
(2009) 09 AHC CK 0160
In the Allahabad High Court

Sartaj Ahmad and Others

APPELLANT

Vs

Prescribed Authority/Judge, Small Causes and Another

RESPONDENT

Date of Decision : 03-09-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(2), 38
Evidence Act, 1872 — Section 116
Limitation Act, 1963 — Section 10, 11, 12, 13, 14
Transfer of Property Act, 1882 — Section 111
United Provinces Muslim Wakf Act, 1936 — Section 29(8)
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 2, 21, 21, 21(1), 21(6)

Citation : (2010) 4 AWC 3387

Hon'ble Judges : Shishir Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shishir Kumar, J.—This writ petition has been filed for quashing the order dated 18.11.2004 passed by opposite party No. 1, Annexure-7 to the writ petition.

2. The facts arising out of the present writ petition are that the dispute relates to shop situate in premises No. 40, Hazratganj, Lucknow. The said shop was let out to Haji Ahmad Deen, father of the petitioner in the year 1923. He died in the year 1972 leaving behind the petitioners and other sons namely Jameel Ahmad and four daughters and a widow. Opposite party No. 2 alongwith Mirza Rasheed Beg, Mirza Nighat Rasool and Smt. Hasina Khatoon daughter of Mirza Fida Rasool made an application u/s 21(1)(a) of Act No. XIII of 1972 for release of the shop on the ground of their personal need. The prescribed authority after hearing both the parties was pleased to allow the said application partly vide its judgment and order dated 2.5.1980 and order for release of the entire shop except an area of 22" x 6" on the front size, i.e., left side corner in which the business in the name and style of "Gift Corner" is being carried on by the heirs of Nurudeen.

3. Being aggrieved by the aforesaid order, an appeal was filed by Khairunisha

and others and another appeal was filed by the petitioners as Appeal No. 87 of 1980 and another Appeal No. 97 of 1980 was filed by Mirza Rasheed Beg. All the three appeals were consolidated and decided by a common judgment dated 18.3.1982 and the Additional District Judge allowed the release application with respect to the similar portion shown in the map dated 20.8.1990 in which the words "Gift Corner" have been written and for the remaining portion of the premises in question it was rejected. The petitioners alongwith other tenants were required to vacate the said premises within two months. Being aggrieved by the judgment and order dated 8.3.1982 Mirza Rasheed Beg and others filed Writ Petition No. 3145 of 1982 which was dismissed by order dated 2.12.1997. The said order has become final and it has not been challenged by the opposite party and his brother before any court of law.

4. On 29.8.2005, opposite party No. 2 made an application for execution u/s 23 of the Act which was registered as P.A. Execution Case No. 12 of 2005 against Sartaz Ahmad petitioner No. 1 against which objection has been filed and opposite party No. 2 got the said application dismissed. Opposite party No. 2 on 18.12.2006 made an application for execution of the judgment dated 8.3.1982 passed in appeal which was registered as P.A. Execution Case No. 17 of 2006 against the petitioners and other 23 persons. After receipt of the notice, a detailed objection was filed by opposite party Nos. 8 and 9, and 20 separately on the ground that the said application is highly misconceived and is not maintainable. It was further pleaded that after the judgment dated 8.3.1982 passed by the appellate court Smt. Puttan died. In the objection, it has also been disclosed regarding subsequent transfers made by the applicants. It was also pleaded that the petitioners became the owner of the building in question to the extent of 3/7 shares and they could not be evicted from their own property to the extent of their undivided share, therefore, the opposite party No. 2 is not entitled alone to get the judgment and decree executed. In the objection a specific averment has been made regarding the shares of various persons. Respondent No. 1 without considering the entire facts and circumstances of the case in spite of the pleadings that the application is barred by limitation as period of 12 years from the date of final judgment dated 8.3.1982 has already expired. But the court below has rejected the application holding therein that execution application is not barred by limitation. Further on Issue No. 2, a finding has been recorded that doctrine of merger as in Section 111(d) of the Transfer of Property Act is not applicable. Further a finding has been recorded that application alone filed by opposite party No. 2 is maintainable, as such the execution application filed by opposite party No. 2 was allowed and warrant of possession directing the Station House Officer, concerned to get the same executed and 15.11.2008 was fixed for further orders.

5. Learned senior counsel Mohd. Arif Khan assisted by Sri Adil Khan, advocate, for the petitioners has submitted that it is apparent that after the judgment dated 8.3.1982, opposite party No. 2 has made an application for execution only on 18.12.2006 after a lapse of 24 years. Hence, the application is barred by time

as Section 136 of the Limitation Act prescribes the period of limitation for execution of a decree as 12 years.

6. Reliance has been placed upon a judgment of the Uttaranchal High Court, Azahar Mohammad and Ors. v. Prescribed Authority (Civil Judge, Senior Division), Dehradun and Ors. 2006 (3) ARC 360. Placing reliance upon the aforesaid judgment, learned Counsel for the petitioner submits that the Court interpreting the provision of Section 21(1)(a) of Act XIII of 1972 and 23 of the Limitation Act and has held that as the order u/s 21 has attained finality, it will amount to decree as defined u/s 2(2) and as such Article 136 shall apply, therefore, the eviction order can be executed within a period of 12 years from the date of decree or the order became enforceable. Further submission has been made that Section 21(6) of the Act provides that immediately after the expiry of 30 days from the order under Sub-section (1) or Sub-section (1)(a) or Sub-section (2), the tenancy of a tenant shall stand determined in its entirety or as the case may be, in respect of any part of the appurtenant land released in favour of landlord and in latter case payable for the remainder of the building under the tenancy shall be such as may be agreed between the parties and in the absence of such agreement as it may be determined u/s 8 of the Act, therefore, as regards the question of order, dated 8.3.1982 u/s 2 of the Act having attained finality and the rights having already been adjudicated, will amount to decree as defined u/s 2(2) of the Civil Procedure Code, therefore, Article 136 will be applicable.

