
(2001) 08 BOM CK 0052
In the Bombay High Court
Case No : Suit No. 508 of 1971

Kalpana Gopalkrishna Singhania and Others	APPELLANT
Vs	
Naresh M. Kabra	RESPONDENT

Date of Decision : 18-08-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Specific Relief Act, 1963 — Section 5, 6
Transfer of Property Act, 1882 — Section 101, 102, 103, 104, 105

Citation : (2002) 2 ALLMR 858 : (2002) 5 BomCR 370

Hon'ble Judges : A.B. Palkar, J

Bench : Single Bench

Advocate : N.G. Thakkar and Sanjay Kothari, instructed by Mulla and Mulla, Carraige, Blund and Coroe, for the Appellant; P.R. Diwan and C. Ardeshir, instructed by Kanga and Co., for the Respondent

Judgement

A.B. Palkar, J.—This is a suit for eviction and recovery of mesne profits. Plaintiff No. 2 is a joint stock company registered under the Companies Act and original plaintiff No. 1 was at all material times Managing Director of the company. Original plaintiff No. 1 died intestate on 3-1-1980 during the pendency of the suit and his heirs plaintiffs 1-A to 1-D are brought on record. Plaintiff No. 1 is member/shareholder of the Shankar Sagar Co-operative Housing Society holding five shares and the society has allotted as such member a flat bearing No. 44 on the 7th floor of the said building Shankar Sagar situated at Bhulabhai Desai Road, Bombay, Original plaintiff was holding the aforesaid shares and the beneficial interest in the said flat No. 44 as a nominee for and on behalf of plaintiff No. 2 Company. The said shares and beneficial interest in the flat are the assets of the company.

2. Late Lala Kailaspath Singhania was the uncle of original plaintiff No. 1. His daughter Amarpali got married to defendant on 15-12-1968. At the request of Lala Kailaspath Singhania and his daughter Amarpali, original plaintiff No. 1 (since deceased) allowed by way of a temporary arrangement the said Amarpali

to use and occupy the said flat from February 1969 without payment of any rent or compensation. Thereafter Amarpali along with the defendant started residing in the said flat from February 1969. However, from 26-2-1970, Amarpali ceased to reside in the said flat with the consent of the plaintiffs and has not been using the same for any purpose and defendant, her husband, is in wrongful use, enjoyment and possession of the same. On 26-2-1970, Amarpali left the flat and since Amarpali ceased to reside the temporary arrangement came to an end and was terminated. By letter dated 3-12-1970 Amarpali confirmed this fact that she has no objection to the plaintiffs recovering possession of the flat from the defendant.

3. There is no contractual relationship whatsoever between the plaintiffs and defendant. Even according to the bye-laws of the society it is not possible to create tenancy in respect of flat without previous permission of the society in writing and no such consent has been given. Plaintiffs are neither owners nor tenants in respect of the flat and there is no power to create any tenancy or sub-tenancy. Plaintiffs therefore repeatedly asked defendant to remove himself from the said flat and ultimately by letter dated 13-1-1971 called upon him to do so and to remove himself from the said flat alongwith his belongings and hand over vacant possession to the plaintiffs. However, defendant by his Advocate's letter dated 13-2-1971 made false and frivolous allegations and wrongfully refused to hand over possession and hence the suit. Defendant has thus become trespasser and is liable to pay damages at the rate of Rs. 100/- per day which is just and reasonable compensation and mesne profits. Plaintiffs have therefore claimed a sum of Rs. 45,300/- as damages with further interest at 6% per annum from the date of suit till realization.

4. Contesting the suit the defendant filed a very verbose written statement. However, it would be sufficient to refer to material allegations only. Plaintiff is verified by Mr. M.R. Kurup, constituted attorney of plaintiff No. 1 and Assistant Secretary of plaintiff No. 2. He has no personal knowledge of the mutual understanding and arrangement between original plaintiff No. 1 and members of the family and defendant, especially his late father-in-law of defendant Mr. Lala Kailaspath Singhania. The 1st plaintiff is aware of the facts and circumstances regarding the arrangement and understanding by which suit flat has been occupied by defendant, but he has deliberately chosen not to put his oath to the plaintiff and proceedings and to the various affidavits filed in the proceedings and the plaintiff is sworn and verified by one of the employees of plaintiff No. 2 who has no personal knowledge of the facts and circumstances. Defendant does not admit that plaintiff No. 1 is member and shareholder of the society and entitled to use and occupy the flat in accordance with the bye-laws of the society. Shares are registered in the name of plaintiff No. 1 G.K. Singhania and not in the name of the limited company. This position was even admitted by plaintiff No. 1. He has now made false allegations with ulterior motive.

5. It is also contended by defendant that he was reliably learnt that there is

provision in the Will made by his late father-in-law regarding the said flat for residence of defendant, his wife and their minor daughter Sangeeta. According to the defendant in the said Will his late father-in-law has disposed of the suit flat in favour of defendant, his wife, and their minor daughter Sangeeta. Plaintiff No. 1 and Singhania family have forcibly manoeuvred defendant's wife to leave matrimonial home soon after the death of his father-in-law, leaving the minor daughter Sangeeta and plaintiff No. 1 and Singhania family have forced his wife to reside with plaintiff No. 1 and Singhania family in order to have full control over her, so that she may do certain things which she may not be willing to do of her own. The flat is bequeathed in favour of defendant, his wife and daughter.

