
(1995) 07 GUJ CK 0056
In the Gujarat High Court

Bakarali Fatehali and Others

APPELLANT

Vs

Mohammedkasam Haji Gulambhai

RESPONDENT

Date of Decision : 28-07-1995

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13(1)(e)

Citation : (1996) 1 GLR 96

Hon'ble Judges : Sharad D. Dave, J

Bench : Single Bench

Judgement

S.D. Dave, J.—This is a Civil Revision Application for and on behalf of the tenants, who have suffered a decree of eviction, on the count of the sub-letting or the assignment qua the suit premises.

2. The Rent Suit No. 171 of 1978 came to be instituted by the plaintiff-landlord against the original defendant-tenant, Bakarali, who had died during the pendency of the suit, leaving behind the heirs and legal representatives who figure as the defendants in the proceedings. The case of the plaintiff in brief, was that, he is the owner and the landlord of the property situated at Raopura, Baroda (Vadodara) and that the defendant No. I, was the tenant in a shop on the ground floor at the monthly rent of Rs. 70/- and that the monthly tenancy was to be reckoned according to the English Calendar. It has been averred that defendant No. 1 who was the tenant of the premises in question was, guilty of sub-letting the premises or of a transfer or assignment of his rights qua the premises. The whole endeavour on the part of the plaintiff-landlord was to establish that by certain successive partnership agreements creating partnership and the dissolution of the same, ultimately, the defendant No. 1 the original tenant was able either to sub-let the premises to his sons or was able to assign or transfer his interest in the tenancy to them. The defendants had appeared before the trial Court and had challenged the suit by filing a joint written Statement at Exh. 10 inter alia, contending that the suit is frivolous and that there has not been any sub-letting or transfer or assignment of the tenancy

rights and that the contractual rent was excessive and therefore, the Court should proceed ahead to fix the standard rent. The trial Court had framed the issues at Exh. 14 and upon the appreciation of the oral and documentary evidence on record has come to the conclusion that the plaintiff was able to establish that he has become the sole owner and the landlord of the premises by virtue of an oral Hiba made in his favour by his father. The trial Court was also of the view that there was an unlawful sub-letting or the assignment or transfer of the defendant No. 1 's interest in favour of the sons of the defendant qua, the suit premises. This view taken by the trial Court has resulted into the decreeing of the suit vide the judgment dated September 5, 1984. The defendants were called upon to hand over the vacant possession of the suit premises to the plaintiff on or before October 13, 1984. The said judgment and consequent decree were taken in appeal before the District Court at Baroda, by filing Regular Civil Appeal No. 312 of 1984 which came to be dismissed by the learned 2nd Joint District Judge, Baroda, vide the judgment dated November 6, 1993. The said judgment and the consequent decree of the Appellate Judge have been impugned in the present Civil Revision Application before me.

3. The question to be decided is as to whether the transactions which are in form of agreements executed between the original defendant and his sons in succession, would be able to establish either the sub-letting or the transfer or the assignment of the rights of the original defendant-tenant qua the suit premises in favour of his sons. The question appears to be calling for a decision on the basis of the factual and legal position. This would necessitate a detailed reference to the case of the plaintiff as demonstrated in the plaint and that of the defendants put forth in a joint written statement at Exh. 10. The plaintiff Mohammad Kasam Haji Gulambhai, has averred that the suit premises, comprising a shop is situated on the ground floor of certain building belonging to him at Raopura locality in the town of Baroda and defendant No. 1 happens to be the statutory tenant and pays the rent at the rate of Rs. 70/- per month. It is further averred that the premises in question belonged to the father of the plaintiff and that during that time also the defendant No. 1 was the tenant in respect of the suit premises but that the plaintiff has become the owner and the landlord of the premises by virtue of a gift. It shall have to be appreciated that the plaintiff nowhere states in the pleadings that he has become the owner or the landlord of the premises by virtue of an oral Hiba. As it would become evident later on, the question regarding the validity and the legality of a valid Hiba or even an establishment of the fact of the Hiba goes or recedes in an insignificant area as the requisite contentions in this respect were never raised before the appellate Court. Nonetheless, while appreciating the case of the plaintiff put forth in the pleadings, it shall have to be noticed that there is absolutely no mention regarding the plaintiff becoming the owner or the landlord of the premises under an oral Hiba. All whatever has been said is that, he has become the owner and the landlord of the premises because of a certain gift made by his father.

