be suitably provided within the premises as and when each portion will be ready and cause all surplus material plant and rubbish to be removed from the said College Unit and the said Extended College Area before handing over the same to the parties hereto of the third part for the Rani Birla College. So however if anybody connected with Rani Birla College causes any obstruction during construction of the building at the said site the parties hereto of the Third Part (Governing Body) shall forthwith take appropriate steps for removal of such obstruction so as to enable the owner to carry on the construction and erection of the building smoothly and keep the Trustees/Owners indemnified against all such obstruction. The Owners however undertake that till such time the new College Building is constructed and the College is shifted to this new College Unit and temporarily in the existing Annexe Block they will not disturb the functioning of the College. On the completion of the construction of the said Extended College Area the Owners will makeover possession of the same to Rani Birla College as already stated and thereupon the said Rani Birla College will vacate the annexe Block for demolition by the Owners."

67. The land owners were duly served with copy of application filed in these proceedings under Order XVI Rule 27 CPC, and have chosen not to file any opposition to the application. The learned Senior Counsel, Mr. Mukherjee for the land owners submitted that the agreements, having not been acted upon are irrelevant. Submission regarding the agreement not being acted upon is not in dispute. We in the present proceedings, however, are not concerned with the aims and objects of the agreements executed between the parties. However, recitals of these documents which have not been denied or disputed throws valuable

light on the mutually acknowledged status of the parties to the agreement/s, with respect to the suit property. Both these documents, and the letter dated 04.09.1995 manifests an acknowledged status of the College, as a tenant in the suit premises, independent of the Trust.

68. The letter dated 04.09.1995 and 06.05.2002 issued by the land owners to the Inspector of Colleges and Vice Chancellor, University of Calcutta are also of great significance. From reading of these two letters it is clear that the land owners acknowledged occupation of the suit premises by the College, independent of the Trust. These letters were written after the College was taken over by the Calcutta University. The letters were apparently written when the parties including the College could not give effect to the purpose of the agreement dated 04.03.1993 (supra) It is in this connection that the land owners wrote the letter dated 04.09.1995 to the Inspector of Colleges of Calcutta University which reads:

> *"The Inspector of Colleges*
> *Calcutta University*
> *Centenary Building*
> *Calcutta-700073.*
>
> *Dear Sir,*
>
> *Re: Reconstruction of premises No.38, Theatre Road Calcutta.*
>
> *You are aware that with regard to above proposal, based on discussions with University authorities, a tripartite agreement dated 04/03/1993 was executed and filed with Inspector of Colleges, Calcutta University, Calcutta, and thereafter we had several meetings in this regard at your office too. You however suggested certain modifications in the agreement and required them to be incorporated in the agreement that had been filed at your office earlier. The modifications as suggested by your goodself was agreed to by the owners of the premises barring two co-owners. Our persuation with them have yielded no fruitful result so far.*
>
> *In order to overcome this impasse and to expedite the matter we propose that we sell the premises to a willing buyer who undertakes to comply with all the terms and conditions which were committed by us including*

> *amendments required by the Inspector of Colleges and thus step into our shoes. Fortunately, it has been possible for us to locate a willing buyer of the premises who is agreeable to fulfil all the terms and conditions contained in the agreement dated 04/03/1993 and the amendments later required by the Inspector of Colleges and with Hindusthan Charitable Trust as tenant of this premises and thereafter subsequently transfer the tenancy to the College. The proposed buyer would construct the building for the College and commercial Unit as stated in the said Agreement within stipulated time frame and hand over the College Building to the College authorities thereby stepping into our shoes. But before proceeding further in the matter the willing buyer wants an assurance from University and College authorities and also from Hindusthan Charitable Trust that this arrangement is acceptable to all the quarters and all concerned will abide by the terms of this arrangement. (emphasis ours)*
>
> *The proposed arrangement will be in the interest of the concerned parties and for smooth functioning.*
>
> *We request you to please consider the matter and accord concurrance/approval to this arrangement at your earliest convenience so as to clear the path for the willing purchaser.*
>
> *Thanking you,"*

69. These communications and recitals in the two agreements establish the College's independent existence and occupation of the premises in question, duly acknowledged by the land owners since long before filing of the suit. They were conscious that any dealing with the suit property could only to be with the notice/ consent of the College. However, while filing Title Suit No. 1054 of 2004 for eviction they have chosen to keep the College in dark and not impleaded them as a party.