6. Material contention of the defendant is that after his marriage with Amarpali, which was a love marriage, he was residing in Bombay and had no accommodation of his own. During one of his visits to his late father-in-law, his father-in-law made enquiries about his accommodation and on finding that he has no accommodation of his own, persuaded him to reside in one of flats, viz. the suit flat on the 7th floor of Shankar Sagar building without any hesitation or without any feeling of obligation. Defendant told his deceased father-in-law that he was accepting the request to reside in the suit flat on condition that the deceased would accept a lumpsum price of the suit flat and allow defendant to pay the same by installment as would be mutually agreed upon so that no other family member can make allegation against defendant and his wife. However, his deceased father-in-law was not agreeable to accept anything by way of price and on insistence and persuasion by the defendant, he agreed to accept Rs. 300/- per month as monthly rent to cover the outgoings of the suit flat. His father-in-law told that he never wanted to make any profit out of the suit flat and the arrangements and understanding was made known to original plaintiff No. 1. He was also present and it was confirmed by him. Plaintiff No. 1 informed that the flat stands in his name. It is merely for the sake of convenience and in fact it belongs to the family. Plaintiffs have therefore come up with a false claim that the flat belongs to plaintiff No. 2 company.

7. On occupying suit flat, the deceased father-in-law of defendant got it renovated and also furnished it with furniture, fittings and fixtures and provided other facilities for residence of the defendant. The said furniture, fixtures and fittings were in fact given to the defendant as gift and since then the defendant has been in exclusive use, occupation and possession of the suit flat and has been paying monthly rent of Rs. 300/-. Even after the death of his father-in-law, plaintiff No. 1 called defendant on several occasions at his residence and informed him that he was still ready and willing to give effect to and carry out the desire of the deceased father-in-law of the defendant by giving away the flat and the fiat car to the defendant, more particularly since the grand child was born and it was so stated by the father-in-law in his last Will. Defendant has been paying monthly rent as directed by the Court. Plaintiff No. 1 who initially represented to the defendant that he is a well-wisher of defendant, was ultimately responsible for severance of relationship between defendant and his

wife and it is because of the brother of plaintiff No. 1 and other family members that Amarpali suddenly and without any cause left the matrimonial home in February/March 1970 leaving even her five months old child. It is now learnt that it is at the instance of plaintiff and Singhanian family that all attempts of reconciliation between defendant and his wife failed. His wife had filed a custody Petition bearing No. 318 of 1970 in order to pressurise the defendant to submit to the ulterior motive of the plaintiffs and Singhanian family and at their instance she also filed an interim application when interim custody was refused, she did not persuade the custody petition. Letter dated 3- 12-1970 has thus been obtained by plaintiff No. 1 and Singhanian family by pressurising Amarpali which is evident from the language of the said letter. Plaintiff No. 1 is party to the agreement between defendant and his father-in-law. Suit has been filed after lapse of sufficiently long time and plaintiffs are guilty of laches and/or estopped from claiming any relief. The society has in fact recognised defendant as in exclusive possession of the flat since the time he came in occupation and to the knowledge of the society electricity meter, telephone, are standing in the name of the defendant. Even the cooking gas is standing in the name of defendant and he is paying the charges and thus defendant is in exclusive possession. Plaintiffs are now estopped from demanding possession of the suit flat from the defendant. Defendant has also spent huge amount on the improvement made in the suit flat, defendant has also made enquiry about monthly assessment and other outgoing of the flat. He was asked to pay Rs. 300/- per month by his father-in-law to cover the expenses and it was to be paid by way of rent and as such the suit in the form presented is not maintainable.

8. On the pleadings of the parties issues were framed and those issues with my findings recorded against them are as under and the reasons for the findings are stated in the paragraphs that follow :

ISSUES FINDINGS.

1. Whether this Court has no jurisdiction to entertain. This Court has jurisdiction and try the suit as alleged in para 1 of the written statement?

2. Whether plaintiff No. 1 holds shares and beneficial interest in the suit flat as a nominee for and on behalf of plaintiff No. 2 as alleged in para 2 of the plaint? Yes.

3. If answer to issue No. 2 is in affirmative whether plaintiff No. 2 is entitled to claim any right, title and interest in the suit flat in view of provisions of Benami Transactions (Prohibition of the Right to Recover Property) Ordinance, 1988? Yes.

4. Whether at the request of Kailaspat Singhanian and his daughter Amarpali the org. plaintiff No. 1 as and by way of temporary arrangement allowed the said Amarpali to use and occupy the suit flat from February 1969 without payment of compensation as alleged in para 4 of the plaint? Yes.

5. If answer to issue No. 4 is in affirmative:

(a) Whether on or about 26th February 1970 the said Amarpali ceased to reside

in the said flat and by consent between the plaintiff and the said Amarpali the temporary arrangement was terminated as alleged in para 5 of the plaint? Yes.

(b) Whether said Amarpali by a letter dated 3-12-1970 confirmed that the said Amarpali had no objection to plaintiffs recovering the said flat as alleged in para 5 of the plaint ? Yes.

6. Whether between plaintiffs and defendant there is no contractual relationship whatsoever for the reasons alleged in para 6 of the plaintiff ? Yes.

7. Where the defendant and his wife come to use and occupy the suit flat and started residing there from February/March 1969 as a monthly tenant at a monthly rent of Rs. 300/- in the circumstances set out in para 9 of the written statement ? No.

