

(2008) 10 KAR CK 0002

In the Karnataka High Court

Case No : H.R.R.P. No"s. 68, 69 and 70 of 2008

Sri B. Paramashivaiah and Sri B. Chandrashekar

APPELLANT

Vs

Sri M.K. Shankar Prasad Chetty and Sri M.K. Srinivas Murthy
(since deceased by his Lrs Smt. Anita S. Murthy and Kum.
Snigdha rep. by her mother and Guardian Smt. Anita S.
Murthy)
 Sri B. Parameshivaiah and Others Vs Sri M.K.
Shankar Prasad Chetty and Sri M.K. Srinivas Murthy Chetty

 Sri B. Parameshivaiah and Sri B. Chandrashekar Vs Sri
M.K. Shankar Prasad Chetty and Others

RESPONDENT

Date of Decision : 22-10-2008

Acts Referred:

Karnataka Rent Act, 1999 — Section 27 (2) (a), 27 (a) (r), 5

Citation : AIR 2009 Kar 88 : (2009) 3 KarLJ 319 : (2009) 4 KCCR 2783

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : Janardhana G, for the Appellant; Legal Axis, for R1 and R2A in HRRP Nos. 69 and 70 of 2008 and Legal Axis and M.L. Dayananda Kumar, Advocate in HRRP No. 68 of 2008, for the Respondent

Final Decision : Allowed

Judgement

B.V. Nagarathna, J.—These three revision petitions are filed by the tenants challenging the order passed in H.R.C. Nos. 10044/06, 10045/06 and 10043/06 by the order dated: 30.11.07 passed by learned XV Addl. Small Causes Judge(SCCH-19), Bangalore. The said eviction petitions filed by the respondent landlords u/s 27(2)(a), (r) and 5 of the Karnataka Rent Act, 1999 have been allowed granting the petitioners six months" time to quit and hand over the vacant possession of the schedule premises.

Since common questions arise in these revision petitions, they have been taken up for hearing together and are disposed of by this common order.

Although the schedule premises in the three revision petitions are different, the

parties in these revision petitions are common and have common interest.

2. The relevant facts of the case are that, respondents who are the landlords had initiated eviction petition u/s 27(2)(a), (r) and u/s 5 of the Karnataka Rent Act, 1999 seeking eviction of the petitioners/ tenants from the respective schedule premises on the ground that they, being the landlords, had required the premises for their own use and that the tenants had failed to deposit the rents and on account of the death of the original tenant, the tenancy has ceased by virtue of Section 5 of the Act.

3. On receipt of notice from the trial Court, the petitioners herein appeared and filed their statement of objections contending that by virtue of agreement of sale dated: 3.3.1993, between the parties, the schedule premises in all the three cases were agreed to be sold by the respondents to the petitioners for a valuable consideration and that they were in possession of the premises by virtue of the said agreement of sale w.e.f. 3.3.1993 and therefore the petitions for eviction filed by the respondents herein were not maintainable and hence the same ought to be dismissed.

4. In support of their case, respondents examined first respondent as PW-1 and got marked Exs-P1 to P6, while the second petitioner herein was examined as RW-1 and the first petitioner herein was examined as RW-2 and another witness as RW-3 and Exs-R1 to R15 were got marked.

5. Based on the pleadings of the parties and the evidence on record, the trial Court raised the following points for its consideration:

- a. Whether the petitioners prove that there exists relationship of landlord and tenants between them and the respondents?
- b. Whether the petitioners prove that the respondents have neither paid nor tendered the whole of arrears of rent within two months from the date of receipt of notice of demand for payment of rent?
- c. Whether the petitioners prove that petition schedule premises for their own use and occupation?
- d. Whether the petitioners are entitled to the relief u/s 5 of the Karnataka Rent Act, 1999?
- e. What order?

