
(2001) 12 AP CK 0086

In the Andhra Pradesh High Court

Case No : CRP No's. 1294 and 4072 of 2000

E.V. Jagannadha Rao and Others

APPELLANT

Vs

L.S. Eswara Rao and Others

RESPONDENT

Date of Decision : 19-12-2001

Acts Referred:

Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 — Section 10, 10(2), 11(4), 12, 13
Civil Procedure Code, 1908 (CPC) — Order 20 Rule 18, 151, 47
Transfer of Property Act, 1882 — Section 104, 106, 109

Citation : (2002) 1 ALD 845 : (2002) 1 ALT 532

Hon'ble Judges : Ar. Lakshmanan, C.J;V.V.S. Rao, J

Bench : Division Bench

Advocate : A. Srinivasa Sarma in CRP No. 4072 of 2000 and S. Srinivasa Reddy, for the Appellant; A. Srinivasa Sarma in CRP No. 1294/2000, K. Chidambaram and K. Ramagopal, for the Respondent

Final Decision : Partly Allowed

Judgement

A.R. Lakshmanan, C.J.—The tenants are the revision petitioners in both the CRPs. CRP No. 1294 of 2000 was filed as against the order in RCA No.43 of 1995 on the file of the Rent Control Appellate Authority-cum-Principal Senior Civil Judge, Visakhapatnam whereas CRP No.4072 of 2000 was filed against the order made in IA No.54 of 2000 in RC No.84 of 1986 on the file of the Rent Controller, Visakhapatnam. The said IA was filed by the petitioners u/s 15 of the A.P. Buildings (Lease, Rent and Eviction) Control, Act, 1960 (hereinafter referred to as "the Act") read with Section 151 of the CPC seeking relief of partition of the petition schedule property into four equal shares and to deliver possession of respective 1/4th and 3/4th shares by appointing a Commissioner to divide petition schedule property. The Court below appointed a Commissioner to divide the said property by an order dated 29-8-2000 and aggrieved by the same, CRP No.4072 of 2000 was filed. CRP No. 1294 of 2000 was filed by the petitioners aggrieved by the order of the appellant authority in RCA No.43 of 1995 dated

18-11-1999 in which the appeal was dismissed to the extent of order of eviction, but it was modified ordering eviction of tenants from 3/4th undivided share of the tenants therein as they are entitled to retain 1/4th undivided portion of the property and the parties were directed to approach the learned Rent Controller with a petition u/s 15 of the Act seeking a final decree for appointment of an Advocate-Commissioner for partition of property by metes and bounds and thereafter the learned Rent Controller shall pass final decree accordingly with regard to 3/4th share of the landlords and in case the tenants succeed in obtaining any further share in the property, the learned Rent Controller is at liberty to pass appropriate orders depending upon the circumstances, of the case.

2. The learned Counsel for the petitioner in CRP No. 1294 of 2000 had submitted that in view of the purchase of 1/4th share by registered sale deed dated 16-4-1993 by the 2nd revision petitioner viz., the third respondent in the eviction petition, the possession of the petitioners cannot be disturbed except by invoking the remedy in a competent civil Court. The learned Counsel had also drawn our attention relating to agreement of sale dated 27-5-1992 for the other 1/4th share and had submitted that a suit for specific performance is pending in this regard. The learned Counsel also had submitted that except relating to the 1/4th share purchased during the pendency of the litigation, in all other respects the findings of both the Courts are against him.

3. The learned Counsel for the landlords had vehemently contended that even if the registered sale deed is taken into consideration the other landlords are entitled to get possession of 3/4th share subject to the result of the suit for specific performance and in the event of success, the said 1/4th share also may go to the tenants. At this stage, at the best, the tenants can contend that they are entitled to 1/4th share by virtue of a registered sale deed. However, it is pertinent to note that even the vendor under the said sale deed was not examined. The learned Counsel had placed reliance on the decisions in Bibijan and Others Vs. Chintakridi Narasimham and Sons, , Lingaiah, Kistaiah, Chennaiah Vs. Chillampalli Venkatesham and Another, , Pokuri Venkata Subba Rao Vs. Vinnakota Peda Nageswara Rao, .

