

(1998) 11 KAR CK 0041

In the Karnataka High Court

Case No : House Rent Revision Petition No. 5977 of 1990

Channabasappa Gurappa Belagavi and Others

APPELLANT

Vs

Laxmidas Bapudas Darbar and Another

RESPONDENT

Date of Decision : 03-11-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Karnataka Rent Control Act, 1961 — Section 21 (1) (h), 21 (1) (p)

Citation : (1999) 1 KarLJ 216

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : Sri Kumar, for M/s. Kumar and Kumar, for the Appellant; Sri S.S. Ujjannavar, for the Respondent

Judgement

1. The petitioners, in this petition, are the landlords and were the petitioners before the Trial Court. The respondents, in this petition, are the tenants and were the respondents before the Trial Court. The parties to this petition, in the course of this order, will be referred to as "the landlords" and "the tenants".

2. Facts that may have bearing for the disposal of this petition, may briefly be stated as hereunder:

(a) The petition schedule premises consist of land measuring 1 acre 10 guntas in R.S. No. 87 and land measuring 1 acre 14 guntas in R.S. No. 93, bearing C.T.S. Nos. 146 to 153, situated in Ward No. III, Neeligin Road, Hubli (hereinafter referred to as "the petition schedule premises"). By means of a registered lease deed dated 1st of March, 1905, one Gurappa Bin Channabasappa Belagavi, minor represented by his guardian and mothers one Smt. Dundawa, Dodda Irapawa and Sanna Irapawa through their Power of Attorney one Shivamurteppa, leased out the petition schedule premises to one Anant Parashuram Nagaonkar by means of registered lease deed dated 1st of March, 1905 for a period of 99 years on an annual rent of Rs. 325/-. The lease deed has been produced as Annexure-P19. The lease deed provided that the petition schedule premises was leased for

the purpose of utilising it for Pressing and Ginning Factory. On 10th of December, 1907, the original lessee, the aforesaid Anant Parashuram Nagaonkar, disposed of all his leasehold interest and rights in the petition schedule premises in favour of one Ramadas Vittaldas Darbar by receiving the sale consideration of Rs. 8.500/-. Thus, the said Ramdas Vittaldas Darbar stepped into the shoes of the original lessee the aforesaid Anant Parashuram Nagaonkar and became the lessee of the petition schedule premises. The landlords in this petition are the successors-in-interest of the original landlord the aforesaid Gurappa Channabasappa Belagavi and the tenants in this petition are the successors-in-interest of the aforesaid Ramdas Vittaldas Darbar.

(b) The landlords instituted proceedings for eviction of the tenants from the petition schedule premises in HRC No. 140 of 1986, on the file of the Court of Principal Munsiff at Hubli, seeking eviction of the tenants u/s 21(1)(h) and (p) of the Karnataka Rent Control Act, 1961 (hereinafter referred to as "the Act"), contending, inter alia, that the landlords require the petition schedule premises reasonably and bona fide for the purpose of their business i.e., for the purpose of starting Cotton Pressing and Ginning Factory and also on the ground that the tenants having secured a suitable alternate premises, they are liable to be evicted both u/s 21(1)(h) and (p) of the Act. It is their further case that if an order of eviction is not passed, they will be put to greater hardship than the tenants.

(c) The tenants resisted the claim of the landlords, inter alia, contending that the lease of the petition schedule premises being a permanent lease, they are entitled to continue to be in possession of the petition schedule premises for ever and for an indefinite period and as such, the eviction petition filed by the landlords was not maintainable u/s 21 of the Act. They also contended that the claim made by the landlords is neither reasonable nor bona fide; and if an order of eviction is passed, they will be put to greater hardship than the landlords. It is their further case that they are not liable to be evicted u/s 21(1)(p) of the Act as the premises, which is stated to have been acquired by them as claimed by the landlords, was with them even before acquiring the leasehold interest in the petition schedule premises.

(d) The learned Munsiff, on consideration of the evidence on record and various terms provided in the lease deed Exhibit P-19, took the view that the lease of the petition schedule premises was a term lease for a period of 99 years with a clause for renewal of the lease; and as such, the eviction petition filed by the landlords seeking eviction of the tenants u/s 21 of the Act is maintainable. Further, he also held that the landlords have established that they require the petition schedule premises reasonably and bona fide for the purpose of their use and occupation i.e., for the purpose of their business; and if an order of eviction is not passed, the landlords will be put to greater hardship than the tenants; and directed eviction of the tenants u/s 21(1)(h) of the Act. However, with regard to the claim of the landlords for eviction of the tenants on the ground that they

have acquired a suitable alternate premises, the learned Munsiff negated the claim of the landlords holding that the premises stated to have been acquired by the tenants was with the tenants even prior to the taking of the petition schedule premises by them on lease; and as such, the tenants are not liable for eviction u/s 21(1)(p) of the Act.

(e) Being aggrieved by the order of eviction passed against the tenants u/s 21(1)(h) of the Act, the tenants had filed Revision (Rent) No. 51 of 1990 and the landlords being aggrieved by the order passed by the learned Munsiff rejecting their claim for eviction of the tenants u/s 21(1)(p) of the Act, had filed Revision (Rent) No. 56 of 1990, before the Court of I Additional District Judge, Dharwad, sitting at Hubli. The learned District Judge, while concurring with the view expressed by the learned Munsiff that the landlords had failed to establish that the tenants have acquired a suitable alternate premises and as such they are not liable for eviction u/s 21(1)(p) of the Act, dismissed the revision petition filed by the landlords, however, he allowed the revision petition filed by the tenants and set aside the order of eviction passed against the tenants u/s 21(1)(h) of the Act. The learned District Judge, while rejecting the claim of the landlords for eviction of the tenants u/s 21(1)(h) of the Act, has, on consideration of the lease deed Exhibit P. 19, has come to the conclusion that the lease deed Exhibit P. 19 is in the nature of a permanent lease; and as such, the landlords were not entitled to maintain an eviction petition u/s 21 of the Act seeking eviction of the tenants. However, while considering the claim made by the landlords that they require the petition schedule premises reasonably and bona fide; and if an order of eviction is not passed, they will be put to greater hardship than the tenants, the learned District Judge concurred with the finding recorded by the learned Munsiff on the said two questions and held that if the lease in question is held as a term lease, the landlords are entitled to seek for eviction of the tenants u/s 21(1)(h) of the Act.