6. After considering the evidence on record, the trial Court answered point Nos. 1 to 3 in affirmative and point No .4 in negative and by its Final order dated: 30.11.07, dismissed the petition u/s 5 of the Act and allowed the petition u/s 27(2) (a) and (r) of the Act. Being aggrieved by the said order, the petitioners have preferred these revision petitions.

I have heard Sri. Janardhana G., learned Counsel for the petitioners and Sri, MX, Dayanand Kumar, Sri. M.D. Raghunath and Sri Hitesh Kumar Jain, learned

Counsel for the respondent Nos. 1 & 2A,

7. It is submitted on behalf of the petitioners that the trial Court had failed to consider the effect of the agreements of sale dated: 3.3.1993(Ex-R1) on the facts and circumstances of the case, inasmuch as, on and from the execution of the said agreements, there was no relationship of landlord and tenant in respect of the schedule premises and that the petitioner* herein were agreement holders and were in possession of the schedule premises by virtue of the said agreement and therefore since the relationship of the landlord and tenant had ceased,, the respondents herein could not have been invoked the provisions of Karnataka Rent Act for seeking eviction of the petitioners herein as if they were tenants under them. He has taken me through the various clauses of agreements dated: 3.3.1993 in respect of the schedule premises to contend that on reading of the said agreements, the petitioners herein were not required to pay any rents and all that remains was the execution of the final sale deed and since the same had not happened till date, the petitioners have filed O.S. Nos. 26784/3007 to 26786/2007 seeking specific performance of the said agreements and that during the pendency of the said suits, the petitioners have every right to defend their possession by virtue of Section 53A of The Transfer of Property Act and under the facts and circumstances, the trial Court fell in error in ordering eviction of the petitioners from the schedule premises. He therefore submits that all the three impugned orders in respect of the three schedule premises ought to be set aside and thereon the possession of the schedule premises by the respondents herein ought to be put at rest.

8. Per-contra, it is submitted to learned Counsel for the respondents that no doubt Ex-R1 was executed between the parties herein, but the said agreements had been given up and abandoned by the parties and that the status of the petitioners being in possession of the schedule premises was as tenants and not as agreement holders and under the circumstances, the respondents had every right to initiate eviction proceedings against them by invoking the provisions of the Karnataka Rent Act and the trial court was therefore justified in passing an order of eviction against the petitioners herein. He further submits that the right u/s 53A of the Transfer of property Act is not available to the tenant in eviction proceedings and since the tenancy rights had revived, in the instant case, reliance placed by the petitioners herein u/s 53-A of The Transfer of Property Act was not of any use to them. Therefore while supporting the judgment of the trial court, he submits that revision petitions ought to be dismissed.

Both the counsel have relied upon certain citations which will be adverted to at a later stage.

9. Taking note of the above submission, the following points arise for ray consideration in these revision petitions:

a. Whether on the facts & circumstances of the case and in view of the agreements of sale dated: 3.3.1993 in respect of the schedule premises, the

respondent landlords could have initiated the eviction petitions under the Karnataka Rent Act, 1999, so as to vacate the petitioner tenants from the respective schedule premises? An incidental question which also arises is as to:

b. Whether the petitioners are entitled to protection u/s 53A of the Transfer of Property Act, in view of the agreements of sale dated: 3.3.1993 entered into between the parties hereinabove?

10. It is not in dispute that the petitioners were tenants of the respondents prior to the execution of agreements dated: 3.3.1993 in respect of the schedule premises and that during the pendency of the suit, the agreements were entered into between them and subsequently the petitioners continued in possession of the schedule premises. The question is therefore as to whether the relationship between the parties as landlord and tenant changed on account of the agreements dated: 3.3.1993 entered into between the parties, wherein the respondent landlord had agreed to sell the schedule premises to the petitioners for a valuable consideration on certain terms and conditions.