8. Whether defendant's occupation enjoyment and possession of the said flat are acts of trespass and defendant is a trespasser as alleged in para 9 of the plaint ? Yes.

9. Whether the plaintiffs are estopped from alleging that the suit flat belongs to them or that no tenancy in favour of the defendant could be created in respect thereof of that the plaintiffs are entitled to file this suit as alleged in paras 7 and 13 of the written statement ? No.

10. Whether the plaintiffs are entitled to possession of the suit flat as alleged in para 8 of the plaint ? Yes.

11. Whether the plaintiffs are entitled to damages and Plaintiffs are entitled compensation of Rs. 43,500/- to damages not at the and further damages and rate claimed but at the compensation as alleged in rate as per the order. para 11 of the plaint ?

12. To what reliefs if any are Plaintiffs are entitled the plaintiffs entitled to ? possession and mesne profits as per order below.

13. What order ? As per final order.

REASONS

9. So far as Issue No. 1 is concerned, in fact no argument was advanced in support of the issue by defendants although issue was framed at the instance of the defendants. It is well settled law that in order to decide whether the Court has jurisdiction what is necessary is to see the allegations in the plaint. The flat was allowed to be used by the daughter of Singhania and the defendant who is her husband, for a temporary period without any payment or compensation, meaning thereby that it was a gratuitous licence and defendant was residing there as her husband. On such pleadings the suit has to be filed in this Court in view of the valuation. Merely because defendant has raised a plea that he is a tenant, the jurisdiction of the Court does not cease and in view of this, it appears that the learned Counsel for the defendant did not press this issue.

10. Issue Nos. 2 & 3: Although Issue No. 3 is framed no argument was advanced in support of the same on behalf of the defendant by his learned Counsel obviously for the reason that there is no substance in the contention raised in that behalf. The contention of the plaintiffs is that the property is of the company and since the society rules do not permit company to be a member of the society, original plaintiff No. 1 was made a nominee and therefore his name is mentioned in the society record. It is not their case that plaintiff No. 1 is real owner of the flat and it is also not the case whether even according to the company that plaintiff No. 1 is a benamidar. The company requires the flat for its officers and visitors and as society rules do not permit it to stand in the name of the company, it was taken in the name of G.K. Singhania, plaintiffs have produced sufficient evidence on record to show that Kailaspath Singhania was not the owner of the flat, but it belongs to the company. The subject came up for discussion in the board meeting dated 20-11-1967 of which minutes are produced on record. Mr. Singhania expressed difficulty the company was facing for providing residential accommodation for their guests other dignitaries who visit Bombay and brought it to notice that negotiations for purchase of three bed room flat on ownership basis in Shankar Sagar were going on. The price of the said flat was also stated and it was brought to the notice of the Board that the agreement will have to be in the name of the nominee of the company and the Board directed to take such steps as is necessary for the purchase of the said flat. The resolution is at Exh. B, Exh. C is the agreement and naturally the share certificate stands in the name of Gopal Krishna Singhania. The entire record regarding the payment of price by the company is produced and the property is shown as property of the company in all the records. It is also mentioned in the annual report. All the outgoings of the flat have been paid by the company although receipts stands in the name of G.K. Singhania. Payment of consideration is also recorded in the accounts of the company. The entire consideration has been paid by the company and merely because society rules require a member to be an individual and not jural person, G.K. Singhania was appointed by the company to be a nominee of the company to hold that the said flat and the flat therefore stands in his name in the record of the society which for all practical purposes is a flat belonging to the company. All cheques for payment of outstanding dues are issued by the company and as a matter of fact this was not seriously challenged even during the course of arguments by the learned Counsel. Therefore, original plaintiff No. 1 G.K. Singhania was not the owner but was only a nominee of the company and the property belongs to plaintiff No. 2. In fact this documentary evidence has not been practically challenged by the defendant knowing well that it is difficult to controvert. In this connection learned Counsel for the plaintiffs relied on a judgment reported in *Laxmibai Narayan Satesa Vs. Dattatraya Tukaram Jarande*, . Hence issue Nos. 2 and 3 are answered accordingly.

11. Issue Nos. 4, 5(a) & (b), 6, 7, 8, 9, 10, 12 & 13: All these issues are so interconnected that it is convenient to discuss together. The relationship is not in

dispute, Amarpali is the daughter of Lala Kailaspath Singhanian. She got married to the defendant. Admittedly it was a love marriage against the wishes of her parents and without their permission and the circumstances in which the flat was given to Amarpali for residence are also not in serious dispute. Immediately after marriage Amarpali and defendant came to Bombay and had no accommodation of their own. Even according to the defendant, he was residing with a friend and it is obvious that he could not continue to reside in the house of the friend for a long period. He had to make some arrangement of his own and in such a situation he met his father-in-law and therefore, father-in-law gave an offer to use and occupy one of the flats of the company. It is also on record that Amarpali was just 18 years of age and had become major only three days prior to her marriage with defendant. Admittedly she belongs to a rich family representing J.K. Group of companies i.e. family of Singhanian and the defendant was a doctor who had just completed his education and was attending some hospital.

