

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar**

**F.M.A. No.664 of 2021
with
CAN 1 of 2025**

**Md. Tazammul Hossain
Vs.
Imranuzzaman Safvi and others**

For the appellants	:	Mr. Asit Baran Raut Mr. Tuhin Subhra Raut
For the respondent nos.1 and 2	:	Mr. Wasim Ahmed
Heard on	:	23.04.2025, 07.05.2025 & 14.05.2025
Hearing concluded on	:	14.05.2025
Judgment on	:	09.06.2025

Sabyasachi Bhattacharyya, J.:-

1. The present appeal has been preferred by the plaintiff/appellant against the dismissal of an injunction application filed in connection with his suit for declaration and permanent injunction.
2. The plaint case is that the original owner/landlord of the suit property entered into an agreement on May 18, 1982 in writing with Md. Shoaib, Md. Zakaria, Md. Naim Mullick, granting them monthly tenancy in respect of the suite premises. In the said agreement, the tenants were also given right to collect rent from the other tenants in the building. That apart, in case of demolition of the premises by any act of God or

by the Corporation of Calcutta or any other Authority, the tenants were granted liberty to construct a new multi-storied building on the suit property.

3. It is alleged that in terms of the said agreement, the three joint tenants constructed together a G+4 storied-building on a portion of the premises at their own investment, by demolishing the existing structure thereon.
4. The joint tenants also inducted several other tenants under them in terms of the agreement and the landlords issued letters of attornment to such tenants.
5. Another agreement was entered into between the three joint tenants on August 22, 1984, whereby Md. Shoaib was put in charge of collecting monthly rents from the tenants on behalf of the three joint tenants.
6. According to the appellant, Md. Naim Mullick died intestate and issueless on February 5, 1991, leaving behind his widow Amana Begum and brother Md. Tazammul Hussain (the plaintiff/appellant) as his legal heirs.
7. On May 11, 2012, a further agreement was entered into between the then joint tenants, being Md. Shoaib and Md. Zakaria on the one hand and Amana and Tazammul on the other. In terms of the said agreement, Md. Zakaria was to collect the rent and, upon payment of the share of the superior landlords, to distribute the same among the other joint tenants.

8. Subsequently, Amena Begum also died, leaving Tazammul Hussain as the sole joint tenant in place of Md. Naim, along with Md. Shoaib and Md. Zakaria.
9. The plaintiff Tazammul received a letter on September 5, 2018 from the defendant no.1, indicating that he had purchased the property from the superior landlords. The plaintiff disputes the fact that defendant /respondent no.1 purchased the property from all the co-owners of the property. It is alleged that defendant no.1 is politically influential and, taking advantage of such influence, is trying to collect rents from all the tenants in the premises in violation of the agreement entered into by the original joint tenants with the original landlords.
10. Accordingly, the present suit has been filed for declaration of the joint tenancy right of the plaintiff in respect of the suit property, and for further declaration that the alleged surrender of tenancy rights by Md. Shoaib and Md. Zakaria, the other joint tenants (defendant nos.3 and 4), in favour of defendant No.1 behind the back of the plaintiff, is illegal, invalid and inoperative, and is not binding on the plaintiff, as well as permanent injunction restraining the defendant nos.1 and 2 and their men and agents from collecting monthly rent from any of the tenants of the premises.
11. Learned counsel appearing before the plaintiff/appellant argues that in view of the rights created by the agreements of 1982, 1984 and 2012, and since the plaintiff has also invested substantial amounts of money in erecting the building on the premises, the defendants/respondent nos. 1 and 2, who have stepped into the shoes of the original landlords

and are bound by the 1982 agreement between the original joint tenants and the original owners, do not have any right to collect such rent from the other tenants. It is argued that in view of the tenancy being joint in the name of the defendants/respondent nos.3 and 4 and the plaintiff, the said respondents did not have any right to surrender the tenancy in favour of respondent nos.1 and 2 behind the back of the plaintiff or without the plaintiff's consent.

