
(2006) 03 CAL CK 0023

In the Calcutta High Court

Case No : F.A. No. 16 of 2005 and CAN No. 272 of 2006

Team Consultants Private Limited

APPELLANT

Vs

Swapna Lahiri and Others

RESPONDENT

Date of Decision : 01-03-2006

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 174, 194, 214, 231
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Evidence Act, 1872 — Section 116
Transfer of Property Act, 1882 — Section 106, 109
West Bengal Premises Tenancy Act, 1956 — Section 10(2), 13, 13(6), 17, 17(1)

Citation : (2006) 2 CALLT 322 : (2006) 3 CHN 689

Hon'ble Judges : Pravendu Narayan Sinha, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Shamit Sanyal, for the Appellant; Sudhis Dasgupta, Jay Saha and Aniruddha Chatterjee, for the Respondent

Final Decision : Allowed

Judgement

Bhaskar Bhattacharya, J.—This first appeal is at the instance of a defendant in a suit for eviction and is directed against the judgement and decree dated 25th June, 2003 passed by the learned Judge, 5th Bench, City Civil Court at Calcutta in Ejectment Suit No. 166 of 1996 thereby passing a decree for eviction of the present appellant on the ground of default in payment of rent with the observation that the defendant, in an earlier suit having obtained relief u/s 17(4) of the West Bengal Premises Tenancy Act ("Act"), was not entitled to get further benefit of protection under that provision of the Act.

2. The respondent No. 1 along with one Arun Chandra Lahiri, since deceased, the predecessor-in-interest of respondent Nos. 2(a) and 2(b) filed a suit being Ejectment Suit No. 166 of 1996 against the appellant on the ground of default in payment of rent from September, 1993.

3. The case made out by the plaintiff-respondents may be summed up thus:

(a) One Mrs. Kanwal Madan, the proforma defendant was the original owner of the suit property. On 29th May, 1986 the said Mrs. Kanwal Madan delivered possession of the flat to Shri Ashok Chandra Lahiri, the husband of the respondent No. 1.

(b) The appellant was inducted by Mrs. Kanwal Madan as a tenant in respect of the said flat at a monthly rental of Rs. 2,000/-. Consequent to the sale of the said flat by Mrs. Kanwal Madan to Shri Ashok Chandra Lahiri, the tenancy of the appellant was attorned in favour of Ashok Chandra Lahiri and the appellant continued to pay rent to the said Ashok Chandra Lahiri and thus, accepted him as its landlord.

(c) The said Ashok Chandra Lahiri died on 15th January, 1995 leaving the respondent No. 1 as his wife and one Smt. Urmila Lahiri, since deceased, being his mother, as his sole heirs and legal representative. The said Smt. Urmila Lahiri during her lifetime released and relinquished her right, title and interest in the said flat in favour of respondent No. 1 and thus, the respondent No. 1 became the sole and absolute owner of the disputed property.

(d) Smt. Urmila Lahiri died on 19th February, 1996 leaving the respondent No. 1, the widow of her predeceased son and another son, viz. Arun Chandra Lahiri, the predecessor-in-interest of the respondent Nos. 2(a) and 2(b) as her sole heirs and legal representatives and as such, the said predecessor-in-interest of the respondent Nos. 2(a) and 2(b) had been impleaded as plaintiff No. 2 by way of abundant caution, even though, the respondent No. 1 was the sole and absolute owner of the suit property.

(e) The appellant was inducted by virtue of a lease dated November 21, 1977 expiring with November 20, 1982 but the appellant failed to vacate the said flat and accordingly, a suit was filed against the appellant by the previous owner, namely, Mrs. Kanwal Madan for eviction on the ground of default in payment of rent.

(f) Being a case of first default, the appellant got protection after having paid the outstanding amount of rent and thus, the Court dismissed the earlier Ejectment Suit No. 1028 of 1982 by a decree dated 5th March, 1986 after giving protection to the appellant u/s 17(4) of the Act.

(g) The appellant failed and neglected to pay any part of the increased occupiers' share of the consolidated tax imposed by Corporation of Calcutta and on account of non-payment of commercial surcharge, a sum of Rs. 92,309/- was due and payable by the appellant to the plaintiff No. 1 up to 31st December, 1995.

(h) The appellant was a habitual defaulter and accordingly, the plaintiff No. 1 was compelled to initiate distress case being Suit No. 1 of 1988 against the appellant and after the issue of the distress warrant, the appellant made payment of the arrears of rent.

(i) The plaintiff No. 1 by a notice dated December 15, 1995 u/s 13(6) of the West Bengal Premises Tenancy Act and Section 106 of Transfer of Property Act terminated the tenancy of the appellant asking it to vacate the suit property on the expiry of January, 1996 but in spite of receipt of such notice, the defendant did not vacate the suit property. Hence the suit.