4. The learned Counsel in CRP No. 4072 of 2000 had contended that the impugned order directing the appointment of Commissioner to divide the properties is totally unsustainable since the remedy under the Act is only a summary remedy and the relief of partition or division of property by metes and bounds by appointment of a Commissioner and the passing of the final decree can be done only by a competent civil Court and not by the Rent Controller. Even otherwise, u/s 15 of the Act, this power cannot be exercised and hence the impugned order is one without jurisdiction.

5. The matter was heard by Sri Justice P.S. Narayana. Before the learned single Judge, it was submitted that the Rent Control Court is having jurisdiction to effect partition of joint property u/s 15 of the Act in appropriate cases and the order of eviction of tenants from such possession of property to which the

landlords are entitled as per the shares therein can be passed. For this proportion, the decision in Bibijan (supra) was relied upon.

6. In the decision in Pokuri Venkatasubba Rao, (supra), it was held that where there is no specific provision in the Rent Control Act or Rules relating to transfer of decree for execution from one Rent Controller to another, the provisions of CPC apply to such cases. In the decision in Lingaiah (supra), it was held that where eviction of tenant was ordered by the Rent Controller and the decree originally passed relates to the entire building and on partition between the landlord-brothers the building was divided into two portions and the tenant was occupying the entire building and the EP filed by one of the landlords for eviction of the tenant from the portion of the building that had fallen to his share, is maintainable u/s 104 of the Transfer of Property Act.

7. According to P.S. Narayana, J., the facts in the present case appear to be a bit peculiar. According to the learned Judge, the Rent Controller proceedings is a summary proceeding and in such a matter, it is doubtful whether the complicated questions involving title including the partition disputes can be resolved by exercising the powers u/s 15 of the Act. Therefore, the learned Judge was inclined to refer both the CRPs to a Division Bench to have an authoritative pronouncement on the following two questions:

1. Whether the Rent Controller exercising the powers u/s 15 of the Act can pass final decree and divide the properties by following the procedure under the Code of Civil Procedure? If so, to what extent and under what circumstances?

2. Whether in case of this nature the parties are to be directed to approach the competent civil Court for adjudicating their dispute and workout their remedies in a competent civil Court?

8. The Office as directed placed the matter before the Hon'ble the Chief Justice for passing appropriate orders in this regard. That is how the matter is placed before this Bench for answering the reference.

9. Section 15 of the Act reads as follows:

15. Execution of Orders :--Every order made u/s 10, Section 12, Section 13 or Section 14 and every order passed on appeal u/s 20 or on revision u/s 22 and every order as to costs u/s 21 shall be executed by the Controller:

Provided that an order passed in execution under this section shall not be subject to an appeal, but shall be subject to revision u/s 22.

10. Section 15 of the Act deals with the execution of orders. It says that every order made u/s 10, Section 12, Section 13 or Section 14 and every order passed on appeal u/s 20 or on revision u/s 22 and every order as to costs u/s 21 shall be executed by the Controller. The proviso says that the order passed in execution under the section shall not be subject to an appeal, but shall be subject to revision u/s 22 of the Act. However, a leaned single Judge of this Court

