

(2004) 11 AHC CK 0205

Allahabad High Court

Case No: First Appeal No. 2419 of 2004

Shiv Kumar Jatia

APPELLANT

Vs

S.R.G.P. Industries Ltd.

RESPONDENT

Date of Decision: Nov. 1, 2004

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2
- Specific Relief Act, 1963 - Section 40, 41, 6C
- Transfer of Property Act, 1882 - Section 108, 108(j)

Citation: AIR 2005 All 215 : (2005) 1 ARC 431 : (2005) 2 AWC 1457 : (2006) 1 CivCC 14 :
(2005) 3 RCR(Civil) 614 : (2005) 2 RCR(Rent) 206

Hon'ble Judges: M.P. Singh, J; A.K. Yog, J

Bench: Division Bench

Advocate: A.B. Saran and Pramatma Rai, for the Appellant; R.N. Singh, G.K. Singh and V.K. Singh, for the Respondent

Final Decision: Allowed

Judgement

1. Learned Counsel for the parties agreed and have made a statement that this F.A.F.O. may be decided on the basis of the documents filed with the affidavit (sworn by Yogesh Kumar Garg on behalf of the Appellant) in support of the Stay Application in the present First Appeal From Order and hereinafter called "the Affidavit". None of the parties have referred to any papers in the Respondent's Paper Book.

2. The salient and relevant factual details, necessary for appreciating the contentions of the parties in the present First Appeal From Order are as hereunder:

3. One Shiv Kumar Jatia (plaintiff-appellant) filed Original Suit No. 496 of 2001 primarily on the ground that disputed property is Municipal No. 365, Harris Ganj, Kanpur Cantt, Kanpur, (referred to as premises No. 4927 Cawnpur Cantt. Board in the lease-deed dated 1.1.1895 (Exbt-I on the record of the Trial Court), and pleaded,

inter alia amongst others, that plaintiff is the successor in interest of the Lessor whereas the defendant S.R.G.P. Industries/ Defendant is the "Lessee"; copy of the lease dated 1.1.1895 is Annexure 3 to "the affidavit" (Page 37 of the F.A.F.O. paper book). Copy of the plaint of said Original Suit No. 496 of 2001, dated May 1, 2001 is Annexure 1 to "the affidavit" (Page 26 of the F.A.F.O. paper book).

4. For convenience, Plaint Para 2, 3, 6, 7 and 17 (relief clause) are quoted-

"(2) That by the lease deed dated 1.1.1895 the disputed property was given on the lease to the lessee i.e. Ganges Flour Mills Company Limited, to construct the Flour Mill Offices and hereditaments and the company construed the same. The lessee was conferred no right to raise any of the constructions, which were not ancillary to Flour Mill.

(3) That in the year 1921/1922 the defendant purchased the Flour Mill along with the lease hold rights from the original lessee i.e. Ganges Flour Mill Company Limited, through Court Action.

(6) That on 2.9.2000 defendant issued a public notice and informed its employees that the defendant has decided to close the production in its mill fully and finally w.e.f. 4.9.2000. Now the defendant has closed its mill and there is no production in the Mill. The purpose for which the disputed property was leased to defendant has totally ceased to exist and the defendant has no right to use the property in suit for any other purpose.

(7) That on 2.1.2001 plaintiff wrote a detailed letter to the defendant and clearly pointed there on that the defendant totally changed the nature of the disputed property as well as the business carried on by the defendant, i.e. from Industrial to commercial. Meanwhile plaintiff came to know that the defendant has obtained the sanction from Cantonment Board Kanpur, vide its resolution No. 26, dated 12.9.2000. This sanction was taken to erect a commercial complex on the disputed property, after changing the nature of its present business of Flour Mill, which is totally in violation of lease terms contained in the lease deed dated 1.1.1895. The Plaintiff has asked the Cantonment Board to provide the certified copy of sanctioned site plan it has refused to provide the same to the plaintiff.

"17. That the plaintiff prays for the following reliefs:

(a) A decree of permanent prohibitory injunction, may kindly be passed in favour of plaintiff and against the defendant, restraining the defendant from raising any construction on the disputed property, in pursuance of the alleged map sanctioned by Cantonment; Board or otherwise, so as to change the nature of disputed property from industrial Commercial.