(f) Aggrieved by the order passed by the learned District Judge allowing the revision petition of the tenants and rejecting the revision petition of the landlords, this revision petition has been filed.

3. Sri Kumar, learned Counsel appearing for the landlords, challenging the order under revision, made two submissions. Firstly, he submitted that the construction placed by the learned District Judge on lease deed Exhibit P. 19 holding that the lease is a permanent lease, is totally erroneous in law and the said finding has been recorded in total misunderstanding and misreading of the lease deed and also in disregard of the law on the subject. Elaborating this submission, Sri Kumar pointed out that the learned District Judge has totally misunderstood the stipulation in the lease deed which provides for the renewal of the lease and also which provides that the lease deed is binding on the heirs, executors, administrators, successors and legatees under the Will of both the "lessor" and the "lessee" and also the stipulation, which only permits the lessee to surrender the leasehold premises. It is his submission that it is only in case of leases where

the lease of the property is for an indefinite period; and a lessee is given the right to continue the leasehold property for an indefinite period, then only the lease could be considered as a permanent lease as has been held by the Supreme Court in the case of *Sivayogeswara Cotton Press, Davangere and Others v M. Panchaksharappa and Another*. According to the learned Counsel, the lease deed in question is required to be considered as a term lease on proper construction as the lease is for a specific period of 99 years on payment of Rs. 325/- per year. According to him, the provision made for renewal of the lease will not make the lease a permanent lease. It is his submission that while construing the lease deed as to whether it is a permanent lease or a term lease, the Court should normally take a view against construing the lease as the permanent lease, unless the terms in the lease deed, in unequivocal and unambiguous terms, require such interpretation to be placed; and when the lease deed provides for a specific period and even if an option is given to the lessees to renew the lease under the same terms and conditions, the lease can be renewed only once and after the renewal of the lease for one term, the lessees will not get any further right to get the lease renewed for any further period. In support of the above submission, the learned Counsel drew my attention to the decision of the Supreme Court in the case of *Chapsibhai Dhanjibhai Dand v Purushottam*; the Division Bench decision of the Andhra Pradesh High Court in the case of *Syed Jaleel Zone v P. Venkata Murlidhar*; the decision of the Delhi High Court in the case of *Mrs. (Dr.) P.S. Bedi v Project and Equipment Corporation of India Limited*; and also in the case of *Sewak Ram and Others v Municipal Board, Meerut*. Therefore, the learned Counsel pointed out that when the learned Munsiff, on proper construction of the terms provided in the lease deed Exhibit P. 19, had taken the view that the lease is a term lease, the learned District Judge has committed a serious error in taking the contrary view and treating the lease as a permanent lease. He also referred to the decision of the Supreme Court in the case of *Sivayogeswara Cotton Press, supra* and submitted that the lease deed in question which was under consideration before the Supreme Court in the said case, did not provide for any fixed period, and under those circumstances, the Supreme Court took the view that the lease in the said case was a permanent lease. Secondly, he submitted that even if it is a permanent lease, so long as it is a lease, in view of the provisions contained in Section 21 of the Act which nullifies the contract of lease entered into between the parties and provides a statutory right both to the landlords and tenants, the landlords are entitled to seek eviction of the tenants from the petition schedule premises. Therefore, he pointed out that even if the lease is held to be a permanent lease, the landlords are entitled to seek eviction of the tenants. He submitted that the principle laid down by the Full Bench decision of this Court in the case of *M/s. Bombay Tyres International Limited, Bombay and Another v K.S. Prakash and Another*, following the decision of the Supreme Court in the case of *Sri Lakshmi Venkateshwara Enterprises Private Limited v Smt. Syeda Vajhiunnisa Begum and Others*, wherein the Full Bench of this Court has taken the view that the provisions of Section 21 of the Act would operate notwithstanding the provisions contained in

the contract of lease, would apply in equal force even if the lease is permanent lease.

4. Sri S.S. Ujjannavar, learned Counsel appearing for the respondent, while strongly meeting the submissions of Sri Kumar, submitted that the construction placed by the learned District Judge on lease deed Exhibit P. 19 is proper and correct; and, therefore, the finding recorded by the learned District Judge in the order under revision that the lease is a permanent lease, does not call for interference by this Court in exercise of its revisional jurisdiction u/s 115 of the Code of Civil Procedure. He pointed out that the learned District Judge, after careful consideration of the several terms in the lease deed and more particularly the stipulation regarding the renewal of the lease; the agreement having been made binding on the heirs, executors, administrators, successors and legatees under the Will of both the lessor and the lessee; that the right of the lessor is only to receive the rent and the lessee being allowed to continue to enjoy the leasehold property as long as he wishes; and the option was only given to the lessee to surrender the lease without there being a corresponding option or right given to the lessor to terminate the lease, has rightly held that the lease is a permanent lease and not a term lease as contended by the landlords. It is his submission that the terms provided in the lease deed, which came up for consideration before the Supreme Court in the case of *Sivayogeswara Cotton Press, supra*, are akin to the terms provided in lease deed Exhibit P. 19, which falls for consideration in this petition; and, therefore, the principle laid down by the Supreme Court in the case of *Sivayogeswara Cotton Press, supra*, is fully applicable while placing the correct construction on lease deed Exhibit P. 19. He also submitted that an instrument purporting to create a perpetual lease at a rent would operate, if at all, as a conveyance in fee simple subject to perpetual rent charge, or as an agreement to convey such an estate and, therefore, the petition filed by the landlords seeking eviction of the tenant, was not maintainable. In support of this submission, he drew my attention to the observations made in *Hill and Redman*, 15th Edition, at pages 57 and 58, wherein it is stated as follows:

"The term may be for any length of time, however great. In building lease terms of ninety-nine years or nine hundred and ninety-nine years are frequently granted but there is no special virtue in these particular numbers and leases can be, and are, granted for any number of years, and often with a part of a year in addition. But there must be a definite limit; there cannot be a lease in perpetuity, except by virtue of statute. An instrument purporting to create a perpetual lease at a rent would operate, if at all, as a conveyance in fee simple subject to a perpetual rent charge, or as an agreement to convey such an estate".