11. Before answering this question, it is necessary to advert to the clauses of the agreements dated: 3.3.1993 in respect of the schedule premises. It is relevant to note that one agreement is entered into between the respondents herein and the first petitioner in respect of two premises, which are the subject matters of HRRP No. 70/08 and 69/08 respectively and the other agreement is also entered into between the same parties and the schedule under the said agreement is the subject matter of HRRP No. 68/08. There is also no dispute that the terms and conditions of the two agreements in respect of schedule premises which are three in number are identical and therefore the terms and conditions referred to in respect of one agreement consisting of two schedules would be an adequate reference to the terms and conditions of the other agreement, wherein one property is the subject matter of the transaction. While referring to the respondents herein as the "sellers" and the first petitioner herein as the "purchaser", it would be useful to extract clause 3, 4, 5, 6, 8 of Ex-R1 as under:

Clause : That the purchaser has this day on the execution of this agreement paid to the seller a sum of Rs. 50,000/- (Rupees fifty thousand only) by Cheque No. 0958861 for which constitutes Rs. 25,000/- (Rupees twenty five thousand only) drawn on Karnataka Bank & by cheque No. 0958862 for Rs. 25,000/- dated 3.3.1993 drawn in Karnataka Bank dated 3.3.1993 which constitutes the consideration of this agreement and the balance of purchase price shall be paid by the purchaser on or before the expiry of 6 months from the date hereof and get the sale deed executed in his favour but subject to the conditions hereinafter appearing.

Clause 4: That the sellers shall produce all documents of title together with upto date tax receipts in respect of the schedule properties. In the absence of these documents and also if it is found that the title is not clear and subsisting, then this agreement shall be borne of no avail and the consideration of this agreement

received by the sellers shall be refunded to the purchaser forthwith without any deduction.

Clause 5: That since the purchaser is in possession of the residential property, he will not be liable to pay rents and he alone shall be responsible for any damage or loss from whatever causes arising to the property whereby agreed to be sold from this day onwards.

Clause 6; that in the event, of the sale not materialising by the stipulated time, the earnest money of Rs. 50,000/- only paid by the Purchaser shall stand forfeited to the sellers, provided, however, the transaction fails through no cause attributable to the sellers. In case the transaction fails to materialise at the option or causes attributable to the sellers, within the stipulated time and thereafter, then the sellers shall be liable to return the earnest money to the purchaser together with like sum of Rs. 50,000/- forthwith,

Clause 8: That on the purchaser making available the balance of purchase price on or before the stipulated time, a sale deed shall be executed and registered by the sellers.

12. A summary of the terms and conditions of the agreements are that the consideration of sale was fixed at Rs .2,25,000/- and that on the date of execution of agreement, a sum of Rs. 50,000/- was paid by way of cheque and the balance consideration was to be paid on or before expiry of six months from the date of agreement subject to certain conditions. In Clause 4 of the agreement of sale, it is specifically stated that the sellers i.e., the respondents herein shall produce all the documents of the title together with upto date tax receipts in respect of the schedule properties and that in the absence of these documents and also if the title is not clear and subsisting, then the said agreement was of no consequence and that the consideration received by them would be refunded to the purchasers i.e., to the petitioners herein forthwith without any deductions, It was also stated that since the residential property was already in the possession of the purchasers (as tenants), they would not. be liable to pay the rents and that they would also be responsible for any damage or loss which would be caused to the property from the date of the agreement. Clause 6 of the agreement states that if the agreement was not materialized within stipulated time, then the earnest money deposit of Rs. 50,000/- would be forfeited if the cause of the failure was not attributable to the sellers(respondents herein) or otherwise they would be liable to return the said amount to the purchasers petitioners herein) together with the like-sum of Rs. 50,000/- forthwith, It has also come on record that though six months was the time stipulated under the agreement, further payments were made on 19.10.93 and 26.2.94 and accepted by the respondents herein, which are infact beyond the period of six months stipulated,