(b) A decree of permanent prohibitory injunction may kindly be passed in favour of plaintiff and against the defendants, restraining the defendant from sub letting any part of the disputed property.

(c) any other relief which this Honourable Court deems fit in the circumstances of this case, may be kindly granted in favour of plaintiff and against the defendant.

(d) cost of the suit may be awarded in favour of the plaintiff and against the defendant."

5. Along with the plaint, an ad-interim injunction application, dated May 1, 2001 (Paper No. 6 Ga), alongwith affidavit (sworn by Shiv Kumar Jatia) dated May 1/2, 2001/Annexures 2 & 3 to "the Affidavit" (Page 31 and 33 of F.A.F.O. paper book) were also filed.

6. Para 6, 7, 12 & 13 of said affidavit, sworn by Shiv Kumar Jatia, filed in support of the ad-interim-injunction application before the Trial Court, read:

"6. That on 2.9.2000 defendant issued a public notice and informed its employees that the defendant has decided to close the production in its mill fully and finally w.e.f. 4.9.2000. Now the defendant has closed its mill and there is no production in the Mill. The purpose for which the disputed property was leased to defendant has totally ceased to exist and the defendant has no right to use the property in suit for any other purpose.

(7) That on 2.1.2001 deponent wrote a detailed letter to the defendant and clearly pointed there on that the defendant totally changed the nature of the disputed property as well as the business carried on by the defendant, i.e. from Industrial to commercial. Meanwhile deponent came to know that the defendant has obtained the sanction from cantonment Board Kanpur, vide its resolution No. 26, dated 12.9.2000.

This sanction was taken to erect a commercial complex on the disputed property, after changing the nature of its present business of Flour Mill, which is totally in violation of lease terms contained in the lease deed dated 1.1.1895. The deponent has asked the Cantonment Board to provide the certified copy of sanctioned site plan but it has refused to provide the same to the deponent. The true photocopy of the letter dated 2.1.2001 is Annexure No. 3 of this affidavit.

12. That the deponent has given so many representations to the Cantonment authorities to suspend their sanction dated 12.9.2000 and to restrain the defendant from changing the nature of disputed property but all in vain. By using misrepresentation and connivance between the defendants the plan was sanctioned. No plan was submitted to the Board under the signature of the deponent. The defendant has never asked for the written consent of the deponent before raising new construction at the site as provided in the lease deed itself.

13. That the defendant has no right to change the nature of business carried on the disputed property. The defendant also has no right to sub-let the disputed property."

7. The defendant filed objection before the Trial Court, in the shape of counter affidavit sworn by Raghuraj Kanodia, dated 13.5.2002/Annexure 5 to "the affidavit" (Page 63 of the F.A.F.O. paper book) was filed. Para 4, 8, 9, 15 and 22 of the said Counter affidavit, containing defence of the defendant for opposing prayer for granting ad-interim injunction before trial Court, read:

"4. That the contents of Para 2 of the affidavit under reply as they stand are not admitted. It is incorrect to allege that the leases did not confer any right to raise constructions, which were not ancillary to the Flour Mill. It is pertinent to mention here that the lease dated 1.11.1895 does not mention anywhere that the land was being given for construction of only Flour Mill. In fact, the only condition laid down in the said lease was that "building etc." upon the said land were required to be erected within the term of 3 months from the commencement of lease deed and before the expiry of one year from the same date. The erection of the buildings on the said parcel of ground was to be completed of the capital value of at least Rs. 30,000/- and that the premises, so constructed were required to be kept in good condition and perfect repairs and to maintain the same at all time of the capital value of at least Rs. 30,000/-. It is misrepresentation, on the part of the plaintiff to allege that the subject property was given on lease only for the construction of Flour Mill, Officers and hereditaments of the company. There does not exist any bar for raising any type of construction upon the lease land. The plaintiff is put to strict proof of the averments to the contrary.

8. That the contents of Para 6 of the affidavit under reply are only partly correct. It is incorrect to allege that the purpose of lease ceased to exist or that the defendant has no right to use the property for any other purpose except for flour mill. The defendant has right to use the leased property as per its wishes and desire and in any manner whatsoever. It is most emphatically denied that the land was leased to the defendant for flour mill only.