12. This is a case in which according to the plaintiffs, daughter of Lala Kailaspath Singhanian was allowed to use company's flat for a temporary period which amounts to a licence. The premises were given on licence. It is not a case of licence for a day or two or limited period of six months or so. On behalf of the defendants it was strenuously contended that the licence or permission for a temporary period would not be for an indefinite period and if that is so then it would not be a licence. Suffice it to say that there is no substance in the argument. A person having sufficient property and in practical control of a leading group of companies, would not like his daughter to stay in a place which does not even belong to or in which his son-in-law has no right. They were just staying at a friend's house and it is obvious even from the defendant's evidence and pleadings that defendant was not in a position to secure accommodation. In normal course he would require considerable period to secure accommodation. The word temporary does not indicate a short period. The word only indicates that it was not permanent. As against this, the contention of the defendant is of tenancy and to appreciate the evidence in such a case, it is necessary to bear in mind the legal position. In the case of *Chandrabai Pandurang Bidwekar Vs. Nanji Jaywant*, it was held as under:

(A) Transfer of Property Act, (1882), section 105---Suit for ejectment of defendant as trespasser-Question whether defendant is tenant. Recovery of rent from defendant by a person who is not owner of land in question it cannot give right to defendant as tenant or amount to recognition of his alleged tenancy.

(B) Evidence Act, (1872)--Suit for ejectment of trespasser-plaintiff's title undisputed-Burden of proof-Failure of defendant to prove his plea-Effect Transfer of Property Act, (1882), section 105.

Where in suit for ejectment of defendant as trespasser the plaintiff proves his title and the defendant sets up plea of title by way of tenancy under which he seeks to be in occupation of the suit land, it will be for him to establish that title. Unless he does so, the plaintiff by virtue of his title will be entitled to possession

of suit land and the defendant must be held to be trespasser."

It is therefore clear that the burden to prove relationship of landlord and tenant is on the defendants and on the failure of the defendant to establish such a relationship the obvious conclusion would be that defendant is occupying the flat as a licensee which licence was granted in favour of his wife Amarपाली by his father-in-law in order to accommodate her immediately after her marriage as she and her husband had no accommodation and were living in the house of a friend.

13. In order to consider the defendants plea of tenancy, it is also necessary to bear in mind that the property did not belong either to Kailaspath Singhania or to original plaintiff No. 1 G.K. Singhania. It is the property of the company and as such none of them was legally competent to create a tenancy although in their own authority they could allow their relatives or member of their family to occupy the flat. Creation of tenancy would involve transfer of interest in the property which is not permissible as the property belong to a company and in any case being well aware of this aspect, it is not probable that without even following the necessary formalities required for leasing out a flat belonging to the company, Kailaspath Singhania would create a tenancy right on companies property. In this connection the learned Counsel for the plaintiffs relied on a judgment reported in Indian Hotels Co. Ltd. Vs. Bhaskar Moreshwar Karve and another., . In this case respondent joined the company as an officer and in 1971 he was allotted as officer of the company a flat belonging to the company for his residence. In 1976 the company purchased another flat for Rs. 1.77 lakhs. Respondent representing that his own flat would be ready in two years, requested the company in 1978 to be allotted the new flat. Company acceded to this request. Later in the same year, the respondent expressed his wish to retire prematurely in 1979 and requested that the flat occupied by him should be sold to him at book value. Managing Director of the company agreed in principle but stated that the matter was subject to modification and approval of the Board of Directors. Respondents however, did not retire but continued in service. Some years later, he requested the Managing Director to have the sale of the flat to him at book value completed immediately. The Managing Director pointed out that since there had been a drastic change in real estate prices he could not put the matter to the board and it might be possible to offer an alternative. In 1989, the respondent retired from service, but did not vacate the flat. He was informed that the offer to buy the flat at book value had been turned down by the Board of Directors, whereupon the respondent called upon the company to honour its commitment. Though the Board had refused, the respondent insisted on being sold the flat at book value. Subsequently the company after calling upon the respondent to hand over possession of the flat, instituted a complaint against the respondent u/s 630 of the Companies Act. Respondent filed a suit for specific performance of the agreement of sale and in the circumstances, it was held that no commitment was made by the Managing Director to the respondent to sell the flat in question to him. Moreover, in matters of alienation of property, no such commitment made by any officer at any level could either be valid or binding as

it was only the Board of Directors in whom such powers vested. Therefore, neither Kailaspath Singhanian nor Gopal Krishna Singhanian could bind the company by creating a tenancy in respect of the flat in favour of any close relative including daughter of Mr. Kailaspath Singhanian. The oral evidence in this respect is to be appreciated bearing in mind this legal position.