12. Learned counsel appearing for the appellant further argues that although Section 2(g) of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as "the 1997 Act") provides a moratorium period after which the heirs of the original tenant become trespassers, since the devolution of tenancy on the present appellant took place prior to enactment of the 1997 Act and as there was no such restriction under the predecessor-Act of 1956, the rigour of Section 2(g) of the 1997 Act is not applicable in the present case and the appellant continues as a joint tenant.
13. In support of such contention, the appellant relies on *Rajesh Mitra Alias Rajesh Kumar Mitra and Anr. v. Karnani Properties Ltd.*, reported at *AIR Online 2024 SC 771*, where it was held that statutory laws operate from the date of their enforcement, that is, prospectively, and in case the legislature intends to make a law retrospectively, such an intention must be reflected clearly in the statute itself. Thus, it was held that the accrued rights created in favour of a tenant under the 1956 Act cannot be taken away by the 1997 statute.

- 14.** Learned counsel for the appellant next cites *Anwar Ali Bepari v. Jamini Lal Ray Chaudhuri*, reported at 1939 ILR (Cal) 254, where it was held that where there are more than one joint tenants at the inception of the tenancy, a notice of ejectment given to only the surviving tenant and not the heirs of the deceased tenant was invalid and did not terminate the tenancy. It was held therein that in India, tenancies from year to year or month to month create a leasehold interest and Section 116 of the Transfer of Property Act places leases from year to year and month to month on the same footing. These tenancies under the said Act are transferable and there is no reason why they should not be heritable.
- 15.** Learned counsel for the appellant places reliance on the relevant clauses of the three agreements as well as on certain rent receipts, all of which were annexed to the injunction application in the court below, which indicate that from time to time, rent was collected by the joint tenants on behalf of all of them. One of the rent receipts also show that the plaintiffs/appellant alone collected rent on behalf of the other joint tenants as well.
- 16.** Learned counsel also relies on Clause 16 of the 1982 Agreement with the superior landlord which conferred a prior right of refusal in favour of the joint tenants in case the landlords wanted to sale the property to any third party. It is argued that the purported sale to respondent no.1 is invalid on such count as well.
- 17.** Learned counsel appearing for the respondent nos.1 and 2, the alleged purchasers, contends that in view of the admitted position in terms of the averments in the injunction application that Md. Shoaib, Md.

Zakaria and Md. Naim Mullick were “joint tenants”, the correct position of law is that on the demise of Md. Naim, the tenancy would devolve on the surviving joint tenants, namely, Md. Shoaib and Md. Zakaria and not upon the heirs of the deceased joint tenant.

18. In support of such contention, learned counsel cites *Suresh Kumar Kohli v. Rakesh Jain and another*, reported at (2018) 6 SCC 708. In the said judgment, the Supreme Court distinguished between tenancy-in-common and joint tenancy and held that the incidents of the two are different. Joint tenants have unity of title, unity of commencement of title, unity of interest, unity of equal shares in the joint estate, unity of possession and right of survivorship. As opposed thereto, there is unity of possession but no unity of title in case of tenancy-in-common, that is, the interests are differently held and each co-tenant has different shares over the estate. The tenancy right, being proprietary rights, by applying the principle of inheritance, the shares of heirs are different and ownership/leasehold rights would be confined to the respective shares of each heir and none of them would have title in the entire leasehold property. Therefore, it was observed, the estate shall be divided among the co-tenants and each tenant-in-common has an estate in the whole of the single tenancy.
19. Learned counsel next cites *Ajit Kumar Roy and Ors. v. Satya Bala Dutt & Ors.*, reported at 78 CWN 19, where a Division Bench of this Court came to the conclusion that as between the heirs of the original tenant themselves, they are tenants-in-common and not joint tenants, in the sense that on the death of one, his interest will not devolve by

survivorship to the other tenants, but on his heirs. It was held that in case of joint tenants, on the death of one, his interest in the tenancy will pass to the other joint tenants by survivorship. The Division Bench relied on the other judgments, including *Kanji Manji v. The Trustees of the Port of Bombay*, reported at AIR 1963 SC 468, to hold that when joint tenancy was created in the true sense of the term, namely on the death of one, the tenancy would pass to the other by survivorship, if notice to quit was served on one, it would suffice for all.

- 20.** It is argued by learned counsel for the respondents that in view of the admitted case in the plaint of joint tenancy, the plaintiff/appellant does not have any right by inheritance through the original joint tenant Md. Naim Mullick on the latter's demise.
- 21.** It is further contended that since the original landlords sold the property to the respondent no.1, the latter has exclusive right to collect rents from the tenants in the premises.
- 22.** Upon hearing learned counsel, we arrive at the following conclusions:
- 23.** In order to ascertain the respective rights of the parties on the basis of the case of the parties, we are to look into the terms of the agreements produced by the plaintiff.
- 24.** The agreement dated May 8, 1982 clearly recorded that the original landlords were residents of Lucknow and they granted joint tenancy to Md. Shoaib, Md. Zakaria and Md. Naim Mullick. However, while describing the joint tenants as "party of the Second Part" in the agreement, it was mentioned that the term shall be deemed to include their respective heirs, legal representatives etc.