in Bibijan (supra), V. Bhaskar Rao. J., held that the Rent Control Court has jurisdiction to effect partition of joint property u/s 15 of the Act in appropriate cases and order eviction of tenants from such portion of property to which landlords are entitled as per their shares therein. The correctness of this decision was doubted by P.S. Narayana J., as already noticed. In this case, the Court held that the petitioners who are owners of 30 out of 72 shares, are not entitled to evict the tenant who subsequently purchased 42 out of 72 shares in the demised premises till partition is effected though they are able to establish their bona fide requirement of the premises. It was argued that the order of the appellate Court that tenants cannot be evicted until the partition is effected between the parties, is not correct as the law envisages the relief of joint possession too and hence the lower Court should have directed that the revision petitioners would be inducted into joint possession to the extent of 30 out of 72 shares. It was contended that the Rent Control Act is a self contained legislation and the Rent Controller is a Court possessing all the attributes of a Court and therefore, the revision petitioners have a remedy to evict the tenant only before the Rent Controller and the Section 15 of the Act confers all powers of execution upon a Rent Controller and that includes the power to effect partition by metes and bounds. The learned Counsel for the petitioners has relied on catena of decisions in support of their contentions. The learned Judge after referring to the sections and the salient features of the Rent Control Act was of the view that the A.P. Buildings (lease, Rent and Eviction) Control Rules, 1961 have been framed so as to supplement the provisions of the Act and thus, the Act and the Rules are a complete Code operating in the field of adjudication of disputes between the landlords and the tenants. The learned Judge was of the view that a combined reading of Sub-section (1) and the proviso would go to show that the civil Court shall have jurisdiction only in cases where the tenant denies the title of the landlords or claims right of permanent tenancy and in the event of the Controller deciding that such denial or claim is bona fide. In all other cases, it is the Rent Controller and the Rent Controller alone who will have jurisdiction. The learned Judge further observed:

It is pertinent to mention that Section 15 contemplates that orders have to be passed under Sections 10, 12 and 13 but conspicuously Section 11(4) is omitted therein. Despite the omission of Section 11(4) it has been held in the judgment cited supra (T. Venkateswam v. Krishnaiah 1969 (2) An.WR 245,) that an order u/s 11(4) also can be enforced in the same way as in other orders and this power will have to be traced to Section 15 of the Act. It is the golden principle of interpretation of the statute that any rule or law will have to be construed in a harmonious manner and the provisions will have to be interpreted in harmony with each other but not in conflict. From that point of view, the scope of Section 15 of the Act is held to cover the cases of Section 11(4) also.

11. Turning to the case on hand, the learned Judge was inclined to hold that Section 15 of the Act is comprehensive enough to execute the orders of all kinds passed by the Rent Controller including the division by metes and bounds. The

learned Judge further held that as the eviction order is to separate the undivided 30 out of 72 shares of the revision petitioners, the order has to be treated as a preliminary decree. By legal fiction this order has to be considered to be a preliminary decree and it follows the petitioners will have to file a petition invoking Section 15 of the Act seeking final decree and appointment of Advocate-Commissioner who shall suggest to the Court as to how the properties are to be divided by metes and bounds. When once that is done, a final will ensure how the revision petitioners will have to be put in exclusive possession of the demised property as may be suggested by the Advocate-Commissioner. According to the learned Judge, the remedy indicated above will be best suited to the facts and circumstances of the case and it can also be achieved in a speedy manner.

12. P.S. Narayana, J., has also noticed the decision in Lingaiah (supra) rendered by Bayapu Reddy. J. In this case, regarding maintainability of the execution petition in respect of half share of the landlords in which also the tenant is continuing as a tenant, a copy of the sale deed executed was also filed. The disputed building was already partitioned into equal shares and the purchaser under the sale deed had become entitled to the northern portion of the building while the respondents still continue to be as owners of the southern portion of the building. The landlords filed an execution petition seeking delivery in respect of their undivided share in the building lying on the southern side. Under the said circumstances, the learned Judge was of the view that there is no bar for ordering eviction of the tenants from such southern portion of the building which is also continued to be in the possession of the tenant as tenant. The learned Judge further observed that inasmuch as there is no provision in the A.P. Rent Control Act and the Rules framed thereunder relating to execution of a decree regarding portion of the demised premises, Section 109 of the Transfer of Property Act will apply. Such an execution petition filed for eviction relating to only a portion of the demised premises is maintainable and cannot be said to be in-executable.