70. We are mindful that an appellate Court is not entitled to let in the fresh evidence only on a statement that the evidence is necessary to pronounce judgment, or that it is required in the interest of justice, or on the ground that there is no reason to reject the same. The Court is required to exercise judicial discretion within the four corners of the statutory provisions in Order XLI Rule 27. In the present case, upon consideration of the material as taken note of above we find that the

same has a direct and important bearing on the main issue regarding status of the College *vis-à-vis* the plaintiff and the Trust. In the application filed under Order XLI Rule 27 by the respondent it has specifically been pleaded that in spite of due diligence the same could not be brought in the Trial. The appellant has also chosen not to file any opposition to this application.

71. We find that the evidence sought to be introduced removes the cloud of doubt sought to be created by the appellants by submitting that status of the College has not been determined in the Misc Case. Therefore, we allow the evidence considered above to be taken on record as per judgments of the Apex Court in the case of ***Ibrahim Uddin*** (Supra) and ***Sanjay Kumar Singh*** (Supra), in exercise of judicial discretion under Order XLI Rule 27 C.P.C.

72. We thus find that the plaintiff was well aware of the fact that the College was possessing the suit premises in a status independent of the Trust. The fact that the College continued in possession of the suit premises even after surrender of tenancy by the Trust through its communication dated 21.09.2001, is also a fact known to the plaintiff. The fact of continuous possession of the College even after surrender of tenancy by the Trust three years prior to filing of the suit is also borne from the statements made in the written statement filed by the Trust in the suit. Such status of the College is evident from the material on record including the three letters dated 13.03.1990, 19.08.1994 and 23.07.1998, the two agreements dated 04.03.1993 and 31.05.1996 as

well as the letter dated 04.09.1995 and 06.05.2002 issued by the plaintiffs to the Inspector of Colleges of the Calcutta University and the Vice Chancellor respectively.

73. As regards submissions of Mr. Sanyal, learned Senior Advocate regarding the plaintiff and defendant in Title Suit No. 1054 of 2004 being in collusion and that they have practiced a fraud upon the Court and did not approach the Court with clean hands, we, based on the material considered above, find that the plaintiff withheld vital material from the Court in the plaint filed in the Title Suit. The defendant Trust, however, has disclosed such fact in the written statement filed by them. It has also stated that it has no control over the College which continues in possession of the suit property and explicitly admitted that it is not in a position to get the premises vacated by the College. The defendant in paragraph 3 of the written statement (extracted above) has accepted the ownership of the plaintiff as well as its inability to deliver vacant possession of the suit premises as it had no control over the management of the College. From such stand of the parties in the Title Suit it appears that it is the plaintiff which has resorted to suppression of relevant and material facts.

74. As regards the decision relied upon by the learned Senior Counsel for the College in the case of ***Ram Chandra Singh*** (supra) and ***Mehta Suraya*** (supra), we find that in these two judgments the Apex Court has considered that a plaintiff is required to approach the Court by disclosing the facts and documents relevant to the litigation. If he

withholds vital document to gain advantage on the other side, he would be guilty of playing fraud on the Court as well as on the opposite party.

75. In the present case, however, the withholding of the fact regarding continuous occupation of the College after surrender of tenancy by the Trust did not give the plaintiff any undue advantage on the other side (Trust) since the defendant in his written statement has brought the correct state of facts on record. It is the defendant's case in the suit that after it surrendered the tenancy, the College continued in possession of the suit property and that the defendant Trust had no control over the College, which was now an alter-ego of the Calcutta University. From the reading of the written statement filed by the defendant, it is also evident that the defendant has not agreed to the case of the plaintiff that the defendant was continuing in possession of the suit property, after its surrender by the letter dated 21.09.2001. In fact, the Trust has denied the claim of the plaintiff that it was in possession of the suit premises or that it was in a position to hand over vacant possession of the suit premises.

76. We, therefore, find that there is a real contest by the defendant over a deceptive claim put forward by the plaintiff in the suit. Such claim put forward in the plaint has been actually denied and disputed by the defendant in his written statement and, therefore, there is no occasion for this Court to conclude that there was any collusion between the parties. In this connection, we consider it appropriate to refer to decision of the Apex Court in the case of ***Nagubai Ammal & Ors. Vs.***

B. Shama Rao & Ors reported in ***AIR 1956 SC 593.*** Paragraph 13 of the decision reads:

> *"13. Now, there is a fundamental distinction between a proceeding which is collusive and one which is fraudulent. "Collusion in judicial proceedings is a secret arrangement between two persons that the one should institute a suit against the other in order to obtain the decision of a judicial tribunal for some sinister purpose". (Wharton's Law Lexicon, 14th Edn., p. 212). In such a proceeding, the claim put forward is fictitious, the contest over it is unreal, and the decree passed therein is a mere mask having the similitude of a judicial determination and worn by the parties with the object of confounding third parties. But when a proceeding is alleged to be fraudulent, what is meant is that the claim made therein is untrue, but that the claimant has managed to obtain the verdict of the court in his favour and against his opponent by practising fraud on the court. Such a proceeding is started with a view to injure the opponent, and there can be no question of its having been initiated as the result of an understanding between the parties. While in collusive proceedings the combat is a mere sham, in a fraudulent suit it is real and earnest. …."*