It is his further submission that even if it is held that the lease is a term lease as claimed by the landlords, the respondents are not entitled to seek eviction of the tenants under the provisions of the Act and de hors the terms provided in the lease deed. In other words, the landlords can seek eviction of the tenant or

recovery of possession of the petition schedule premises only after the expiry of the period provided in the lease, and not earlier to it. According to him, the provisions contained in Section 21 of the Act, cannot be made applicable to curtail the rights of the tenant incorporated by means of a contract of lease. In support of this plea, he relied upon the decision of the Supreme Court in the case of *Modern Hotel, Gudur v K. Radhakrishnaiah* and submitted that in the light of the decision of the Supreme Court, the law laid down by the Full Bench of this Court in the case of *M/s. Bombay Tyres, supra*, is not a good law. He also pointed out that the Full Bench of this Court has totally misunderstood the observations made by the Supreme Court in the case of *Laxmi Venkateshwara Enterprises, supra*.

5. It is useful to extract the relevant terms of the lease deed Exhibit P. 19 dated 1st of March, 1905 referred to by the learned District Judge in paragraph 12 of his order, which read as hereunder:

"The period of lease is 99 years, and the rent reserved is Rs. 325/-annually to be paid in advance and the purpose of the lease was for establishing a pressing and ginning factory. The lessee has absolute right to enjoy the demised lands as long as he pays the annual rent of Rs. 325/-. In case if the lessee commits any default in payment of rent, the lessor has no right to recover possession, The lessee has full liberty to erect buildings as he desires to establish a pressing and ginning factory. As long as the demised land is in possession of the lessee, the lessor has no right to increase the rent. If fine is levied at the time of construction of the buildings, the lessee undertakes to pay the fine and also the Municipal tax and local funds. The lessee shall have always right to let out or sell the buildings constructed on the demised lands but without affecting the rent reserved and other conditions of the lease and the terms of the lease are binding on the lessee or the purchaser of the buildings. In case, after some years, the lessee vacates the demised lands, he shall deliver wood, stones, and tiles used for the construction of the buildings to the lessor and take only the machineries and the zinc sheets. The lessee shall not be liable to pay the rent after he surrenders the possession of the demised land to the lessor. After the stipulated period, if the lessee agrees to continue the lease under the same terms and conditions, the lessor shall renew the lease. It is stipulated that the said agreement is binding on the heirs, executors, administrators, successors and legatees under the Will of both the lessor and the lessee".

6. In the light of the rival submissions made by the learned Counsel appearing for the parties, the two substantial questions that would arise for consideration in this revision petition, are.-

(1) Whether the lease deed Exhibit P. 19, dated 1st of March, 1905, on a proper construction to be placed, is a permanent lease or is only a term lease?

(2) Whether the landlords, notwithstanding the terms provided in the lease deed Exhibit P. 19, in view of Section 21 of the Karnataka Rent Control Act, 1961, are

entitled to seek eviction of the tenants?

7. Before I do that, it will be useful to refer to the decisions relied upon by the learned Counsel appearing for the parties in support of their respective submissions, on the first question.

(a) In the case of *Sivayogeswara Cotton Press*, supra relied upon by the learned Counsel for the respondents, the land was let out for building purpose with a fixed period and under those circumstances, the Supreme Court, while considering whether the lease was a permanent lease or a temporary lease, at paragraphs 8 and 9 of the said decision, has observed thus:

"8. Addressing ourselves to that question, it is clear on a construction of the document Ex. I that it was a lease of the demised premises for a term of 20 years certain, on payment of Rs. 350/-annual rent in advance, even though the lessee may not continue to occupy the demised land; that the lessee had been granted a right to continue the lease of the demised premises as long as the lessee desired to do so; that on his choosing to continue to enjoy the leasehold, the lessee was obliged to pay annually the enhanced rent of Rs. 400 for the next ten years after October 1, 1934, and after the expiration of the ten years aforesaid, the rent was further enhanced to the sum of Rs. 500 per annum; that the lessee was given the option to give up the lease at any time after October 1, 1934, without any further liability for payment of the stipulation rent; that (and this is a very important stipulation) the lessor bound himself not to call upon the lessee at any time to give up possession of the leasehold as long as the lessee was prepared to observe the terms of the lease; that the lessee was fully authorised "to erect, as many buildings, godowns, factories, bungalows and other structures etc.," as also to pull down or re correct structures or to make any alterations, as desired by him; that the lessor undertook not to raise any objection to the lessee making those structures or his using or enjoying the land in any way or for any purposes according to his desire; that the lessor undertook to pay the annual assessment to Government in respect of the demised premises but the lessee was obliged to pay all fines and other taxes which Government might impose for granting permission to convert the cultivable land into land meant for building factories and other structures as contemplated between the parties; that if the lessee chose to give up possession of the demised premises, he shall be entitled to take away all machinery, iron and steel, woodworks etc. of the factories, buildings and other structures that may be standing; that in the event of a default in the payment of the annual rent fixed as aforesaid, upon notice of demand served upon the lessee, the lessor reserved the right to re-take possession of the demised land. The lessee was also declared by para 10 quoted above to be always entitled to sublet or re-let the demised land to any person and on any terms. As the lease was apparently for the purpose of converting agricultural land into factory premises necessary for running the factory, it was specifically provided that if the Government refused to give the necessary permission for setting up the factory, the lease shall be deemed to be cancelled.

Para 13 also contains a stipulation that the heirs and assigns of the lessor shall have no right to disturb the lessee in peaceful possession of the demised premises, and that in the event of any such interference, the lessee shall be entitled to claim damages for the loss suffered by any action on the part of the lessor or his heirs or successors. Para 14 is also a very important clause in the lease deed, which though coming as the last clause must govern all the stipulations between the parties. Thus the terms and conditions of the lease which created the rights and obligations between the lessor and the lessee were specifically declared to be binding on the heirs and successors-in-interest of the lessor and the lessee.