13. In our opinion P.S. Narayana, J., was right in not agreeing with the view expressed by the decision in Bibijan (supra). According to him, the Rent Controller proceeding is a summary proceeding and in such a matter, it is doubtful whether the complicated questions involving title including the partition disputes can be resolved by exercising the powers u/s 15 of the act. In the case on hand, in IA No.54 of 2000, the appellate Court modified the order passed by the Rent Controller by ordering eviction of the tenants from 3/4th undivided share of schedule premises and also held that they are entitled to retain 1/4th undivided portion of the property. The appellate Court directed both the parties to approach before the Rent Controller with a petition u/s 15 of the Act for a final decree and for appointment of the Advocate-Commissioner for partition of the property by metes and bounds. Before the said Court, the decision in Bibijan and Others Vs. Chintakridi Narasimham and Sons, was cited. The Court felt that the prayer in the IA was not in accordance with the procedure indicated in the said judgment and the petitioners cannot straight away request the Court by means

of the IA either to partition the schedule property into four shares or to allot 3/4th share without filing an application for passing a final decree for the 3/4th share by appointing a Commissioner to partition the property by treating the order of the appellate authority as a preliminary decree by following the procedure indicated in Order XX, Rule 18 of the CPC. The respondents requested the Court to dismiss the petition. The Rent Controller passed the following order:

As a respondent No.2 purchased the undivided, unspecified 1/4th share of the property from the 4th respondent herein by way of registered sale deed during the pendency of RCC 84 of 1986. The second respondent is entitled to retain 1/4th share of schedule property. Though in the prayer the petitioner not mentioned regarding appointment of Advocate-Commissioner. For that the technical reason the Court should not dismiss this application as prayed by the respondents. As the shares of parties are certain, the Court can proceed further in this application as directed by the Hon"ble appellate authority in RCA No.43 of 1995.

In the result Sri K. Sailesh Prasad, advocate is appointed as Advocate-Commissioner. He is directed to divide the plaint schedule property into four equal and equivalent shares by metes and bounds. The fee of Advocate-Commissioner is fixed @ Rs. 1,000/- directly payable by the petitioners. The Advocate-Commissioner is further directed to issue notices to both the parties prior to his execution of warrant and obtain work memos if any from them. For report and sketch call on 19-9-2000.

14, Likewise, the appellate authority in RCA No.43 of 1995 passed the following order:

In the result, the appeal is dismissed so as to the extent of order of eviction but it is modified ordering eviction of the tenants from 3/4th undivided share and the appellate tenants are entitled to retain 1/4th undivided portion of the property. The parties are directed to approach the learned Rent Controller with a petition u/s 15 of the Act seeking a final decree and for appointment of an Advocate-Commissioner for partition of the property by metes and bounds and thereafter the learned Rent Controller shall pass a final decree accordingly with regard to the 3/4th share to the landlords. In case the tenants succeed to obtaining any further share in the property, the learned Rent Controller is at liberty to pass appropriate order accordingly depending upon the circumstances exists.

15. The Courts have held that where a decree or an order is made without jurisdiction, such decree or order is a nullity and is incapable of enforcement in execution.

16. In P.L. Morada Vs. S.D. Bakshi, the High Court of Himachal Pradesh held:

The state of pleadings, in their ultimate analysis, raised the question of jurisdiction. The appellant puts forward the plea of inherent lack of jurisdiction in the Controller and in the civil Court to execute the decree, if such a lack of

jurisdiction is proved, the very order of execution would be a nullity and in a situation of like nature, in our opinion such a question relating to jurisdiction could be raised at any stage in the proceedings. As evident the plea does not relate to wrongful exercise of jurisdiction but relates to absolute want of jurisdiction in the Controller or in the civil Court to execute the order. Such a plea could be raised at the stage of the execution of the order. Therefore, the objection relating to the limited question of execution, discharge and satisfaction of a decree, ordinarily amenable in a proceeding u/s 47 of the Code of Civil Procedure, would hardly be open in the present case.