7. The petitioners have placed reliance upon a judgment of the Apex Court in Kamleshwar Prasad Vs. Pradumanju Agarwal (dead) by LR"s., It has been held by the Apex Court that the order of appellate authority is final and is a decree of the civil court. Thus, the judgment amounts to a decree as defined u/s 2(2) of the CPC and period of limitation of 12 years will be applicable. In such a situation, learned Counsel for the petitioners submits that execution proceedings initiated by the opposite party No. 2 was beyond the statutory period of limitation. Further submission has been made that there was no stay of the portion of the judgment passed in appeal as such, in view of the provisions of Section 15 of the Limitation Act which deals with the execution of time in certain cases the period of limitation for execution of the decree has to commence after the decision passed in appeal on 8.3.1982. Admittedly, an application has been filed on 18.12.2006 beyond the period of 12 years.

8. The judgment relied upon by the court below regarding the view of doctrine of merger as they subsequently purchased the shares of the son of the applicants of the shops in dispute after the decision of the appeal, they became the owner in respect of the entire shop which includes the released portion. Therefore, opposite party No. 2 is not entitled to get the decree passed by the appellate court releasing a portion of the shop executed. Learned Counsel for the petitioners has placed reliance upon a judgment in Abdul Alim v. Sheikh Jamaluddin Ansari and Ors. 1998 (2) ARC 614 : 1999 (1) AWC 629 (SC), and

placed reliance upon para 2 of the said judgment, which is quoted as under:

2. The dispute in the instant appeal pertains to a shop situate in Mohalla Bazar Bagh, Bahadurganj, known as Bazarganj, Moradabad. Initially the shop in question was owned by respondent No. 1 and his real brother Sheikh Burhan Uddin. Vide a registered sale deed executed on 12.4.1998, Sheikh Burhan Uddin sold his share in the shop to the appellant, who, thus, became a co-owner of the premises in question to the extent of half share. Respondent No. 1 confined to be the co-owner to the extent of the other half share. Respondent No. 1 made an application for release of the shop u/s 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (hereinafter referred to as "the Act") before the prescribed authority in 1987. The application was dismissed on 29.3.1989 by the prescribed authority principally on the ground that since the appellant had become a co-owner of the premises, the application for release was not maintainable. Appeal filed by respondent No. 1 in the Court of Additional District Judge, Moradabad failed on 24.1.1990. Respondent No. 1, thereafter filed a Miscellaneous Writ Petition before the High Court of Allahabad. Though the High Court confirmed the findings of fact recorded by the courts below, held that the application for release was maintainable, as the sale deed executed in favour of the appellant on 12.4.1988 could not change his status of being a tenant of the premises. Hence, this appeal by special leave.

9. Further reliance has been placed upon a judgment of this Court in *Imambi v. Azeeda Bee* JT 2000 (9) SC 562 and para 5 of the said judgment has been referred to which runs as under:

5. Thus, only question which arises for our consideration is, whether status of a tenant would continue to be so even after an agreement of sale is executed by such tenant with the landlord in respect of the same tenanted premises. Having heard learned Counsel for the parties, we find the matter is covered by the decision of this Court. The status of such tenant, after execution of the said agreement of sale ceases to be such which is changed to that of a purchaser and when a sale deed is executed, as in this case of the half share of the said property, such tenant becomes co-owner with the landlord. The Court held in the similar effect in *Abdul Alim v. Sheikh Jamaluddin Ansari and Ors.* 1998 (1) Scale 175 : 1999 (1) AWC 629 (SC).

10. Further learned Counsel for the petitioners has placed reliance upon a judgment of this Court in *Habib Ahmad Khan v. Sunni Central Board* 1986 (4) LCD 287, and reliance have been placed upon paras 3, 4 and 5 of the judgment which are quoted as under:

3. Learned Counsel for the parties were unable to point out whether any provision of the Act makes the Limitation Act, 1963 applicable to proceeds under the Waqfs Act. In the background it has to be seen whether the provisions of Section 5 of the Limitation Act would be applicable to the proceedings under the U.P. Muslim Waqfs Act on the ground that the said Act does not exclude the

application of Section 5 of the Limitation Act. This question came up for consideration before the Supreme Court in *Mangu Ram Vs. Municipal Corporation of Delhi*, In this respect the observations of Bhagwati, J. are pertinent and are quoted as follows:

There is an important departure made by the Limitation Act, 1963 in so far as the provisions contained in Section 29, Sub-section (2) is concerned. Whereas under the Indian Limitation Act, 1908, Section 29, Sub-section (2), Clause (b) provided that for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law the provisions of the Indian Limitation Act, 1908 other than those contained in Sections 4, 9 to 19 and 22. shall not apply and, therefore, the applicability of Section 5 was in clear and specific terms excluded. Section 29, Sub-section (2) of the Limitation Act, 1963 enacts in so many terms that for the purpose of determining the period of limitation prescribed for any suit, appeal or application by any special or local law the provisions contained in Sections 4 to 24 which would include Section 5, shall apply in so far as and to the extent to which they are not expressly excluded by such special or local law. Section 29, Sub-section (2), Clause (b) of the Indian Limitation Act, 1908 specifically excluded the applicability of Section 5, while Section 29, Sub-section (2), Clause (b) of the Indian Limitation Act, 1908 specifically excluded the applicability of Section 5, while Section 29, Sub-section (2) of the Limitation Act, 1963 in clear and unambiguous terms provided for the applicability of Section 5 and the ratio of the decisions in *Kaushalya Rani's* case, therefore, have no application in cases governed by the Limitation Act, 1963, since that decision proceeded on the hypothesis that the applicability of Section 5 was excluded by reason of Section 29(2)(b) of the Indian Limitation Act, 1908. Since under the Limitation Act, 1963, Section 5 is specifically made applicable by Section 29, Sub-section (2), it can be availed of for the purpose of extending the period of limitation prescribed by special or local law if the applicant can show that he had sufficient cause for not presenting the application within the period of limitation. It is only if the special or local law excludes the applicability of Section 5 that would stand displaced.

4. The question whether in the instant case Section 5 of the Limitation Act applies or not to the proceedings in question would have to be decided by reference to the observations of the Supreme Court quoted above. It is indisputable that u/s 29(8) of the U.P. Muslim Waqfs Act an aggrieved person may by an application within 90 days from the date of that order refer the dispute to the Tribunal for decision. If the application is entertained u/s 29(8) of the Muslim Waqfs Act then the Tribunal under Chapter IX of the said Act will decide the dispute between the parties. It is, accordingly, apparent that "the moving of an application u/s 29(8) of the Muslim Waqfs Act initiates the proceedings which are ultimately decided by a Tribunal constituted under Chapter IX of the Act. It has been contended on behalf of the applicant that since the applicability of Section 5 of the Limitation Act, 1963 has not been excluded by the Muslim Waqfs Act, the said section shall be applicable in the case of an

application u/s 29(8) of the Muslim Waqfs Act. The observations of the Supreme Court quoted above clearly lay down the principle that the provisions contained in Sections 4 to 24 (inclusive) shall apply to the extent to which they are not specially excluded by such special or local law. The learned Counsel for the parties were unable to point out that the Muslim Waqfs Act, in any manner, excluded the application of Section 5 of the Limitation Act.

5. This Court in *M.M. Hasan Jaffrey v. Azam Alt and Ors.* 1963 AWC 409 held that Section 5 of the Limitation Act is applicable to proceedings u/s 29(8) of the Muslim Waqfs Act. In view of the decision of the Supreme Court referred to above and the decision of this Court, it is obvious that Section 5 of the Limitation Act would apply to proceedings u/s 29 (8) of the U.P. Muslim Waqfs Act.

11. In view of the aforesaid fact, learned Counsel for the petitioners submits that respondents have wrongly rejected the objection filed by the petitioners and has allowed the decree to be executed. From the record, it was proved that application filed is beyond limitation and decree cannot be executed but the application for ejectment has been allowed.

12. On the other hand, learned Counsel for opposite party No. 2 has submitted that there is an absence of prescription of limitation in the special statute, then general rule of limitation provided in the Limitation Act stands excluded and he has brought to the notice of the Court Sections 35 and 38 of the Rent Control Act, which are being reproduced below:

35. Application of Sections 4, 5 and 12 of Limitation Act, 1963.-The provisions of Sections 4, 5 and 12 of the Limitation Act, 1963 (Act No. 36 of 1963), shall mutatis mutandis apply to all proceedings under this Act.

38. Act to override T.P. Act and Civil Procedure Code.-The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Transfer of Property Act, 1882 (Act No. IV of 1882), or in the Code of Civil Procedure, 1908.

13. Further submission has been made that from the perusal of the provisions of Sections 21, 22 and 23 of the Act, it is clear that any order passed is not a decree. If that is not decree, then in view of the provisions of Civil Procedure Code, it cannot be said to be a decree and period of limitation will not be applicable because u/s 2 (2) of the CPC decree has been defined but in the Act No. XIII of 1972, it is an order to be executed, therefore, the contention of the petitioner to this effect regarding applicability of period of 12 years from the date of order will not be applicable and it can be instituted at any time because u/s 23 Sub-clause (2) it is mentioned that every order of the prescribed authority in proceedings in these sections shall be final. Reliance has been placed upon a judgment of the Apex Court *Uttam Namdev Mahale v. Vithal Deo* 1997 SCFBR 349 and para 4 of the said Judgment has been referred which is reproduced below:

4. Mr. Bhasme learned Counsel for the appellant, contends that in the absence of fixation of rule of limitation, the power can be exercised within a reasonable time and in the absence of such prescription of limitation, the power to enforce the order is vitiated by error of law. He places reliance on the decisions in *The State of Gujarat Vs. Patil Raghav Natha and Others*, *Ram Chand and Others Vs. Union of India (UOI) and Others*, and C.A. No. 5023 of 1985, *Mohammad Davi Mohammad Amin v. Fatmabai Ibrahim*, decided on August 22, 1996. We find no force in the contention. It is seen that the order of ejectment against the applicant has become final. Section 21 of the Mamlatdar's Court Act does not prescribe any limitation within which the order needs to be executed. In the absence of any specific limitation provided thereunder, necessary implication is that the general law of limitation provided in Limitation Act (Act No. 2 of 1963) stands excluded. The Division Bench, therefore, has rightly held that no limitation has been prescribed and it can be executed at any time, especially when the law of limitation for the purpose of this appeal is not there. Where there is statutory rule operating in the field, the implied power of exercise of the right within reasonable limitation does not arise. The cited decisions deal with that area and bear no relevance to the facts.

