

(2009) 04 KAR CK 0090

In the Karnataka High Court

Case No : Regular First Appeal No. 389 of 2007 and W.A. No. 740 of 2006

A.S. Krishna Murthy

APPELLANT

Vs

C.N. Revanna and Others
 Sri C.N. Revanna Vs Smt. S.
Nalina Sreenivasan and The District Magistrate

RESPONDENT

Date of Decision : 03-04-2009

Acts Referred:

Karnataka Rent Control Act, 1961 — Section 21 (1) (h), 21 (1) (j)
Transfer of Property Act, 1882 — Section 106, 111

Citation : (2009) 5 KarLJ 454 : (2009) 5 KCCR 3816

Hon'ble Judges : K.L. Manjunath, J;B.V. Nagarathna, J

Bench : Division Bench

Advocate : G.S. Visweswara for H.M. Muralidhar, in R.F.A. No. 389/2007 and Chandan S. Rao, in W.A. No. 740/2006, for the Appellant; B.G. Sridharan for Sreeranga Associates for R1 in R.F.A. No. 389/2007 and Sree Ranga Associates for R1 in W.A. No. 740/2006, for the Respondent

Judgement

B.V. Nagarathna, J.—W.A. No. 740/2006 is filed by plaintiff No. 2 in O.S. no. 15842/1999 challenging the order dated 27.3.2006 made by the learned single Judge in W.P. No. 26457/2005.

2. RFA. No. 389/2007 is filed by the second defendant in O.S. No. 15842 by challenging the Judgment and Decree dated 30.11.2006, passed by the City Civil Court, Mayo Hall Unit, Bangalore.

3. For the sake of convenience the parties shall be referred to in terms of their status before the trial court.

4. According to the plaintiffs they are the absolute owners of the suit schedule property comprising of premises bearing No. 6, Shivaji Road, Shivaji Nagar, Bangalore-51 and the same was leased out to one Srinivas who was carrying on the business in the name and style of "Elgin Talkies"; that subsequent to the death of Srinivas, his wife the first defendant continued the business as proprietrix on a monthly rent of Rs. 3000/ -, out of which a sum of Rs. 1,125/ -

was paid to the first plaintiff and sum of Rs. 1,875/- to the second plaintiff respectively, the plaintiffs initially had tiled an eviction petition in HRC. No. 974/1987 on the file of Xth Addl. Small Causes Judge, Bangalore u/s 21(1)(h) & (j) of the Karnataka Rent Control Act, 1961. The said petition was disposed of by order dated 3.12.1998 as being not maintainable and thereafter the plaintiffs determined, the tenancy by virtue of a legal notice dated 1.6.1999 and since the defendants failed to comply with the demand made by the plaintiffs, the suit for possession as well as for damages at the rate of Rs. 25,000/-p.ni was filed.

5. In response to the suit summons and notice issued by the trial court, defendant No. 1 did not tile written statement, but the second defendant tiled his written statement contending that, the plaintiffs had no right to demand possession of the suit schedule property as they were not the absolute owners of the same. It was stated that defendants 3 to 6 being the children of the original tenant. Sri. A.N. Srinivasan were arrayed as parties by way of abundant caution but in the absence of a juridical relationship, the suit was not maintainable as against them and there was no reason to pay damages and hence sought dismissal of the suit.

6. Defendant No. 3 also stated that two persons claiming independent rights could not issue a single notice and tile the suit and therefore, the requirement of notice u/s 106 of Transfer of Property Act was not complied with; that the plaintiffs had no locus standi to issue a single notice or to file the suit and therefore sought dismissal of the same. Defendant Nos. 4 & 5 adopted the written statement filed by the third defendant. Defendant No. 6 failed to appear and was placed exparte.

7. On the basis of the above pleadings, the trial court framed the following issues:

1. Whether plaintiff proves that the defendants were their tenants in respect of suit schedule premises bearing No. 6, 7, 8 and 9 on a monthly rental of Rs. 3000/- (i.e., Rs. 1125/- to plaintiff No. 1 and Rs. 1,875/- to plaintiff No. 2?

2. Whether plaintiffs have properly terminated the tenancy of the defendants?

3. Whether plaintiffs are entitled to any damages; If so at what rate?

4. Whether defendants prove that the suit of the plaintiff is bad for mis-joinder of parties and cause of action?

5. To what reliefs the plaintiffs are entitled?

6. What decree or order?

8. In support of their case the plaintiffs examined PW. 1 (second plaintiff) and got marked Ex. P1 to P34 while the defendants examined DW.1 (defendant No. 2/ appellant herein) and got marked Ex. D1 to D4.

9. On the basis of the material on record, the trial court decreed the suit and directed the defendants to hand over vacant possession of the suit schedule

premises to plaintiff No. 2, within three months from the date of judgment and to pay damages at the rate of Rs. 10,000/- p.m. Being aggrieved by the said Judgment and Decree, the second defendant only has preferred this appeal.

10. We have heard Sri. G.S. Visweswara, learned Senior Counsel for Sri. H.M. Muralidhar, Counsel for the appellant and Sri. B.G. Sridharan, learned Senior Counsel for M/s. Sriranga Associates for respondent No. 1 caveator.

11. It is submitted on behalf of the appellant that the trial court failed to appreciate that the notice of termination of tenancy was not valid in law in as much as plaintiff No. 1 & 2 were not co-owners of the property and therefore, they ought to have issued notices in their individual names. It was further submitted that the second plaintiff was not the owner of the schedule premises; that after the filing of the suit the first plaintiff executed the release deed in favour of the second plaintiff dated 10.1.2003 and thereafter filed an application to get her name deleted. The finding of the trial court with regard to ownership of the plaintiff in the suit schedule property was not in accordance with law and under the circumstances the Judgment and Decree is bad in law.