14. Plaintiffs have examined two employees of the company. Their evidence was criticised mainly on the ground that they have no personal knowledge specifically as regards the talks between Kailaspath Singhanian as well as Gopal Krishna Singhanian and the defendant or his wife. These were matters of personal knowledge of Mr. Kailaspath Singhanian or original plaintiff No. 1. Original plaintiff No. 1 is not examined and during the pendency of the proceedings he died. At one stage, it appears that the plaintiffs wanted to examine original plaintiff No. 1 but ultimately he has not been examined. Be that as it may, when it is clear that the burden to establish the agreement of tenancy is on the defendant, it is necessary first to examine defendant's evidence and to find out whether even prima facie the contention of the defendant regarding tenancy is acceptable. One of the facts as already pointed out is that neither Mr. Kailaspath Singhanian nor Mr. Gopal Krishna Singhanian, original plaintiff No. 1 had any authority to create tenancy in respect of the suit flat which belong to plaintiff No. 2. Even assuming in favour of defendant that Kailaspath Singhanian being Head of the J.K. Group of companies could have influenced the Board of Directors or could have created such a tenancy, the question remains is whether even after doing so, he would not inform the company so as to take note and necessary entry in the records of the company and to see that the so called rent agreed or outgoings to be borne by the defendant are paid by the defendant to the company, and the outgoings are not borne by the company thereafter. Even assuming that he wanted to give flat on lease to the defendant, in normal course he would tell the defendant that although he has no objection to give him the flat on rent, he will have to bring it to the notice of the Board of Directors of the company and even though it may be a formality, necessary resolution will have to be passed by the Board, so that proper entries are made in the records and account books of the company and in such a case the amount of rent or outgoings by whatever name called is paid by defendant to the company and would naturally be deposited in the account of the company. Nothing of the sort has been done and therefore, at the very inception the plea of defendant having been inducted in the premises as a tenant by Mr. Kailaspath Singhanian to the knowledge of Mr. Gopal Krishna Singhanian and with his consent appears totally untenable. I do not think that non-examination of Gopal Krishna Singhanian has any effect on the plaintiffs case in view of the evidence of the defendant himself specially as the burden was on the defendant. While examining the defendant's evidence, it is necessary to point out that defendant was a grown-up man of 27 years of age and a person with medical qualifications. He is expected to know that he is secretly marrying with the daughter of Kailaspath Singhanian. She belongs to a very rich family. However, defendant wants us to believe that he was not even knowing as to who are the

parents of Amarpali and what is their social status and what their financial position. The marriage was performed on 15-12-1968. For the purpose of marriage Amarpali had left the house without the consent of her parent and without their knowledge this marriage was performed and thereafter the couple stayed at the house of a friend of defendant by name R.C. Parekh, at Walkeshwar. At the time of marriage Amarpali was just 18 years having completed age of 18 years on 12-12-1968 the marriage was performed within these days. Thus obviously defendant took the precaution to perform marriage only after her attaining majority. According to his evidence, he came in contact with Mrs. Sudha Sanghania, who was being treated at Bachha Nursing Home, where defendant was working. He was knowing the fact that the parents of Amarpali were against the marriage and this was categorically told to him by Amarpali. Sometime in second week of January 1969, his wife telephoned to her father and apprised him of the fact of their marriage and her father, as would be natural for any father, told her that he was keen to meet them and they were called to his residence at Warden Road, although she married against his wish, he was happy to greet the young couple and there is nothing abnormal in it. According to the defendant, he told them that whatever has happened, let it be forgotten and he was interested in the future welfare of the couple. Probably in the second visit sometime in second week of January 1969, his father-in-law asked him to occupy one of the family flats at Shankar Sagar Society or Shant building and recommended flat at Shankar Sagar. It is his evidence that his father-in-law told him that these are family flats. This statement does not appear to be true because Mr. Singhania knew well that Shankar Sagar flat is of the company and he would not call it a family flat or the property of Singhania family. He was not interested in accepting anything as an obligation from his father-in-law and he told his father-in-law that he has already made arrangement for his residence with a friend. It is obvious that defendant could not reside in the house of his friend as guest (paying or non-paying) for a long time and he was thus in dire need of some accommodation. He admitted that his residence with Mr. Parekh was a temporary arrangement and he was looking after for better accommodation and wanted to secure accommodation on ownership basis wherever he was getting facility of installment. He had also seen a couple of properties. Thereafter he met his father-in-law by end of January and his father-in-law again made enquiry and asked him whether he had thought of joining production line and requested him to accept family flat as his daughter was not accustomed to living in small flat and considering the sincerity of the request, defendant agreed to accept the flat if his father-in-law could agree to a price and payment thereof in installments. He agreed to consider the offer, if price was quoted and father-in-law was willing to accept it in installment. Then the father-in-law insisted on accepting the flat, he told the father-in-law he would consider the offer on condition that the father-in-law should accept a lumpsum amount or accept outgoings of the flat as rent which would save him from an embarrassing situation and there would be no objection from other family members. Thereafter in further visit in February 1969, his father-in-law

informed him that although it was not to his liking, he would accept outgoings of the flat by way of rent in order that defendant should have the necessary feeling of freedom and told him that defendant should pay Rs. 300/- per month to cover expenses of the flat and such amount should be paid by way of rent every month. Admittedly according to the defendant also Mr. Gopalkrishna Singhania was not present in the meeting but in further meeting his father-in-law took defendant to Mr. Gopalkrishna Singhania and apprised him of the arrangement to which Mr. Gopalkrishna Singhania (original plaintiff No. 1) agreed. According to him, even original plaintiff No. 1 told him that though the flat stood in his name, it was a family flat and he would not mind giving it on tenancy basis to defendant. This is obviously unreliable because Mr. Gopalkrishna Singhania would not tell him that it is a family flat and on the contrary would say the flat belongs to the company. Immediately thereafter there was pooja and defendant entered into possession of the flat. It is his evidence in examination-in-chief that even today on the board of the society, name of original plaintiff No. 1 is shown and his name plate is only on the door. Had it been really a case of the defendant having been allowed to occupy flat as tenant, his name would have appeared on the board of the society. However, since his wife and along with her the defendant were allowed to occupy the flat, name of original plaintiff No. 1 continued on the board, even after defendant occupied it. It has come in his cross-examination that after he was introduced to Amarpali by Sudha Singhania (her aunt) he was told by Sudha Singhania that there is tussle among the parents of Amarpali and the defendant should help her. He however does not know what sort of help was accepted. This statement of the defendant is obviously untrue because there is absolutely no evidence on record to corroborate the version that there was any tussle between parents of Amarpali for which even according to her aunt Mrs. Sudha Singhania, Amarpali was in need of any help and that also from an outsider like defendant. Thereafter his meetings with Amarpali increased which ultimately culminated into their marriage. However, defendant wants to feign ignorance by stating that he did not ask her any personal details and he also did ask as to who are her parents and did not know her parents. This being obviously unreliable and cannot be believed even for a while. At the relevant time, defendant was working in Bachha Nursing Home. He was a resident Doctor. He had just completed education. He was provided a small accommodation by the nursing home. As already stated, after marriage he started residing along with Amarpali in a friend's residence at Walkeshwar. Defendant wants us to believe that even Amarpali did not tell him that her parents were against the marriage. He did not enquire about the names of her parents and he came to know about their names only after the marriage. To say the least, these statements of the defendant clearly shows that he has no regard for truth and in order to make out a case of having occupied the flat on rent that too on the request of the father-in-law, he has made such statements. Even though he has stated that only after his father-in-law agreed to accept outgoings of the flat, he decided to shift to the flat, it is his further statement that he never enquired from anybody as to what were the outgoing of the flat