9. That the contents of Para 7 of the affidavit under reply are denied. No notice as alleged has ever been served upon or received by the defendant. Besides, as already mentioned above, the defendant has right to use the subject property for any industrial or commercial or residential purposes. It is not disputed that the defendant has obtained the sanction from the cantonment Board, Kanpur, vide its Resolution No. 26 dated 12.9.2000. There being no impediment or restriction to raise any type of building upon the lease land, the defendant has every right to erect commercial complex or any other type of building thereupon, so long as the value of buildings remaining at any time does not fall below Rs. 30,000/-. The defendant has not done any thing against the lease deed nor has violated any term of the lease deed, the assertions of the para under reply are merely to misguide the Court.

15. That the contents of Para 13 of the affidavit under reply are most emphatically denied. The defendant has right to make any construction of their choice and has likewise right to use the property for any purpose as so desired and has right to

assign and sublease the property.

22. That nothing either in the plaint or in the affidavit under reply discloses any injury likely to be suffered by the plaintiff. In the absence of any such injury as could not be compensated by award or damages, discretionary relief of injunction is barred by Section 41(e) and 41(h) of Specific Relief Act. The balance of convenience is not in favour of the plaintiff who has miserably failed to make out even a prima facie case."

8. The plaintiff-Appellant denied aforesaid contentions of the Defendant-Respondent and reiterated the averments made in original Affidavit (Annexure 3 to the Affidavit).

9. The plaintiff-appellant also filed a supplementary affidavit, dated 30.9.2003 before Trial Court, relevant Para 2 & 3 of the supplementary affidavit (Annexure 7 to "the affidavit" Page 74 of the F.A.F.O. paper book) read:-

"2. That it is stated that during the pendency of this suit the name of the deponent has been G.L.R of the Cantonment Board, Kanpur Cantt. in the capacity of Karta of H.U.F. Firms as holder of occupancy rights in respect of the disputed premises. A true photocopy of the G.L.R. extract is filed as Annexure-1 to this affidavit.

3. That it is further submitted that Cantonment Board Kanpur Cantt. adopted in serious view to the unauthorised and illegal constructions raised by the opposite party and also to the transfers/sub-leases created by the defendant and consequently cantonment board Kanpur has published a public notice of the same effect on 23.4.2003 in daily newspaper Dainik Jagran. True photostat copy of this public notice dated 23.4.2003 is filed as Annexure 2 to this affidavit."

10. The defendant filed supplementary counter affidavit, dated 4.11.2003 contending that the documents, filed by the Plaintiff with the supplementary affidavit, were not admissible in evidence. Relevant Para 5 reads-

"That Para 3 of the supplementary affidavit as stated is not admitted and the plaintiff is put to proof thereof. Annexure 2 of the supplementary affidavit is equally in-admissible in evidence. The use of the words "Unauthorised and illegal constructions by the opposite party and also the transfers sub leases created by the deponent are seriously refuted, the constructions have been made according to the plans sanctioned by the Cantonment Board."

11. The Trial Court has referred to earlier Writ Petition No. 47066 of 2002 S.R.G.P. Industries v. Cantonment Board, Kanpur. We called for the Original record of the said Writ-Petition and perused the same. The present plaintiff-Shiv Kumar Jatia was not a party to the said petition, which is still pending.

12. The Petitioner, (Defendant-Respondent in present F.A.F.O.) claimed writ of certiorari for quashing notices issued by Cantonment Board for demolition of

certain constructions on the property in dispute which were not in accordance with the sanctioned plan and a writ of mandamus to consider the application for compounding filed by the petitioner before the Respondent (in the Writ Petition) no merits. This Court noted the contention of the petitioner M/s S.R.G.P. Industries Limited, that no construction has been made beyond the sanctioned area; that a revised plan was submitted for compounding of deviation from the plan (which was only in respect of the alteration in the internal dimension of the rooms and the shops), and directed vide its interim order dated 30.10.2002 to the effect that pursuant to the notices (impugned in the Writ-Petition), constructions in question shall not be demolished until further order of this Court.

13. The Trial Court has also referred to writ petition No. 44476 of 2003, Shiv Kumar Jatia v. State of U.P. and Ors. We called for the original record of this Writ Petition also and perused the same. Division Bench of this Court disposed of the said Writ Petition finally requiring the Trial Court seized of Original Suit No. 496 of 2001 (giving rise to the present F.A.F.O.) to decide the application for interim relief under Order XXXIX, Rules 1 and 2, CPC expeditiously preferably within a period of two months from the date of filing of a certified copy of the High Court order.