12. learned Senior Counsel also adverted to Section 59 of the Trust Act to contend that there was non-compliance of the said provision in the instant case and the second plaintiff being the beneficiary of the trust did not have any locus standi to file the suit particularly in the absence of compliance with Clause 12 of the Trust Deed. Learned Senior Counsel also relied upon certain decisions which shall be adverted to at a later stage.

13. Per contra, learned Senior Counsel for the first respondent while supporting the Judgment and Decree of the trial court has stated that the trial court has rightly answered issue No. 1 & 2 in the affirmative and issue No. 4 in the negative and has decreed the suit in accordance with law. The previous proceedings between the parties would also support the findings arrived at by the trial court; that the defendants are interested only in squatting on the property and thereby deprive the plaintiff (respondent No. 1 herein) the right to enjoy the property. He further submits that the contentions regarding non-compliance with the provisions of the Trust Act and the Clauses of the Trust Deed are technical in nature which in no way can support the case of the appellant or the other defendants. He therefore, submits that the appeal is devoid of merit: and hence requires to be dismissed.

14. Having heard the Counsel on both sides, the following points arise for our consideration:

1. Whether the notice issued by the plaintiff to the defendants is in accordance with law?
2. Whether the suit filed by the plaintiff is maintainable or in other words, whether plaintiff No. 2 had the locus standi to file the suit?
3. To what reliefs the plaintiffs are entitled to?

15. From the material on record, it is evident that the suit filed by the plaintiff was for ejectment and damages and the plaintiffs prayed for Judgment and Decree directing the defendants to surrender vacant possession of the suit schedule premises and to pay damages at the rate of Rs. 25,000/- p.m. from the date of the suit till handing over of possession. The said suit was tiled in the year- 1999 alter the order passed in HRC. No. 974/ 1987, dated 3.12.1998, tiled by the plaintiffs herein against the defendant Nos. 1 & 2 herein u/s 21(1)(h) & (j) of Karnataka Rent Control Act, 1961 was held to be not maintainable m view of the decision of the Supreme Court reported in JT 1998 (7) SC 110 as the suit schedule premises is a non-residential one fetching rent of more than Rs. 500/-. Therefore, the exemption u/s 31 of the Rent Control Act was applicable which ousted the jurisdiction under the Rent Control Act, 1961 in respect of the non-residential premises where rent was more than Rs. 500/-. After the said order the present suit was tiled after issuing a legal notice dated 1.6.1999 (Ex.P17).

16. It is also of significance to note that earlier, plaintiff No. 1 herein and the fattier of plaintiff No. 2, Sri. C.R. Nagappa had tiled a suit against the husband of the first defendant and one M.ismaU in O.S. No. 64/1972 on the tile of the City Civil Judge, Mayo Hall Unit, Bangalore seeking eviction of the defendants from the schedule property and for recovery of rent of Rs. 11,400/ - and for future mesne profits. The said suit was decreed with regard to only arrears of rent for Rs. 11,400/-, but was dismissed in so far as the other reliefs were concerned including the relief of eviction. Aggrieved by the said Judgment and Decree dated 30.11.1974, RFA. No. 7/1975 was preferred before this court, during the pendency of which, C.R. Nagappa died and I.A. No. IV for bringing his legal representative was tiled under Order XXII Rule 4 CPC and the same was allowed by this court by order dated 26.7.1976.

17. In support of his case, the second plaintiff who has deposed as PW.1 and power of attorney holder of plaintiff No. 1 has stated that he and the first plaintiff were the absolute owners of the schedule premises, that first plaintiff had 3/8th share and he had 5/8th share that his 5/8th share was by virtue of a settlement (sic) Trust Deed executed by his father, the original deed was produced at. Ex.P2 dated 14.4.1955, that 5/8th share was purchased by his father on 11.12.1929 and that the first plaintiff had got the remaining 3/8th share by virtue of an arbitration award which was decreed and earlier to her it belonged to her grand-father, Sri. C. Papanna, who had purchased the same by sale deed dated 25.5.1929. The schedule property was leased to Sri. Srinivasan and that the rent in respect of the property was apportioned between the plaintiffs. According to PW. 1, Ex.P5 is the order dated 26.7.1976 whereby he was brought on record as legal representative of his father in R.F.A. No. 7/1972 and that letters written by defendants are at Ex.P6 to P16, Ex.F17, legal notice, dated 1.6.1999 was issued by the plaintiffs and the postal acknowledgments are at Ex.P.18 to P23 and the defendants reply is at EX.H24.

18. In cross examination he has admitted that plaintiff No. 1 and he were

receiving rents separately to the extent of their shares and that he and plaintiff No. 1 were joint owners and that prior to Ex.F25, release deed dated 10.1.2003, he did not have any right in respect of 3/8th share owned by the plaintiff No. 1; that the khatha of the property was standing in his name to an extent of 5/8th share and in the name of plaintiff No. 1 to an extent of 3/8th share and that municipal taxes were being paid separately. However, he has denied that the defendants are tenants separately under him and under plaintiff No. 1, but he has stated that as joint owners the tenancy was terminated and not separately to the extent of their shares.

