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**(2010) 09 AHC CK 0261**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 29261 of 2007

Manju Lata Awasthi

APPELLANT

Vs

Rent Control & Eviction Officer and Others

RESPONDENT

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**Date of Decision :** 17-09-2010

**Acts Referred:**

Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —  
Section 12

**Citation :** (2010) 09 AHC CK 0261

**Hon'ble Judges :** Rakesh Tiwari, J

**Final Decision :** Dismissed

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## Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the parties and perused the record.

2. It is apparent from paragraph 3 of Annexure1 to the writ petition that two sons namely Vinod Kumar Dixit and Ashok Kumar Dixit were living with Cyan Chandra Awasthi on the date of notice dated 10.10.1990 for vacancy.

3. The contention of Teamed Counsel for the respondent is that both the sons who are said to have acquired an accommodation were dependent upon their father and as such provision of section 12 (4) of the Act would not come into play.

4 Per contra learned Counsel for the petitioner has submitted that there are two conditions under section 12 (3) i.e., acquisition of another residential building in vacant state or after getting it vacated by any one of cotenant. The effect of such section is that the entire set up of cotenants shall be deemed to have ceased to occupy building.

5. After hearing learned Counsel for the parties, I am of the view that the expression "any member of family" used therein applies to a person normally residing with tenant or is wholly dependent on tenant, will be member of tenant's family and, therefore, both the conditions are independent, If any of the condition is fulfilled then the tenant or his family members i.e. entire set of cotenants shall be deemed to have ceased to occupy building.

6. I am supported by a Full Bench decision rendered in the case of Smt. Ram Devi Shakhya and another v. First Addi District judge, Lucknow and another, 19841 ARC 308. According to learned Counsel for the petitioner, paragraph 28 of the said judgment is relevant which is quoted as under:

"The problem in the present case is not of termination of tenancy by a notice to quit given by the landlord to the tenants. The question before the Court is if one cotenant builds or otherwise acquires another residential building will all the cotenants be deemed to cease to occupy the building under tenancy. As we have seen above, the correct legal position is that among themselves the cotenants as tenants in common may have a specified though undivided share in the leasehold interest, but they have unity of possession. There is privity of estate between them and the landlord. The mere fact of inheritance does not destroy the integrity of the lease. It remains single lease. Each one of the cotenants is equally liable to the landlord for carrying out the terms and conditions of the lease and of the law in force. If any of the tenants in common commits breach or default the landlord is entitled to enforce his rights of terminating the lease and suing for ejectment, It is hence clear that "where one of the cotenants builds or otherwise acquires another residential building within the meaning of subsection (3) of section 12, the tenant, namely, the entire set of cotenants shall be deemed to have ceased to occupy the building under his sub tenancy It cannot be that the share belong to the cotenant in default alone shall fall vacant".

7. For all the reasons stated above and in view of the fact that petitioner's son had acquired a building in vacant state, the writ petition succeeds and is accordingly allowed. The order dated 24.9.2003 is quashed.