14. The Trial Court has said nothing about the above two Writ-Petitions, and about their relevance in the impugned judgment.

15. The Trial Court, in the impugned order referred to the "Lease-deed" dated 1.1.1895 as "Ikrarnama"/Ext I and "dated 15.4.1895". Learned Counsel for the parties have made a statement before this Court that "Ikrarnama" (Ext.1) referred to as dated 15.4.1895 by the Trial Court is the one and the same document which is, on record, in fact lease deed dated 1.1.1895 (registered on 15.4.1895). Copy of the said Lease-deed dated 1.1.1895 (Ext. 1) has been filed alongwith "the affidavit" (Page 37 of the F.A.F.O. Paper book).

16. The Trial Court while referring to Ext. 1 noted that nowhere in the said lease deed it is mentioned that disputed property cannot be used for the purpose other than industrial nature; that S.C.C. Suit No. 17 of 2003 for eviction, i.e. for larger and effective relief, which was pending; plaintiff was not entitled to interim injunction in view of Clause (e) and (h) of Section 41, Specific Relief Act; under Lease-Deed (Ext-1), in case of breach of any of any of the terms and conditions of the lease deed. Plaintiff could claim damages; the plaintiff had filed other suits in other Courts and from the material on record it was not clear that disputed property was to be used only for the Flour mill and hence plaintiff had no prima facie case. Trial Court, in view of it finding against the Plaintiff, did not record finding on the issue of "balance of convenience" and "irreparable loss". In the result, application for ad interim injunction application (6 Ga) was rejected by means of the impugned judgment and order dated 9.8.2004 (challenged under present F.A.F.O.)

17. Heard learned Counsel for the parties and perused the record of the case.

18. Learned Counsel for the Appellant, refers to Para 16 of "the Affidavit" (sworn by Yogesh Kumar Garg), which reads:-

"That the ingredients for grant of interim injunction were fully established by the plaintiff but still the Court below has illegally declined to grant the injunction. The plaintiff appellant will suffer grave and irreparable loss in case the interim injunction as prayed for is not granted. The defendant-respondent is advertising for sale of commercial plots in news papers and has started registration of members. Copies of the newspaper report and the booking pamphlets are being filed herewith as Annexures 9 and 10. It is expedient in the interest of justice that during the pendency of the appeal the defendant-respondent be restrained from raising any construction on the disputed property (being property No. 365, Harris Ganj, Kanpur Cantt., Kanpur Nagar) and from changing its nature in any manner and further the defendant-respondent be restrained from subletting any part of the disputed property (being property No. 365, Harris Ganj, Kanpur Cantt., Kanpur Nagar), otherwise the applicant will suffer grave and irreparable loss.

19. The learned Counsel for the appellant then referred to the reply of the Defendant-Respondent contained in Para 37 of the Counter affidavit which reads-

"37. That the contents of Paras 15 & 16 of the affidavit are totally incorrect, as stated, hence are denied. In reply it may be stated that the lessee i.e. the answering respondent is entitled to develop the property and sub-lease the same without hindrance from the lessor i.e. Sri S.K. Jatia as long as the development is in consonance with the building plans sanctioned in accordance with the Cantonment Act 1924. The answering respondent can construct as per the rights available to him under the Deeds, The deed specifically provides that if an existing construction is to be replaced with an another construction of equal value, no prior permission is required from the lessor. The construction to be made, can be for commercial or residential purposes. The answering respondent can further assign its sub-lease rights or create of further sub-lease. There is absolutely no restriction in any of the lease deeds. In view of what has been mentioned above, it is, therefore, clear that the Stay Application filed by the plaintiff-appellant alongwith the First Appeal From order in question is totally misconceived and the same are liable to be rejected."

20. Learned Counsel for the Plaintiff-Appellant argued that Lease-Deed dated 1.1.1895 was executed for certain intended purposes (viz-running mill) and for that construction/demolition could be carried out and made subject to the conditions provided under the Lease-deed and, according to him the proposed commercial complex was out of the ambit of the rights conferred upon the Lessee under the Lease-deed.