- 25.** The joint tenants, as per the plaint case, acted on the said document and constructed a G+4-storied building and started collecting rent jointly from the other tenants.
- 26.** Subsequently, pursuant to the said agreement, another agreement between the three joint tenants *inter se* was entered into in writing on August 22, 1984, whereby a mutual arrangement was made between themselves to the effect that one of them would collect the rent on behalf of the others. They also agreed that the first party thereto, that is, Md. Shoaib and Md. Zakaria (brothers) on the one hand and the second party, Md. Naim Mullick, on the other would have 50 per cent share each in the leasehold property.
- 27.** Conspicuously, in the Agreement of 1984 as well, the expression “Second Party”, which defined Md. Naim Mullick, also included his heirs, successors, representatives and assigns.
- 28.** Thus, we find that although all the agreements mention the original three tenants, namely Md. Shoaib, Md. Zakaria and Md. Naim, as “joint tenants”, the provisions of the agreements themselves indicate that the said nomenclature was loosely used, in view of the same being qualified by inclusion of the heirs and legal representatives of the joint tenants. Such inclusion clearly indicates that the parties intended between themselves that upon the demise of one of the joint tenants, his respective tenancy rights in the property would devolve on his heirs.
- 29.** Importantly, a conjoint reading of the 1982 and 1984 documents would reveal that the rights of the three original joint tenants were not restricted to the tenancy alone. If such would be the case, each of the

joint tenants would claim share to the extent of one third of the rent collected from the other tenants. However, the tenancy rights of the three joint tenants were intertwined with and merged into their proprietary rights in respect of the building created with each of their funds on the suit property. Such position would also be reflected from the 1984 document, which delineated the shares between the joint tenants not in the ratio of one third each, but in 50:50 ratio between Md. Shoaib and Md. Zakaria, acting as a branch on one hand, and Md. Naim, as a different branch on the other.

- 30.** Hence, the incidents of a joint tenancy simpliciter cannot be attributed to the *jural* relationship between the original joint tenants. Their relationship *inter se* was multi-layered, including not only mere tenancy rights but separate rights to the property as well as rights flowing from the 1984 Agreement as well. Since the 1984 Agreement also included the heirs and legal representatives of Md. Naim, the argument of respondent nos.1 and 2, that the tenancy of Md. Naim would devolve on Md. Shoaib and Md. Zakaria by survivorship on the demise of Md. Naim, is not acceptable in the facts of the case.
- 31.** Since the respective shares of Md. Shoaib and Md. Zakaria on the one hand and Md. Naim on the other was agreed between themselves to be delineated in 50:50 ratio, Md. Naim had a separate moiety share in the tenancy, segregable from that of the other two 'joint tenants'. Thus, the governing legal principles of a tenancy-in-common would be applicable, as opposed to a 'joint tenancy', as the tenants themselves agreed in writing that their tenancy *inter se* was not a single unit aligned to the

concept of a true 'joint tenancy' but akin to a 'tenancy-in-common', since two branches of the tenants (Md. Shoaib and Md. Zakaria on the one hand and Md. Naim on the other) had independent fifty per cent shares of their own, a corollary of which would be that on the demise of Md. Naim, his share would devolve by inheritance on his heirs and legal representatives.

- 32.** That apart, we cannot overlook the agreement dated May 11, 2012 entered into in writing between Md. Shoaib and Md. Zakaria on the one hand and Amena Begum and Md. Tazammul Hussain, the widow and brother respectively of Md. Naim (by then deceased) on the other. The said agreement gave rise to independent rights of Amena and the plaintiff Tazammul as joint tenants with Md. Shoaib and Md. Zakaria. Being parties to the same, the other two joint tenants, Md. Naim and Md. Zakaria, cannot resile from such position. In the said agreement, the legacy of the 1984 agreement was furthered by expressly stipulating that whereas Md. Shoaib and Md. Zakaria would have half share in the property, Amena and Tazammul would have the other half.
- 33.** Upon the subsequent demise of Amena, Tazammul has become entitled to the half share initially devolving on Md. Naim and thereafter on Amena and Tazammul together.
- 34.** Hence, the rights claimed by the plaintiff/appellant are not restricted to their rights through Md. Naim, but are also based on their independent rights created by virtue of the 2012 agreement.
- 35.** Moreover, since the expression "joint tenancy" in all the documents of 1982, 1984 and 2012 was qualified by inclusion of the heirs and legal