and he was not aware of what were the outgoings, and he came to know of it when the amount was decided between him and his father-in-law. Any person would normally atleast after occupying the premises would enquire from the society or even would come to know from the persons residing there what are the exact outgoing of the flat and what are the municipal taxes. He wants us to believe that he then paid Rs. 300/- to his father-in-law regularly. Now admittedly documents on record do not show that any amount in respect of the flat was received by the company at any time and therefore to accept this version of the defendant would mean to accept that Mr. Kailaspath Singhania who was Head of J.K. Group of Companies, who allowed his daughter to occupy a flat of the company by way of temporary arrangement, who was accepting Rs. 300/- from defendant and was not accounting for it with the company and was thus swallowing Rs. 300/- per month which defendant claims to have paid personally to him. By making such a statement, defendant has made himself extremely unreliable. This apart, there is documentary evidence on record to show that this is defendant's after thought story invented probably as he had no alternative in order to cling on to the possession.

15. There was a custody petition filed by Amarpali against defendant as their marriage did not work for long and their relations strained within a year or so, rather immediately after birth of the female child. He admitted that in the custody petition Amarpali alleged that he was staying in the flat free of charge. His attention was drawn to para 8 of the concerned portion of the affidavit. Considering the fact that defendant who boost to be a person who reluctantly accepted the offer of the father-in-law to reside in the flat only after the father-in-law agreed to accept Rs. 300/- per month, it is inconceivable that when charged by his wife with whom he had differences that he was occupying the flat free of charge, the defendant would normally come out with the case that he occupied the flat as tenant at monthly rent of Rs. 300/ which amount he has paid in cash to his father-in-law. In reply to the allegations of Amarpali in the said proceedings, he has stated in his affidavit that it was suggested to him that his father-in-law would fix mode of payment of price and he occupied the flat. When confronted with this statement, he stated that this statement is correct and stated further that therefore, we (he himself and his wife) shifted to the flat without there being a price fixed and categorically admitted that in this affidavit he has not stated that rent in the form of outgoings was agreed to be paid. He has not stated in the affidavit that before he shifted the rent to be paid was agreed or was paid and went on to explain that he did not mention in the affidavit-in-reply as it was not pertaining to the concerned paras of the petition. According to him even though Amarpali had made allegation in that petition that he was getting free use of the suit flat, it was not material to reply this by stating that he was occupying the flat on rent of Rs. 300/- per month and stated further that he had instructed to draft the reply affidavit that it was agreed between him and his father-in-law that he would be paying Rs. 300/- per month as outgoing of the flat in the form of rent and although he read the affidavit, he does not know

why he did not raise any objection when this material part of payment of rent was not in the affidavit and his explanation for the same is that the reply was for whatever she had stated in the petition. When in the petition Amarpali had stated that he was using the flat free of charge, it is inconceivable that defendant would not state that he was occupying it as tenant by paying Rs. 300/- per month as rent which was agreed between him and late father-in-law and was not residing there free of charge. He has then admitted that in the written statement he had not mentioned about any agreement for purchase of flat by paying of price in installment because there was only talk to that effect whereas in the affidavit he has made averments to the effect that the price of the flat was to be fixed later by the father-in-law and the same was to be paid by installment. However, he has not stated any particulars as regards the price of the flat, quantum or number of installments payable by him. It is his further statement that even if there was no agreement, it is not correct that he would have pleaded it in the reply to the custody petition. Unreliability of the defendant became further clear from his statement in the cross-examination regarding his mother-in-law. In para 4 of the reply affidavit he has stated number of things about his mother-in-law. That she was psychoneurotic and of domineering (sic) dominating nature and addicted to drinking and was very possessive. When confronted with this, he stated that from his initial talk with her prior to marriage he noted that she was a person of such type and was not in favour of marriage because of his modest means. He has made statement that she was a psychoneurotic person, was of dominating nature and was addicted to drinking etc. on the basis of the information given to him by his wife and in the next breath admitted that in the affidavit he stated that he judged the qualities of his mother-in-law from the meetings he had with her, and stated further that he may have one or two meetings with her and wants us to believe that in one or two meetings he judged that his mother-in-law was a psychoneurotic person, she was addicted to drinking, she was possessive and what not. He went on further to state that by psychoneurotic he means a person having psychoneurotic problem manifested by behaviour pattern, and that the person having fixed ideas and split in personality and because of that the person get disoriented. Suffice it to say that defendant has made this statement without bothering for the trust thereof in order to justify his contention that he developed contact with Amarpali in order to help her.