4. So far as the case regarding the sub-letting of the premises or transfer or

assignment qua the tenancy right is concerned, it has been averred that the defendant No. 1 has sub-let the suit premises to his two sons, namely, Alibhai and Imranbhai, the defendant Nos. 2 and 3 respectively. Nonetheless, it is further averred that despite this fact, rent is being paid by the defendant No. 1. It is on this basis that the plaintiff-landlord has prayed for a decree of eviction against the defendants.

5. The defendants have resisted the suit of the plaintiff-landlord by a joint written Statement at Exh. 10 averring that there has been no sub-letting of the suit premises and in the same way there has been no assignment or transfer of the tenancy rights by the defendant No. 1 in favour of the sons, the two defendants. Putting forth their rival case, the defendants have averred that previously one Shri Zhaveri was the owner and the landlord of the premises and that the defendant No. 1 was his tenant and that he used to carry on a partnership business in the name and style of "B.A. Fatehali and Sons". It is the say of the defendants that the abovesaid business which was being carried on by the defendant No. 1 was in fact, a business for and on behalf of the family of the defendant No. 1, but that as the defendant No. 1 was the elderly member of the family, the suit premises were taken on lease in his name. It is further contended that defendant Nos. 2 and 3 are the sons of the defendant No. 1 and that because of the advanced age and indifferent health, the defendant No. 1 has ceased to come to the shop but that it cannot be said that there has been a sub-letting of the premises. It is averred, in no unclear manner, in the pleadings that because of the old age and the indifferent health, the defendant No. 1 has made the necessary arrangements for the management of the affairs of his assets and that they have been handed over to them and that as both the sons, namely, Alibhai and Imranbhai used to assist the defendant No. 1 in running of the said business and as the abovesaid business is being run even today by the sons, namely, the defendant Nos. 2 and 3, it cannot be urged that there has been a sub-letting of the premises or a transfer or assignment. The defendants have averred that now, the defendant No. 1 Bakarali does not pay any rent but that the same is being paid by one of the sons, namely, Alibhai and receipts as usual are being issued in the name of defendant No. 1, Bakarali.

6. Thus, on a reference to the pleadings it is apparent that though the case was later on, developed by the plaintiff saying that there has been an oral Hiba in his favour, there is absolutely, no such mention in the pleadings. Moreover, the plaintiff himself says that he is receiving the rent from defendant No. 1. The say of the other side is that there has been some same arrangement regarding the affairs of the family assets and that now, the defendant No. 1 does not attend to the business because of the advanced age and certain infirmities. Nonetheless, they also say that the rent is being paid by one of the sons, namely, Alibhai but there is no transaction which would amount to a sub-letting or the transfer and the assignment of the tenancy rights.

7. Learned Counsel Mr. Saiyed appearing on behalf of the petitioner, firstly,

wanted to urge that there is absolutely no material which would warrant a valid oral Hiba and, therefore, it cannot be said that the plaintiff-landlord is the sole owner or the sole landlord of the premises in question. The Learned Counsel wanted to place heavy reliance upon the principles of Mahomedan Law which would govern a valid oral Hiba. The Learned Counsel wanted to urge that the requisite formalities have not been duly complied with and that therefore, the case of the landlord for a valid oral Hiba could not have been accepted. It is also, an endeavour on the part of the Learned Counsel to urge on the basis of the plaint that absolutely, no such case was taken. It is indeed, surprising that though no such specific case was taken in the pleadings the trial Court has proceeded to examine the question of a valid oral Hiba. The ultimate finding is that the original plaintiff has become the owner and the landlord of the premises in dispute, by virtue of a valid oral Hiba. But after a rather lengthy debate on this count, it appeared that the contention raised by the Learned Counsel Mr. Saiyed for the petitioner, was not worthy of further emphasis, because no such contention ever came to be taken before the appellate Court. It is clear and not in dispute before me that, in the revisional jurisdiction, this Court would examine the contention being raised by the Counsel for the parties before this Court only, if a contention in this respect came to be raised and decided by the Court below. On a screening of the judgment and the memo of the appeal before the appellate Court, it becomes evident that no specific contention in this respect came to be raised by the petitioners, who were the appellants before the said Court. The reliance in this respect is placed upon the Supreme Court pronouncement in Gauri Shanker Vs. Hindustan Trust (Pvt.) Ltd. and Others, . This decision, while examining the case under the Delhi Rent Control Act (59 of 1958) and especially the provisions contained u/s 39(2) of the same, says that, raising a point in the memorandum of appeal is not sufficient to show that the point was argued or pressed before the appellate Court and the statement in the judgment that no such point was argued is prima facie to be accepted. When the judgment and the memorandum of the appeal before the appellate Court are perused in light of the say of the Supreme Court, it is apparent that no contention regarding the non-existence of a valid oral Hiba ever came to be raised before the appellate Court. No contention in this respect came to be raised. Not only this but, no contention ever came to be taken in the memorandum of the appeal. It appears that even at the revisional stage, the memorandum of the Revision petition does not precisely show such a contention. Moreover, the plaint itself is silent regarding a valid oral Hiba, in favour of the plaintiff. It shall, therefore, have to be accepted that this contention which was not raised before the appellate Court is not open to be canvassed by the Learned Counsel for the petitioner before me. The whole controversy, therefore, regarding the validity and the legality of the alleged oral Hiba recedes in the background. The concentration shall have to be on the question as to whether certain transactions entered into between the defendants themselves would amount to a case of sub-letting or the transfer or the assignment of the interest of the defendant No. 1 in favour of the rest of the defendants. Exh. 48 is a rent note executed by Bakarali, defendant No. 1 in