4. The suit was contested by the appellant by filing written statement thereby denying the material allegations made in the plaint and the defence of the appellant may be epitomised thus:

(I) The suit was bad for non-joinder and mis-joinder of parties and if no administration had been granted in respect of the estate left by Ashok Chandra Lahiri in favour of the respondent No. 1, the suit was liable to be dismissed on that ground and the respondent No. 1 was not entitled to any of the relief claimed.

(II) The tenancy was governed by the provisions of West Bengal Premises Tenancy Act. The appellant denied that at the expiry of the lease-period of five years, the occupiers' share of consolidated tax payable to the Calcutta Municipal Corporation was Rs. 850/- per quarter as alleged at all. The appellant had an obligation to pay Rs. 2,000/- a month inclusive of all taxes, service charges and other charges and any amount in addition to the said amount of Rs. 2,000/- is required to be paid by the respondent No. 1 and not by the appellant.

(III) The amount of surcharge alleged to be payable as shown by the respondent No. 1 was incorrect and the appellant was forced to pay the amount on account of such charge.

5. Subsequently, the defendant filed additional written statement stating that there was no default in making payment of rent from the month of September, 1993 till January, 1996 or for any other period as alleged at all.

6. At the time of hearing of the suit one Gautam Sangneria, the constituted attorney of respondent No. 1 deposed on behalf of the respondents while one Basudha Ghosh deposed on behalf of the appellant.

7. The learned Trial Judge, as indicated above, by the judgment and decree impugned herein, has passed a decree for eviction in favour of the plaintiff on the ground of default in payment of rent.

8. Being dissatisfied, the appellant has come up with the present first appeal.

9. Mr. Sanyal, the learned Advocate appearing on behalf of the appellant has, at the very outset, submitted that the respondent No. 1 alone having issued the notice u/s 13(6) of the West Bengal Premises Tenancy Act claiming to be the sole landlord, the learned Trial Judge ought to have dismissed the suit on the ground that on the death of Shri Ashok Chandra Lahiri, not only the respondent No. 1 but also the predecessor-in-interest of the respondent No. 2 became the joint-landlords and as such, the suit as framed was not maintainable.

10. The learned Advocate for the appellant next contends that the learned Trial Judge erred in law in passing a decree for eviction without arriving at any findings as to whether the appellant was a defaulter in payment of rent as alleged. According to him, the learned Trial Judge solely relied upon the evidence adduced at the time of disposal of the application u/s 17(4) of the West Bengal Premises Tenancy Act and such course is not permissible under law.

11. It is lastly contended that the present appellant cannot be said to be a second defaulter, inasmuch as, the previous default was committed in a suit filed by Mrs. Kanwal Madan but the present respondent No. 1 could not prove herself to be the successor-in-interest of Mrs. Kanwal Madan. In other words, he submits that Shri Ashok Chandra Lahiri did not purchase the property from Mrs. Kanwal Madan but only got an agreement for sale and therefore, the previous tenancy did not devolve upon him by virtue of a mere agreement for sale. According to him, the appellant having paid rent direct to Ashok Chandra Lahiri of its own under the wrong impression that he purchased the suit property from Mrs. Madan, it should be presumed that a new tenancy had been created between the appellant and Shri Ashok Chandra Lahiri and accordingly, the present tenancy cannot be the continuation of the earlier tenancy under Mrs. Madan. The learned Advocate for the appellant, thus, prays for dismissal of the suit.

12. Mr. Dasgupta, the learned Senior Advocate appearing on behalf of the respondent has, however, opposed the aforesaid contentions of the learned Advocate for the appellant. According to Mr. Dasgupta, although the notice was issued by the respondent No, 1 alone, for that reason the suit cannot be dismissed. Mr. Dasgupta contends that one of the co-landlords is entitled to give a notice for eviction and also to file a suit for eviction and thus, the notice at the instance of respondent No. 1 alone cannot be said to be illegal.

13. Mr. Dasgupta further contends that the present tenancy is the continuation of the one created by Mrs. Kanwal Madan and the learned Trial Judge rightly held that the appellant, being the second defaulter, is not entitled to get further protection u/s 17(4) of the Act.