16. On behalf of the defendant a hue and cry was made of the fact that defendant got the electric meter and gas connection transferred in his name. Firstly do not find any substance in the contention because defendant and his wife were to reside there for considerable time and it is obvious that he would be paying the electricity bills. There is no evidence on record to prove positively that the electric meter was in fact transferred in his name and his payment of electricity bills does not lead us to accept as case of tenancy. Gas connection was standing in the name of his father-in-law. Had the defendant occupied the flat as tenant, he would have applied for gas connection in his name mentioning that he

is a tenant therein and there is no objection from his father-in-law. What defendant produced some bill of gas connection. The copy of the application making a statement that he occupies the flat as a tenant is not produced. Even if gas connection of father-in-law is transferred to him, it supports the plaintiffs contention that defendant was a mere licensee. Nobody would transfer the gas connection in the name of the tenant, even if the tenant is son-in-law and if gas connection was given to him by the father-in-law, then it would obviously show that he was merely allowed to occupy the flat on temporary basis and no legal right was intended to be created in his favour. He admitted that he does not have bills for the earlier period. He does not know when the first bill of gas connection was paid. Whatever bills were in his custody he has produced and the date of first bill is 7-8-1970 i.e. long after Amarpali left and after petition for custody of the child was initiated by Amarpali. He further admitted that the first bill of electricity produced by him is of 7-8-1970. He does not have bill prior to 7-8-1970. Therefore, in the beginning at least even according to him, electricity charges were also paid by him, which is not possible in case of tenancy and the same is in consonance with his being a licensee. He admitted that he made an application for transfer in June 1969. The transfer charges are paid on 10-6-1970. He made no attempt to get produced the application for transfer of electricity meter and if he was a tenant, transfer application would have been with the signature of his father-in-law giving no objection and accepting the fact of his being a tenant and he would have also mentioned therein that he is occupying the flat as a tenant. He applied for ration card in the year 1970 i.e. long after he came in occupation of the flat and the ration card was issued on 5-8-1970. It is well known that production of ration card is necessary for transfer of gas and for taking electric connection. In my view therefore this does not help the defendant in any way and on the contrary supports the plaintiffs contention that defendant entered into possession of the flat as licensee for reason that he had no other accommodation. Defendant entered into the premises because of his marriage with Amarpali as a result of permission given to his wife Amarpali by his father-in-law to occupy the flat and defendant never entered into the premises in his own right in any case on creation of tenancy in his favour. Defendant is not aware as to what were the outgoings of the suit flat and according to him the outgoings in the year 1969 were about Rs. 100 and odd. He however did not deny that the outgoings of the flat today is above Rs. 2200/- per month. Considering the situation and the locality in which the flat is situated, amenities provided to the flat, amount of Rs. 2500/- per month by way of outgoings is not at all abnormal and even if in the year in which defendant occupied the flat, it is difficult to accept that the outgoings would be less than Rs. 300/- per month. Taking his case at its best, the agreement was to pay outgoings of the flat then in the normal course, he would have been asked to pay the same directly to the society and there cannot be a fixed amount of outgoings for all times to come and this itself shows that the case made out by the defendant that Rs. 300/- per month was the outgoings of the flat and his liability to pay the outgoings was fixed at Rs. 300/- is on the face of it unreliable.

17. The defendant claims to have made some alterations in the flat which according to him are permanent alternations. It was therefore contended that the licence has become irrevocable in view of the permanent structures erected. This argument is mentioned only for being rejected outright because no such case is pleaded by the defendant. It is also not pleaded as to what exactly is the nature of construction done by him. When admittedly even according to him all renovation, furnishing and fittings and fixtures in the flat were done by his father-in-law, it is inconceivable that his father-in-law would ask him to spend for some alteration like enclosing part of the balcony or erecting a wall upto the roof. More over it is also not known as to how erection of wall would itself amount to a permanent structure. In this connection it is worth mentioning that defendant was asked in cross-examination that whether while altering the balcony he had taken permission from the original plaintiff and he stated that it was an oral permission. Admittedly he did not take permission of the Municipal Corporation nor did he seek permission of the society and admitted that the work of kitchen platform could have been done by his father-in-law when he has done other works of colouring etc. The cross-examination was for challenging his veracity. However, surprisingly it was contended on behalf of the defendant that when such questions were asked in cross-examination and it was not suggested that he was falsely contending to have made alterations and to have erected permanent structures, it should be taken that even the plaintiffs are admitting that he has made alterations and permanent structures in the suit flat. To say the least, the argument is ridiculous and does not deserve consideration at all. Certain authorities have been cited by the learned Counsel for the defendant in this connection, but since argument is without any substance, I am not referring to those authorities. On the basis of this, it was contended that the licence becomes irrevocable in view of the permanent structures erected. I have already pointed out that no permanent structure whatsoever has been erected and therefore, there is no question of licence becoming irrevocable, and as stated earlier it is not his case in the written statement. It was not a licence in respect of an open land where a building is constructed by the licensee. It is a licence in respect of a flat wherein as is found by me licensee was Amarpali and not the defendant. Amarpali does not claim to have erected any permanent structure and the defendant even if accepted to be a licensee occupying the flat as husband of Amarpali has miserably failed to show that any construction was made by him which can be said to be a permanent character. Mere raising a wall does not amount to making permanent construction. More over this was not a construction to the knowledge of the plaintiff. It was inside the flat and as already pointed out, plaintiffs who spent for renovation and furnishing of the flat would not allow the defendant to erect a wall. More over this argument having been advanced without there being any pleadings in the written statement was an attempt to succeed in the design to hold on to the possession of the suit flat. I am of the considered view that it was Amarpali who was allowed to occupy the suit flat as she was just married and her husband had no accommodation and looking to the financial position and social status in which her parents were, they