77. Insofar as Mr. Sanyal's submission regarding the decree fraudulently being obtained by practicing a fraud upon the Court, we find that such allegation is also not sustainable in view of the law as per decision in ***Nagubai Ammal & Ors.*** (Supra). In the present case the plaintiff did not injure the defendant. The Trust was the opponent in the suit and had nothing to lose in the proceedings, since it had already surrendered the tenancy without handing over actual possession, about 3 years prior to filing of the suit.

78. From reading of this exposition of law made by the Hon'ble Supreme Court in this judgment [***Nagubai Ammal & Ors.*** (Supra)] it is apparent that while dealing with the distinction between fraud and collusion, the ingredients of both fraud, and collusion has been laid down. In terms of the law laid down in this regard in the above noted Apex Court

decision we find that neither any fraud is made out; nor any collusion is made out in the Title Suit No. 1054 of 2004.

79. It is also apparent from the material on record that the College's independent possession of the suit premises is an acknowledged fact by both the plaintiff as well as defendant, since long before filing of the Title Suit No. 1054 of 2004. Therefore, in order to dispossess the College, which is in peaceful possession of the premises in the status of a tenant, even the rightful owner of the suit premises can obtain possession/ repossession only in accordance with law and through a Court of competent jurisdiction in a proceeding to which the College is made a party and afforded an opportunity to protect its possession in accordance with law. The law does not contemplate dispossession of such a person, in execution of a decree obtained without impleading him as a party and in his absence. In this connection, we consider it appropriate here to refer to the Apex Court decision in the case of ***Rame Gowda (dead) by LRS. Vs. M. Varadappa Naidu (dead) by LRS. and Another*** reported in ***(2004) 1 SCC 769***. Paragraph 7 of the decision reads:

> *"7. The thought has prevailed incessantly, till date, the last and latest one in the chain of decisions being Ramesh Chand Ardawatiya v. Anil Panjwani [(2003) 7 SCC 350] . In between, to quote a few out of several, in Lallu Yeshwant Singh v. Rao Jagdish Singh [AIR 1968 SC 620 : (1968) 2 SCR 203] this Court has held that a landlord did commit trespass when he forcibly entered his own land in the possession of a tenant whose tenancy has expired. The Court turned down the submission that under the general law applicable to a lessor and a lessee there was no rule or principle which made it obligatory for the lessor to resort to court and obtain an order for possession before he could eject the lessee. The Court quoted with approval the law as stated by a Full Bench of the Allahabad High Court in Yar Mohd. v. Lakshmi Das [AIR 1959 All 1 : 1958 All LJ 628 (FB)] (AIR at p. 4):*

> *"Law respects possession even if there is no title to support it. It will not permit any person to take the law in his own hands and to dispossess a person in actual possession without having recourse to a court. No person can be allowed to become a judge in his own cause." (AIR p. 5, para 13)*
>
> *In the oft-quoted case of Nair Service Society Ltd. v. K.C. Alexander [AIR 1968 SC 1165 : (1968) 3 SCR 163] this Court held that a person in possession of land in assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. When the facts disclose no title in either party, possession alone decides. The Court quoted Loft's maxim — "Possessio contra omnes valet praeter eur cui ius sit possessionis (he that hath possession hath right against all but him that hath the very right)" and said: (AIR p. 1175, para 20)*
>
> *"A defendant in such a case must show in himself or his predecessor a valid legal title, or probably a possession prior to the plaintiff's and thus be able to raise a presumption prior in time."*
>
> *In M.C. Chockalingam v. V. Manickavasagam [(1974) 1 SCC 48] this Court held that the law forbids forcible dispossession, even with the best of title. In Krishna Ram Mahale v. Shobha Venkat Rao [(1989) 4 SCC 131] it was held that where a person is in settled possession of property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law. In Nagar Palika, Jind v. Jagat Singh [(1995) 3 SCC 426] this Court held that disputed questions of title are to be decided by due process of law, but the peaceful possession is to be protected from the trespasser without regard to the question of the origin of the possession. When the defendant fails in proving his title to the suit land the plaintiff can succeed in securing a decree for possession on the basis of his prior possession against the defendant who has dispossessed him. Such a suit will be founded on the averment of previous possession of the plaintiff and dispossession by the defendant."*