14. The second point raised by the learned Counsel for the respondents is that whether the tenancy of the building gets extinguished when the tenant acquires right of co-owner and in such a situation, can landlord seek eviction under the Act. Learned Counsel for the respondents has placed reliance upon the various judgments of the Apex Court as well as this Court in support of the aforesaid submissions. The relevant decisions are being quoted below:

Badri Narain Jha and Others Vs. Rameshwar Dayal Singh and Others,

6. On 21.9.1934 the defendants first party as mokarraridars brought a suit against the plaintiffs for arrears of raiyati rent for the years 1338-39 fasli to the extent of six annas share and for the years 1340-41 F. to the extent of fourteen annas share claiming that under the partition decree they got a fourteen anna share in the mokarrari interest in the village. Plaintiffs contested the suit alleging that Bisheshwari's mokarrari interest had merged in the lakhraj interest that was purchased by him from the Pathaks in the years 1916-17, and that by the sale under the Government's certificate his whole eight anna interest in the village including both the lakhraj and the mokarrari had passed on to the plaintiffs and that the defendants' first party could only claim rent from them to the extent of the six anna share in the mokarrari. This plea was disallowed and the defendants first party's claim for rent was decreed in full. The decree was upheld on appeal and second appeal. The question of title was, however, left open. In the year 1938 another suit for rent was filed by the "defendants" first party as mokarraridars to recover fourteen anna share of the rent for the years subsequent to fasli 1341. As a result of this suit, the plaintiffs brought the present suit for declaration and injunction on the allegation that the eight anna mokarrari interest of Bisheshwar Dayal Singh had merged in his lakhraj interest,

that by the certificate sale Bisheshwar Dayal Singh lost all his interest in the village both lakhraj and mokarrari by reason of merger, that the partition decree of the year 1921 was illegal and in any case, under that decree the defendants first party got only six anna mokarrari interest and were entitled to realise rents from the tenants only to that extent. An injunction was also claimed restraining the defendants from proceeding with the rent suit. In the plaint, it was alleged that there was a private partition between the mokarraridars by virtue of which the lands of village Darha were divided between the three sets of mokarraridars, each set being in separate possession of its own separate and defined shares. It was also pleaded that there was another partition between the proprietors of the lakhraj interest, that is, between Bisheshwar Dayal Singh on the one hand and Deolal Pathak, Neman Pathak and Surajnath Pathak on the other, by virtue of which the lands that were in mokarrari parties of Parmeshwar Dayal Singh and others and Hiranand Jha and Durganand Jha fell in the patti of Deolal Pathak and Ors. while the lands that were in the mokarrari patti of the defendants second party fell in his proprietary lakhraj patti and that as a result of these partitions the mokarrari interest of the defendants second party merged in his lakhraj interest and under a certificate sale the whole of his interest passed to the plaintiffs.

Pramod Kumar Jaiswal and Others Vs. Bibi Husn Bano and Others,

12. In this appeal, the only ground taken was that the tenants having taken an assignment of the rights of certain co-owners, being the heirs of Quasim, the original landlord, the lease or the tenancy over the building must be taken to have been extinguished and since there was no subsisting relationship of landlord-tenant between the parties, there could be no direction to deposit the rent in terms of the Act. On behalf of the appellants a decision of this Court in *Abul Alim v. Sheikh Jamaluddin Ansari* 1998 (9) SCC 683 . was relied on. The Bench before which the matter came up, noticed that the decision relied on by the appellants was in conflict with another decision of a coequal Bench of this Court in *T. Lakshmipathi and Others Vs. P. Nithyananda Reddy and Others*, and referred the matter for being heard by a Bench of three Judges. The appeal is thus before this Bench.

13. Learned Counsel for the appellants, Mr. M. K. S. Menon submitted that the ratio of the decision in *Abul Alim v. Sheikh Jamal Uddin Ansari* (supra) should be accepted and approved by this Court and the decision in *T. Lakshmipathi and Ors. v. P. Nithyananda Reddy and Ors.* (supra) deserves to be overruled. Counsel submitted that once a tenant acquires even the right of a co-owner landlord, or a fraction of the reversion, the tenancy comes to an end and it could not be postulated that there could be a continuance of the lease or the subsistence of the relationship of landlord and tenant between the parties. He also referred to the decision in *Jagdish Dutt and Another Vs. Dharam Pal and Others*, in support, pointing out that therein, this Court upheld an order of remand to investigate the quantum of shares purchased by the tenant in occupation. Counsel submitted

that in *T. Lakshmipathi and Ors. v. P. Nithyananda Reddy and Ors.* (supra) where a contrary view was taken, the effect of Section 44 of the Transfer of Property Act had not been considered. Learned Counsel for the respondents, on the other hand, submitted that the matter has been elaborately discussed in *T. Lakshmipathi and Ors. v. P. Nithyananda Reddy and Ors.* (supra) and the view taken therein was consistent with Section 111 (d) of the Transfer of Property Act and the settled position in that regard. He also brought to our notice the decision in the *India Umbrella Manufacturing Co. and Others Vs. Bhagabandei Agarwalla (Dead)* by Lrs. Smt. Savitri Agarwalla and Others, , in support of his position.