19. On a perusal of the documents got marked by the plaintiffs, it is seen that Ex.P2 is the Trust Deed dated 14.4.1955, under which Sri. C.R. Nagappa the lather of PW. 1, the author of the trust, created a separate and independent trust of the properties belonging to him for the benefit and enjoyment of his six sons and one daughter by assigning the property mentioned in the trust deed to the trustees upon trust including the suit schedule property. The trustees were given various powers for carrying out. of the objects of the trust and the trustees were to transfer the trust properties to the second plaintiff (PW.1) the beneficiary under the trust absolutely on his completing the age of 21 years and the trust properties were transferred to him as per Clause 12. Ex.P3 is the order dated 3.12.1998 passed in HRC. No. 974/1987 while Ex.P4 is the Judgment dated 30.11.1974 in G.S. No. 64/1972, Ex.P5 is the order dated 2.6.1982 passed in RFA. No. 7/1975 whereby it was submitted on behalf of the appellant in the said appeal that the matter was settled out of court and therefore the appeal be disposed of accordingly. Ex.F5(a) is the Order dated 26.7.1976 passed in RFA. No. 7/1975 bringing PW.1 herein as the legal representative of the respondent No. 1 in the said appeal. Ex.P6 to P16 are the letters dated 7.8.1976, 11.7.1977. 2.8.1980, 30.8.1987, 25.3.1988, 10.7.88, 10.2.91, 10.3.91, 10.4.91 by which rents were paid to both the plaintiffs herein. Ex.P17 is the copy of the legal notice issued on behalf of both the plaintiffs herein whereby the tenancy was determined on 30.6.1999, thereby calling upon the defendants to quit and deliver vacant possession of the schedule premises. Ex.pl8 to P23 are the postal acknowledgments with regard to the said notice and Ex.P24 is the reply notice. In the reply notice it has been stated that, the notice got issued by the plaintiffs is defective in as much as two persons claiming independent rights could not main tarn a single notice, locus standi of the plaintiffs to send the notice was questioned and relevant registered documents with regard to the locus standi of the plaintiffs to issue the notice were sought Ex.P25 is the release deed dated 10.1.2003 under which the first plaintiff released her 3/8th share in the suit schedule property in favour of the second plaintiff after receiving consideration of Rs. 12,00,000/-. Ex.P26 & P27 are the khatha certificates and the Assessment extract respectively while Ex.P28 is the copy of the lease deed dated 30.6.1951 entered into between the lather of PW.1 with Elgin Talkies, a partnership firm represented by one of its partners Sri. A.V. Natesha Mudaliar. Ex. P29 is the copy of the objection filed by the defendants to I.A. No. XIII filed by the plaintiffs in

the suit.

20. As opposed to this evidence, DW. 1 the appellant herein has stated in his evidence that the tenancy in respect of 5/8th share and 3/8th share of the plaintiffs are distinct and separate; that the first plaintiff is the owner of 3/8th share and the second plaintiff is the owner of 5/8th share; that the plaintiffs are not co-owners of suit schedule property and that a single suit tiled by them is not maintainable as they have distinct khatha and share. The Trustees had to file the suit in terms of Ex.F2 the Trust Deed and hence the suit filed in the name of the second plaintiff was not maintainable; that the notice also was not in accordance with law, that since the plaintiffs received the rents separately, the termination of tenancy also had to be separate and hence sought for dismissal of the suit. A copy of the petition tiled in HRC. No. 974/ 1987 before the Court of Small Causes, Bangalore prior to the institution of the present suit was marked as Ex.D1. Ex.D2 is the deposition of C.N. Kumar in HRC. No. 974/1987 while Ex.D3 is the deposition of plaintiff No. 2 in the said case, Ex.D4 is the deposition of plaintiff No. 1 in the said case.

21. In his cross-examination, DW.1 has stated that since 1890 Elgin Theatre was run by holding drama shows by his grand-father who died in the year 1960 and thereafter the theatre was run by him and his father until his father passed away. Elgin theatre was thereafter standing in the name of the first defendant; that according to him 5/8th and 3/8th share in the theatre have been divided but he is not aware if it is not divided by putting a wall; that the khatha in respect of the property was split up in the said ratio. According to him, it is not true that the plaintiffs are the joint owners of the suit schedule property; that the cheques at Ex.P9 to P16 were issued in the name of both the plaintiffs separately; that he is not aware about the release deed executed in favour of plaintiff No. 2 on 10.1.2003; he does not know who is C.N. Kumar. In further evidence by way of examination-in-chief he has stated that Ex. P26 and P27 are documents which came into existence subsequent to the tiling of the suit; that a release deed is not permissible between joint owners having distinct ownership of the premises but it is permissible between owners who do not have distinct shares separately made out. Plaintiff No. 2 had not succeeded to the estate of Nagappa and as plaintiff No. 1 was not the owner of the property she could not have executed the release deed.

22. In farther cross-examination he has stated that he did not receive any legal notice sent by the Counsel for the plaintiff nor did he receive any intimation upon the execution of the release deed. In Ex.D1 which is the petition in HRC. No. 974/1987, the grounds for seeking eviction u/s 21(1)(h) & (j) of the Act are stated. Ex.P20 is the deposition of Sri. C.N. Kumar who is the younger brother of the plaintiff No. 2 herein wherein he has admitted that the schedule property belong to the petitioners in the said case namely the plaintiff's in the present case.

23. At the outset it is to be noted that this appeal has been filed only by

defendant No. 2 in the suit and that the other defendants have not preferred any appeal by challenging the Judgment and Decree impugned. It is also not in dispute that plaintiff No. 1, had 3/8th share in the suit schedule property and plaintiff No. 2 had 5/8th share and that plaintiff No. 1 has executed a release deed in favour of plaintiff No. 2 vide Ex.P25; that after the said fact was brought to the notice of the court, plaintiff No. 1 was deleted in the array of parties by order dated 9.9.2003 and the suit was continued by plaintiff No. 2 only. It is also borne out from the record that the suit schedule property is also a part and parcel of the trust property to an extent of 5/8th share. That the lease was commenced from 30.6.1951 between the second plaintiff's father and latter defendant Nos. 3 to 6.

24. Point No. 1:

With regard to the requisites of a valid notice as per Section 106 of Transfer of Property Act read with Section 111 of the said Act, notice must be clear and unambiguous and definite though no particular form of notice has been prescribed u/s 106 of the Act. The lessor has no right to terminate the tenancy by giving notice to quit only in respect of a part of the demised premises. If the tenancy is broken up, it is quite clear that it must be terminated as a whole. Another requirement is that the notice should be in writing and should be signed by the person giving it or by somebody empowered or entitled to act on behalf. A notice given by the sons on the death of the father is valid. Where a person has general authority to deal with the property of the owner, a notice to quit given by him is also valid. At common law where a person authorizes another to sign for him, the signature of the person so signing is the signature of the person authorizing it. Thus a notice to quit signed by an authorized agent in the principal's name without indicating that the signatures appended by an agent is also valid. A notice once given in compliance with provision of Section 106 of T.P. Act enures to the benefit of successors in title of the lessor or the lessee as the case may be. Where there are more than one lessor, the notice to quit must be given by or on behalf of all, but where a co-sharer gives notice on behalf of himself and the other co-sharers, stating that he is acting for them, the notice is valid.