21. From Annexure Nos. 9 and 10 to "the Affidavit" (referred to above) Appellant endeavours to show that the Defendant-Respondent wants to construct shop and make a commercial complex on the basis of "Advertisement" in News-Papers and as

per "booking agreement". To show that respondent has closed the mill, reference is made to the above quoted Para 6 and 12 of the affidavit (filed in support of the injunction application before the Trial Court), which have not been denied in the counter affidavit (sworn by A.K. Misra) filed before the Trial Court.

22. The fact that mills has been closed, also stands established and not disputed by the learned Counsel for the Defendant-Respondent. It is, however, pointed out that the disputed property was given to the Defendant on lease of 999 years, that there is no dispute that Defendant has been regularly paying rent under Lease-deed in question and that lease in question subsists. It is argued that, considering the fact that lease was for 999 years, no one will expect that the purpose in the lease shall be confined to run flour mill alone, and to interpret the Lease-deed in that manner is beyond one's comprehension. It is further argued that the expression "the construction of the Mills, Offices, and "hereditaments.....", according to the dictionary meaning of "hereditament", confers right upon the Defendant-Respondent to use and construct buildings over the disputed premises of any nature without restriction of any kind. Reference is also made to Clause (j) of Section 108, Transfer of Property Act and also referred to Clause (e) and (h) of Section 41 of the Specific Relief Act. Learned Counsel for the respondent further submitted that no interim injunction should be granted at interim-stage if it has effect of granting relief which can be granted only when suit is decreed.

23. Learned Counsel for the defendant respondent, in the last stated that defendant-respondent is ready to undertake to restore the property in question in case plaintiff succeeds.

24. Defendant also referred to the fact that he had obtained sanction to make constructions in question from the Cantonment Board, Kanpur vide its Resolution No. 26 dated 12.9.2000, there was no impediment or restriction to raise any type of building upon the lease land and the defendant, has every right to erect commercial complex or any other type of building thereupon so long as the value of said construction/building is above Rs. 30,000/-.

25. Plaintiff-Appellant in, rejoinder argued that there is, however, no averment that, "sanction" for construction over disputed property was obtained after "Notice" to or within the knowledge or with the consent of the Plaintiff-Appellant. According to the Plaintiff-Appellant Cantt. Board has given notice to the Defendant to cancel "sanction" granted for construction of commercial complex in favour of the Defendant-Respondent. It is also argued that those are different proceedings and the issue in hand in the suit is to be decided with reference to the covenants, terms & conditions contained in the deed dated 1.1.1895.

26. Learned Counsel for the parties have endeavoured to interpret Lease-deed dated 1.1.1895 in their favour.

27. Relevant passages of the lease deed dated 1.1.1895 (Ext. 1) are reproduced.

".....provided that should the Lessee their successors or assigns desire at any time to renounce this Lease they shall be permitted to do so on giving six months" notice to the Lessors or their representatives of such desire, and on paying to the Lessors or their representatives for the time being a sum equal to twenty years rent of the premises as above provided full rent due to the date of renunciation having being previously satisfied and paid, the Lessees or their successors or assigns being entitled in the event of such renunciation to remove forthwith from the premises all movable property, machinery, and other effects belonging to them, and to demolish and remove the materials of all building erected or that may be erected thereon by virtune here of.....or the building thereon erected and will within the term of six months from the date of these presents commence and before the expiry of one year from the same date complete the erection of buildings on the said parcel of grounds of the capital.....,and will permit all persons authorised by the lessors or persons empowered by them.....Provided always and these presents are on this express condition that if and when any part of the said rent shall be in arrear for six months after the same shall have been legally demanded, or if the buildings erected or to be erected on the land thereby demised shall be demolished (Except when such is done that others of equal value may be substituted therefore as hereinbefore provided) without consent in writing from the lessor or person authorised by them (which consent however shall not be withheld) if the lessee can produce a certificate of value as before provided)....."

28. From the pleadings on record, it is clear that both the parties are relying on the lease deed dated 1.1.1895 (Ext. 1) and there is no dispute regarding the issue that Defendant wants to make commercial complex by raising shops which shall be allotted to several sub-lessees for the period till the year 2894. The crux of the issue, for grant of ad interim injunction will depend on the interpretation of the said Lease-deed i.e. whether lessee under said lease can make shopping complex and execute sub-leases for said purpose on the basis of their advertisement/publication as per "booking agreement" referred to above (Annexures 9 & 10 to the Affidavit at Page 80 to 87 of the F.A.F.O. Paper Book).