9. It is manifest, therefore, on a plain construction of the terms aforesaid of the lease deed that the purpose of the transaction was a building lease, that though there was liberty reserved for the lessee or his successor or to give up the leasehold at any time after October 1, 1934, no corresponding right was reserved to the lessor. Thus, there is no room for the controversy which has occupied a large portion of the judgments of the Courts below, that reservation of the right to the lessee to surrender possession at any time, imported a corresponding right to the lessor to call upon the lessee to give up possession. It was an advantage specifically reserved to the lessee without any corresponding benefit to the lessor. It is equally clear that the lease was heritable and assignable. Thus, there is no difficulty in holding that there is no room for the contention, on the terms of the lease, that the parties intended that after the lapse of the first 20 years of the lease, the tenancy will be merely a tenancy at Will. It was clearly a tenancy for an indefinite period at the least".

(b) In the case of Chapsibhai, *supra*, relied upon by Sri Kumar for the landlords, while considering the stipulation provided in the lease deed, which provided "even after the prescribed time limit, I shall have a right to keep my structure on the leased out land, so long as I like and I shall be paying to you the rent every year as stated above, you will have no right to increase the rent and I shall also not pay it, myself and my heirs shall use this land in whatever manner we please", the Supreme Court, after referring to its earlier judgment in *Navalram v Javerilal* and in *Promada Nath Roy v S. Chowdhry*, at paragraphs 10, 11 and 14 of the decision, has observed as follows:

"10. Looking at the document (Ex. P. 4) as a whole, the lease undoubtedly is for building a residential structure. Though it is for 30 years certain, the lessee was entitled to remain in possession of the land so long as he paid the stipulated rent, which the lessor was not entitled to increase. But, though the lease is for building structure and the period is indefinite, there are at any rate no express words indicating that the leasehold rights thereunder were intended to be heritable. On the other hand, it expressly provides, as was the case in *Abdul Rahim ILR 1930 Bom 1596 : AIR 1929 Bom. 66*, for the right of the lessee to remove the structures, meaning thereby vacating the land, if he so desired. The clause providing for such removal is not that the lessee would remove the

structures on default in payment of rent, but depends on his own volition, a clause indicative of the parties not having intended the lease to be permanent. For, if it was intended to be permanent, there was no necessity for providing such a right. But, the argument was that there are words in the document indicative of the lease having been intended to be heritable as was the case in *Sivayogeswara Cotton Press*, supra. The mere fact, however, that a lease provides for the interests thereunder to pass on to the heirs of the lessee would not always mean that it is a permanent lease. Such a provision can be made in two ways resulting in two different consequences. A lease may provide a fixed period and then include a provision that in the event of the lessee dying before the expiry of such period, his heirs would be entitled to have the benefit of the lease for the remainder of the period. In such a case, although the lease may provide for the heirs to succeed to the interests in the leased land, it would only mean that such heirs succeed to the rights upto the expiry of the lease period. If the lease, on the other hand, were for an indefinite period, and contains a provision for the rights thereunder being heritable, then, such a lease, though ordinarily for the lifetime of the lessee, would be construed as permanent. The question, therefore, is to which of these two classes of leases the present lease belongs.

11. After reciting the purpose for which it was made, the term of 30 years and the rent, the deed provides:

"Even after the prescribed time limit, I shall have a right to keep my structure on the leased out land, so long as I like, and I shall be paying to you the rent every year as stated above".

Though the period is 30 years, this part of the document would make the lease for an indefinite period which would ordinarily mean a lease for the lifetime of the lessee. What follows then, however, gives scope for the argument that it is not merely for the lifetime of the lessee:

"You will have no right to increase the rent and I shall also not pay it, myself and my heirs shall also not pay it, myself and my heirs shall use this land in whatever manner we please. After the lease period, we shall, if we like, remove our building right from the foundation and vacate your land. In case we remove our structure before the stipulated period, we shall be liable to pay to you, the rent for all the thirty years, as agreed to above".

And further:

"In case I were to sell away the buildings, which I shall be constructing on the above land, to anyone else, then, the purchaser shall be bound by all the terms in this lease deed".

This part of the document undoubtedly gives the lessee the right to transfer by sale the leasehold interest. But, as already stated, a clause enabling the leasehold interests to be transferred does not render such interest inheritable.

14. In our view the lease before us is clearly distinguishable from that in the case of *Sivayogeswara Cotton Press*, supra, where the leasehold rights were in clear terms made heritable and where the Court held that clause (14), though placed last in the document, governed all its terms. There is no provision in the present case comparable with such a clause. The lease was undoubtedly for an indefinite period which only means that it was to enure for the lessee's lifetime. Reference in it of the heirs of the lessee is only for the limited purposes set out earlier and not for making the leasehold interests heritable. We do not find in the document words such as those in *Sivayogeswara Cotton Press*, supra, which would compel us to the conclusion that the lease was intended to be permanent".

(c) In the case of *Hamidullah (dead) by L.Rs and Others v Abdullah and Others*, the Supreme Court has held that in every case, an inference of permanency of tenancy is a question of fact depending upon the facts of each particular case and the onus of proving that the tenancy is permanent, is on the tenant. It is further observed in the said judgment that the mere fact of long occupation of the fixed rent does not raise the presumption of permanent tenancy. It is useful to refer to paragraph 17 of the judgment, which reads as under:

"17. The mere fact that an uniform fixed rent had been paid for a long time or the fact that Haji Khuda Bux and Faqir Bux had been in possession of the land for a long time and making constructions on land at their own cost would not, in the circumstances of this case raise a presumption that the tenancies were of permanent character. In every case an inference of permanency of tenancy is a question of fact depending upon the facts of each particular case. In *A.S.N. Nainapillai Marakayar v T.A.R. A. Rm. Ramanathan Chettiar*, it was ruled that the onus of proving that a tenancy is permanent is on the tenant and that the mere fact of long occupation at a fixed rent does not raise a presumption of permanent tenancy. The same view was held in *Subrahmanya Chettiar v V.P. Subrahmanya Mudaliyar*. In *Bejoy Gopal Mukherji v Pratul Chandra Ghose*, this Court said that neither possession for generations at uniform rent nor construction of permanent structures by itself is conclusive proof of permanent tenancy. It is the cumulative effect of these circumstances coupled with several other facts that may lead to an inference of permanent tenancy.. "