favour of the original landlord, namely, Haji Alumusa Zhaveri, on December 1, 1946. This document at Exh. 46 would go to show that, even before the plaintiff's father had purchased the suit property, the defendant No. 1 was a tenant in respect of the shop and that he was carrying on his business in the said premises. There is indeed, a mention in this rent note that the premises have been taken on lease for his own use and occupation and that he shall not sub-let the premises in favour of anybody. The second document which requires consideration is the rent note at Exh. 56 executed by the defendant No. 1 in favour of the father of the plaintiff in year 1947, which also says that the premises have been taken on lease for running a business in the same and that the lessee shall not sub-let the same to any person.

8. Exhibit-53 is the partnership deed dated November 15, 1955 under which the defendant No. 1 Bakarali alongwith his four sons became the partners of the partnership business. An averment in the partnership deed is that the defendant No. 1 used to run a proprietary business in the name and style of B.A. Fatehali and Sons, but that the rest of the partners have been taken in the business as the partners. The terms and conditions and especially Clause No. 7 thereof makes it abundantly clear that the partnership is a Partnership at Will and that a retiring partner shall have to give a notice of three months to the other partners. This Clause No. 7 in the partnership deed also provides for a future contingency, namely, the dissolution of the firm and the partnership business. It has been specifically provided under Clause No. 7 of this agreement that, in case of a dissolution, the defendant No. 1, namely, the tenant and the father of the rest of the partners would get the rights of goodwill and "the rights in respect of the tenancy of the suit premises." Therefore, while providing for a future contingency, namely, the dissolution of the firm and the partnership business, it has been specifically provided that the defendant No. 1 the original tenant would be getting the goodwill and would retain the tenancy rights. Thus, it is abundantly clear that, not only the tenancy rights have not been made available to the rest of the defendants during the continuance of the partnership but it has been provided that, on the dissolution of the firm the tenancy rights would remain with the defendant No. 1, the original tenant. It, therefore, becomes clear that this partnership agreement at Exhibit-53 would itself not carry the case of the plaintiff-landlord towards the establishment either of sub-letting or the transfer or the assignment of the tenancy rights of the defendant No. 1 in favour of the rest of the two defendants. On the contrary, specific care has been taken to ensure that, in case of dissolution of the firm, the tenancy rights would be of the defendant No. 1 alone and that the other partners are not concerned with the tenancy rights qua the leased premises.

9. Anyhow, the matter does not rest here because a further development occurs by the document at Exhibit-54 which is also styled as a "Deed of Partnership" dated November 14, 1974. The sum and substance of this deed is that the defendant No. 1, Bakarali retires from the partnership business and that the said business is being taken over by the two sons, namely, Alibhai and Imranbhai.