14. Mr. Dasgupta lastly contends that it would appear from the findings at the time of disposal of the application u/s 17(4) of the Act that the appellant was a defaulter in payment of rent and as such, this Court on the basis of evidence-on-record should arrive at the conclusion that the appellant is a defaulter for more than two months and not having complied with the provisions contained in Section 17(4) of the West Bengal Premises Tenancy Act is not even entitled to get protection as a first defaulter. Mr. Dasgupta, therefore, prays for dismissal of the appeal. In support of his contentions, Mr. Dasgupta relies upon the following decisions:

- 1) Kanta Goel Vs. B.P. Pathak and Others, ;
- 2) Pal Singh Vs. Sunder Singh (Dead) by Lrs. and Others, ;

- 3) Tej Bhan Madan Vs. II Additional District Judge and Others, ;
- 4) Taraknath and Another Vs. Sushil Chandra Dey by Lrs. and Others, ;
- 5) Sk. Sattar Sk. Mohd. Choudhari Vs. Gundappa AMabadas Bukate, ;
- 6) Bakhtawar Singh v. Gurdev Singh, (1996) 9 SCC 370 ;
- 7) Anar Debi v. Nathu Ram reported in 1994 SCC 250;
- 8) Harihar Banerjee v. Ramsashi Roy and Ors., reported in 23 CWN 77 (PC).

15. At the time of hearing of this appeal, the respondents filed an application under Order 41 Rule 27 of the CPC for taking into consideration certain additional documents for the purpose of disclosing some materials as regards the ownership of the disputed flat. This Court after hearing the learned Counsel for the parties allowed such application because for effective adjudication of the disputes involved in this appeal the Court required those documents. The appellant was given opportunity of adducing evidence for refutation but the learned Advocate for the appellant informed this Court that the appellant would not lead any further evidence for the purpose of rebutting those additional evidences adduced by the respondents.

16. Before we proceed to deal with the points raised by the learned Advocate for the appellant, we propose to consider the question of ownership of the flat because such question is, to some extent, relevant for the purpose of answering the questions raised by the learned Advocate for the appellant.

17. After going through the evidence including the additional evidence adduced by the respondents, it appears that Mrs. Kanwal Madan who inducted the appellant in the suit property as tenant did not transfer the property in favour of Ashok Chandra Lahiri although the plaintiffs alleged that Ashok Chandra Lahiri acquired title to the property from Mrs. Madan. It is apparent that only an agreement for sale was entered into between Mrs. Madan and Shri Ashok Chandra Lahiri but no sale deed, pursuant to such agreement, had been executed. Therefore, neither Ashok Chandra Lahiri had nor his successors till today have acquired title to the property from Mrs. Madan. It is nobody's case that Mrs. Madan issued any letter of attornment asking the appellant to pay rent to Ashok Chandra Lahiri but it appears from the record that the appellant under the impression that Ashok Chandra Lahiri purchased the property from Mrs. Madan started paying rent to Shri Ashok Chandra Lahiri and did not further pay any rent to Mrs. Madan. But the fact that the plaintiff No. 1 never mutually collected any amount of rent from the appellant will appear from the allegation in the plaint itself that the appellant has been described as a defaulter from the period during the lifetime of Shri Ashok Chandra Lahiri.

18. From the aforesaid materials it is clear that although the appellant was a tenant under Mrs. Madan, subsequently of its own, it has stopped making payment to Mrs. Madan and had started paying rent to Ashok Chandra Lahiri. It

is an admitted position that after the death of Ashok Chandra Lahiri, the plaintiff No. 1, his widow, never realised rent by granting rent-receipt but on the other hand refused to accept rent from plaintiff in spite of tender and accordingly, the appellant started depositing rent before the Rent Controller.

19. Therefore, the first question is whether the tenancy created by Mrs. Madan has devolved upon Ashok Chandra Lahiri and after his death, upon the plaintiff No. 1 alone. It is now a settled law that for the purpose of inducing a tenant in a property, it is not necessary that the inductor must be an owner. If a tenant is induced not by the owner but by a different person, the tenant is estopped from disputing the title of his inductor at the time of creation of tenancy. Therefore, the appellant having been originally induced by Mrs. Madan is estopped from disputing the title of Mrs. Madan at the time of induction. The law is equally settled that a tenant can, however, dispute the derivative title of a person who claims to have acquired title from the inducing landlord. To this principle, however, there is one exception. The exception is that if the tenant himself pays rent to the derivative title-holder, he cannot dispute the title of such derivative title-holder by reason of the provisions contained in Section 116 of the Evidence Act. Of course, if through mistake he made payment, he is not so estopped. It is not the case of the appellant that through mistake, it had paid rent to Ashok Chandra Lahiri or that it tried to rectify such mistake by again tendering the rent to Mrs. Madan. But at the same time we must bear in mind that if a tenant without request from the inducing landlord pays rent of its own to another persons on the assumption that the latter has become owner by virtue of the act of the parties or by operation of law but, in fact, if the latter has not acquired such ownership, the original tenancy ceases to continue and it should be presumed that a fresh tenancy has been created between the tenant and the person to whom he has subsequently paid rent. However, if the subsequent landlord acquired title from the inducing landlord by virtue inter vivos transaction, testamentary or intestate succession or by operation of law, the original tenancy would continue. In the case before us, it is nobody's case that Mrs. Madan requested the tenant to pay rent to Ashok Chandra Lahiri. Therefore, this is not a case of attornment of tenancy on the request of inducing landlord nor is it a case of acquisition of the title from the inducing landlord as no title deed has been executed in favour of Ashok Chandra Lahiri or his heirs. Thus, by conduct of the parties, a new tenancy had been created between Ashok Chandra Lahiri and the appellant and the said tenancy is not the continuation of the tenancy created by Mrs. Madan,