17. In Mahadeo Subhanji Adekar Vs. Akaji Undersa Umathe, , the High Court of Bombay held:

A landlord having obtained the permission of the appellate authority to terminate the tenancy under Clause 13(3)(vii) of the CPC and Berar Letting of Houses and Rent Control Order, 1949, filed a suit for eviction. The tenant had in the meantime filed a writ petition challenging the finding of the appellate authority and applied for stay of suit pending the decision in the writ petition. The stay application was rejected and the landlord obtained a decree for eviction. The tenant's application for stay of execution of decree was allowed by High Court as also the writ petition and the findings of the appellate authority were quashed. The tenant resisted the execution of the decree on the ground that it had, in view of the High Court's decision on the writ petition, become nullity. The objection having been overruled on the ground that the executing Court could not go behind the decree in appeal.

Held that the permission granted by the appellate authority having been set aside by the High Court the parties were relegated to the former position, namely, that the tenancy had not been determined and consequently no suit for eviction could be maintained. The suit for eviction was not only premature but the decree passed therein was without jurisdiction.

18. In D. Narayana Gowda and Others Vs. I.N. Krishna Madystha, , the High Court of Karnataka held:

Under Section 48(6) of the Rent Control Act, it is not open to the executing Court to question the validity of the order of eviction passed against the judgment-debtor. The section, however, does not operate a bar to the question raised on behalf of the judgment-debtor with regard to the jurisdiction of the Court which passed the decree.

19. In N. Rajeswari and Others Vs. S.P. Palaniappan and Others, a decision of Madras High Court, the landlord sued for eviction of the tenant on the ground of subletting premises without permission and for committing acts of waste. During the pendency of the proceedings, the tenants purchased from the landlord's legal representatives 11/60 share of the demised property. The Rent Controller ordered eviction rejecting the plea of the tenant that by virtue of their purchase, they had become co-owners and the lease in question had been extinguished. On

appeal, the appellate authority held that by reason of their purchase, the tenants had become co-owners and were entitled to be in possession as co-owners and that the remedy open to the petitioners was to file a suit for partition and separate possession of their share and allowed the appeal. On revision against the order of appellate authority, a Division Bench comprising K.B.N. Singh, C.J., and K. Venkataswami, J., held:

There is no nothing in the Act to indicate that if a tenant occupying a premises under the Act, acquires a moiety interest of the landlord, he ceases to be a tenant within the meaning of the terms under the Act, and ceases to be liable to pay rent.

It was further held:

It also includes a person "continuing in possession after the termination of the tenancy in his favour". Section 10 deals with the eviction of tenants, and lays down that a tenant shall not be evicted, whether in execution of a decree or otherwise, except in accordance with the provisions of Section 10 or Sections 14 to 16 of the Act. Admittedly, the petition for eviction in this case was filed by the undisputed landlord u/s 10(2)(ii)(a), (b) and (iii) of the Act and after his death, both the tenants- respondents 1 and 2, purchased a moiety interest of one of his heirs. We do not find anything in the Act from which may inference could be drawn that, on such subsequent acquisition of a moiety interest, the petition for eviction filed under the Tamilnadu Act will no longer be maintainable, or that the lease creating the tenancy itself will be put an end to. The petition for eviction which was filed in the year 1975 will not be rendered nugatory on the acquisition of a share, two years later on (23rd October, 1977) by the tenant from one of the co-sharers of the landlord, under Exhibits. 14.

If that is the correct position of law than, in the absence of the tenants acquiring the entire interest of the landlord, they cannot non-suit the landlord's application for eviction on that ground alone. It is, however, another matter as to what is the relief that could be granted to them in such a situation, to which we shall revert later.