(d) In the case of *Syed Jaleel Zane*, supra, strongly relied upon by Sri Kumar, the Division Bench of the Andhra Pradesh High Court speaking through Jeevan Reddy, J., (as he then was), while considering the effect of a clause providing for renewal of the lease, after referring to the judgments of various High Courts, has taken the view that while in India law does not prohibit perpetual lease, clear unambiguous language would be required to infer such a lease; and if the language is ambiguous, the Court would opt for an interpretation negating the plea of a perpetual lease. It has also further held that the Court always leans against a perpetual renewal and where there is a clause for renewal subject to same terms and conditions, it has to be construed as giving a right to renewal for the same period as the period of the original lease, but not a right to the second

or third renewal and so on, unless the language is clear and unambiguous. At paragraph 19 of the judgment, the Court has observed as follows:

"19. The principle that emerges from the above decision is that, while in India, the law does not prohibit a perpetual lease, clear and unambiguous language would be required to infer such a lease. If the language is ambiguous, the Court would opt for an interpretation negating the plea of a perpetual lease. The Court always leans against a perpetual renewal and hence where there is a clause for renewal subject to the same terms and conditions, it would be construed as giving a right to renewal for the same period as the period of the original lease, but not a right to second or third renewal and so on unless, of course, the language is clear and unambiguous....".

Again, at paragraph 24, after considering the terms of the lease deed, the Court observed thus:

"24. We are, therefore, of the opinion that clauses 3 and 13 of the lease deed read together do not provide for a perpetual renewal and that the parties intended and contemplated only one renewal for a period of five years after the expiry of the initial period of lease, and no more. Once that is so, the tenant is not entitled to hold the premises on or after 31st December, 1973. The learned Single Judge was thus right in construing clause 3 accordingly".

(e) In the case of Sewak Ram, *supra*, the High Court of Allahabad has taken the view similar to the one taken by the Division Bench of the Andhra Pradesh High Court in the case of Syed Jaleel Zane, *supra*, and has held that in ordinary leases containing a clause for renewal of the lease after the expiry of the period, the lessee is entitled only to one renewal and after that, the lessee's right to renewal is exhausted. The Court, at page 331 of the judgment, has observed thus:

". . . . The defendant in the case before us however urges that under the terms of the lease executed by Ganga Ram, he (the defendant) has a perpetual right to the renewal of the lease on the expiry of each period. In our opinion this contention is not correct. Woodfall, in his Law of Landlord and Tenant, Edition 21, at page 467, observes that the leaning of the Courts is against perpetual renewals and that therefore in order to establish this construction, the intention must be unequivocally expressed. The leading case on the point is *Swinburn v Milburn*. Mull, in his Transfer of Property Act, at page 586, remarks:

"The chief difficulty about a covenant for renewal is to distinguish a covenant for one renewal from a covenant for perpetual renewal. This is a matter of construction of the covenant and the leaning of the Courts always has been against perpetual renewal, and unless the intention is clearly shown, the agreement is exhausted by one renewal".

In *Secretary of State v A.H. Forbes*, the following opinion was expressed on the point in issue:

"Similarly, Earl of Selborne, observed in 9 AC 844, that though there is no sort of

legal presumption against a perpetual renewal, yet the authorities certainly do impose upon anyone claiming such a right the burden of strict proof and are strongly against inferring it from any equivocal expressions which may fairly be capable of being otherwise interpreted. The substance of the matter therefore is that the covenant will not be construed as a covenant for perpetual renewal unless intention on that behalf is clearly shown, for instance, when the covenant expressly states that the lease is to be renewed for ever, otherwise the agreement is satisfied and exhausted by a single renewal.. .".

As we have already mentioned, in our opinion, there is nothing in the terms of the lease granted by Ganga Ram from which it could be gathered that the parties were agreeing to a perpetual renewal of the lease. The interpretation which we place on the lease executed by Ganga Ram is that under its terms, the Municipal Board of Meerut was entitled to one renewal and after that the defendants' rights were exhausted....".

(f) Similar is the view consistently taken by the Calcutta High Court while considering the covenant for renewal provided in a lease deed. In the case of *Secretary of State v Digambar Nanda and Others*, the Calcutta High Court took the view that where there is a covenant for renewal, if the option does not state the terms of renewal, the new lease would be for the same period and on the same terms as the original lease in respect of all the essential conditions thereof, except as to the covenant for renewal itself. The Court has further held in the said decision that the leaning of the Court is always against perpetual renewal and in order to establish that there was a covenant of perpetual renewal, the intention to be unequivocally expressed.

(g) The Division Bench of the Calcutta High Court in the case of *Guru Prasanna Bhattacharjee v Madhusudan Chowdhury*, has observed as follows:

"Consequently, the rule enunciated in *Lani Mia v Muhammad Easin Mia* 1933 Lab.IC 448, on the authority of the decision in *Secretary of State v Forbes* 1917 Lab.IC 180, becomes applicable, namely, that where there is a covenant for renewal, if the option does not state the terms of the renewal, the new lease would be for the same period and on the same terms as the original lease in respect of all the essential conditions thereof except as to the covenant for renewal itself.

(h) In Halsbury's "Laws of England", 3rd Edition, at pages 627 and 628, it is stated thus:

"The covenant may be a covenant for perpetual renewal, but the Court will not give it this effect unless the intention in that behalf, is clearly shown; as, for instance, where the covenant expressly states that the lease is to be renewable forever. If the intention to renew perpetually is clear, the Court will give effect to it notwithstanding that certain other terms of the lease appear to be inconsistent with such an intention. A provision that the new lease shall contain the same covenants as the old lease does not entitle the tenant to have the covenant for

renewal inserted, so as to give him perpetual renewal, unless the provision expressly includes "this present covenant". The intention to renew perpetually must be clear on the language of the lease; the fact that several renewals have been granted is not admissible to explain the intention of the parties to the lease. . . .".