20. We, therefore, find substance in the contention of the learned Advocate for the appellant that the present tenancy being not in continuity of the earlier one, it cannot be said that the appellant is a defaulter for second time in respect of the self-same tenancy. According to the provision contained in Section 17(4) of the West Bengal Premises Tenancy Act, if a tenant once obtained the benefit of Section 17(4) of the Act, he will not get such protection against eviction in case of a second default if such second default is for more than four months within a

period of twelve months in respect of the self-same tenancy.

21. The learned Trial Judge has in this case refused benefit to the appellant on the ground that earlier it obtained benefit from Mrs. Madan. We have already pointed out that the present tenancy is neither the continuation of the previous one by virtue of attornment nor has the said tenancy devolved upon Ashok Chandra Lahiri by dint of Section 109 of the Transfer of Property Act. Therefore, we are unable to approve the aforesaid finding of learned Trial Judge.

22. Next question is whether the notice given by the plaintiff No. 1 alone claiming to be the sole landlord is valid in terms of Section 13(6) of the West Bengal Premises Tenancy Act. We have already indicated that the present tenancy was created by mutual payment and acceptance of rent between the appellant and Ashok Chandra Lahiri. There is no dispute that Ashok Chandra Lahiri did not acquire title to the property but we have already held that for the purpose creation of a tenancy the landlord is not required to be the owner. It is also not in dispute that Ashok Chandra Lahiri died intestate leaving his widow, the plaintiff No. 1 and his mother Smt. Urmila Lahiri. Plaintiffs have made out a specific statement that the mother of Ashok Chandra Lahiri surrendered her interest in the property in favour of the plaintiff No. 1 and thus, the plaintiff No. 1 alone became the absolute landlord of the appellant. We find from the record that no such deed has been produced demonstrating the surrender of such interest in favour of the plaintiff No. 1 and the learned Trial Judge has also come to the conclusion that the right, title and interest of Ashok Chandra Lahiri devolved not only upon the plaintiff No. 1 but also upon his mother. Therefore, on the death of Ashok Chandra Lahiri not only the plaintiff No. 1 but also her mother-in-law became the joint landlords of the appellant. According to Section 13(6) of the West Bengal Premises Tenancy Act, a notice must be given by the "landlord" to the "tenant". According to various decisions given by the Supreme Court a co-owner of the property can also be a landlord and can serve eviction notice accordingly. We have already pointed out that Ashok Chandra Lahiri never became owner of the flat nor have his heirs become owner. Therefore, by taking aid of the definition of landlord mentioned in the West Bengal Premises Tenancy Act, it cannot be said that plaintiff No. 1 alone was the landlord of the property after the death of Ashoke Chandra Lahiri. If one of the landlords asserts himself to be the sole landlord by disputing the title of other landlord, whereas at the time of hearing of the suit it is established that both are the landlords of the defendant, a notice given by one of them disputing the title of the other cannot be said to be a valid notice because the person who has given notice is claiming to be a "landlord" by asserting a different tenancy than the one proved in the suit.

23. We, therefore, find that the learned Trial Judge having rightly found that on the death of Ashok Chandra Lahiri, both the plaintiffs became the landlord, the notice issued by one of them denying title of the other cannot be said to be valid one. Even in the plaint, the plaintiffs have stated, that for abundant precaution,

the plaintiff No. 2 was made party but it was the plaintiff No. 1 who was alone the landlord whereas such fact has not been proved and it has been established from the material on record that both the plaintiffs became landlords according to law. Therefore, the notice given in this suit is not by the plaintiff No. 1 for self and also on behalf of the other landlord. We, thus, find that the notice of eviction by the "landlord" which is mandatory u/s 13(6) of the Act was invalid because one of the joint landlords denied the right of the other and on that ground alone the suit is liable to be dismissed.

24. The next question is whether the plaintiffs have proved default on the part of the defendant in payment of rent as alleged in the plaint.

