

## Gauri Shankar Vs Rakesh Kumar

**Court:** SUPREME COURT OF INDIA

**Date of Decision:** March 29, 2017

**Citation:** (2017) 2 ARC 1 : (2017) 3 BCR 128 : (2017) 123 CutLT 1024 : (2017) 2 JBCJ 338 : (2017) 3 JT 471 : (2017) 1 RCRRent 444 : (2017) 3 RecentApexJudgments(RAJ) 58 : (2017) 4 Scale 116 : (2017) 2 WLN 70 : (2017) 5 SCC 792

**Hon'ble Judges:** Dipak Misra, J; A.M. Khanwilkar, J; Mohan M. Shantanagoudar, J

**Bench:** Full Bench

**Advocate:** Mukesh Kumar Verma, R.N. Verma, Rakesh Mudgal, Raj Singh Rana, Advocates, for the Appellant; Mrs. Sarla Chandra, Advocate, for the Respondents

**Final Decision:** Allowed

### Judgement

A.M. Khanwilkar, J. - The Appellant filed a suit for dissolution of partnership of a jewellery shop and rendition of accounts against Rakesh

Kumar (Respondent No. 1), Maya Devi (Respondent No. 2) and Bal Mukund Verma (predecessor of Respondents). The suit was decreed in

favour of the Appellant inter alia with a declaration that the possession of the suit shop was for the benefit of the Appellant and Respondent No. 1

as joint-tenants.

2. The Respondents filed two separate appeals which were disposed of by the first appellate Court vide a common judgment on 03.02.2005. In

the said appeal, the declaration regarding the tenancy rights of the Appellant in the suit shop was reversed on the finding that the tenancy was

surrendered by one partner. The first appellate court relying on the decisions in the cases of Kanji Manji v. Trustee of Port of Bombay, AIR

1963 SC 468; H.C. Pandey v. G.C. Paul, AIR 1989 SC 1470; and Harish Tandon v. Additional District Magistrate, Allahabad, AIR

1995 SC 676, opined that notice of surrender of tenancy given by one of the co-tenants and a decree of possession of the tenanted premises

passed on that basis will bind the other. The first appellate court found that the tenancy surrendered by one of the joint tenants, even if without the

consent of the other, would bind the other joint tenant.

3. Aggrieved, the Appellant filed a second appeal before the High Court of Delhi at New Delhi being RSA 146/2005. By the impugned judgment

dated 02.12.2013, the second appeal was dismissed by the learned Single Judge on the sole ground that the question as to whether the tenancy

rights could be surrendered by one of the joint-tenants without the consent or concurrence of the other is a question of fact and not a question of

law much less a substantial question of law. The Appellant filed a review/recall application against the aforementioned impugned judgment before

the High Court, which was rejected on 22.08.2014. The Appellant has challenged both these judgments of the High Court in the present appeals.

4. The grievance of the Appellant is that the Appellant had raised substantial questions of law as articulated in the Memo of Second Appeal, in

paragraph 8(K). The main grievance of the Appellant was that the Respondent No. 1 - joint-tenant had surrendered the entire tenancy rights in the

suit shop without the consent or knowledge of the Appellant, in a deceitful and fraudulent manner. In that, the surrender of the tenancy was

unilateral, unauthorized and collusive between the landlady who is the mother of Respondent No. 1 and the new tenant inducted in the suit shop

(original defendant No. 3 before the Trial Court) who was none other than the father of Respondent No. 1. According to the Appellant, in the

present case, the act of surrender of joint-tenancy by the Respondent No. 1 was a subterfuge and fraud played so as to defeat the rights of the

Appellant in the suit shop. Further, the first appellate Court, without dealing with the finding of fact recorded by the trial court on this aspect,

reversed the well considered view taken by the trial court. The first appellate court merely relied upon the decisions which could be distinguished

and not relevant to the specific plea taken by the Appellant. This grievance made by the Appellant has been completely glossed over by the

learned single Judge of the High Court. The High Court proceeded to reject the second appeal without addressing the real issues, by merely stating

that the fact as to whether the tenancy rights could be surrendered by one of the partners is a question of fact.

5. We have heard the learned counsel for the parties. With their able assistance, we have perused the relevant records and the judgments

impugned in the present appeals. We agree with the Appellant that the learned single Judge of the High Court has failed to refer to the substantial

questions of law formulated by the Appellant in the Memo of Appeal in Paragraph 8(K). Further, the specific plea taken by the Appellant, that the

alleged surrender of joint tenancy by Respondent No. 1 was a deceitful and fraudulent act not binding on the Appellant nor could impact the joint

tenancy in respect of the suit shop, has not been examined by the High Court. The material facts to establish that plea have been brought on record

by the Appellant and duly noticed by the trial court. However, the efficacy thereof has not been considered either by the first appellate Court or the

High Court. The High Court was obliged to examine the aforementioned pleas taken by the Appellant including that the decisions of this Court

relied upon by the first appellate Court to answer the issue against the Appellant were inapplicable to the fact situation of the present case and

could be distinguished.

6. As a result, we find merit in the argument of the Appellant that the parties be relegated before the High Court for a fresh consideration of the

second appeal on its own merit in accordance with law and more so, the substantial questions of law formulated by the Appellant which are as

under:-

i. Whether the tenancy of Respondent No. 1 and 2 as created w.e.f. 01.09.1975 in respect of Suit premises No. 47, UB, Jawahar Nagar, Delhi -

11006 jointly in their name can be said to be joint tenancy as contemplated in the judgment AIR 1989 SC 1470 ""H.C. Pandey v. G.C. Paul

which were passed in the context of joint tenancy conferred on the body of the legal heir of deceased or not?

ii. Whether the Ld. Appellate Court was duty bound to address all issues and give finding therein after re-appraisal of the facts and was not

competent to uphold the finding summarily as sought to be done by the judgment dated 03.02.2005 or not?

iii. Whether the Ld. Appellate Court was duty bound to deal with other issues except Issue No. 6?

iv. Whether the Judgment/Decree of the Ld. Appellate Court dated 03.02.2005 was perverse and in breach of its jurisdiction as the appellate

court by not giving independent finding passed on re-appraisal of pleading and evidence on record?

v. Whether the Ld. Appellate Court upholding other issues ought to have passed such further direction for passing of the preliminary decree of

rendition of account to its logical end as appointment of Local Commissioner and its terms set lapsed by then or not?

7. We may not be understood to have formulated the above noted questions while remitting the second appeal. It will be open to the High Court to

reformulate the substantial questions of law or permit the parties to urge any further substantial questions of law that may require consideration by

the High Court.

8. Accordingly, we set aside the judgments and orders passed by the High Court dated 02.12.2013 and 22.08.2014 and instead restore the

second appeal to the file of the High Court to its original number for fresh consideration on its own merit in accordance with law. The parties shall

appear before the High Court on 17th April, 2017 when the High Court may assign a suitable date for hearing of the second appeal. We request

the High Court to expeditiously dispose of the second appeal.

9. The appeals are allowed in the above terms. No order as to costs.