20. In *Abdul Alim v. Sheikh Jamal Uddin Ansari* (supra) relied on by the learned Counsel for the appellant, the question has not been considered with reference to the relevant provision of the Transfer of Property Act referred to above. There is also no discussion on this question. It appears that in that case, an application filed by the landlord u/s 21(1)(a) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 for release of the building from the tenant, was held to be not maintainable because the tenant had in the meanwhile acquired co-ownership in the demised shop. It is simply stated:

that the change of status of the tenant to that of being an equal co-owners of the unpartitioned property, would, therefore, lead to an irresistible conclusion that the release application was not maintainable. It is not disputed that there has been no partition of the suit premises till date. The High Court was under the circumstances not justified in upsetting the findings of the trial court and the appellate court in exercise of its powers under writ jurisdiction.

21. With respect, we cannot consider this decision as laying down a proposition of law that on a tenant acquiring the right of a co-owner landlord, the tenancy of a building gets extinguished and the landlord cannot seek eviction of the tenant under the Act or the fixation of fair rent under the Act. It must be pointed out that the observations as above are made even without referring to Section 111(d) of the Transfer of Property Act which governs such a case and the earlier decisions of this Court. The observation runs counter to the statutory provision. Hence, the decision must be held to be not correctly decided on this question. The decision in *Jagdish Dutt and Anr. v. Dharam Pal and Ors.* case (supra) is also of no assistance to the appellants since that was a case to which, according to this Court, Section 111 (d) of the Transfer of Property Act had no application. Their Lordships stated in paragraph 6 of the judgment therein:

We need not examine the scope of Section 111 (d) of the Transfer of Property Act inasmuch as respondent No. 2 is held to be trespasser and not a lessee.

India Umbrella Manufacturing Co. and Others Vs. Bhagabandei Agarwalla (Dead) by Lrs. Smt. Savitri Agarwalla and Others,

7. Buchi Devi willingly joined with Bhagabandei in filing the suit. During the continuity of litigation she parted with her share in the property. One out of the two tenants purchased her share. It seems that the tenancy is in the name of a

partnership firm and some of the partners have purchased the share of Bhagabandei. It is not clear if all the partners or only a few out of all the partners are the buyers. The fact remains that they have purchased only a share in the property and not the entire property. The applicability of doctrine of merger within the meaning of Clause (d) of Section 111 of the Transfer of Property Act, 1882 is not attracted. In order to bring the tenancy to an end the merger should be complete, i.e., the interest of the landlord in its entirety must come to vest and merge into the interest of tenant in its entirety. When part of the interest of the landlord or the interest of one out of many co-landlords-cum-co-owners comes to vest in the tenant, there is no merger and the tenancy is not extinguished. In our opinion, the first appellate court was not justified in placing a rider on the right of the decree-holders to execute the decree unless the property was partitioned between the co-owners. However, we need not dwell much upon this aspect as that part of the decree has achieved a finality as the landlords have not pursued their challenge to the decree of the first appellate court by filing special leave petitions in this Court.

T. Lakshmipathi and Others Vs. P. Nithyananda Reddy and Others,

11. The first question which arises for decision is whether the appellants are absolved of their obligation of delivering possession over the suit premises to the landlord respondent No. 1 because the tenancy rights in the suit premises held by respondent Nos. 2 and 3 and transferred by them to the appellants have merged in the ownership entailing determination of tenancy. The learned senior counsel for the appellants has placed strong reliance on the doctrine of merger.

24. In the facts and circumstances of the case, no defence or shelter is available to the appellants behind the plea that they have acquired interest of some of the co-owners. The law as to co-owners is well settled. Where any property is held by several co-owners, each co-owner has interest in every inch of the common property, but his interest is qualified and limited by similar interest of the other owners. One co-owner cannot take exclusive possession of the property nor commit an act of waste, ouster or illegitimate use, and he does so he may be restrained by an injunction. A co-owner may, by an arrangement, expressed or implied, with his other co-owners, possess and enjoy any property exclusively. Such a co-owner can also protect his possession against the other co-owners and if he is disposed by the latter, he can recover exclusive possession. (See *Jahuri Sah v. Dwarika Prasad Jhunjhunwala* (1966) Supp SCR 280). It is beyond any controversy that on the death of late P. Narayana Reddy, his rights devolved upon the several heirs including respondent No. 1. The respondent No. 1 is the only male person in the body of the co-owners, all others being women. It may be for this reason, or otherwise, that the respondent No. 1 was in possession of the property, through tenants, realising the rent peacefully and with the consent, expressed or implied, of other co-heirs of late P. Nithyananda Reddy. So far as the respondent Nos. 2 and 3 are concerned, by operation of Section 116 of the Evidence Act, they were estopped from challenging or denying the ownership of

the respondent No. 1 and his rights in the tenancy premises. As held in *Vashu Deo Vs. Bal Kishan*, the rule of estoppel between landlord and tenant continues to operate so long as the tenancy continues and unless the tenant has surrendered possession to the landlord. The estoppel would cease to operate only on the tenant openly restoring possession by surrender to the landlord. Neither the respondent Nos. 2 and 3 nor their successors-in-interest or the persons claiming under could have denied the title of the respondent No. 1 during the continuance of the tenancy and even thereafter unless they had restored possession over the tenancy premises to the respondent No. 1. Looking at the status of the appellants whether as co-owners or as persons inducted in possession by the tenants they have no legs to stand on. If other co-owners could not have dispossessed the respondent No. 1 or demolished the property without the consent of respondent No. 1 it is difficult to conceive how their transferees could have demolished the tenancy premises and raised their own construction over the land on which the tenancy premises stood earlier.