25. We find from the materials on record that the learned Trial Judge has not arrived at any independent conclusion as regards the allegation of default in payment of rent at the time of final hearing but has relied upon the observations of the Revisional Court while disposing of a revisional application preferred against an order passed u/s 17(4) of the West Bengal Premises Tenancy Act. In the written statement the appellant has specifically taken the plea that the monthly rent of the flat was Rs. 2,000/- and apart from payment of that amount, it was under no obligation to pay any amount of Corporation tax or surcharge imposed by the Corporation. Such plea was also taken in the application u/s 17(2) of the West Bengal Premises Tenancy Act. The learned Trial Judge did not arrive at any independent conclusion on the basis of evidence adduced in this case at the time of hearing of the suit as regards rate of rent payable by the tenant. It is now settled by various decisions of the Division Benches of this Court that any finding made at the time of disposing of the application u/s 17(2) of the West Bengal Premises Tenancy Act will not be binding upon the Trial Court at the time of trial and the earlier finding made at the time of disposing of the application u/s 17(2) of Act should be treated to be tentative one for the purpose of disposing of such application only unless the relevant issue of default or relationship of the parties was also decided along with the application u/s 17(2) of the Act. [See: Synthetic Plywood Industries (P) Ltd. v. Manjulika Bhadury and Ors. reported in 1998 (1) CLT 350 (Cal) where all the decisions on this point have been referred to]. We find from the evidence of PW-1, the sole witness for this landlord, that he is not even acquainted with the terms of the alleged tenancy between the parties. It appears from the averment in the notice to quit that the rate of rent was described as Rs. 2,000/- a month. It is also the definite case of the defendant that the rate of rent was Rs. 2,000/- a month. The plaintiffs have valued the suit at Rs. 24,000/- for eviction being the annual rent according to them and thus, the finding of the learned Trial Judge that the municipal charges were part of rent was a perverse finding of fact.

26. Even if, in addition to the rent payable to the landlord, the tenant agreed to pay the proportionate occupier's charge or the commercial surcharge imposed by the Corporation of Kolkata by virtue of the statutory provisions, such variable sum payable by the tenant in terms of the statute cannot form part of rent for

the purpose of Section 13 or Section 17 of the Act. At this stage it will be profitable to refer to the following observation of a Bench consisting of three-Judges of the Supreme Court in the case of *Karnani Properties Ltd. Vs. Augustin*, , while laying down the exact meaning of the word "rent" when not defined in the Rent Control Act:

The term "rent" has not been defined in the Act. Hence it must be taken to have been used in its ordinary dictionary meaning. If, as already indicated, the term "rent" is comprehensive enough to include all payments agreed by the tenant to be paid to his landlord for the use and occupation not only of the building and its appurtenances but also of furnishing, electric installations and other amenities agreed between the parties to be provided by and at the cost of the landlord, the conclusion is irresistible that all that is included in the term "rent" is within the purview of the Act and the Rent Controller and other authorities had the power to control the same.

(Emphasis supplied by us)

27. If we apply the aforesaid principle to the fact of our case it is clear that the commercial surcharge and municipal taxes are payable not for the furnishing, electric installations and amenities "provided by and at the cost of the landlord" but are really the charges for services rendered by the municipal authorities as per statute and are also not a fixed amount and cannot form part of rent for the purpose of giving right to the landlord to evict a tenant for nonpayment of such due.

28. As laid down in Section 174 of the Kolkata Municipal Corporation Act, 1980, for the purpose of assessment of the property tax of a building, the annual value of the building shall be deemed to be the gross annual rent including the service charges, if any, at which such building might at the time of assessment be reasonably expected to let from year to year, less an amount of ten per cent for the cost of repairs and other expenses necessary to maintain such building in a State to command such gross rent and the word "rent" used therein is not the contractual rent or the fair rent fixed by the Rent Controller as would appear from the opening phrase of the said section that the mode of assessment is "notwithstanding the provisions contained in the West Bengal Premises Tenancy Act or any other law for the time being in force". According to the provisions of the said Municipal Act, although the owner of the building is primarily liable to pay the amount but the same is recoverable from the tenant according to the proportionate occupation of the tenant in the building as indicated in Section 194 of the said Act and the mode of recovery is provided in Section 231 which is quoted below:

Mode of recovery. -If any person primarily liable to pay any property tax on any land or building and is entitled to recover any sum from an occupier of such land or building, he shall have, for recovery thereof, the same right and remedies as if such sum were rent payable to him by the person from whom, he is entitled to

recover such sum.

(Emphasis given by us)

29. Therefore, it is clear that the amount of the property tax or the commercial surcharge payable by the tenant should be treated to be rent only for the purpose of recovery thereof but not for the purpose evicting the tenant on the ground of default of payment of such amount because of the non-obstante clause in the beginning of the Section 13 of the West Bengal Premises Tenancy Act, 1956. Moreover, in Section 13 of the Act, the prescribed period of default for eviction of a tenant is two months within a period of twelve months or for two successive periods in cases where the rent is not payable monthly, whereas, the property tax or the surcharge is due and payable quarterly and only on presentation of a bill as provided in Section 214 of the Kolkata Municipal Corporation Act. Therefore, if the rent of the premises is payable monthly, there is no scope of evicting the tenant on the ground of non-payment of property tax for any one or more quarter by treating the same as default for any specified month or months. Similarly, the provisions contained in the last part of Section 17(1) of the Act cannot be effectively complied with by a tenant if the property tax is treated to be part of rent because such tax is not payable within 15th of the succeeding month even according to the provisions contained in the Kolkata Municipal Corporation Act. Therefore, it was never the intention of the legislature to include the amount of property tax within the meaning of the word "rent" appearing in Section 13 or Section 17 of the West Bengal Premises Tenancy Act.