25. Further a person who has entered into possession as tenant cannot deny the landlord's title or the landlord-tenant relationship. The co-owner can issue to a tenant notice to quit and file an eviction suit. The tenant cannot object particularly where tenant himself has been paying rent to the co-owners Girraj Kishore Vs. Dr. Trilokinath Vimal, . Where the landlords right belong jointly to several persons, a suit to eject a tenant can only be brought by all the co-owners suing jointly as plaintiffs and all the joint landlords must join in giving notice to the tenant before determining tenancy. Notice to quit is only one of the modes in which tenancy can be determined. u/s 111 the lease terminates on the expiry of a notice to determine the lease or to quit or of intention to quit. A tenancy is determined by the service of notice in the manner provided u/s 111(g) read with

106 of Transfer of Property.

26. The tenant who is let into possession is estopped from denying the landlord's title and the said principle is equally applicable to tenants, who, though not let into possession by the landlord acknowledged the landlord by executing a deed or by paying rent or otherwise.

27. In an action of ejectment by the landlord the tenant can only show that the title of the landlord has determined, but he cannot plead that the landlord had no title to grant the lease when possession was given nor can he defend the suit on the ground that, he has acquired an outstanding title by adverse possession to the landlord. A tenant who has been let into possession cannot deny his landlord's title, however, defective it may be, so long as he has not openly restored possession by surrender to his landlord. In the case of a tenant who had not been let into possession by his landlord, he can, in addition, take the pleas of ignorance, defect of title, fraud, misrepresentation or co-ersion. The tenant may however show that his landlord's title has expired or determined either by act of parties or by operation of laws. Section 116 however, does not stopped the tenant from questions claiming his co-share of the landlord but the tenant who has brought on land by the plaintiff and holding under lease granted by him cannot say that the latter is his sole landlord. The estoppel disappears only if the landlord title is extinguished at the time of demise operates even alter the termination of the tenancy.

28. In the instant case Ex.P28 is the lease deed dated 30.6.1951 which clearly states that the father of plaintiff No. 2 had 5/8th share and the other owner, P. Hanumantha Reddy had 3/8th share in the leased property. Vinubhai Patel and A.V. Natesh grand father of the appellant were the lessees under the said lease deed. The lessors were described as joint owners. As per Ex.P17 dated 1.6.1999, the lease has been terminated and the termination notice demanded that the defendants hand over possession of the premises on or before 30.6.1999, Considering the fact that there was an undivided share to an extent of 3/8th share and 5/8th by the plaintiffs in the suit schedule property, the common notice issued by them cannot be held to be contrary to Section 106 of Transfer of Property Act. Since the demised property has not been divided by metes and bounds ill the ratio of 3/8th and 5/8th share between plain tiff Nos. 1 & 2 as on the date of termination of lease. Therefore, point No, 1 is answered against the appellant.

29. Apart from the above reason it is of significance that release deed Ex.P25 by which plaintiff No. 1 released her 3/5th share in favour of plaintiff No. 2 who became the sole owner of the suit schedule premises with effect from the date of the said release deed, also in our considered view has given the full competence to plaintiff No. 2 not only to issue notice at Ex.P17 but also to maintain the suit. However, it is the contention of the learned Senior Counsel for the appellant that the release deed made by the plaintiff No. 1 in favour of plaintiff No. 2 is not in accordance with law and therefore, plaintiff No. 2 could not have maintained the

suit.

30. In the case of Kothuri Venkata Subba Rao and Others Vs. District Registrar of Assurances, Guntur, , and several other decisions, it has been held that in order to determine the nature of an instrument, neither the nomenclature nor the language which the parties may choose to employ in framing the document is decisive. What is decisive is the actual nature and the character of the transaction intended by the executant. The intendment of the parties to the instrument, and the purpose of the transaction for which the instrument is brought into existence, the recitals or the language employed in the instrument should be given paramount considerations for judging whether a particular document is a deed of release or a deed of conveyance. In the said decision it has been held that a deed of release is an instrument by which one of the co-owners releases or renounces his interest in the specified property and the result of such release would be the enlargement of the share of the other co-owner, it is also well settled that the deed of release need not be gratuitous only, even if it is supported by consideration, still it can be treated as a deed of release if the intendment of the parties and the purpose of the transaction satisfy the requirements of a deed of release in a case of the property owned by the co-owners.

31. On the aspect of a relinquishment by a co-owner is the decision of the Full Bench of Madras High Court in the case of Board of Revenue and Another Vs. V.M. Murugesu Mudaliar of Gudiyatham, , wherein it has been held that each co-owner in theory is entitled to enjoy the entire property in part or in whole. It is therefore not necessary for one of the co-owners to convey his interest, to the other co-owners, but it is sufficient if one of the co-owners releases his interest and as a result of such release would be the enlargement of the share of the other co-owner. In such a case there need be no conveyance as such by one of the co-owners in favour of the other co-owners. There can be no release by one person in favour of another who is not already entitled to the property as the co-owner.