This deed which is complete in respect of many details and requisites does not override or control in any manner Clause No. 7 of the prior partnership deed, under which the father had reserved the rights of goodwill and rights qua the tenanted premises for himself, even in case of the dissolution of the firm and the partnership business. Thus, it appears that because of this deed at Exhibit-54 the two sons, namely, Alibhai and Imranbhai had taken over the entire business with effect from November 14, 1974, but without any overriding effect in any way touching the reservation of tenancy rights in favour of defendant No. 1, the father.

10. It appears that, one of the two continuing partners, namely, Alibhai had later on expired on December 27, 1987 and therefore, his son, namely, Salmanbhai aged about 20 years was taken in the partnership business as a partner, but without any overriding effect. Thus, it requires to be noted with pertinence that, in the subsequent agreements or deeds there is no overriding clause which would in any way militate against the letter and spirit of Clause No. 7 in the first deed under which the defendant No. 1, the father has reserved for himself the tenancy rights qua suit premises, even in case of a dissolution of the firm. In the result, as a corollary, it requires to be accepted that, though there were subsequent developments the father, namely, the defendant No. 1-deceased Bakarali had remained as the person having the tenancy rights qua the suit premises, in his favour.

11. Mr. M.C. Shah, the Learned Counsel appearing on behalf of the respondent-original landlord has placed heavy reliance not only upon the pleadings but also on the reply to the notice dated December 7, 1977 (Exh. No. not legible), and the oral evidence adduced by the parties. As indicated above, the plaintiff has approached the Court with a case that, though there has been the sub-letting or transfer or assignment, the rent is being paid by the defendant No. 1. On the other hand, the defendants have stated in the joint W.S. at Exhibi-10 that, though it was a family business right from the beginning and though the business was being run for the benefit of the members of the family, the premises were taken on lease in the name of defendant No. 1 alone, because he happened to be the elderly member of the family. The defendants have ultimately said in the W.S. that the rent is not being paid by Bakarali but the same is being paid by Alibhai and that, the necessary rent receipts are being issued in name of Bakarali, the defendant No. 1. The reply to the notice dated December 7, 1977, says that the business in the premises was being run by one of the two sons, namely, Alibhai and that he used to help his father in the running of the shop and that later on, the "business has been given to the two sons." This reply also says that the rent is not being paid by Bakarali but is being paid by Alibhai, and the rent receipts as usual are being issued in the name of defendant No. 1-Bakarali. Placing heavy reliance upon the W.S. at Exhibit-10 and the said reply to the notice dated December 7, 1977, the Learned Counsel for the respondent urges that, it would be only fair and just to record a finding that the defendant No. 1 -Bakarali, had altogether walked out of the business and that

the business had remained with his two sons, out of which the elder one Alibhai used to pay the rent. The contention further being canvassed is that, this would amount to parting with the possession qua the premises both in law and in fact and that, therefore, there is no justification for any interference at the hands of this Court in the concurrent findings rendered by the Courts below. This contention can well be appreciated alongwith the oral evidence which, according to the Learned Counsel Mr. Shah goes to show the very same thing. Imranali the son has stated in his evidence at Exhibit-57 that previously the landlord of the premises was one Shri Zhaveri Sheth and later on the premises are said to be belonging to the plaintiff. He has stated that, right from year 1947 he used to sit on the shop alongwith his brothers and the father. He has further said that the business which was started by his father was of the sole ownership of his father. According to him, vide the document Exhibit-53 a partnership had come into being and that later on they had become the partners in the partnership business. The Learned Counsel, Mr. Shah places heavy reliance on the say of the defendant No. 1 during the concluding portion of the cross-examination wherein he has stated that, the shop was handed over to him and his brother Salmanbhai by the father in year 1974. On the basis of this say of son Alibhai in oral evidence before the Court below, the Learned Counsel urges that, there was a complete walk out by the defendant No. 1 from the partnership business and that, as the partnership business alongwith the tenancy rights have gone to the rest of the sons, this is a case of sub-letting or transfer or assignment, and that, no other conclusion excepting the same is permissible.