29. The lease deed dated 1.1.1895 shows that the intended user of the land in question is "construction of the mills-offices alongwith all attached rights thereto and "hereditament". Expression "hereditament" has certain legal connotation. It cannot be stretched to mean, something in abstract or what is not intended in the Lease-deed in question i.e. for raising commercial complex and to create sub-lessees rights in those permanent structures.

30. In the "Legal Glossory 1988" (Page 155), Published by Government of India, Ministry of Law and Justice, Department of Law (Raj Bhasha Khand) the expression- "hereditament" is defined as- Generally used as the widest expression for real property of all kind, employed in conveyance after the words "land" and

"tenements" to include everything of the nature of reality.

31. According to THE LAW LEXICON by P. Ram Natha Aiyer-Reprint Edition 1987 (pp 516) published by WADHAWA & COMPANY, "Hereditaments" is the largest word of all in that kind; for whatsoever may be inherited is an hereditament be it corporeal or incorporeal, or, real or personal or mixed. In its ordinary acceptance it is applied to houses & other buildings, yet in its proper legal sense it signifies everything that may be beholden. It not only includes land, but rent and other interests".

32. In Tomkins v. Jones (1889) 22 Q.B. 599 Bowen, LJ, at Page 602-described "the words is not used as describing the quantum of interest but as describing the subject matter itself, viz. the land.

33. From the said definitions it is clear that expression "hereditament" does not mean to stretch the quantum of interest and on the other hand it is meant to describe and include the interest relating to the subject itself.

34. The lease deed in question contains relevant covenants and clauses providing for raising constructions subject to certain conditions mentioned therein. Apparently and prima facie the constructions of the nature by creating subleases (as per Annexure 9 & 10 to the Affidavit) are not within the ambit of the constructions contemplated in the Lease-deed in question. The covenants governing building constructions in the Lease-deed, does not in any manner suggest that lessee shall have right to use the land in question for raising commercial complex and do profiteering by executing sub-leases in favour of public at large.

35. It is well settled principle of interpretation that while interpreting the deed/documents, relevant clause should be interpreted with contextual reference. Reference may be made to [Brijendra Singh Vs. State of Uttar Pradesh and Others](#), wherein the Apex Court had observed that-

".....It is a cardinal canon of construction that an expression which has no uniform, precisely fixed meaning, takes its colour, light and content from the context."

36. Where the context does not permit or where it would lead to absurd or unintended result, the definition of an expression need not be mechanically applied as observed in (1994) 1 SC 692 The Printers (Mysore) Ltd. and Anr. v. Assistant Tax Officer and Ors.

37. In the case of [State of Orissa and another etc. Vs. Sri Damodar Das](#), the Apex Court has held that a particular clause in the agreement must be read as a whole.

38. Another "Golden Rule" to construe and interpret a deed and documents is harmonious construction of all clauses to avoid conflict. Reference may be made to [Ramkishore Lal Vs. Kamal Narain](#), .

39. Keeping aforesaid principles in mind, if one goes through the Lease-deed in question, then it does not seem possible to infer that Defendant can raise commercial complex as claimed by him.

40. However, prima facie we find that constructions proposed by Defendant (shopping complex) and to execute sub-leases in respect thereof cannot be said to be included in the said Lease-deed.

41. From the admitted facts on record it is clear that in case permanent structure-like shopping complex is allowed and sub-leases executed in favour of third persons during pendency of the suit, there is real and sufficient danger of damage to the subject matter of the suit, as creation of third party interest in the lis is certainly to complicate and give rise to multiplicity of litigation and complications. It shall certainly seriously prejudice the Plaintiff-Appellant who cannot be adequately compensated in terms of damages. It will certainly give unfair advantage to the Defendant if injunction is refused to the plaintiff. The view taken by us, find support from the view taken by Supreme Court in the case of [Mohammad Ibrahim Khan Vs. Pateshwari Prasad Singh](#), .