30. In the case of *Shri Chhote Lal Vs. Shri Kewal Krishan Mehta*, , a Bench consisting of two-Judges of the Apex Court held that in a case where the electric charges are not fixed and can only be ascertained at the end of each month after the electricity consumed is known while the rent is payable in advance, the electricity charges do not form part of the rent. The question what will be the position when a fixed amount is paid as electric charge to the landlord was, however, kept open for consideration in that case. We are, however, quite conscious of the existence of a recent decision of a Bench of two-Judges of the Supreme Court in the case of *Abdul Kader Vs. G.D. Govindaraj (D)* by Lrs., , where the Apex Court was considering a case where a tenant agreed to pay a fix amount as municipal tax to the landlord in addition to the amount of rent. In that context, it was held that the amount of tax payable by the tenant was also part of rent. We find that the Court made the following observations in arriving at that conclusion:

The term "rent" not been defined in the Act and therefore, we shall have to go by the ordinary dictionary meaning of the term "rent". As held in *Karnani Properties Ltd. Vs. Augustin*, , the term "rent" is comprehensive enough to include, all payments agreed by the tenant to be paid to his landlord for the use and occupation not only of the building and its appurtenances but also furnishing, electric installations and other amenities agreed between the parties to be provided by and at the cost of the landlord. It was very fairly conceded by

learned Counsel for the appellant that ever since the decision of this Court in the case of Karnani Properties Ltd., the view of being taken consistently by the High Court of Madras is that in the event of taxes having been agreed to be paid by the tenant, the same forms part of the rent. [To wit, see Raval and Company Vs. K.G. Ramachandran and Others,]. Thus, there is no doubt that the amount of taxes which was agreed to by the tenant to be paid to the landlord was a part of the rent and the word "rent" in Section 10(2)(i) of the Act has to be construed accordingly.

31. We are of the view that the aforesaid conclusion was arrived at by the Apex Court on the basis of the concession of the Counsel of the parties that the consistent view prevailing in the Madras High Court was that in a case the tenant agrees to pay the tax to the landlord, the same is treated to be part of rent. At any rate, the said decision cannot have any application to a case of variable amount of proportionate municipal tax and commercial surcharge payable to the municipality in lieu of the service rendered not by the landlord. but by the municipality and in this case the landlord has specifically mentioned the amount of Rs. 2,000/- as rent. We, therefore, hold that in the fact of this case the rent should be held to be Rs. 2,000/- a month and although the tenant is under the statutory obligation to pay the occupier's share and the commercial surcharge, the same being payable to the Corporation in lieu of the service rendered to the occupiers is not a part of rent and thus, the Court could not hold the appellant defaulter in payment of rent for non-payment of the Corporation tax and commercial surcharge.

32. In the plaint although the other brother of the husband of the plaintiff No. 1 had been made party, yet, it is specifically averred that the plaintiff No. 1 is the sole landlord and such assertion of the plaintiffs has been found to be wrong. Therefore, there exists relationship of landlord and tenant between both the plaintiff's and the defendant but in the suit, a different tenancy between the plaintiff No. 1 and the appellant has been claimed and therefore, the suit as framed was liable to be dismissed once it is found that the plaintiff No. 1 in exclusion of the other plaintiff was not the landlord as asserted in the plaint and in the notice to quit. Merely because, the brother-in-law of the plaintiff No. 1 was made party as a co-plaintiff, for that reason, the suit cannot succeed because of the specific averments made in the plaint that the plaintiff No. 2 was not the landlord and at the same time the notice to quit was also issued denying the right of the plaintiff No. 2 making it invalid on that ground.

33. Therefore, on consideration of the materials-on-record we find that the suit as framed is not maintainable and in view of relationship of landlord and tenant between both the plaintiff's and the defendant, the question of default in payment of rent should not be adjudicated in this suit which is not a properly framed suit. If a fresh suit is filed by the plaintiffs claiming to be joint landlords after giving fresh notice u/s 13(6) of the Act as such, the question of default can be appropriately dealt with in such a suit and fresh opportunity to comply with

the provisions contained in Section 17 of the Act should be given to the defendant and even if, the defendant is found to be defaulter, as a first defaulter in the capacity of a new tenant under Ashok Chandra Lahiri, the defendant would get protection u/s 17(4) of the Act if it complies with the provisions contained in Section 17(1), or 17(2) or 17(2A) of the Act as the present tenancy is a new one being the outcome of mutual payment and acceptance rent between the appellant and Ashok Chandra Lahiri and not the continuation of the tenancy under Mrs. Madan which the defendant has abandoned by accepting Shri Ashok Chandra Lahiri as its landlord notwithstanding the fact that no title passed in favour of Ashok Chandra Lahiri through Mrs. Madan in the absence of any sale deed.