7-A. Therefore, from the precedents, referred to above, what appears to me to be the correct view to be taken when a question arises as to whether the lease is a perpetual lease or a term lease, is that though there is no presumption against perpetual lease, clear and unambiguous language is required to infer such a lease. If the language is ambiguous, not clear and admits of some doubt, the Court is required to opt for an interpretation rejecting the plea of a perpetual lease. This is necessary because if the Court leans in favour of a perpetual lease in the absence of the language being clear and unambiguous, the effect of such interpretation would be to deprive a owner of his right to enjoy the property for ever. If the intention of the parties is to give a perpetual lease, nothing would be easier than to state in the lease deed that the lease is for ever or in perpetuity or the tenant can continue to enjoy the property as long as he likes and generation after generation. These are the simple sentences which could be, without any confusion or ambiguity or doubt, could be incorporated if really the parties intend that the lease is a permanent or a perpetual lease. In the absence of such stipulations in a lease deed, the Court is required to scrutinise the terms very carefully keeping in mind the consequences that would flow on the rights of the parties in considering or properly understanding the stipulations in a lease deed. Therefore, I am of the view that as observed in the decisions referred to above, the Courts will have to proceed on the basis that there is no presumption in favour of the perpetual lease and the Courts are required to lean against perpetual lease in the absence of stipulations in that behalf being unambiguous or clear.

8. In the instant case, as noticed by me earlier, though the learned Munsiff, on a consideration of several stipulations in lease deed Exhibit P. 19, has come to the conclusion that the lease is a term lease, the learned District Judge has reversed that finding and come to the conclusion that it is a perpetual lease. The two main considerations which weighed with the learned District Judge to take the view that the lease is a perpetual lease, are: (1) that the stipulation regarding the renewal of the lease under the same terms at the option of the tenant; and (2) that the lease is binding on the heirs, administrators, executors, successors, legatees of both the lessor and the lessee. Further, relying upon the decision of the Supreme Court in the case of Sivayogeswara Cotton Press, supra, the learned District Judge negated the case of the petitioners that since the option was given to surrender the lease at any time at the discretion of the tenant, the lease should be construed as a term lease. The reasons assigned by the learned District Judge, as noticed by me earlier, were reiterated by Sri Ujjannavar to support the finding recorded by the learned District Judge. However, on a proper construction of various terms in the lease deed and in the light of the precedents,

I am unable to agree with the conclusion reached by the learned District Judge that the lease is a permanent lease. It is necessary to point out that in the case of *Sivayogeswara Cotton Press*, *supra*, strongly relied upon by Sri Ujjannavar appearing for the respondents and also relied upon by the learned District Judge, as observed by me earlier, it was a case where the land was let out for building purposes without a fixed period. It was not a case where the lease was made renewable even at the option of the lessee. In that context, the Supreme Court took the view that the presumption is that it was intended to create a permanent tenancy and the presumption is not weakened the fact that the lessee has stipulated with the lessor to be entitled to give up possession if and when the lessee decides to do so. In my considered view, the principle laid down by the Supreme Court in the case of *Sivayogeswara Cotton Press*, *supra*, is not of any assistance to the tenants to treat the lease in question as a permanent lease. Insofar as the present case is concerned, admittedly the lease is for a period of 99 years. Therefore, there cannot be any doubt that when a period of 99 years is fixed in the lease deed, it is a term lease.

Otherwise, if the intention of the parties were to create a permanent lease, nothing could have been easier than to state that the lease is for an indefinite period. Then the question is whether the stipulation provided in the lease deed for renewal of the lease at the option of the lessee would make it a permanent lease. The renewal, even if done at the option of the lessee, again could be for a term of 99 years only. Whether it be during the original period of lease or even in the renewed period, the option is given to the lessee to surrender at his discretion. There is no provision in the lease deed which says that the renewal of the lease is for an indefinite period. In the absence of a specific provision in the lease deed providing that the renewal is required to be made at the option of the lessee for an indefinite length of time and from generation to generation, it is not possible to come to the conclusion that merely because the lease provides for a renewal of the term fixed in the lease deed under the same terms and conditions, that renewal is for an indefinite period and the lease is a permanent lease. If the renewal clause in the lease deed Exhibit P. 19 is properly understood in the backdrop of several other stipulations in the lease deed, I have no doubt in my mind to come to the conclusion that the lease is only for a term of 99 years; and the option can be exercised to renew the lease only once. If the parties could carefully provide for several contingencies in the lease deed culling out their rights, liabilities and obligations, if the intention of the parties were to create a permanent lease, as observed by me earlier, it was not at all difficult for them to specifically state in the lease deed that the lease is for an indefinite period and it is a permanent lease. Though the nomenclature of the lease or a document is not decisive to decide the nature of the document, still it is one of the considerations to be taken into consideration while interpreting a document and considering various other stipulations in the document. The lease deed also does not state that it is a permanent lease. Further, it is also necessary to notice that the lease was executed on behalf of a minor represented by his mother and guardian

through her Power of Attorney. The decision in the case of Syed Jaleel Zone, supra and in the case of Sewak Ram, supra and the observations made in the Halsbury's "Laws of England", 4th Edition and the other decisions of the High Courts, referred to above, also clearly support my view that when a renewal clause is provided in a lease, the renewal is only for a term and not beyond that.

9. Now, the other question is what is the effect of a stipulation in the deed which states that the lease is binding on the heirs, executors, administrators, successors and legatees under the Will of both the lessor and the lessee? The interpretation placed by the learned District Judge relying upon this clause that the lease is a permanent lease, in my view, is totally erroneous. The said stipulation is similar to the stipulation provided in any document. The effect of such a stipulation is that whatever is stated in the lease deed or a document, is binding on the heirs, executors, administrators, successors and legatees under the Will on account of death of the parties to the deed. Such a stipulation cannot be understood as extending the rights, liabilities and obligations created in the document. The said stipulation has to be understood as observed by me earlier to make the terms of the deed binding on the successors in interest of the parties to the document. Further, it is also necessary to point out that the rent is fixed and there is no provision for gradual increase in the rent. If, as a matter of fact, the lease was a permanent lease, one would expect the parties, who have taken the care to set out several terms in the deed governing the rights of the parties to provide for at least a gradual increase in the rent. Since the lease was for construction of a building and for establishing a Pressing and Ginning Factory, the term of the lease is fixed fairly long and a clause for renewal of the lease also is provided. Therefore, the long term provided in the lease with a renewal clause, cannot be understood as meaning that the lease is a permanent lease. Though the power of transfer or assignment of the lease is reserved to the lessee, the said provision specifically states that the transfer or assignment of leasehold interest of the lessee should not in any way affect the other conditions of the lease. The lease deed also provides that in the event the lessee is required to cut any tree growth in the land leased if the said tree growth becoming an obstruction to make use of the leased land for the purpose it was let out, the lessee can cut the trees, but hand over the tree growths to the lessor. This clearly shows that the lessor has reserved substantial interest in the leased premises and he has a right to the tree growths on the leased land in the event of the said tree growths are required to be cut. It is also provided that in the event of lessee vacating the demised land, he is required to deliver wood, stone and tiles used for the construction of the building to the lessor and take only the machineries and zinc sheets.