Naseem Ahmad Vs. District Judge and Others,

5. As far as the maintainability of release application by one co-owner landlord is concerned, it has been decided by a Full Bench of this Court in *Gopal Das v. A.D.J. 1987 (1) ARC 281 : 1987 (1) AWC 538 (FB)*, that even one co-owner landlord can file release application u/s 21 of the Act.

6. As far as the question of merger of interest of landlord and tenant is concerned, recently a Three Judges Bench of the Supreme Court in *Pramod Kumar Jaiswal and Others Vs. Bibi Husn Bano and Others*, has held that even if tenant purchased a share in the tenanted accommodation, he continues to be tenant unless he purchases the total interest in the tenanted accommodation. In this view of the matter purchase of 1/9th share by the sons of the original tenant, who are now themselves tenants, does not bring to an end the relationship of landlord and tenant in between the petitioner and Mewalal, the original tenant and his legal representatives after his death.

Syed Asadullah Kazmi v. A.D.J. Allahabad 1981 ARC 543.

4. We are of opinion that the High Court is right. Plainly, the order dated 25th March, 1977 of the appellate authority releasing a portion of the premises in favour of the third respondent and leaving the remaining portion in the tenancy of the appellant acquired finality when the proceedings taken against it by the appellant failed. The order having become final, the prescribed authority was bound to give effect to it. In doing so. the prescribed authority was not acting outside its jurisdiction or contrary to law. The application moved by the appellant before the prescribed authority requesting it to take into account the death of Raj Kumar Sinha was misconceived, because it did not lie with the prescribed authority to reopen proceedings which had been taken to the highest Court and had become final. It is true that subsequent events must be taken into account by a statutory authority or court when considering proceeding arising out of a

landlord's petition for ejectment of a tenant on the ground of the landlord's personal need. But in the present case, the order for release of a portion of the accommodation acquired finality before the death of Raj Kumar Sinha and the controversy concluded by it could not be reopened.

Taking support of these judgments, learned Counsel for the respondents submits that an application filed by the tenant submitting that right to evict vests in co-landlords and as one of them has transferred away her rights and the transferees were not interested in pursuing the eviction.

15. The third point raised by the learned Counsel for the respondents is that whether difference in fact or existence of an additional fact makes a difference in the precedential value of the decisions. Learned Counsel for the respondents has placed reliance upon the following judgments relevant paragraphs of which are quoted below:

U.P.S.E.B. v. Pooran Chandra Pandey (2007) 11 SCC 92 : 2008 (1) AWC 331 (SC).

12. As observed by this Court in State of Orissa v. Sudhansu Sekhar Misra (vide AIR pp. 651-52, para 13):

13. ...A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic that is what Earl of Halsbury, L.C. said in Quinn v. Leathern (All ER p. 7 G-1).

Before discussing Allen v. Flood and what was decided therein, there are two observations of a general character which I wish to make; and one is to repeat what I have very often said before- that every Judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all.

13. In Ambica Quarry Works v. State of Gujarat vide SCC p. 221, para 18 this Court observed:

18. ...The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides and not what logically follows from it.

14. In Bhavnagar University v. Palitana Sugar Mill (P.) Ltd. vide SCC p. 130, para 59 this Court observed:

59 ...It is also well-settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

15. As held in *Bharat Petroleum Corporation Ltd. v. N.R. Vairamani*, a decision cannot be relied on without disclosing the factual situation. In the same judgment this Court also observed : (SCC pp. 584 and 585, paras 9 to 12)

9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* AC at p. 761 Lord Mac Dermott observed : (All ER p. 14 C-D)

The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge...

10. In *Home Office v. Dorset Yacht Co. Ltd.* All ER p. 297 g-h Lord Reid said, Lord Atkin's speech...is not to be treated as if it were a statutory definition. It will require qualification in new circumstances". Megarry, J. in *Shepherd Homes Ltd. v. Sandham* (No. 2), observed : (All ER p. 1274 d)

One must not, of course, construe even a reserved judgment of even Russell, L.J. As if it were an Act of Parliament;

And, in *Herrington v. British Railways Board* Lord Morris said : (All ER p. 761c)

There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.

11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

12. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad

resemblance to another case is not at all decisive.

Precedent should be followed only so far as it marks the path of Justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path of Justice clear of obstructions which could impede it.

16. We are constrained to refer to the above decisions and principles contained therein because we find that often Umadevi (3) case is being applied by courts mechanically as if it were a Euclid's formula without seeing the facts of a particular case. As observed by this Court in Bhavnagar University and Bharat Petroleum Corpn. Ltd. a little difference in facts or even one additional fact may make a lot of difference in the precedential value of a decision. Hence, in our opinion, Umadevi (3) case cannot be applied mechanically without seeing the facts of a particular case, as a little difference in facts can make Umadevi (3) case inapplicable to the facts of that case.