34. We now propose to deal with the decisions cited by Mr. Dasgupta.

35. In the case of Tej Bhan (*supra*), the concurrent findings of fact were that the appellant attorned the tenancy in favour of the assignee of the landlord and paid rent to him. There was no misrepresentation on the part of the assignee nor was any mistake on the part of the appellant in making attornment and in such a situation, the Apex Court held that the appellant was estopped from disputing the derivative title of the landlord. We fail to appreciate how the said decision can be of any help to the respondent. In the case before us, the appellant without any request from Mrs. Madan paid rent to Ashok Chandra Lahiri and accepted him as its landlord and the appellant has also not disputed that position. We are here concerned with the question whether after the death of Ashok, the plaintiff No. 1 alone has become the landlord. We have already pointed out that after the death of Ashok there has not been any payment to the plaintiff No. 1 mutually as would appear from the plaintiff's allegation where the appellant has been shown to be a defaulter from a period prior to the death of Ashok. Therefore, the said decision has no application to the facts of the present case.

36. In the case of Pal Singh (*supra*), the tenant was paying rent to one of the co-owners and the other co-owners were not opposing the suit. In such circumstances, the suit was held to be maintainable. In the case before us, the appellant never made payment of rent mutually to the plaintiff No. 1 and at the same time, she never acquired title to the property and gave notice of ejectment claiming adverse to the interest of other heirs of Ashok, the admitted landlord. Therefore, the notice to quit was definitely invalid and without giving a fresh notice by and on behalf of all the legal heirs of Ashok, the suit was not maintainable. If according to law, two persons are the heirs of the admitted landlord and one of them who never realised rent gives notice to quit claiming himself to be the sole landlord, such notice must be held to be invalid even if the other landlord does not say anything. We, therefore, find that the said decision is of no assistance to the respondent. ,

37. In the case of Kanta Goel, the tenant was paying rent to one of the co-owners and by consent, either implicit or otherwise, he was collecting rent on

behalf of others. In such a case, the Apex Court held that the respondent was the landlord and was entitled to file a case in the absence of the other co-owners. We have already pointed out that in this case the plaintiff No. 1 never collected rent on behalf of either herself or on behalf of all the heirs of the admitted landlord and in the notice of ejectment, she claimed to be the sole heir of Ashok which was found to be wrong and thus, the notice of eviction was not valid being expressly contrary to the interest of the other lawful heir of the landlord. Therefore, the decision of Kania Goel does not help the respondent in any way.

38. In the case of *Anar Devi v. Nathu Ram* (supra), the Supreme Court reiterated the well-settled principles recognised by Section 116 of the Evidence Act which estops even a person already in possession as a tenant under one landlord from denying the title of the subsequent landlord when once he acknowledges him as his landlord by attornment or conduct. In the case before us, the tenant is not disputing for a moment the right of the heirs of Ashok, the erstwhile landlord, but it is denying the claim of the plaintiff No. 1 who tried to assert herself as the sole heir of Ashok and admittedly, there being no mutual payment of rent by the appellant to the plaintiff No. 1, the doctrine of estoppel is not applicable in this case. The said decision is thus of no assistance to the respondents. The position, however, would have been different if there was mutual acceptance of rent by the plaintiff No. 1 from the appellant and in such a situation, the appellant could not deny the plaintiff No. 1 as its sole landlord.

39. The case of *Tarakanath and Anr. v. Sushil Chandra* (supra), in our view, is irrelevant for our purpose. In that case, the heirs of the original landlord by way of family settlement gave the property to the sons and the daughters, created oral heba in favour of their brothers which was permissible under their personal law and the appellants before the Apex Court purchased the property from the brothers and thus, became the landlord of the respondent. In the case before us, the Trial Court itself found that there is no material placed before the Court indicating that the mother of Ashok ever gifted her share to the plaintiff No. 1. Therefore, after the death of the mother, the plaintiff No. 2 became a co-owner with the plaintiff No. 1, but in the notice of eviction the plaintiff No. 1 alone claimed to be the landlord. The said decision therefore really supports the contention of the appellant that both the plaintiffs were its landlord but the notice of ejectment denying the right of the plaintiff No. 2 was invalid.