32. The said decision has been followed in another subsequent Full bench decision of the Madras High Court in the case of Chief Controlling Revenue Authority, Referring Officer Vs. Rustorn Nusserwanji Patel, . In the said case the releasor and the releasee were brothers and they were having equal shares in the property as co-owners. The releasor relinquished his undivided half share and the interest in the entire property in favour of his elder brother for the discharge of the mortgage deed, which formed the consideration for the release. The Full Bench took a view that the releasor could relinquish his interest in favour of the other co-owner (releasee) for consideration. In the said decision it was held that where two parties are co-owners when the title cannot be demarcated or fixed with reference to any particular part of the property, in other words, where there is a joint ownership and possession that can only be severed by partition where there is already a legal right in the property vested in the

releasee and the release would operate to enlarge that light into an absolute title for the entire property as far as the parties are concerned. Therefore, under law, release can be made by one co-owner in favour of another co-owner where title to the property already exists and he is just as much seized of the whole as a releasee or himself.

33. In the case of Smt. Balwant Kaur and Others Vs. State of U.P., it was observed after referring to the Full Bench Judgment of the Madras High Court, that like a joint owner a person who owns the property can also execute a release deed in favour of another co-owner and when such a deed is executed the share of the co-owner in whose favour the property is released gets augmented and in such a case it is not necessary for the executant to execute a deed of conveyance. It is thus clear that in law, it is open to a person holding property as a tenant in common to execute a release deed in favour of the other co-owner renouncing his claim to interest in the un-partitioned property and for this purpose it is not necessary for him to execute a deed of conveyance. In Board of Revenue and Another Vs. V.M. Murugesu Mudaliar of Gudiyatham, it has also been declared that it is not necessary for one of the co-owners to convey his interest to the other co-owners as it is sufficient if one of the co-owners releases his interest and there need be no conveyance by one of the co-owners in favour of the other co-owners.

34. In Kothuri Venkata Subba Rao and Others Vs. District Registrar of Assurances, Guntur, a Full Bench of the Andhra Pradesh High Court has also held that if there are two co-owners as in the case of Chief Controlling Revenue Authority, Referring Officer Vs. Rustorn Nusserwanji Patel, and one of the co-owners relinquishes his share in favour of the other, the result of the relinquishment is the enlargement, of the share of the other co-owner, if one of the co-owner who is the releasor merely mentions that he relinquishes his share or his interest in the property, instead of using the expression "in favour of the other co-owner" namely the enlargement of the share of the co-owner, it is sufficient in the instant case plaintiff No. 1 has relinquished her 3/8th undivided share in favour of plaintiff No. 2 who had a 5/8th undivided share in the property and as a result the ownership of plaintiff No. 2 in the suit has become complete and whole.

35. Hence we are of the considered view that the document of release deed marked as Ex.P25 is in accordance with law and therefore a valid document and hence plaintiff No. 2 had the locus standi to issue the notice of termination and also file the suit. Therefore, the submission of the learned Senior Counsel on the validity of the release deed is negatived. Even if the plaintiff No. 2 had not succeeded to the suit schedule property alter the extinguishment of the trust, and as legal representative of his father he could still maintain the suit as the owner of 3/8th share in the suit schedule property, by virtue of the release deed executed by plaintiff No. 1 in favour of plaintiff No. 2.

36. Point No. 2:

It is contended by the learned Senior Counsel appealing for the appellant that since 5/8th share of the suit schedule property is trust property, plaintiff No. 2, who is only a beneficiary under the trust has no locus standi to maintain the suit. He relies upon Section 59 of the Trust Act in support of his submission. u/s 59 of the Indian Trust Act, 1882 where no trustees are appointed or all the Trustees die, disclaim or are discharged, or where for any other reason the execution of a Trust by the Trustee is or becomes impracticable, the beneficiary may institute a suit for the execution of the Trust and the Trust shall, so far as may be possible, be executed by the Court until the appointment of a Trustee or new Trustee. The conditions for invoking Section 59 are as follows: that there are no trustees appointed or all the trustees died disclaim or discharge in respect of a trust or where for any other reason, the execution of the trust by the trustee is or becomes impracticable, then the beneficiary may institute a suit for the execution of the trust and so far as may be possible be executed by the court until the appointment of a trustee or new trustee. Therefore, it is a condition precedent that the execution of the trust must become impossible for any of the reasons stated in Section 59 in which event, the beneficiary may institute a suit for the execution of the trust.

37. In the case of Lakshmi Ammal Vs. Sun Life Assurance Co. of Canada, it has been held that it is only where the execution of the Trust has become impracticable, the beneficiary can institute the suit for the execution of the Trust. In the said case it was not proved that the execution of the Trust had become impracticable. It was held that the plaintiff was not entitled to rely on Section 59 of the Indian Trust Act to institute a suit in her name for the enforcement of the Trust.

38. In the case of Kumaraswamy Goundan v. Palanisamy Goundan and Ors. reported in AIR 1938 Mad 668 it has been held that in a chit transaction the security bond made it clear that the position of the stake holder was that of a trustee while taking mortgages from the successful bidder. The stake holder was adjudged insolvent and his properties were sold by auction by Official Receiver. The stake holder ceased to perform and rendered himself incapable of performing the duties that devolved upon him as a trustee and hence a suit u/s 59 was held to be maintainable by the beneficiaries.

39. In the case of Thangachi Nachial and Another Vs. Ahmed Hussain Malumiar and Others, it has been explained that the beneficiary's right to sue embodied in Section 59 of the Trust Act 1882 is based on the principle that "a Trust shall not fail for want of a trustee". A suit filed by the plaintiff who was the son of the founder of the Trust and who was in the line of trustees appointed by the founder and interested in seeing that the properties are not lost by the trust and who was also a beneficiary of the surplus one-fourth which has to be distributed by the trustee amongst the heirs of the original founder, for possession of the wakf properties alienated by the trustee was held to be maintainable though any recovery of possession ordered in his favour could only be on behalf of the trust.

In die said case another decision in die case of Maulvi Muhammad Fahimul Haq v. Jagat Ballay Ghosh reported in AIR 1923 Pat 475 was referred to in which it has been held that the beneficiary of die trust in respect of a Muhammadan wakf, interested in die maintenance of a mosque or other charitable institution, may, without having recourse to Order 1 Rule 8 of CPC and without suing in a representative capacity, on behalf of die other beneficiaries, sue for recovery of possession of property, wrongfully alienated by die trustee, and for the incidental declaration that the properties are the subject of the trust and that they cannot be alienated.