42. Learned Counsel for the respondent then referred to Clause (j) of Section 108, Transfer of Property Act, which reads-

"(j) the lessee may transfer absolutely or by way of mortgage or sublease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease;

nothing in this clause shall be deemed to authorize a tenant having on untransferable right of occupancy, the former of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Words, assign his interest as such tenant, farmer or lessee;

(Underlined to lay emphasis)

43. The Respondents-on the basis of aforequoted Section 108 (j), Transfer of Property Act, argued that lessee is in possession and hence Lessee has absolute right to use the leased premises as he may like and, therefore, no interim injunction can be granted in favour of the plaintiff. This submission is misconceived and ignoring the expression "any part of his interest in the property". Possession of the lessee on the basis of Lease-deed and rights in the leased property are subject to "restrictions and riders" contained in the lease deed. We are prima facie satisfied, on perusing the lease deed in question, that lessee is not entitled to raise constructions in the manner sought to be done in the present case. The interest of the defendant flows from the lease deed dated 1.1.1895 and not beyond that.

44. We may also refer to Clause (o) (p) & (q) of Section 108, Transfer of Property Act, which are reproduced-

"(o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or sell or fell timber, pull down or damage buildings belonging to the lessor, or work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto;

(p) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes;

(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property."

45. These provisions clearly show that lessee cannot use lease property or create sub-leases for purpose, other than for which the property in question was leased out. Also, on the determination of the Lease-deed, (as is evident from the pendency of eviction suit) a lessee is under statutory obligation to put the lessor "into possession of the property" and hence equity and fairness require that third party interest be not created. We have our doubt that lessor will be in a practical position to restore back the "possession of the" property and deliver it back in original condition if proposed constructions are made and third party interest are created by the Defendant-Respondent.

46. Respondent's Counsel also referred to Section 54 & 41(e) & (h), Specific Relief Act. It will suffice to mention that relief of injunction is a relief of equity and its primary object is to protect the "lis" so that relief claimed by the plaintiff, in case of suit being decreed, is not lost.

47. Respondent rely upon-

1. [Babu Ram, Ashok Kumar and Another Vs. Antarim Zila Parishad,](#)

Holding-Court of Appeal shall not interfere with the exercise of discretion of Court below, if it is not good faith, after giving due weight to relevant matters and without being swayed by irrelevant matters, and if two views are possible then also Court of Appeal will not interfere unless exercise of discretion or the view is manifestly wrong.

2. 2004 ALJ 953 (Pr. 38)-Ashok Kumar Bajpai v. (Smt.) Ranjana Bajpai.

Holding-interim relief, which amount to final relief which could have been granted at the time final determination of the case should not be granted and in exceptional circumstances where the fact situation requires the Court to pass an interim relief amounts to final relief, the Court must record reasons so that its correctness may be examined.

48. None of the above cite decision help the Defendant-Respondent. In the instant case, we find Lease-deed has not been properly appreciated/interpreted by the Trial Court. Secondly, circumstances, as indicated above, do exist which warrant grant of ad-interim injunction.

49. It has come on record, as also noted above by the Trial Court, that plaintiff had instituted suit for eviction which is pending presumably on the ground that "lease-deed" stands, determined. In that view of the matter, If Defendant is not restrained from raising construction (as they admittedly intend to do) the purpose of filing eviction suit itself will be lost. The fact that Plaintiff-Appellant has already instituted suit and which is pending, bonafide of the Plaintiff for institution a suit for permanent injunction. The argument that Plaintiff can claim damages and no "injunction" be granted, is misplaced for two reasons. Section 40, Specific Relief Act does provide an absolute "Bar" even if damages can be claimed either in addition to, or in substitution for such injunction. Again Section 41(e) & (h) of Specific Relief Act, we find injunction should be granted to prevent breach of terms of Lease-deed dated 1.1.1895 by Defendant-Respondent and that plaintiff has got no other equally efficacious remedy or relief.

50. In view of the above balance of convenience is in favour of the plaintiff appellant. Needless to mention that in case the property in question (i.e. subject matter of the lease deed dated 1.1.1895) is lost due to creating of third-party interest during pendency of eviction suit, the Plaintiff shall suffer irreparably.

51. In the result the impugned judgment and order dated 9.8.2004 dated is set aside. Application u/s 6C is allowed. Defendant-Respondent is restrained from making/raising constructions/ shopping complex on the basis of their "Publication"/"Advertisement" in the News Paper as per "Booking Agreement", copy of which has been filed as Annexure 9 & 10 to the affidavit.

52. First Appeal from Order is allowed.

53. However, in the facts and circumstances of the case we make no order as to costs.