20. The Madras High Court while allowing the appeal set aside the order of the appellate authority and held that the petitioners are entitled to the order for eviction of the tenants in respect of the petition in their occupation. So far as the respondents 1 and 2 are concerned, taking note of subsequent events viz,, of their acquisition of a share in the building, no order for eviction need be passed against them, leaving it open to the parties to seek appropriate relief by way of partition and separate possession of their respective shares in the premises in question.

21. In *Puwada Venkateswara Rao Vs. Chidamana Venkata Ramana*, , the Supreme Court while considering the question of the issue of prior notice u/s 106 of the Transfer of Property Act, held:

The Andhra Pradesh Building Control Act is a complete code providing procedure for eviction and a prior notice u/s 106 of the T.P. Act terminating the lease is not necessary before filing a petition for eviction u/s 10 of the Andhra Act.

22. In this case, the Supreme Court also approved the decision in Raval and Co. Vs. K.G. Ramachandran and Others, . In that case, the Supreme Court noticed a decision in Hem Chand v. Sham Devi ILR (1955) P&h 36, and pointed out that it was held there that the Act under consideration in that case provided the whole procedure for obtaining the relief of ejectment and that being so, provisions of Section 106 of the T.P. Act had no relevance. No doubt, the decision mentioned with approval by the Supreme Court related to another enactment. But the principle indicated by the Supreme Court was the same as that was applied by the Andhra Pradesh High Court in Ulligappa v. S. Mohan Rao 1969(2)Andh. LT 268.

23. We may also refer to another judgment of the Madras High Court in Kuppuswami v. Balgurunurthi (1965) 1 MLJ 86. That was a case of appeal against the final decree in a partition suit. In that case, one of the owners of the properties sold his undivided half share in the building to the plaintiff in the suit. Soon after the sale, the owner who was carrying on business in the premises obtained lease from the vendee of the undivided share conveyed to him. Subsequently, the vendee filed a suit for partition and delivery of separate possession of his share in the properties. There was a preliminary decree in the suit. When the plaintiff applied for passing of the final decree, the second defendant contended that inasmuch as he was in possession as tenant of the premises under the plaintiffs, he would be entitled to protection afforded by the Madras Building (Lease, Rent Control) Act and that therefore no effective decree for delivery of possession could be passed in the case. The Court observed that the second defendant could resist pleading his rights at the stage of delivery of possession. The second defendant was not satisfied with the provision and he has come up in appeal. The plaintiff has filed a memo of cross objections stating that there could be no relationship of landlord and tenant between the parties. The Division Bench of the said Court held:

Where a co-owner of a building sells an undivided share therein to another and obtains a lease from his vendee of the undivided share conveyed by him to the vendee, he cannot claim to be entitled to the protection afforded by the Madras Buildings (Lease and Rent Control) Act, because in such a case there is no lease of any "building" and defined in Section 2(1) the Act, even assuming the arrangement to be one by way of lease.

By reason of the sale of the undivided share, the vendor and the vendee become thereafter co-tenants of the building, each of whom has an undoubted right to demand and obtain partition by metes and bounds of the joint property; but till that is done, it cannot be said that any of the sharers has got an exclusive right to any part of the joint property.

Where one co-tenant allows another co-tenant to enjoy his undivided share, it cannot be said that he has such exclusive right to the property, as to be capable of being let out. Much less can it be said that any part of such a building has been let out. No co-owner can say that he is the owner of any part or designated part of the building. His interest would be to the extent of the share owned by him in the entirety of the property. If he, under an arrangement, purports to let out or enters, into arrangement for the enjoyment of the property by the other, that transaction can be regarded only as one with respect to the undivided Share of the entire property and not with reference to any "building" or part of "building" within the meaning of the Madras Buildings (Lease and Rent Control) Act.

24. The above case is clearly distinguishable. It was held in that case that it was not a case of letting out the building, but only an arrangement with respect to the undivided share of the entire property and that no tenancy of any building as defined in the Act, was created.