40. Further, Section 77 of the Trust Act deals with extinguishment of a trust due to certain contingencies. u/s 77, a trust is extinguished when its purpose is completely fulfilled, if a provision is there in the Trust Deed that the Trust has come to an end on wife's death or sons attaining certain age whichever is later, then the Trust is extinguished upon the death of a wife or son attaining the age whichever is later and the trustee stands discharged, but liability to render accounts remains vide S. Darshan Lal Vs. Dr. R.E.S. Dalliwall and Another, , in the present case, in Clause 12 of the Trust Deed (Ex.P2) it is stated that the trustee or trustees shall transfer the schedule transferred properties to Sri. C.N. Revanna, the beneficiary under the Trust absolutely along with any accumulations of money, shares, dividends, stocks, acquisitions of movable or immovable properties, profits and rents etc., on the said C.N. Revanna (plaintiff No. 2) completing the age of twenty one years. As per Clause 17 of the Trust deed, the trust shall be in force till the beneficiary mentioned above completed 21 years and the trust property were transferred to him as per Clause 12.

41. It is however, the contention of the Counsel for the appellant that in the absence of a transfer by the trustees in favour of the beneficiary, the latter had to apply to the court u/s 59 of the Act for the execution of the Trust and that the beneficiary could not have tiled the present suit as such. In support of the said proposition learned Senior Counsel for the appellant has relied upon the following decisions.

42. In the case of Baisnab Das Sen Vs. Bholanath Sen and Another, the facts were that the trustee of the suit premises appointed under Deed of Trust had instituted an ejectment suit for eviction from part, of the premises and obtained a decree. The decree was affirmed in the first appeal and when a second appeal was pending the beneficiary filed an application and was added as a respondent as he was considered desirable. After the ejectment decree was affirmed in the second appeal, the beneficiary sought for the execution of the decree by filing an application. It was held that the, beneficiary had no right to execute the decree in place of or jointly with the trustee and therefore, allowed the application filed by the Judgment Debtor u/s 47 of CPC, In the said decision it was observed that the intention of the settlor as expressed in the trust deed was that the trustee would convey and transfer the property in question on his attaining majority. In the absence of such conveyance or transfer by the trustee of the suit property,

the beneficiary could not execute the decree u/s 146 read with Order XXI Rule 10 of CPC. It was further observed that since there was no assignment, creation or devolution of interest in the property during the pendency of the suit as required by Order XXII Rule 10 of CPC nor has the decree being assigned as mentioned in Order XXI Rule 16 of CPC, the right of the beneficiary was the right to call upon the trust to administer the property so as to give the beneficiary his dues according to the provisions of the trust u/s 55 of the Trust Act or in a proper case to convey the properties to the beneficiary u/s 56 of the Act. In the said case the court found that there was no assignment, creation or devolution of interest in the property during the pendency of the suit as required by Order XXII Rule 10 of CPC nor was the decree assigned as mentioned in Order XXI Rule 16 of CPC. Hence it was held that the beneficiary had no right to execute the decree in place of or jointly by the decree holder, i.e., the trustee of the said trust.

43. The said decision can be distinguished on facts as in the instant case in the previous round of litigation between the parties as far back as on 26.7.1976 in RFA. No. 7/ 1975 the present appellant's father who was the appellant in the said appeal had filed an application under Order XXII Rule 4 of CPC for bringing on record, the legal representative of the deceased father of plaintiff No. 2 herein and the same was allowed mid plaintiff No. 2 herein was brought on record. Under the circumstances the defendants cannot at this point of time be permitted to raise a contention that the second plaintiff herein had no locus standi to maintain the instant suit. Further the fact that the in the previous round of litigation between the parties, the second plaintiff was brought on record as legal representative stops the defendants from contending that plaintiff No. 2 had no locus standi to file the suit. For the aforesaid reasons, the decision relied upon by the Counsel for the appellants is not applicable to the facts of the present case.

44. More over, Clause 17 of the Trust Deed has clearly stated that the trust would be in force till the beneficiary (plaintiff No. 2) herein completed the age of 21 years in which event the trust properties were to be transferred to him as per Clause 12. Hence when plaintiff No. 2 completed 21 years of age, the purpose of the trust itself was fulfilled and it was a case of extinguishment of the trust u/s 77 of the Act. Also the office of the trustees was vacated by the death of all but one of the trustees. Even otherwise on the beneficiary completing 21 years of age the trustees were discharged from their office on account of the extinguishment of the trust as envisaged u/s 77 of the Act. Therefore, in substance, when plaintiff No. 2 completed 21 years of age, it also coincided with the extinguishment of the trust itself, the transfer of trust properties to the beneficiary as per Clause 12 also did not take place, as such a transfer would have become necessary if the trustee or trustees had survived the beneficiary, in which event the trustees would have had to transfer the schedule trust properties to the beneficiary or if the beneficiary died in intestate before the age of 21 years, to others as per Clause 13. The act of transferring the trust properties to the beneficiary did not happen under the terms of the trust Deed.