13. The evidence of the respective parties with regard to Ex-R1 the agreement dated: 3.3.1993 is one of total suppression of the agreement on the part of PW-1

in his evidence, inasmuch as, the same is not adverted to in the petition filed for the eviction also, But in the cross-examination, the said agreements dated: 3.3.1993 are admitted by RW-1. The evidence of RW-1 is to the effect that that the father of the respondents herein had inducted the father of the petitioners herein as tenants and that they had constructed a portion of the building on the schedule premises and that by virtue of the agreements dated: 3.3.1993, they continued in possession under the said agreement and that there was no landlord and tenant relationship between the parties and as per the terms and conditions of the agreements w.e.f. from 1.3.1993 onwards, they had not deposited any rents and that they would be entitled to defend their possession by virtue of the agreements. There has been cross-examination but no material contrary to the terms and conditions of the agreement has been elicited, Similarly RW-2 has been examined and his evidence is also consistent with the evidence of RW-1 and he has admitted in the cross-examination that he is a signatory of Ex-R1 the agreements dated: 3.3.1993 and he denies the suggestion that Ex-R1 would automatically be cancelled on the expiry of clause 4 of the said agreement. He has also denied the suggestion that tenancy rights were revived and that he was liable to pay rents in respect of schedule premises, RW-3 has also spoken about the execution of the agreements dated: 3.3.93, From the oral evidence on record, it thus becomes apparent that there is no dispute regarding execution of Ex-R1 between the parties herein and that while issuing legal notice by the respondents herein, no reference was made to the said agreements in response to the legal notice. The petitioners herein have referred to the agreements to sell and they have also requested for production of original documents for scrutiny and for execution of the sale deed in their legal notice.

14. In order to decide the question as to whether by virtue of the agreements, the petitioners had ceased to be tenants of the schedule premises and therefore respondents herein could not have invoked the provisions of the Rent Act for vacating them, it is necessary to find out the intention of the parties to the agreements so as to answer the said question. From the reading of the agreement, it is apparent that a portion of the sale consideration was paid on the date of agreement by the petitioners herein and that the sale transaction was to be completed only in the event of the respondents producing the documents of title together with upto date tax paid receipts in respect of the schedule premises and that in the event of the same not being complied with by the respondents, the agreements would not have been of no consequence, but subject to the respondents herein refunding to the petitioners the amount received under the agreement or subsequent thereto without any deductions. Clause 5 of the agreement also expressly states that since the purchasers (petitioners herein) were in possession of the schedule premises, they were not liable to pay rents and that they alone would be responsible for the damage caused to the property from the date of agreement onwards.

Clause 5 of the agreement makes it apparent that on and from the date of agreements, the petitioners herein ceased to be treated as tenants and that on

account of the receipt of a portion of the consideration of the respondents herein, the petitioners were not liable to pay any rents, Clause 4 also makes it apparent that the respondents herein could return the consideration advance amount received under the agreements and also the subsequent amounts paid and would have been liable to refund the same in the event of they not producing the documents of title or could forfeit the same in the event of the petitioners herein violating the terms of the agreement and thereby bringing an end to the sale transaction in question, On combined reading of clause 4 with clause 5, what emerges is that there was an implied surrender of the schedule premises by the petitioner tenants to the respondents and that the relationship of landlord and tenant ceased and a new jural relationship of a purchaser and seller commenced on from the date of agreements in question dated 3.3.1993. The fact that clause 5 of the agreement emphasized that the purchaser (petitioners herein) were in possession of the schedule premises, there was no need for once again handing over the possession of the schedule premises to the petitioners herein by virtue of the agreements, but there was an express intention to continue the possession of the premises without any payment of rents, only because they were the intending purchasers and agreement holders. Under the circumstances, the provisions of law with regard to surrender of the property and subsequent defence which is available to the person in possession of the property by virtue of the agreement would come to the aid of the agreement holders.

15. Section 111 of the Transfer of Property Act deals with the circumstances under which there can be a determination of lease and one such circumstance is by express surrender i.e., to say in case the lessee yields up interest to the lessor by mutual agreement between them and another circumstance is by implied surrender yielding up of the lessee's interest to the lessor and under the said provision it may be either express or implied. Express surrender means yielding of his right by lessee in favour of the lessor by actual agreement and implied surrender occurs by (a) creation of new relationship and (b) relinquishment of possession.