would naturally want her to live with all comforts as far as practicable even though she married against their wishes. Amarpali to whom licence was granted had ceased to reside in the flat from 26-1-1970 and licence granted to her has also been terminated and she admitted the said fact of her own free Will by letter dated 3-12-1970. After that the possession of the defendant is that of a trespasser.

18. It is also the contention of the defendant that his father-in-law had made a will. The so called Will is not on record. Even according to the defendant it is not his last Will. Defendant however wants to contend that by that Will, his father-in-law bequeathed the suit flat to him. If at all defendant has any evidence to show that the flat has been bequeathed to him under the Will, the remedy lies elsewhere. In any case in this suit when defendant has come with a positive case of being a tenant in the flat, the contention that there is a Will which defendant himself has not seen, need not be considered. Falsity of this contention is obvious from the fact that the flat belongs to the company and the person like Mr. Singhania would not make a bequeath of a property which did not belong to him but belonged to the company and which stands in the name of original plaintiff No. 1 Gopal Krishna Singhania, as nominee of the company and not in his individual capacity. This contention raised by the defendant only goes to show the anxiety to some how or the other hang on to the possession of the flat which is a very valuable property. These contentions are advanced when the requisite and factual foundation thereof is not laid. It is obvious that defendant was to take shelter under them in order to see that somehow or the he can protract handing over possession. Defendant having miserably failed to prove that he was inducted as tenant in the premises, plaintiffs case that at the most defendant is a licensee must be accepted and as such defendant is liable to hand over possession. The licence has been revoked by a notice even prior to that Amarpali who was in fact the licensee has herself given a letter wherein she has stated that she has left possession of the suit flat and by mutual agreement licence stands revoked. Although it is contended by defendant in his written statement that she was pressurised to give such writing, defendant has not adduced any evidence in support thereof nor has he made any positive assertion in his own evidence by bringing circumstances on record that Amarpali was pressurised to write this letter and considering the strained relations between the two and their fight for the custody of the child, it appears to me to be very natural for Amarpali, who had parted company with the defendant to write such a letter that she was no more interested in continuing to reside in the flat and thus the defendant has become trespasser from the date she gave the letter and the licence came to be revoked by mutual agreement. Thus all the above issues are answered accordingly in favour of the plaintiffs and against the defendant.

19. This takes me to consider issue No. 11. So far as this issue is concerned, plaintiffs have relied on the evidence of their valuer. However, I must say that I am not at all impressed by his evidence because this valuer has admittedly not even visited the suit flat at any time. He has not seen the suit flat. He is not

aware of the condition of the suit flat and claims to have valued it after visiting some other flat in the same building, similar to the suit flat, which even according to him is hearsay. He never contacted the defendant in order to ascertain whether defendant would allow him to visit the suit flat, but presuming that since relations between plaintiff and defendant are strained and there is litigation between them, defendant would not allow him to inspect the suit flat, he inspected some other flat which according to his information is similar to the suit flat and has valued the suit flat on that basis. He has also not referred to any sale instance in respect of similar flat in the said society for the relevant period. He is not even aware that there is any flat on upper floor and he did not go to that floor. He stated that there is water proofing on the 8th floor. It is stated that the basis of enquiry made by him without anybody stopping him from visiting that floor or the terrace and admittedly the statements are made on page 7 of his report on the basis of enquiries made by him. He did not verify the statements made by different persons to him and thus it can be inferred, that the report is not based on the personal knowledge of the valuer. His evidence is of no assistance to the plaintiffs to prove the quantum of mesne profit. More over considering the fact that the suit premises are in Bombay and provisions of Rent Control Act apply, plaintiffs could not have expected to earn huge profit from the flat either by letting it out or by some other means. It is true that plaintiffs could have used the flat for the purpose of accommodating their officers and guests, but they have not brought any evidence on record to show that by putting the flat to such use what they would have earned, and what is the loss suffered by them. However, considering the locality, area of the flat and situation the amount of Rs. 700/- which at present defendant is paying as per the order of the Division Bench appears to be reasonable and it is sufficient in my view to meet ends of justice. I am therefore restricting the claim of mesne profit at Rs. 700/- per month. Consequently, plaintiffs are entitled to mesne profits amounting to Rs. 19,900/-. Issue No. 11 is answered accordingly.

20. In view of the above findings, the suit will have to be decreed. Hence the following order :

21. Suit decreed in terms of prayer Clauses (a) (b), (c) and (d) of the plaint, with modification of mesne profit restricting the same to Rs. 700/- per month. Enquiry be held by the Commissioner for taking Accounts, High Court, as regards future mesne profits from the date of suit till realization under Order XX, Rule 12(1)(c) of Code of Civil Procedure, 1908.