Hence, in the absence of any express transfer of the trust properties in the name of the beneficiaries, the trust property stood reverted back to the author of trust as there was extinguishment of trust

45. In the instant case what is of significance is that though the Trust Deed came into existence on 14.4.1955 and 5/8th share of property of C.R. Nagappa, the author of the trust in the schedule premises which was leased to the appellant's father herein was transferred to the trust, nevertheless O.S. No. 64/1972 was filed by the author of the trust in his own name, for arrears of rent and possession along with plaintiff No. 1 herein wherein it was stated that plaintiffs in O.S. No. 64/1972 were the joint owners of the schedule property despite having a specific undivided share and that for the purpose of convenience the tenants namely the defendants herein were paying rents separately to each of the plaintiffs. The tenancy was terminated by a legal notice dated 8.8.1972 calling upon the defendants to hand over possession on the expiry of 31.8.1972. After the filing of written statement one of the issues raised in the said suit was whether the notice terminating the tenancy was good and an additional issue was whether defendants prove that there is waiver of notice. The trial court answered both the issues in the affirmative and held that the defendants were in arrears of rent to an extent of Rs. 11,400/-. It was further held that the evidence of the defendants proved that there was waiver of notice issued by the plaintiffs, by virtue of conduct of plaintiff therein by acceptance of rent, subsequent to the issuance of notice in terms of Section 116 of the Transfer of Property Act and held that the defendants had continued to be a tenant holding over. Being aggrieved by the said Judgment and Decree the defendant in the said suit filed RFA. No. 7/1975 and by judgment dated 2.7.1982, it was recorded that since the matter was settled out of court, the appeal was disposed of accordingly.

46. From the above material it is noticed that despite the 5/8th share of plaintiff No. 2 being a part of the trust property, nevertheless it was not the trustees who initiated O.S. No. 64/1972 along with plaintiff No. 1 herein. On the other hand, C.R. Nagappa, the father of plaintiff No. 2 herein and author of the trust filed the suit in his own name along with plaintiff No. 1 herein and in the said suit, after decree and during the pendency of RFA. No. 7/1975, on the death of C.R. Nagappa, by order dated 26.7.1976, the application filed to bring the legal representatives of C.R. Nagappa on record under Order XXII Rule 4 was allowed and plaintiff No. 2 herein was brought on record as Legal Representative of C.R. Nagappa.

47. In this context it would be relevant to refer to the decision of the Madras High Court in the case of Vadivelu Mudaliar Vs. C.N. Kuppuswami Mudaliar, wherein it has been held that on all the trustees failing to administer the trust or repudiating trust property dedicated to the trust would re-vest in the disponent or his legal representatives and if he is dead and in such cases they become by operation of law the trustees for the purpose of administering the trust. It is only when the legal representatives are not available or do not take charge of the

trust: for some reason or the other, then it will be that the court to interfere for the purpose of appointing of tins tee or trustees for the administration of trust.

48. Order XXII Rule 1 CPC deals with there being no abatement of the suit if the right to sue survives. Order XXII Rule 2, 3 and 4 deal with devolution of interest on the death of parties to the suit, while Order XXII Rule 10 deals with the devolution of interest in a representative character.

49. Order XXII Rule 10 of CPC is based on the principle that the trial of a suit cannot be brought to an end merely because of the interest of party in the subject matter during the pendency of the suit comes to an end. But that such a suit may be continued with the leave of the court against the person acquiring interest. Rules 2, 3 & 4 of Order XXII deal with the devolution of interest on the death of the parties to the suit. Rule 10 of Order XXII deals with devolution of interest other than those mentioned in Rules 2, 3 & 4 of Order XXII or Rules 7 & 8 of Order XXII. Rules 2, 3 & 4 relates to cases of devolution of interest on the death of plaintiff or defendants. These rules however, do not apply where a suit is tiled in a representative character. The word "interest" in this Rule means interest in the property or the subject matter of the suit. The interest referred to in Rule 10 is the interest of the person who was a party to the suit. The interest includes any persuasive right to sue and not merely an interest in tangible property. When there is devolution of interest on the death of a party Order XXII Rule 4 applies and not Order XXII Rule 10 of CPC and the right to sue survives, but when the devolution of interest is in a representative character, then Order XXII Rule 10 CPC applies.

50. What is apparent is that as on the date of execution of the Trust Deed (Ex.P2) on 14.4.1955 plaintiff No. 2 was only 13 years of age and therefore, it would mean that he was born in the year 1942, in winch event he would have completed 21 years in the year 1963 and the extinguishment of the trust had taken place then. O.S. No. 64/1972 was filed when plaintiff No. 2 was 30 years after the extinguishment of the trust by the author of the trust, as a joint owner of the property along with plaintiff No. 1 herein. When O.S. No. 64/1972 was filed plaintiff No. 2 herein was 30 years of age and when he was brought on record as legal representative of C.R. Nagappa in the year 1976 he was 34 years. What follows is that after plaintiff No. 2 herein attained 21 years of age, there was extinguishment of the trust. But in the absence of there being any express transfer of property of the trust in favour of the beneficiary of the trust by the trustees, it has to be held that the trust property reverted back to the author of the trust. Under the circumstances the author of the trust C.R. Nagappa was entitled to file O.S. No. 64/1972 in his own name and the said circumstances being recognized, on his death plaintiff No. 2 herein as legal representative was brought on record by this court m RFA. No. 7/1975. Hence it does not lie in the mouth of the appellant to now contend that plaintiff No. 2 had no locus standi to file the suit as a beneficiary of the trust in the absence of trustees. The suit tiled by plaintiff No. 2 is not as a beneficiary of the trust, but as a legal representative

of his father in whose name the suit schedule property stood after the extinguishment of the trust. Hence we answer issue No. 2 against the appellant and hold that the suit filed by plaintiff No. 2 was maintainable.

51. In the case of AIR 1931 196 (Privy Council) it is held that where the property is vested in a trustee, the "owner" must be the trustee. The right of the beneficiary being in a proper case to call upon the trustee to convey to him. The said decision is not applicable to the facts of the present case since on the extinguishment of the trust, the beneficiary had not succeeded to the trust properties and there was reversion of the trust property in the name of the author of the trust.

52. In the case of Amrit Lal Kohli and Another Vs. Harbans Lal Kohli and Others, it was held that, where the beneficiaries as well as the trustees pleaded that the purpose of the trust, had been fulfilled, the suit for declaration with the trust so granted had to be decreed.

53. In the case of Uma Ray v. Smt. Meghamala Dev and Anr. reported in AIR 1989 cal 166 (Calcutta), it has been held that where the suit premises being managed by the trust, beneficiary cannot maintain suit for eviction and that the trustee in law is the legal owner. The said decision is in the context of a trust, which is in existence and managed by trustees and does not apply to the present case where there has been extinguishment of the trust as explained earlier.