12. In the background of the above said aspects of the case, Learned Counsel Mr. Saiyed appearing on behalf of the petitioner firstly places reliance upon the Supreme Court decision in Baldev Sahai Bangia Vs. R.C. Bhasin, . It was a case wherein the tenant has shifted to foreign country, leaving the mother, sisters and brother in the tenanted house and while examining the case for a decree of eviction under Delhi Rent Control Act (59 of 1958), the Supreme Court has said that, it cannot be said that the mother, the sisters and the brother have ceased to be the members of the family and therefore, they cannot be evicted on such a ground. The facts of the case are entirely different and the question which came for consideration of the Supreme Court was as to whether in the facts and circumstances of the case, can it be said that the said relations had ceased to be the members of the family. Indeed the question raised has been answered in negative. But looking to the peculiar facts and circumstances of the case before the Supreme Court and looking to the controversy which was required to be resolved under the relevant provisions of the Delhi Rent Control Act (59 of 1958) on the basis of the facts and circumstances of that case, it appears that the said decision would not be of much assistance to this Court in deciding the question regarding the sub-letting or the transfer or the assignment of the tenancy rights. The other decision on which the Learned Counsel places heavy reliance is also of the Supreme Court in M/s. Delhi Stationers and Printers Vs. Rajendra Kumar, . This is again a case which appears to have been decided on its own facts in light

of certain provisions of Rajasthan Premises (Control of Rent and Eviction) Act (17 of 1950). Therein, the alleged sub-tenant was the brother-in-law of the tenant, who was also employed with him and there was the mere user of a kitchen and latrine by the said brother-in-law who was under the employment of the tenant. While examining this question the Supreme Court has pointed out that sub-letting means transfer of an exclusive right to enjoy the property in favour of the third party and the said right must be in lieu of payment of some compensation or amount. Parting of the legal possession means possession with the right to include and also a right to exclude others. According to this pronouncement, mere occupation is not sufficient to infer either sub-tenancy or parting with possession.

13. The Supreme Court pronouncement in Jagan Nath (Deceased) through Lrs. Vs. Chander Bhan and Others, , has been pressed in service with a very great vehemence by the Learned Counsel for the petitioners. The eloquent facts are that, one Jagan Nath was the original tenant of the premises in question. Chander Bhan the respondent had filed petition against Jagan Nath under the relevant provisions of Delhi Rent Control Act (59 of 1958). It was the case of the landlord, against the tenant, that the tenant had, by 9th June 1962 sublet, assigned or otherwise parted with the possession of the premises to Shri Baldev Raj and Sat Pal, without the consent in writing of the respondent-landlord. The suit was contested on various grounds, inter alia urging that the premises in question was residetial-cum-commercial one and that, both the above said persons, namely, Baldev Raj Bindra and Sat Pal Bindra were the sons of the original tenant. While examining the question of awarding of decree under Delhi Rent Control Act (59 of 1958) the Supreme Court had to consider three important pieces of documentary evidence. The first one was a statement of Jagan Nath before the Income Tax Officer, the photostat copy of which was on record and which indicated that Jagan Nath who was the proprietor of Bindra Tent House had sold the same for an amount of Rs. 18,000/- on 1-1-1970 to his sons Baldev Raj Bindra and Sat Pal Bindra and had taken a cash amount of Rs. 8,000/- and had gifted the remaining amount, namely, Rs. 10,000/- in two equal shares to his sons. In this statement Jagan Nath had further stated that his two sons had entered into a partnership in the same name, i.e., M/s. Bindra Tent House in the same premises. The other document on which the emphasis was laid was a photostat copy of the stamp vendor register, which showed the purchase of three non-judicial stamp papers by Baldev Raj for partnership purpose in the name of M/s. Bindra Tent House. The third document, upon which the pointed attention of the Supreme Court was invited was an application for electricity connection made by Sat Pal Bindra in the name of M/s. Bindra Tent House on 25th July 1975. All these documents were relied upon to show that Jagan Nath had unlawfully parted with possession of the demised premises in favour of his sons Baldev Raj Bindra and Sat Pal Bindra without the consent in writing of the landlord. The Supreme Court, upon the appreciation of these facts and the ratio laid down by the same Court in certain other decisions, has said

that the question for consideration was as to whether the mischief contemplated under Sec.14(1)(b) of the Delhi Rent Control Act (59 of 1958) has been committed by the tenant by subletting, assigning or otherwise parting with the possession of the whole or part of the premises, without obtaining the written consent of the landlord. According to the Supreme Court, there was no evidence whatsoever regarding any sub-letting or assignment, the only ground upon which perhaps the landlord was seeking eviction was parting with possession. The Supreme Court has then proceeded to examine the question as to whether the above said facts and circumstances would constitute "the parting with possession" or not. This evidence, in view of the Supreme Court was not constituting the ground of sub-letting or assignment. The important fact which should not go unnoticed is that, according to the statement of the defendant Jagan Nath himself, he had entered into a partnership with his sons and later on he had walked out of the partnership business against the consideration of Rs. 18,000/- and that his sons used to carry on the business in the premises in the same name and style and it was a partnership business. Nonetheless, the Supreme Court has made it abundantly clear that, these facts would not constitute any evidence regarding the sub-letting or the assignment.