16. In the instant case on account of the clause of the agreement stating that the petitioners would not be liable to pay rent on and from the date of the agreement and that they would be alone responsible for any damage caused to the property would clearly imply that there is an implied surrender of rights as tenant and that there is a creation of a new relationship between the parties as that of an intending seller and intending purchaser. Since the subject matter of the agreement to sell were the very schedule premises in which the petitioners were in occupation as tenants, there was no necessity of handing over vacant possession of the said premises to the respondent/landlords and thereafter re-occupy the premises by virtue of the agreement and taking note of the factual possession, the parties intended that the possession would continue but were clear in their minds that the possession on and from the date of the agreement was not by virtue of the landlord tenant relationship, but by virtue of the agreements. Hence the petitioners were not liable to pay any rents. Therefore,

the only conclusion that can be reached is that on and from the date of the agreement, the possession of the schedule premises in the hands of the petitioners was by virtue of the agreement as intending purchasers and not as tenants under the respondents. In the absence of there being any jural relationship of landlord and tenant on and from the date of the agreement in question and there being a change in the relationship of the parties as intended seller and purchaser, in my view, the provisions of the Rent Act could not have been invoked "by the respondents so as to seek eviction of the petitioners as if they were tenants of the schedule premises. Accordingly, point No. 1 is answered in the negative.

17. Learned Counsel for the respondents however, contended that in view of the fact that the agreements were cancelled or abandoned or given up by the parties, there was a revival of the tenancy and that any right which the petitioners may have acquired under the agreements in question had ceased and they place reliance on Clause (iv) of the said agreement to contend that on account of the non-production of the documents of title and up to date tax paid receipts and on account of the fact that several years had elapsed subsequent to the execution of the agreement to sell and no steps were taken by either side seeking performance of the agreement and on account of the revival of the tenancy, the respondents were justified in treating the petitioners as tenants and there being non-payment of rents and the schedule premises were required for the respondents for their own use, the trial court was therefore right in passing an order of eviction, Clause 4 of the agreement clearly stipulates two obligations on the part of the respondents/ sellers, one to an obligation to produce the document of title and up to date tax paid receipts with an intention to sell the schedule property and a second obligation to refund the amounts received by virtue of the agreement without any deduction, It is only when both conditions in the said clause were complied with by the respondents herein read with Clause (vi) of the said agreement could a contention be raised that the rights of the parties under the agreement had ceased and particularly on account of the said fact, there was revival of tenancy.

18. Learned Counsel for the respondent has been fair in submitting that as is also borne out from the evidence there has been no refund of the amounts received by way of advance consideration under the two agreements and this fact would clinch the issue against the respondents in as much as they could not have held on to the advance consideration on the one hand and at the same time treat the petitioners as tenants and thereby Invoke the provisions of Rent Act. for evicting the petitioners. The conduct of the parties in this case weighs in favour of the view that the agreements to sell were subsisting, as on the date of filing of the eviction petition and that there was no revival of tenancy.

19. Under the said circumstances the next issue which has to be taken up for consideration is as to whether the petitioners herein were entitled to defend their possession of the schedule premises by virtue of the provisions of Section 53-A

of Transfer of Property Act. As has already been elaborated, though the possession of the petitioners herein was de-facto continued despite the agreements to sell, it was a case of there being an implied surrender of the rights of the petitioners as tenants and thereafter commencing of their rights as intending purchasers under the terms and conditions of the agreements in question.