representatives of the joint tenants, the incidents applicable to a joint tenancy otherwise cannot be applied in the present case. Hence, the reliance of the respondent nos.1 and 2 on *Suresh Kumar Kohli (supra)* and *Ajit Kumar Roy (supra)* is misplaced.

- 36.** As held in *Rajesh Mitra (supra)*, the rigour of Section 2(g) of the 1997 Act is not applicable to tenants who acquired their rights under the 1956 Act prior to the promulgation of the 1997 Act. Hence, it cannot be said that the appellant has been rendered a trespasser. The heritability of tenancies otherwise under the 1956 Act, the 1997 Act or the general law under the Transfer of Property Act is not a disputed position requiring the citation of *Anwar Ali Bepari (supra)*.
- 37.** Even apart from the above, we find that several rent receipts have been annexed to the injunction application in the court below as well as the injunction application filed in the present appeal. From the documents annexed at page 42, it is found that Md. Zakaria collected rent on behalf of all three joint tenants, namely himself, Md. Shoaib and Md. Naim. More importantly, the documents annexed at page 43, 44 and 45 of CAN 1 of 2025 *prima facie* establish that Md. Zakaria received rents from the other tenants on behalf of himself, Md. Shoaib and the plaintiff/appellant, all joint tenants.
- 38.** Going one step further, going by the rent receipt annexed at page 46, it is the plaintiff/appellant alone who recovered rent from the other tenants on certain occasions.
- 39.** Furthermore, in Clause 16 of the 1982 agreement, the original landlords had categorically granted a right of first refusal to the joint

tenants. Hence, the purported transfer in favour of respondent no.1 by the original landlords without giving a prior option of refusal to the plaintiff/appellant is squarely against Clause 16, thus shrouding the transfer of title in favour of respondent no. 1.

40. Also, since by the agreements of 1984 and 2012, fifty per cent rights in the leasehold property was created in favour of Tazammul, the surrender of the entire tenancy at the behest of respondent nos. 3 and 4, Md. Shoaib, Md. Zakaria, was *prima facie* violative of the said contract. Such surrender, as such, is also *prima facie* invalid, being in contravention of the terms of the said agreements.
41. Accordingly, a sufficient *prima facie* case has been made out by the plaintiff/appellant for challenging the very transfer in favour of respondent no.1 as well as the unilateral collection of rent from the other tenants by the respondent nos.1 and 2, since the respondent no.1 has, at best, stepped into the shoes of the original landlords/transferors, subject to the incidents of the 1982 documents, including Clause 16 thereof, as well as the other clauses granting rent collection rights to the joint tenants, by which the original landlords bound themselves.
42. Thus, we are of the considered view that the Learned Trial Judge acted *de hors* the law and without adverting to the relevant provisions of the agreements and the other documents, including rent receipts produced before the said court. As such, the impugned order is tainted by errors of law and fact as well as perversity due to non-consideration of the

relevant clauses of the agreements and other materials, including copies of rent receipts, placed before the said court.

- 43.** Accordingly, F.M.A. No.664 of 2021 is allowed on contest against the respondent nos. 1 and 2 and *ex-parte* against the other respondents, thereby setting aside the impugned order, bearing Order No.10 dated August 27, 2019 passed by the learned Judge, Ninth Bench, City Civil Court at Calcutta in Title Suit No.1427 of 2018.
- 44.** The defendants/respondent nos.1 and 2 are hereby restrained by an order of injunction from collecting monthly rent from any of the tenants in the suit premises till disposal of the suit, bearing Title Suit No.1427 of 2018.
- 45.** It is made clear that the above findings are tentative in nature, arrived at only for the purpose of deciding the appeal against the refusal of temporary injunction, and shall not be binding on the Learned Trial Judge at any further stage of the suit, including the final hearing of the suit.
- 46.** Consequentially, CAN 1 of 2025 is accordingly disposed of as well.
- 47.** There will be no order as to costs.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)