14. After having said so, the Supreme Court proceeds to examine the question as to whether the said facts and circumstances annexed to the case, would constitute the concept of parting with possession. It is made clear that parting with possession would amount to giving possession to persons other than those to whom possession was given under the lease and that, the parting of the possession must have been by the tenant. It is made clearer further that, user by other person is not parting with possession so long as the tenant retains the legal possession himself. The say of the Supreme Court can be put aptly only by quoting the same:

The only ground perhaps upon which the landlord was seeking eviction was parting with possession. It is well settled that parting with possession meant giving possession to persons other than those to whom possession had been given by the lease and the parting with possession must have been by the tenant, user by other person is not parting with possession so long as the tenant retains the legal possession himself, or in other words there must be vesting of possession by the tenant in another person by divesting himself not only of physical possession but also of the right to possession. So long as the tenant retains the right to possession there is no parting with possession in terms of Clause (b) of Section 14(1) of the Act. Even though the father had retired from the business and the sons had been looking after the business in the facts of this case, it cannot be said that the father had divested himself of the legal right to be in possession. If the father has a right to displace the possession of the occupants, i.e., his sons, it cannot be said that the tenant had parted with possession.

When the facts of the instant case are examined in view of what has been said

by Supreme Court, it is clear that the father while entering into the partnership which is again a Partnership-at-Will with his sons reserves tenancy rights for his ownself, even in case of a future contingency, namely, the dissolution of the firm. The rest of the two documents, in no clause or term affects the above said clause under which there has been a reservation of the tenancy rights in favour of the defendant No. 1. Not only the latter two transactions, do not affect the said clause but in fact they do not speak anything in respect of the same. It is, therefore, apparent that the father, the defendant No. 1, the original tenant who was carrying on business in the commercial premises since last so many years has reserved the tenancy rights in his favour. The payment of rent by one of the two sons, namely, Alibhai cannot be said to be amounting to any violence to the letter and the spirit of the above said Clause No. 7 in the first transaction. If the tenancy rights are said to have been reserved or retained by the father in his favour even in future contingency like dissolution of the firm, the payment of rent by one of the two sons would not go to annihilate the effect of the said clause. It is, therefore, apparent that it cannot be said that the father was guilty of parting with possession either in law or in fact. The Supreme Court decision, therefore, in case of Jagan Nath (*supra*), is squarely attracted to the facts of the case and on the basis of the principle laid down by the Supreme Court, it shall have to be said that the defendant No. 1, the original tenant cannot be said to be guilty either of sub-letting or assigning or transferring his tenancy right qua the suit premises. It cannot be said to amount to the "parting with the legal possession".

15. Mr. Shah, Learned Counsel for the respondent draws my attention to the pronouncement of this Court by a learned single Judge in *Dudabhai alias Dadubhai Karsandas Patel and Others Vs. Sulochanaben Gopaldas Kothari*, , for a double purpose. Mr. Shah urges that, in similar fact-situation, a view has been taken that such an action on the part of the defendant would amount to a ground available for a decree of eviction u/s 13(1)(e) of the Bombay Rents Act, 1947. The other purpose was to impress upon me that, upon the reading of the Supreme Court pronouncement in case of *Jagan Nath (supra)* a view has been taken by a learned single Judge of this Court, and if at all I prefer to differ with the said view, then the only course open to me would be to refer the matter to a larger bench so that the controversy in this respect can be resolved. The decision requires to be read firstly for the first purpose. It was a case in which the business premises were let to a tenant who then takes partners and later on gets out of the partnership and other partners carry on business on their own behalf in the premises. It has been said that the result in law is that, A has transferred the factual and legal possession of the shop to his erstwhile partners and the inference will be that the same was for a consideration. The ultimate view taken by the pronouncement is that, therefore, the eviction decree under Section 13(e) of the Bombay Rents Act, 1947 must follow. The facts appear to be similar but not similar in full. It was a case in which the defendant-tenant takes partners and later on gets out of the partnership. There is no indication while scrutinising the