20. Section 53-A of the said Act provides for a situation whereby a party to a transaction, which is in writing has taken possession of the property or any part thereof in part performance of the said contract or if he is already in possession continues in possession in part performance of the said contract and thus in furtherance of the contract and is willing to perform his part of the contract, then he is entitled to defend his possession by virtue of the contract or agreement under which he is put in possession of the property. It is obvious that a tenant has no right to seek protection of his possession by virtue of Section 53-A of the Transfer of Property Act when a jural relationship is that of landlord and tenant and that the Rent Act would prevail and the landlord could seek eviction in terms of the provisions of the said Act. But where a tenant is in possession of the premises by virtue of an agreement and does certain acts in furtherance of the said agreement, in my view the relationship of landlord and tenant would cease from the date of the agreement and would be replaced by a new relationship of intending purchaser and seller and under the circumstances Section 53-A of the Transfer of Property Act enables such a person in possession of the premises by* virtue of the agreement or contract to defend his possession, Hence the answer to the incidental question raised for my consideration is that the petitioners herein are entitled to defend their possession by virtue of the agreements dated 3.3.1993 as that the respondents/landlords had no right to evict the petitioners by virtue of the provisions of the Karnataka Rent Act.

23. At this stage it is necessary to advert to certain case law referred to by both sides in support of their contentions.

Learned counsel for the petitioners has relied upon the following citations:

In the case of R. Kanthimathi and Another Vs. Beatrice Xavier (Mrs), is a decision which arises u/s 101(e) & (f) of the Transfer of Property Act in the context of surrender of lease and agreement to sell between the lessor and lessee wherein it has been stated that the relationship of landlord and tenant ceases to exist once the agreement is entered into and a portion of the sale consideration is accepted by the seller-landlord and therefore, the eviction petition is not maintainable by the landlord. The said judgment clearly applies to the facts and circumstances of this case.

In the case of Shrimant Shamrao Suryavanshi and Another Vs. Pralhad Bhairoba Suryavanshi by Lrs. and Others, is a case which arises u/s 53-A of the Transfer of Property Act which states even if the right to file a suit for specific performance of an agreement to sell has ceased on account of lapse of time, the Limitation

Act does not come in the way of a transferee in possession of the property to defect his right of possession under the agreement. This decision repels the contention of the learned Counsel for the respondent that in an eviction proceeding, the agreement holder who according to the landlord, is his tenant cannot defend his possession as by virtue of the agreement to sell and the purchaser being in possession of the schedule premises would not be a tenant.

Krishna Kishore Firm Vs. The Govt. of A.P. and others, s cited by the learned Counsel for the petitioner to contend that if a person is in possession of a property by virtue of an agreement, then he acquired a right to the said possession and the same cannot be forbidden by law so long the said agreement is subsisting.

In Chinna Thevar Vs. Gnanaprakasi Ammal and Another, , it has been held that in a suit for eviction under the Rent Act, a plea of part performance is available as a defence to the "tenant" in as much as after the execution of an agreement by the landlord and tenant and the landlord becomes the seller by virtue of the new status created under the contract, and it would no longer be open to the landlord to contend that right of possession claimed by the tenant was referable to the contract of lease.

In my view the judgments referred to above wholly support the view that I have taken and the reasons that I have assigned in the instant case.

Learned counsel for the respondents has referred to several decisions, which would be referred to as follows:

In 1979(2) Kar LJ 218 (Mallppa Bhimanna v. Land Tribunal, Sindagi and Ors.) it is stated that the right of a lessee under a lease does not merge with the right that the tenant may have acquired under the agreement of sale of the land in his favour and that the tenant continues to be a tenant, This decision as well as other decisions which shall be adverted to later are in the context of the merger of the right of a tenant with that of a landlord which aspect does not at all arise on the facts and circumstances of the case. It is a settled position in law that by virtue of an agreement to purchase an immovable property by a lessee, his rights do not get merged with that of the lessor who is the seller. Merger can occur only after the completion of the sale transaction and that not being the case herein, all citations on the Doctrine of Merger, in my view, are not applicable to the facts and circumstances of this case.

