

(2005) 11 AP CK 0048

Andhra Pradesh High Court

Case No: CCCA No. 26 of 1993 and CCCAMP No's. 12002 of 2004 and 316 of 2005

K.R. Krishna Murthy

APPELLANT

Vs

Hyderabad Allwyn Ltd.

RESPONDENT

Date of Decision: Nov. 14, 2005

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 27, Order 7 Rule 9
- Easements Act, 1882 - Section 35, 62
- Registration Act, 1908 - Section 49
- Stamp Act, 1899 - Section 35
- Transfer of Property Act, 1882 - Section 106, 109, 111, 44

Citation: (2006) 2 ALD 486 : (2006) 3 ALT 50

Hon'ble Judges: A. Gopal Reddy, J

Bench: Single Bench

Advocate: J. Prabhakar, M.S. Ramachandra Raa, K. Sankariah, M.V.S. Suresh Kumar and Y. Rainakar, for the Appellant;

Final Decision: Dismissed

Judgement

A. Gopal Reddy, J.

The defendant in the Court below filed this appeal against the judgment and decree of the I Additional Judge, City Civil Court, Hyderabad dated 29-7-1987 passed in O.S. No. 712 of 1980, decreeing the suit of the respondent/plaintiff for possession of Quarter No. 22(A), Municipal No. 7-2-1790, Czech Colony, Sanathnagar, Hyderabad and directing the defendant to pay a sum of Rs. 11,000/- towards past damages for use and occupation and future damages at the rate of Rs. 1,000/- from the date of filing of the suit till the date of delivery of the quarter.

2. A short resume of facts, which are necessary for disposal of the appeal, are as under:

3. For the sake of convenience the parties are arrayed as shown in the Court below.

4. M/s. Hyderabad Allwyn Limited/ plaintiff, which was subsequently taken over by M/s. Voltas Limited during the pendency of appeal with effect from 1-4-1993 under a scheme of rehabilitation by Board for Industrial Finance and Reconstruction (BIFR) vide order dated 4-4-1994, instituted the suit alleging that it obtained suit schedule quarter along with various other quarters from its original owner M/s. Khan Bahadur Ahmed Alladin and Sons by way of lease for the purpose of making them available to the officers of the plaintiff-Company. Accordingly plaintiff allotted the quarters to various officers working in its Company. The defendant, who was working as Production Manager in the year 1978-79, was allotted the said quarter, which was in his possession since from 1950, under a deed of licence dated 26-3-1973. The defendant though retired from service on attaining the age of superannuation of 55 years on 24-8-1979 failed to handover the vacant possession of the suit quarter as per the deed of licence dated 26-3-1973-Ex.A3. Therefore, he was issued a letter dated 20-11-1979-Ex.A2 to vacate and handover the vacant possession, failing which legal action will be taken and a sum of Rs. 1,000/- will be deducted towards rent for use and occupation of the premises. Defendant filed O.S.No. 996 of 1980 before the I Assistant Judge, City Civil Court, Secunderabad seeking permanent injunction restraining the plaintiff-Company not to evict him from the quarter, which has been later transferred to II Assistant Judge, City Civil Court, Hyderabad by the High Court in Tr.C.M.P. No. 8794 of 1980. In view of the same, plaintiff-Company filed the above suit for the aforesaid reliefs.

5. Defendant filed a written statement (amended) raising several contentions, which were elaborately set out at length in the judgment of the trial Court. The sum and substance of the same briefly stated as under:

6. The plaintiff has no locus standi to file the suit against the defendant. In O.S. Nos. 111 of 1973; 223 of 1974 and 319 of 1973, the IV Additional Judge, City Civil Court, Hyderabad held that the plaintiff was neither permanent lessee of Noor Mohd. Allauddin and others or Khan Bahadur Ahmed Allauddin and Sons. The plaintiff filed the above suits in respect of the buildings in Czech Colony against Noor Mohd. Allauddin and others (successor of Khan Bahadur Ahmed Allauddin and Sons) to declare the plaintiff as permanent lessee of Noor Mohd. Allauddin and others, Khan Bahadur Allauddin had two sons, namely, Dosth Mohd. Allauddin and Noor Mohd. Allauddin. Dosth Mohd. Allauddin died prior to filing of the suits, referred to above. After the death of Dosth Mohd. Allauddin, Iqbal Allauddin is looking after the buildings in Czech Colony, Sanathnagar. Mr. L.M. Singhvi, G.P.A. holder of plaintiff-Company is not entitled to file the above suit and the plaintiff was not in occupation of the Quarter No. 22/A along with other quarters and there was no lease between Khan Bahadur Allauddin and Sons and plaintiff nor there is any such lease subsisting. Defendant has been the tenant of Dosth Mohd. Allauddin and after his death Iqbal Ahmed Allauddin is in exclusive, continuous and uninterrupted

possession over the suit schedule quarter. The plaintiff never allotted the quarter from 1944-45 to various officials working in its Company. Building Nos. 9, 17, 30, 46, 18, 20 and 21 were sold to various third parties by its owners. Defendant was joined in service of the plaintiff-Company in the year 1956 and he became direct tenant of M/s. Khan Bahadur Allaiddin and Sons as suit house was tenanted by Mr. Dosth Mohd. Allaiddin. The defendant was threatened to execute licence deed under Ex.A3, which is neither written on sufficient stamp paper nor it was registered being a lease deed more than one year. Therefore, it is not admissible in evidenced. He denied retiring from service as alleged; whereas he gave an application for extension of service and the same was not properly replied. Further, the plaintiff has not been so far settled the gratuity amount nor given any notice terminating the tenancy and the suit is liable to be dismissed. There is no termination of licence, and the clauses in the alleged licence deed are not binding on the defendant, since he was in possession of the property from 1956 and paying the rents to M/s. Khan Bahadur Allaiddin and Sons, which was deducted from his salary and paid to him. The suit-O.S.No. 996 of 1980 was filed by the defendant to protect himself from the forcible dispossession from the suit house and also for getting electricity and water reconnection, which were disconnected by the plaintiff. All the buildings in Czech Colony were constructed before 1944 and the suit schedule quarter is governed by the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960, therefore, plaintiff is not entitled to claim rent at the rate of Rs. 1,000/- per month as damages for the use and occupation of the suit house from 25-8-1979 till the date of filing the suit and the Court cannot have jurisdiction to pass eviction orders against the defendant. In the absence of any relationship of landlord and tenant between the plaintiff and the defendant neither the Transfer of Property Act nor the A.P. Buildings (Lease, Rent and Eviction) Control Act applies for evicting the defendant from the suit house. Defendant was in occupation of the premises from the inception i.e., 1956 as a tenant. The defendant contacted to purchase the suit schedule quarter from Iqbal Alladin S/o Mir Dosth Mohd. Alladin, which fact was admitted in writing under Ex.A3 letter addressed to the defendant and since then he is in possession of the suit property in part performance of the contract under Ex.A4.

7. The defendant's execution of licence deed under Ex.A3 in favour of the plaintiff showing that he was first time inducted in possession is not correct in view of aforementioned facts. If at all plaintiff's claim is accepted, to constitute permissive occupation as such, tenancy rights in force prior to Ex.A3 revived on retirement and continues to subsist. The licence, if any, can be granted only by the owner and not by any other person. As such the licence granted by the plaintiff, who is not the owner of the suit house, under Ex.A3 is invalid, which has not been properly terminated as required u/s 106 of Transfer of Property Act. Noor Mohammed Alladdin and his father, Khan Bahadur Ahmed Alladdin and late brother, Khan Saheb Dosth Mohammed Alladdin purchased the "Bren Gun Estate" known as the Alladdin Industrial Estate situated at Sanathnagar, Hyderabad measuring Ac.403.34 gts.