40. In the case of *Bakhtiar Singh v. Gurdev Singh and Anr.* (supra), after the death of the original landlord, there was an oral family settlement between the heirs and by virtue of such settlement, the tenanted portion was allotted to a particular heir. The allottee intimated such fact to the tenant and demanded rent but the tenant ignored such notice. In a suit filed by the allottee, the Apex Court held that the oral partition among the heirs did not require registration and by virtue of such oral partition, the appellant became the landlord. In the case before us, it is not the case of the plaintiffs that by virtue of any partition, this

property has been allotted to the plaintiff No. 1 alone, on the other hand, it was the case of the plaintiffs that the mother of Ashok gifted her right in the property in favour of the plaintiff No. 1 which could not be proved and thus, on the death of Ashok, the plaintiff No. 1 could not become the sole landlord of the property. The said decision, thus, does not help the respondents.

41. In the case of *Sk. Sattar v. Gundappa Amabadas Bukate* (supra), the Supreme Court, among other points, was considering the position of law when a tenant purchases the share of one of the landlords which is not the case before us. However, in dealing with such a case, the Bench at paragraph 37 of the judgement made the following observations which rather support the case of the appellant:

...As pointed out earlier, a co-sharer cannot initiate action for eviction of the tenant from the portion of the tenanted accommodation nor can he sue for his part of the rent. The tenancy cannot be split up either in estate or in rent or any other obligation by unilateral act of one of the co-owners. If, however, all the co-owners or the co-lessors agree among themselves and split by partition the demised property by metes and bounds and come to have definite, positive and identifiable shares in that property, they become separate individual owners of each severed portion and can deal with that portion as also the tenant thereof as individual owner/ lessor. The right of joint lessors contemplated by Section 109 comes to be possessed by each of them separately and independently. There is no right in the tenant to prevent the joint owners or co-lessors from partitioning the tenanted accommodation among themselves. Whether the premises, which is in occupation of a tenant, shall be retained jointly by all the lessors or they would partition it among themselves, is the exclusive right of the lessors to which no objection can be taken by this tenant, particularly where the tenant knew from the very beginning that the property was jointly owned by several persons and that, even if he was being dealt with by only one of them on behalf of the whole body of the lessors, he cannot object to the transfer of any portion of the property in favour of a third person by one of the owners or to the partition of the property. It will, however, be open to the tenant to show that the partition was not bona fide and was a sham transaction to overcome the rigours of Rent Control laws which protected eviction of tenants except on specified grounds set out in the relevant statute.

42. We fail to appreciate how the said decision can be of any help to Mr. Dasgupta's clients.

43. Lastly, in the case of *Harihar Banerjee v. Ramsashi Roy* (supra), there was wrong description of the tenanted portion in the sense that although it mentioned correctly the amount of rent and also the name of the tenant indicating further that the entire holding was to be vacated, yet, it wrongly gave the quantity of the land to be much less than what it actually was. While considering the plea of the tenant that the same was defective, the Privy Council negatived such plea holding that the test of its sufficiency is not what it would

mean to a stranger, ignorant of all the facts and circumstances touching the holding to which it purported to refer, but what it would mean to the tenant presumably conversant with all the facts. By relying upon the principles laid down therein, Mr. Dasgupta tried to impress upon us that even the wrong mentioning of the fact that the plaintiff No. 1 was the sole landlord is to be ignored. We are afraid we are unable to accept such contention. If one of the two landlords in spite of the fact that she had eight annas share in the landlords' interest asserts herself to be sixteen annas owner and direct the tenant to vacate the entire tenanted property, such notice must be held to be not a notice given by the "landlord" to the "tenant" within the meaning of Section 13(6) of the Act. Mr. Dasgupta could not place before us any authority supporting a notice to quit given by a co-owner denying the title of the other co-owner where such a co-owner even never realised rent from the tenant by mutual consent in exclusion of the others. The principle that a co-owner can alone eject a tenant where the other co-owners are not opposing is based on the theory that such co-owner was acting for the benefit of the other co-owner; but such principle has no application where an admitted co-owner is disputing the right of the other co-owner in the tenanted property for his own benefit to the prejudice of the other. We are, however, in this case, faced with the question whether a notice given by a co-owner denying the right of the other co-owner can be said to be a valid notice given by the landlord to the tenant within the meaning of Section 13(6) of the Act and such question must be answered in negative. The said provision contained in Section 13(6) is mandatory and a decree passed in a suit which is not preceded by such a notice is a void one.

44. We, thus, find that the decisions cited by Mr. Dasgupta are of no avail to his clients.

45. We are, therefore, left with no other alternative but to allow this appeal by setting aside the judgment and the decree passed by the learned Trial Judge and at the same time, dismissing the suit for ejectment filed by the plaintiffs on the aforesaid grounds. In the facts and circumstances, there will be, however, no order as to costs.

Pravendu Narayan Sinha, J.

46. I agree.