M. Chidambaram Vs. N. Sargunam, refers to the distinguishing features of the proceeding under a Kent Act and a suit for specific performance of contract and on the facts and circumstances of the said case wherein the alleged agreement to sell was not made a part of the record, this Court held that the tenant continued to be in possession as a tenant and therefore, was liable to be evicted. Since the instant proceeding Ex.R1 being the agreement to sale are not only on record, but the execution thereof has been admitted by both sides, in my view, the said citation would not come to the assistance of the respondents.

Chinnaswamy Vs. Profulla, is a decision rendered in the context of Section 16 & 20 of the Specific Relief Act in a suit for specific performance filed by an intending purchaser, which is also not applicable to the eviction proceedings initiated in the instant case.

In K.L. Vedamurthy Vs. M. Gopalachari, , this Court held that if at an undisputed point of time the petitioner who has initiated the eviction proceeding was a landlord, then he would be entitled to initiate proceedings for eviction and that any contentions raised by the tenant regarding the title of the landlord viz-a-viz the schedule property cannot be gone into to oust the landlord's petition for eviction. In my view, the said ruling is also of no assistance to the respondents herein in as much as there is no issue regarding the title of the respondents raised by the petitioners herein. On the other hand, the respondents admit the title of the petitioners and it is on the basis of their bonafide belief that the respondents are the title-holders that they have agreed to purchase the schedule premises in question.

J. Baby Ammal Vs. P. Sumithra Devi, is a derision again in the realm of Specific Relief Act and the right of purchaser to seek recovery of the advance sale consideration which is again not relevant to the facts of the present case.

In AIR 2007 Kar 43 (A.R.G. Oomar Saith and Ors. v. B.S. Rajanna), it has been held that where a tenant had entered into an agreement of sale without taking possession of the schedule property, he could not be said to be in possession of the said property in the capacity of purchaser under the agreement of sale and that he continues to be a tenant and cannot deny the relationship of landlord and tenant between them. There can be no contrary view to the said proposition. But the facts of the present case are totally contrary to the facts of the case which arose in the said decision, in as much as in the instant case, the petitioners continued their possession of the schedule premises in the capacity of intending purchasers under the agreement of sale and therefore, the said decision is not applicable to the present case.

Learned counsel for the respondents vehemently relied upon a decision in the case P. Veerappa Vs. M.A. Mohammed Amanulla, wherein the Supreme Court has held that if the agreement comes to an end due to the non-compliance with the terms of the agreement, then ten pre- existing rights of the landlord would revive and merely because the agreement is entered into, tenancy rights cannot be said to have merged with the rights of an agreement holder.

As I have already stated that the mere execution of an agreement to sale would not result in the merger of rights of lessee or a tenant with that of a lessor or landlord and therefore, that portion of the ruling would not be applicable to the facts of the present case. But as far as the revival of the pre-existing rights of the parties as landlord and tenants coming to an end of an agreement or due to non-compliance of agreement is concerned, the Supreme Court when adverting to the said proposition has categorically on the facts and circumstances of the

said case held that the tenancy rights would revive. There can be no contrary view on the said proposition enunciated by the Hon"ble Supreme Court. But since I have already held that in the absence of there being compliance with Clause (iv) of the agreement, in the instant case, the agreement did not come to an end and that the status of the parties did not cease as that of an intending seller and purchaser, the ratio of the said decision is not applicable to the facts and circumstances of the present case.

At this stage, it is to be noted that while the learned Judge of the trial court on the one hand was not convinced with the respondent's case that there was revival of the relationship of landlord and tenant, he was also not convinced of the status of the petitioners herein under the terms of the agreement dated 3.3.1993, Nevertheless without giving a finding on the two contrary stands taken by the parties herein ordered eviction of the petitioners from the schedule premises u/s 27(2)(a) & (r) of the Act, which is not correct.

In view of the reasons that I have assigned and the findings that I have arrived at on the issues raised in these revision petitions, the orders passed by the trial court which are impugned in these three revision petitions are set aside and the revision petitions are allowed with costs.