25. It is well settled that the right to relief in an action between the parties must be judged in relation to the date of the suit. The Court may take subsequent events into consideration for moulding the relief in fairness to both the parties.

26. The Supreme Court in Rabindra Kumar Ghosel alias Buli Vs. The State of West Bengal, observed that if a fact arising after the lis has come to a Court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the Court, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy.

27. In AIR 1941 5 (Federal Court) which is a leading case on the point, Gwyer, CJ,, referred to the rule adopted by the Supreme Court of the United States in Patterson v. State of Alabama (1934) 294 US 600 at p.607, which is in the following terms:

We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such disposition of the case as justice requires. And in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered.

28. In Surendra Nath Sarkar Vs. Mahabir Roy and Others, , a Division Bench held:

A suit for partition would be maintainable although the property which is the subject-matter of partition is in possession of a tenant who happens to be a co-sharer. In such a case it may not be possible for the Court to put the plaintiff into physical possession of the property after the final decree for partition has been made and the plaintiff may have to content himself with a decree entitling him to symbolical possession.

29. In Ganesh Babu and Another Vs. K.S. Radhakrishnan and Others, , the Madras High Court held that the purchaser of a co-parcener's undivided interest

in joint family property is not entitled to possession of what he has purchased. His only right is to sue for partition of property and ask for allotment to him of that which on partition might be found to fall to share of coparcener whose share he had purchased.

30. In the instant case, the relief sought for is partition of the petition schedule property into four equal shares and to deliver possession of respective 1/4th and 3/4th shares by appointing a Commissioner to divide petition schedule property. The Court below appointed a Commissioner to divide the said property by an order dated 29-8-2000 and aggrieved by the same, CRP No.4072 of 2000 was filed. CRP No. 1294 of 2000 was filed by the petitioners aggrieved by the order of the appellate authority in RCA No. 43 of 1995 dated 18-11-1999 in which the appeal was dismissed to the extent of order of eviction, but it was modified ordering eviction of tenants from 3/4th undivided share of the tenants therein as they are entitled to retain 1/4th undivided portion of the property and the parties were directed to approach the learned Rent Controller with a petition u/s 15 of the Act seeking a final decree for appointment of an Advocate-Commissioner for partition of property by metes and bounds.

31. Judged in the light of the aforesaid discussion, it must be held that Rent Control petition filed by the landlord was maintainable on the date when it was filed and that it will not be a non-est proceeding merely on account of the purchase by the tenants of a moiety share, though it will have relevance to the relief that may be granted to the parties. The tenants being already in possession of the building, the proper order that could be passed in the circumstances of the case will be to direct the landlord to be in joint possession along with the tenants, leaving it open to the landlord to sue for partition of his specific share in the property.

32. In view of the plethora of decisions referred to in this judgment, we are of the opinion that the decision rendered by V. Bhaskar Rao, J., in Bibijan and Others Vs. Chintakridi Narasimham and Sons, , does not lay down the correct proposition of law. With respect to the learned Judge, we overrule the same.

33. In the result, the revision petitions are partly allowed and the order of the appellate authority issuing directions to the Rent Controller to pass a final decree is set aside. The landlords are entitled to the order of eviction of tenants in respect of the portion in the occupation of the tenants. So far as the acquisition of share in the building is concerned, the eviction order cannot be executed leaving it open to the parties to seek appropriate relief by way of partition and separate possession of their respective shares in the premises in question.

34. In the result, we answer the reference that the Rent Controller exercising the powers u/s 15 of the Act cannot pass a final decree for dividing the property by following the procedure under the Code of Civil Procedure. As regards the question No.2, in a case of this nature, the parties are to be directed to approach the competent civil Court for adjudication of their disputes and work out their

remedies before a competent civil Court by seeking appropriate relief by way of partition and separate possession of their respective shares in the premises in question. Both the issues are answered accordingly.