facts that the firm contingency, namely, the probable dissolution of the firm in future was provided for. Here I am concerned with a case in which the probable future contingency, namely, the dissolution of the firm is well conceived in advance and while doing so it has been provided that in such a future contingency, though the other assets may go to the continuing partners, the goodwill and the tenancy rights shall continue to be vested in the defendant No. 1 the original tenant, the father. It, therefore, can be said that, though in the instant case on hand, the father walks out of the business, he reserves the tenancy rights and the goodwill for his own self. The subsequent transactions do not affect the said position created by the document in favour of the defendant No. 1, the father. The facts before the learned single Judge in case of Dudabhai @ Dudubhai (supra) were different in as much as there was no such provision under which the tenancy rights could have been reserved or retained by the father who was walking out of the business. Naturally, therefore, the said decision on which heavy reliance has been placed by Learned Counsel Mr. Shah for the respondent would not assist him in his submissions before him. The first purpose of drawing my attention to the said authority, therefore fails.

16. The second purpose was to indicate that, if upon the reading of the Supreme Court decision in case of Jagan Nath (supra) if a learned single Judge of this Court has taken a view to which I am unable to subscribe, then the only course left open to me is to refer the matter to the larger Bench. The effort in this respect is found to be failing when the reference is made to the say of the learned single Judge in case of Dudabhai @ Dudubhai (supra) at page 26. The learned single Judge reads certain observations made by the Supreme Court in case of Jagan Nath (supra) and says that the principle laid down by the Supreme Court is undisputable but it fails when it is applied to the facts of the case in said case, i.e., Dudabhai @ Dudubhai (supra). Therefore, all what the learned single Judge says is that the undisputable principle laid down by the Supreme Court in case of Jagan Nath (supra) could not be attracted or applied to the facts of the said case because they were entirely different.

17. On the analysis of the facts of the case on hand and again on the analysis of the facts and the principle laid down in case of Jagan Nath (supra) I am of the opinion that the said principles are clearly attracted to the facts of the present case. The learned single Judge who decided the case of Dudabhai @ Dudubhai (supra) was of the opinion that the Supreme Court decision was not getting attracted because of the different facts and circumstances. Because of this position, it cannot be said I am trying to read or in fact I am reading the Supreme Court decision in a manner which is entirely different than one adopted by a learned single Judge of this Court, which in its turn would oblige me to refer the matter to a larger Bench.

Before concluding, one more decision of the Supreme Court in case of P.A. Thomas and Another Vs. M. Mohammed Tajuddin and Another, , requires a consideration. It was a litigation arising under Tamil Nadu City Tenant's

Protection Act, 1921. Though the facts were different and though ultimately the High Court came to be directed to record its findings on certain indicated questions, the Supreme Court has ruled that, if the appellant is found to have retained his control, he can be said to have retained possession of the premises even after termination of his tenancy. The principle laid down under altogether different facts, while examining the applicability of the Tamil Nadu City Tenant's Protection Act, 1921, is that, if the appellant is found to have retained the control, he could be said to have retained the possession of the premises. The decision is rendering some help to the petitioner before me.

18. There was an attempt on the part of Learned Counsel for the respondent to urge that the decision of the Supreme Court in case of Jagan Nath (supra) cannot be attracted to the facts of the instant case. Therein the father was carrying on the business with his sons and the family was a Joint Hindu Family. The endeavour was to make a distinction clear that, I am concerned with a family which would be governed by Mohamedan Law in which probably the concept of Joint Hindu Family or Hindu Undivided Family is rather unknown. The question does not require a further examination because the tenancy laws are to be applied to all the tenants and to all the landlords irrespective of their personal law, which would govern their personal life. This position has been made clear by the Supreme Court in case of S.N. Sundalaimuthu Chettiar Vs. Palaniyandavan, .

19. The conclusion, therefore, would be that the Courts below were at an error
20. In concurring upon a finding of fact that, there has been a transfer or assignment of his interest in the premises by the defendant No. 1 the original defendant-father in favour of his sons. The present Civil Revision Application requires to be allowed and the same is hereby accordingly allowed. The judgments and decrees of the Courts below are hereby set aside and the suit of the plaintiff for decree of eviction is hereby dismissed. Rule is made absolute accordingly. No order as to costs throughout.