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13. Proceedings further this Court observed:

This is, of course, as it should be. The High Court is in the day-to-day control of courts and knows the capacity for work of individuals and the requirements of a particular station or Court, the High Court is better suited to make transfers than a Minister. For however, well-meaning a Ministry may be, he can never possess the same intimate knowledge of the working of the Judiciary as a whole and of individual Judges, as the High Court. He must depend on his department for information. The Chief Justice and his colleagues know these matters and deal with them personally. There is less chance of being influenced by secretaries who may withhold some vital information if they are interested themselves. It is also well known that all stations are not similar in climate and education, medical and other facilities. Some are good stations and some are not so good. There is less chance of success for a person seeking advantage for himself if the Chief Justice and his colleagues, with personal information, deal with the matter, than when a Minister deals with it on notes and information supplied by a secretary. The reason of the rule and the sense of the matter combine to suggest the narrow meaning accepted by us. The policy displayed by the Constitution has been in this direction as has been explained in earlier cases of this Court." Obviously relying on the observation of this Court that after a judicial officer is posted to the cadre, it is for the High Court to effect his transfers, the court below has come to the conclusion that as the posts of the law secretary, deputy law secretary and superintendent and legal remembrancer are included in the cadre, the High Court has the power to fill those posts by transfer of judicial officers. The cadre this Court was considering in Ranga Mohammad's case 1967-1 SCR 454 : State of Assam Vs. Ranga Mahammad and Others, namely Assam Superior Judicial Services Cadre consisted of the Registrar of the Assam High Court and three District Judges in the first grade and some Additional District Judges in

grade 11. In that cadre, no officer holding any post under the Government was included. Hence, the reference by this Court to the cadre is a reference to a cadre consisted essentially of officers under the direct control of the High Court. It was in that context this Court spoke of the cadre. The question of law considered in that decision was as regards the scope of the expression "control over district court" in Article 235. The reference to the cadre was merely incidental. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of- Halsbury, L.C. said in *Quinn v. Leathern* 1901 AC 495:

Now before discussing the case of *Allen v. Flood* 1898 AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all.

It is not a profitable task to extract a sentence here and there from a judgment and to build upon it. Neither *Bagchi's* case 1966-1 SCR 771 : *The State of West Bengal Vs. Nripendra Nath Bagchi*, nor *Ranga Mahammad's* case 1967-1 SCR 454 : *State of Assam Vs. Ranga Mahammad and Others*, is of any assistance to us in deciding the question whether the High Court has competence to fill some of the posts in the secretariat by transfer of judicial officers under its control. Just as the executive cannot know the requirements of a particular court, the High Court also cannot know the requirements of any post in the secretariat. Just as the High Court resents any interference by the executive in the functioning of the judiciary, the executive has a right to ask the High Court not to interfere with its functions. It is for the executive to say whether a particular officer would meet its requirements or not. The High Court cannot, as contended by the learned Attorney-General, foist any officer on the Government.

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18. The aforesaid observations have been set in detail in order to understand the true ratio of the said decision in the background of the facts of that case. It is true that this Court held that if the permission had been granted before the coming into operation of the 1980 Act and the forest land has been broken up or cleared, Clause (ii) of Section 2 of 1980 Act would not apply in such a case. But that decision was rendered in the background of the facts of that case. The ratio of any decision must be understood in the background of the facts of that case.

It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. (See Lord Halsbury in *Quinn v. Leathern* 1901 AC 495). But in view of the mandate of Article 141 that the ratio of the decision of this Court is a law of the land, Shri Govind Dass submitted that the ratio of a decision must be found out from finding out if the converse was not correct. But this Court, however, was cautious in expressing the reasons for the said decision in *State of Bihar Vs. Banshi Ram Modi and Others*, This Court observed in that decision that the result of taking the contrary view would be "that while digging for purposes of winning mica can get on, the lessee would be deprived of collecting felspar or quartz which he may come across while he is carrying on mining operation in winning mica. That would lead to be unreasonable result which will not in any way subserve the object of the Act." There was an existing lease where mining operation was being carried on and what was due by incorporation of a new term was that while mining operations were being carried on some other minerals were available, he was giving right to collect those. The new lease only permitted utilisation or collection of the said other minerals.

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9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* 1951 AC 737 at p. 761, Lord Mac Dermot observed:

The matter cannot, of course, be settled merely by treating the *Ipsissima verba* of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge.

11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

Bhavnagar University v. Palitana Sugar Mills Pvt. Ltd 2003 ACJ 1023.

59. A decision, as is well known, is an authority for which it is decided and not what can logically be deduced therefrom. It is also well-settled that a little difference in facts or additional facts may make a lot of difference in the

precedential value of a decision, See Smt Ram Rakhi v. Union of India and Ors. AIR 2002 Del 458 ; Delhi Administration (Now N.C.T. of Delhi) Vs. Manohar Lal, Haryana Financial Corporation and Anr. v. Jagdamba Oil Mills and Anr. JT 2002 (I) SC 482 and Dr. Nalini Mahajan, Ram Lal Mahajan Charitable Trust, Shri Rakesh Mahajan, Pan Foods Ltd. and Others and Mahajan Industries Pvt. Ltd. and Others Vs. Director of Income Tax (Inv.) and Others,

16. Another Constitutional Bench judgment of the Apex Court relied upon by the learned Counsel for the petitioners is State of Punjab and Another Vs. Devans Modern Breweries Ltd. and Another, , and reliance has been placed upon paragraph 334 which is being quoted below:

334. The doctrine of precedent is a well-accepted principle. A ruling is generally considered to be binding on lower courts and courts having a smaller bench structure:

A precedent influences future decisions. Every decision is pronounced on a specific set of past facts and from the decision on those facts a rule has to be extracted and projected into the future. No one can foresee the precise situation that will arise, so the rule has to be capable of applying to a range of broadly similar situations against a background of changing conditions. It has therefore to be in general terms and "malleable"... No word has one proper meaning, nor can anyone seek to fix the meaning of words for others, so the interpretation of the rule remains flexible and open-ended. (See Dias Jurisprudence, 5th Edn., p. 136).