10. In the light of the discussion made above, I am of the view that the conclusion reached by the learned District Judge that the lease deed Exhibit P. 19 is a permanent lease, is erroneous in law and the said finding recorded by the learned District Judge suffers from material irregularities and illegalities while exercising jurisdiction conferred on him as a revisional Court under sub-section

(1) of Section 50 of the Act. On account of wrong construction of the terms of the lease deed, he exercised the jurisdiction not vested in him under law by interfering with the correct conclusion reached by the learned Munsiff and thereby holding that the eviction petition filed by the landlords u/s 21(1)(h) of the Act is not maintainable.

11. Now, the second question is whether, even if it is a term lease, since admittedly the term fixed in the lease even on this date has not expired, and in the light of the renewal clause provided in the lease deed, the landlords are entitled to seek eviction of the tenants? Insofar as this question is concerned, the Full Bench of this Court, in the case of M/s. Bombay Tyres International Limited, *supra*, after considering the earlier Full Bench decision of this Court in the case of Sri Ramakrishna Theatres Limited v General Investments and Commercial Corporation Limited and in the light of the decision of the Supreme Court in the case of Sri Lakshmi Venkateshwara Enterprises, *supra*, has held that the provisions of the Rent Control Act would operate *de hors* the contract and the landlord is entitled to seek eviction of the tenant under the provisions of the Act even before the expiry of the term fixed in the lease. In the case of M/s. Bombay Tyres International Limited, *supra*, this Court, at paragraphs 13 and 14, has observed as follows:

"13. From paragraphs 8 and 11 of the judgment of the Supreme Court in Sri Lakshmi Venkateshwara Enterprises case, it is clear that the Supreme Court has taken a categorical view that, by virtue of the non abstainer clause contained in Section 21 of the Act, nothing contrary contained in any contract can prevail over the provisions of the Rent Control Act. Their Lordships have also interpreted the decision of the Supreme Court in Dhanapal Chettiar v Yesodai Ammal, as taking the view that the provisions of the Rent Control Act would apply notwithstanding the contract. It was also held by their Lordships of the Supreme Court that it is not correct to hold that the Rent Control Act is a beneficial enactment only to the tenant.

"14. In Sri Ramakrishna Theatres Limited's case, *supra*, the Full Bench has held in paragraph 10 of the judgment that the main provision of Section 21 along with its proviso shows that its object is not to enlarge the rights of the landlord in any manner but actually it is restrictive of his right to recover possession. It was also held by the Full Bench that the decision of the Supreme Court in Dhanapal Chettiar's case, *supra*, would apply only to a case regarding termination of lease by issuing a notice u/s 106 of the Transfer of Property Act and that the dictum therein cannot be made applicable to the case where a term is fixed in the lease deed. It is on these two grounds that the Full Bench of this Court came to the conclusion that the provisions of the Rent Control Act are subject to the provisions of the contract of tenancy. But as stated earlier, on a reading of the decision of the Supreme Court referred to above in Sri Lakshmi Venkateshwara Enterprises case, *supra*, it is clear that their Lordships have taken a contrary view, viz., that the provisions of Section 21 of the Karnataka Rent Control Act

would operate notwithstanding the terms contained in any contract. In other words, their Lordships have clearly held that the terms of contract between the landlord and tenant cannot prevail over the provisions of the Rent Control Act. It is clear that if the provisions of the Rent Control Act are satisfied, the landlord is entitled to get an order of eviction notwithstanding the provisions of the contract. In other words, the Supreme Court has held that the Rent Control Court is a self-contained Code and the provisions therein alone would apply to determine the rights and liabilities as between the landlord and tenant and that the landlord would be entitled to get an order of eviction, if any, of the conditions mentioned in Section 21 of the Rent Control Act is satisfied de hors the contract between the parties. In the aforesaid Supreme Court case, their Lordships have also held that Dhanapal Chettiar's case, supra, has also taken a view that the provisions of the Rent Control Act would apply notwithstanding the contract. The Supreme Court further held that the Rent Control Act is not intended to benefit the tenant alone. Thus, it can be seen that on an interpretation of Section 21 of the Karnataka Rent Control Act, their Lordships have held that it would operate notwithstanding any contract and that the provisions under the contract of lease between the parties cannot prevail over the provisions of the Rent Control Act. Their Lordships have also interpreted the decision in Dhanapal Chettiar's case, supra, to the effect that the provisions of the Rent Control Act would apply notwithstanding the contract. When the Supreme Court has interpreted the provisions of Section 21 of the Rent Control Act as also the decision in Dhanapal Chettiar's case, supra, to the effect that the provisions of the Rent Control Act would operate de hors the contract, we are bound by the same. On a reading of the decision of the Supreme Court in Sri Lakshmi Venkateshwara Enterprises case, supra, we have no hesitation to hold that their Lordships have held that the provisions of Section 21 of the Rent Control Act would operate notwithstanding the provisions contained in the contract of lease".