80. We find that the Trial Court has not considered or decided an issue whether the College had any existing subsidiary relationship with the Trust so as to be bound by a decree passed exclusively against the Trust. Still the Trial Court has proceeded to pass a decree, against the defendants 1 to 7 (Trustees). The College though having possession of the suit property, independent of the Trust has not been impleaded as a party to the suit, nor any decree has been passed by the Trial Court in Title Suit No. 1054 of 2004 against the College. Having obtained such a decree exclusively against the Trust and Trustees, the plaintiffs cannot be permitted to disturb the College's possession on the strength

of such a decree which is not binding against the College. We, therefore, are in agreement with the submissions made by Mr. Sanyal relying on decision of the Hon'ble Supreme Court in the case of ***Shreenath and Another*** (Supra) to contend that the College was entitled to resist the taking of possession by the plaintiff pursuant to the decree obtained behind the back of the College; and that the decree in the Title Suit was not binding on the College. We, therefore, find no infirmity in the decision of the Executing Court dated 10.06.2016, in Misc Case No. 2841 of 2006, requiring any interference.

81. Before parting with the case we consider it apposite to take into consideration the concern of the Apex Court recently echoed through its judgment in the case of ***Periyammal (Dead) Through LRS & Ors. Vs. V. Rajamani & Anr. Etc.*** reported in ***2025 SCC Online SC 507***. In the preface of this report the Apex Court has taken note of the manner in which the fruits of justice eludes the justice seeker on account of procedural law, and since he may be dragged till the last ladder of the hierarchy of Courts. After taking note of such a situation, the Apex Court has proceeded to lay down certain guidelines:

> *"**73**. It is worthwhile to revisit the observations in Rahul S. Shah (supra) wherein this Court has provided guidelines and directions for conduct of execution proceedings. The relevant portion of the said judgment is reproduced below:*
>
> *"42. All courts dealing with suits and execution proceedings shall mandatorily follow the below mentioned directions:*
>
> *42.1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order 10 in relation to third-party interest and further exercise the power under Order 11 Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of*

the parties including declaration pertaining to third-party interest in such properties.

42.2. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the court, the court may appoint Commissioner to assess the accurate description and status of the property.

42.3. After examination of parties under Order 10 or production of documents under Order 11 or receipt of Commission report, the court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.

42.4. Under Order 40 Rule 1 CPC, a Court Receiver can be appointed to monitor the status of the property in question as custodia legis for proper adjudication of the matter.

42.5. The court must, before passing the decree, pertaining to delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.

42.6. In a money suit, the court must invariably resort to Order 21 Rule 11, ensuring immediate execution of decree for payment of money on oral application.

42.7. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.

42.8. The court exercising jurisdiction under Section 47 or under Order 21 CPC, must not issue notice on an application of third party claiming rights in a mechanical manner. Further, the court should refrain from entertaining any such application(s) that has already been considered by the court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

42.9. The court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.

42.10. The court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to sub-rule (2) of Rule 98 of Order 21 as well as grant compensatory costs in accordance with Section 35-A.

42.11. Under Section 60 CPC the term "… in name of the judgment-debtor or by another person in trust for him or on his behalf" should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.

42.12. The executing court must dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.

42.13. The executing court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the police station concerned to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the court, the same must be dealt with stringently in accordance with law.

42.14. The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the executing courts."

(Emphasis supplied)"

82. On going through the guidelines and directions we find that the Trial Court has proceeded to pass the decree of possession by a procedure which is unsustainable in view of the guideline contained in para 42.1 to 42.5 amongst others, of the judgment.

83. We, therefore, find that the College was entitled to resist or obstruct delivery of possession of the suit premises pursuant to the decree passed by the Trial Court in Title Suit No. 1054 of 2004.

84. Having regard to the findings recorded above we are of the opinion that by entertaining the Misc Case filed by the College, the Court exercising jurisdiction under Order XXI Rule 101 C.P.C. has prevented a gross miscarriage of justice that may have occurred by execution of a decree so as to disturb possession of the College as a tenant in the suit property, even though the decree was obtained without impleading the College as a party to the suit.

85. The other issues argued by the learned Senior Counsel Mr. Mukherjee, on behalf of the appellants that acquisition of the College by the University does not amount to acquisition of the property, that there is no transfer of interest by any document in favour of the College by the Trust; or that affiliation would not create any interest or charge in the property, though undeniable propositions of law, but need not be gone into and have become academic in view of the findings regarding status of the College as a tenant in the suit premises, independent of the Trust, which we have recorded above based on the material/ evidence on record.

86. We, therefore, find no reason to interfere with the impugned order dated 10.06.2004 passed in the Misc Case No. 2841 of 2006. The appeal is dismissed.

87. The pending applications stand disposed of accordingly.

88. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Madhuresh Prasad, J.)

I agree.

(Supratim Bhattacharya, J.)

(A.D.)