17. It has been submitted that every decision is pronounced on a specific set of facts and on that basis of the facts a rule has to be extracted.

18. In view of the aforesaid facts, learned Counsel for the respondents submits that the present writ petition filed by the petitioner is liable to be dismissed due to the fact that the application filed by the answering respondent was maintainable and the contention raised that application for execution is barred by time and the court below was having no jurisdiction to entertain the said application and to pass the impugned order.

19. After hearing the learned Counsel for the parties and after perusal of the aforesaid record, it appears that the point for consideration by this Court in the present writ petition is whether in the facts and circumstances of the present case, the application filed by the respondent was maintainable or not after a lapse of considerable period of time. The property was initially let out to one Hazi Ahamad, father of the petitioners. The opposite party No. 2 made an application u/s 21(1)(a) of the U.P. Urban Buildings (Regulation of Letting. Rent and Eviction) Act, 1972. The said application was contested and vide its order dated 2.5.1980, the application for release was allowed except an area of 22" x 6" on the front side. Three appeals were filed and by common judgment on 18.3.1982 the appeals were disposed of and the application for release was allowed with respect to the smaller portion and for the rest of the portion the release

application was rejected. One Mirza Rasheed Beg filed a writ petition which was dismissed on 2.12.1997. The said order has become final according to the petitioners. An application by the opposite party No. 2 was made for execution and the said application was got dismissed. Then another application was filed on the objection made by the petitioners. The said application was considered and was subsequently allowed by the impugned order. Now the question for consideration by this Court is whether such proceeding initiated by the respondents was barred by limitation as it was filed after a period of 12 years. Further question to be considered was regarding doctrine of merger as provided u/s 111 (d) of the Transfer of Property Act. In my opinion, the contention of the petitioners to this effect that the application filed by the respondent-opposite party was not maintainable being a decree and limitation provided under the Limitation Act is 12 years. From perusal of Act XIII of 1972 being a Special Act, in my opinion, there is no bar for an application u/s 23 of the U.P. Act No. XIII of 1972 because from perusal of Section 35 of Act No. XIII of 1972 clearly provides the limitation being applicable is only Sections 4, 5 and 12 of the Limitation Act. Except these provisions, no other provision will be applicable in a proceeding under Act No. XIII of 1972. Vide further provisions of Section 38 of the CPC have been excluded, therefore, the decree defined in the Code of Civil Procedure, it cannot be held that application u/s 21 and the appeal decided under the aforesaid Act is a decree and, therefore, the application filed by the respondents itself was barred by time. The judgment cited by the respondents Uttam Namdev Makale (supra) has clearly held that general law of limitation shall not apply especially in view of Sections 35 and 38 of the U.P. Act No. XIII of 1972 being a special law.

20. Further the contention of the petitioners to this effect that tenant acquires the right of co-owner, therefore, no eviction can be sought by the respondent by means of the present execution application. In my opinion, the Apex Court has considered this issue in various cases and has held specifically that in such circumstances it cannot be held that in case if the tenant purchases the share of the tenanted accommodation, he continued to be the tenant unless he purchases the total interest of the tenanted accommodation. As regards the maintainability of the application by a co-owner, it has been decided in the case of Gopal Das v. A.D.J. 1987 (1) ARC 281. A similar question has been considered by the Apex Court in T. Laxmipati and Ors. (supra) and the Apex Court has held that it cannot be held that interests of lessee and lessor in the whole of the property have become vested in the appellants at the same time and in the same right. The lease cannot be said to have been determined by merger. So long as the interest of lessee, the lessor estate and of the owner, the larger estate to not come to coalesce in full either the water of larger estate is not deep enough to enable annihilation or the body of lesser interest does not sink or drown fully.

21. In such a situation, it cannot be held that the respondents opposite parties have got no right and the application filed by them are not maintainable and it cannot be executed against the petitioners.

22. It is also to be held that each and every decision are different on facts and if there is some additional fact, it always makes difference in the precedential value of the decisions.

23. In view of the aforesaid fact and submissions made by the parties, in my opinion, the application filed by the respondent was maintainable and cannot be held that it is beyond by time. The finding recorded by the court below to this effect that some portion has been purchased by the tenant, then the actual tenancy will not be affected and the co-owner on the basis of the decree, can maintain the application for execution. The trial court taking into consideration the various Judgments of the Apex Court has held that the application filed by the respondent is not barred by time and the application for execution is maintainable. In my opinion, the finding recorded by the trial court is a finding based on relevant consideration and relevant law prevailing today, as such, needs no interference.

24. The present writ petition is devoid of merit and is hereby dismissed.

No order is passed as to costs.