Again, at paragraph 15, after referring to the contention advanced on behalf of the tenants, relying upon the decision in Dhanapal Chettiar's case, supra, this Court has stated as follows:

"15. ... In Sri Lakshmi Venkateshwara Enterprises case, supra, the Supreme Court has considered the very same decision and has stated that the above decision clearly holds that the provisions of the Rent Control Act would apply notwithstanding the contract. The effect of the decision in Dhanapal Chettiar's case, supra, is stated by their Lordships of the Supreme Court and we are bound by the same. This Court cannot take a different view as to what was laid down in Dhanapal Chettiar's case, supra. What is decided in Dhanapal Chettiar's case is stated by their Lordships in paragraph 11 of the judgment of Sri Lakshmi Venkateshwara Enterprises case, supra. It is to the effect that the provisions of the Rent Control Act would apply de hors the contract. When the Supreme Court has laid down the law to that effect, this Court has necessarily to follow the same and we do so".

Further, at paragraph 17 of the judgment, this Court held:

"17. In view of what is stated above, we are clearly of the opinion that the decision of the Full Bench of this Court in Sri Ramakrishna Theatres Limited's case, supra, is no longer good law in the light of the decision of the Supreme Court in Sri Lakshmi Venkateshwara Enterprises case, supra. Accordingly, we hold that a landlord is entitled to an order of eviction if he satisfies one or other conditions mentioned in Section 21 of the Karnataka Rent Control Act notwithstanding the fact that the lease under which the tenant is in possession of the premises is for a term and that it has not expired on the date when the application for eviction is filed".

Therefore, I am unable to accept the submission of Sri Ujjannavar that in view of the specific term provided in the lease deed, even if the lease is understood as a term lease, landlords are not entitled to seek eviction or recover possession of the petition schedule premises from the tenants de hors the terms of the lease or before the expiry of the term provided in the lease. The Full Bench decision of this Court, referred to above, which has laid down the law in the light of the decision of the Supreme Court in the case of Sri Lakshmi Venkateshwara Enterprises, supra, is binding on me and judicial discipline requires me to follow the same. It would not be proper for me to re-examine the correctness of the said decision on the basis of the decision of the Supreme Court in the case of Modern Hotel, Gudur, supra, sought to be relied upon by Sri Ujjannavar in support of his contention that the decision of the Full Bench of this Court does not lay down the correct law.

12. Now, in the light of the above conclusion that the eviction petition filed by the landlords is maintainable, the question that is required to be examined is as to whether the finding recorded by the Courts below u/s 21(1)(h) and (p) of the Act, is justified and calls for interference by this Court in exercise of its revisional jurisdiction u/s 115 of the Code of Civil Procedure?

13. Insofar as the claim made by the landlords for eviction of the tenants u/s 21(1)(h) of the Act is concerned, on consideration of the evidence on record, both the Courts below have concurrently found that the claim made by the landlords is reasonable and bona fide and the landlords require the petition schedule premises for the purpose of establishing their business in Pressing and Ginning Factory. The Courts below have found that the landlords have sufficient capacity to establish the business and for the said purpose, they need the petition schedule premises. The finding recorded by the Courts below on this question is purely a question of fact, which is not liable to be interfered with by this Court in exercise of its revisional jurisdiction. I do not find any illegality or infirmity much less any material irregularity or illegality committed by the Courts below in exercise of their jurisdiction. Further, even on comparative hardship, both the Courts below have held against the tenants. The evidence on record shows that the tenants are financially very sound and they have established similar business and similar factories -- one at Bagalkot and another at Bijapur.

Therefore, the finding recorded by the Courts below even on comparative hardship does not call for interference by this Court. I am fully satisfied that the tenants will not be put to any hardship if an order of eviction is passed against the tenants in the facts and circumstances of the case.

14. Now, the other question is whether, in the facts and circumstances of the case, partial eviction is required to be ordered? Both the Courts below on this question also have held against the tenants. It is necessary to point out that partial eviction is a limb of comparative hardship and it is ordered only with a view to mitigate the hardship that is likely to be caused in the event of an order of eviction being passed against the tenants. In the light of the conclusion reached by the Courts below, with which I am concurring, that the tenants will not be put to any hardship, I am of the view that there is absolutely no justification to order partial eviction. It is necessary to point out that the landlords intend to start Pressing and Ginning Factory. If the tenants required the entire accommodation in the petition schedule premises for the purpose of their business, it is needless to point out that the same accommodation would be required by the landlords also. Therefore, it is not reasonable and feasible to order partial eviction.

15. Insofar as the relief sought by the landlords for eviction of the tenants u/s 21(1)(p) of the Act is concerned, both the Courts below have concurrently held against the landlords. Admittedly, alternative premises acquired by the tenants is at Bagalkot. They have been carrying on business in the said premises for the last several years and it is the case of the tenants that they were in occupation of the said premises and carrying on business even prior to their acquiring interest in the petition schedule premises by means of assignment from the original tenants. I do not find any infirmity in the finding recorded by the Courts below. The findings recorded by the Courts below are purely questions of fact. The said findings do not suffer from any material irregularity or illegality in exercise of the jurisdiction by the Courts below, which calls for interference by this Court in exercise of its revisional jurisdiction u/s 115 of the Code of Civil Procedure.

16. In the light of the conclusion, I have reached above holding that the landlords are entitled to seek eviction of the tenant u/s 21(1)(h) of the Act, the order dated 31st of August, 1990 made in Revision (Rent) No. 51 of 1990 by the learned I Additional District Judge, Dharwad, sitting at Hubli, is required to be set aside and accordingly it is set aside, and in its place, order dated 2nd of March, 1990 made in HRC No. 140 of 1986 by the Principal Munsiff, Hubli, is restored and an order of eviction is made against the tenants u/s 21(1)(h) of the Act. However, the claim made by the landlords for eviction of the tenants u/s 21(1)(p) of the Act is rejected.

17. Having regard to the facts and circumstances of the case and keeping in mind that the tenants have been carrying on business in the petition schedule premises all these years and they require some time to re-establish the same business in some other premises, I am of the view that some reasonable time

has to be granted to the tenants. Therefore, the tenants are given 18 months" time from today to vacate the petition schedule premises subject to the condition that they shall file an undertaking by means of an affidavit before this Court within eight weeks from today, undertaking to voluntarily, hand over vacant possession of the petition schedule premises to the landlords on or before 3rd of May, 2000.

18. In terms stated above, this petition is allowed and disposed of.