54. In the case of Ranjit Kumar Ghosh and another Vs. Sirish Chandra Bose and others, the facts were that as per Clause (iv) of the Trust Deed after the determination of the Trust and upon the death of the beneficiaries, the trustees or their heirs would forthwith convey and transfer the trust property to the then surviving heirs of one Akshoy Chandra Bose, the husband of the settler. In the said case of the beneficiaries named in the trust had expired and therefore, the property had to be conveyed as per Clause (iv) and the Hon"ble Supreme Court held that the question of appointment of a trustee did not survive.

55. In the case of AIR 1931 196 (Privy Council) it has been held that the beneficiary cannot be the owner of the property vested in a trust that the trustees is the owner of the trust property and the right of the beneficiary is to call upon the trust to convey the property to him. In M.M. Nagalinga Nadar Sons Vs. Sri Lakshmi Family Trust and K.P. Manian, it has been held that when a trust is extinguished u/s 77 and Clause in the trust deed stipulates that the trust shall stand terminated only after the trustees render true account of all the dealings during the period of trust, the trust got extinguished only on the completion of what is set out in that clause. It was held that even though the terms of the trust deed did not contemplate any deed of conveyance, the beneficiaries could not file eviction petition as trust, was in existence and eviction petition could be tiled only by the trustees. In Kishore Joo Vs. Guman Behari Joo Deo, it has been held that the trustees would join to file an application to execute the decree obtained on behalf of the idol of a temple. However, it has also been observed in the said

case that it is settled law that it is Shebait alone who can file a suit. But it is also equally well settled that in exceptional circumstances, persons other than Shebait can institute a suit on behalf of the idol. In AIR 1989 Cal 166 (Calcutta) (Uma Ray v. Sm. Meghamala Dev and Anr.), it has been held that where suit premises is managed by a trust the beneficiary cannot maintain suit for eviction as trustee in law is the legal owner.

56. The above cited decisions on behalf of the appellant are not applicable to the facts of the present case since we have held that the trust was extinguished and the trust property had stood reverted to the author of the trust and that plaintiff No. 2 as a legal representative of the author of the trust was entitled to law to maintain the suit in question.

57. In CRF. No. 602/1974 decided on 1.7.1974 it has been held that where there is a dispute as to whether particular person is a legal representative or not, any decision given by the court on application under Order XXII Rule 4 CPC does not operate as res-judicata, such a decision is not conclusive. The above decision is not applicable to the present case as no dispute is raised as to whether plaintiff No. 2 was a legal representative of C.R. Nagappa, who had tiled O.S. No. 64/1972, Accordingly Point No. 2 is answered in the affirmative and against, the appellant.

58. The trial court has noted that there was no plea in the written statement regarding the trust property and that the evidence and arguments without specific pleadings in the written statement were of no value. With regard to the validity of the notice at Ex.P17 issued jointly by the plaintiffs, trial court has held that the plaintiffs ancestors had acted as joint owners of the property and not as co-owners and therefore there is no reason to hold that the termination notice is defective. With regard to the validity of the registered release deed at Ex.P25 considering the fact that the plaintiffs had 3/8th and 5/8th undivided share in the suit schedule property and therefore plaintiff No. 2 had a preexisting right in, the suit schedule property which was undivided right with plaintiff No. 1 and the relinquishment made by plaintiff No. 1 in respect, of her 3/8th share in favour of plaintiff No. 2 has been upheld by the trial court. Similarly with regard to the claim made for damages at the rate of Rs. 25,000/- p.m. considering the value of the property and the corporation tax a sum of Rs. 10,000/- is assessed as the damages which finding we do not wish to interfere since the said finding is not challenged seriously by the appellants. Hence we confirm the Judgment and Decree passed by the that court.

59. We now proceed to dispose of the Writ Appeal, which has been connected with RFA. No. 389/2007.

60. In the writ petition, the order dated 29.12.2003 made by the District Magistrate, Bangalore (Second respondent in the writ appeal) and the order dated 29.11.2005 made in appeal No. 367/2004 by the Karnataka Appellate Tribunal were challenged and in addition a writ in the nature of mandamus

directing the second respondent not to re-grant licence to the first respondent with regard to Elgin Theatre was sought. In the said writ petition, learned single judge held that prayer No. 1 & 2 had become infructuous and a direction was issued to the licencing authority to issue a licence of being satisfied about the possession of the building as per Rule 6 of the Karnataka Schemes (Regulation) Rules 1971. The licencing authority was also directed to give opportunity to all concerned parties before taking a decision in the matter of granting licence to the first respondent.

61. The said order has been challenged in this writ appeal by contending that the tenancy in respect of the premises was determined with effect, from 30.6.1999 and that respondent No. 1 is in unlawful possession of the premises and that O.S. No. 15842/1999 filed by the petitioner has been decreed by order dated 30.11.2006 and hence the mandatory requirement under Rule 6 is not established in as much as the first respondent is not in lawful possession of the premises and under the circumstances, the directions issued by the learned single Judge have now become in-effective.

62. Since RFA. No. 389/2007 tiled against the Judgment and Decree dated 30.11.2006 in O.S. No. 15842/1999 has been connected with this writ appeal and we have confirmed the said judgment and decree granted in the said suit which was filed for seeking possession of the suit schedule premises from the defendants and for damages, we are of the considered view, the case of the first respondent in the writ appeal does not come within the scope of Rule 6. Under the circumstances the directions issued by the learned single judge in the writ petition have now become infructuous. Hence the order dated 27.3.2006 is set aside by allowing this writ appeal.

63. For the aforesaid reasons RFA. No. 389/2007 is dismissed with costs and Writ Appeal No. 740/2006 is allowed without any order as to costs. Office is directed to draw up a decree accordingly.