together with buildings including Czech Colony from the Government of India in the year 1947 and formal sale deed was actually executed in their favour on 15-12-1952. Khan Bahadur Ahmed Alladdin died on 21-12-1954 leaving a Will dated 6-12-1954 whereby 1/3rd of his share in the Alladdin Industrial Estate was given to his wife, Noor Banoo Alladdin (deceased) and the balance equally to his two sons, namely, late Khan Saheb Dosth Mohammed Alladin and Mr. Noor Mohammed Alladdin. In pursuance of the said Will and with the consent, land measuring 115 acres out of the Alladdin Industrial Estate was transferred in favour of Noor Banoo Alladin under a registered deed. The Hyderabad Allwyn Metal Works Limited was established in the year 1941-42. Khan Bahadur Ahmed Alladdin purchased the whole area of Sanathnagar upto Fathenagar including Brengun Factory area and its quarters which was known as "Alladdin Estate". The appeals filed by the plaintiff against the judgment of the IV Additional Judge, City Civil Court, Hyderabad are pending and plaintiff was not declared as permanent lessee of Khan Bahadur Ahmed Alladdin and Sons and their legal representatives, therefore, the suit is liable to be dismissed.

8. On these pleadings the lower Court framed the following issues:

1. Whether the plaintiff has locus standi to file the suit?
2. Whether the plaintiff is a public limited company and whether the person using competent to sue?
3. Whether this Court has no jurisdiction to entertain the suit?
4. Whether there is any relationship of landlord and tenant between the parties?
5. Whether the defendant is a legal tenant of Iqbal Alladdin and not a licensee of the plaintiff in the suit building?
6. Whether the defendant has been in possession of the suit premises in part performance of the contract to purchase it from Iqbal Alladdin?
7. Whether there was no valid termination of licence of the defendant?
8. Whether the plaintiff is entitled to recovery of possession?
9. Whether the plaintiff is entitled to mandatory injunction?
10. Whether the plaintiff for damages? If so at what rate and for what period?
11. Whether the defendant is entitled to exemplary costs?
12. To what relief?

9. Two more additional issues were also framed on 15-1-1982, which read as under:

1. Whether the plaintiff has no locus standi to file O.S. No. 615/80 and O.S. No. 712/80?

2. Whether the plaintiff cannot prosecute O.S. No. 615/80 and O.S. No. 712/80 till the appeals are allowed by the High Court?

10. In order to prove the claim of the plaintiff, Production Manager of the Plaintiff-Company, who is the GPA holder, was examined as P.W.1 and got marked Exs.A1 to A6. The defendant himself was examined as D.W.1 and got marked Exs.B1 to B7. The Court below on appreciation of oral and documentary evidence answered Issue No. 1 and additional Issue No. 1 in favour of plaintiff holding that the plaintiff is having locus standi to file the suit. On Issue No. 2 it was held that P.W.1 had authority to sign the papers on behalf of the plaintiff. On additional Issue No. 2 defendant's plea that the plaintiff's prosecution of the suit was negated. On Issue No. 3 it was held that the Court will have jurisdiction and on Issue No. 5 the lease set up by the defendant was held to be not true and correct. On Issue No. 6 it was held that the defendant cannot plea that he is in possession of the suit schedule quarter in part performance of the agreement alleged to have been entered by him and accordingly decreed the suit of the plaintiff ordering eviction of the defendant. Hence the appeal.

11. Pending appeal CCCAMP Nos. 12055 of 2004 and 316 of 2005 are filed by shareholders claims to have entered into an agreement with the defendant/appellant. CCCAMP Nos. 398 and 449 of 2005 are filed by the shareholders with whom the plaintiff claims to have surrendered the symbolic possession. CCAMP Nos. 12002, 12003, 12004 and 12005 are filed by the appellant to permit to file additional documents, namely, Exs.B8, B9, B10 and B11; to permit to adduce additional evidence in the appeal by receiving the affidavit of D.W.1 in lieu of further examination-in-chief, to permit him to raise additional grounds in the appeal; to mark copy of the documents filed, namely Exs.B8 to B11 as additional evidence. CCCAMP No. 12014 of 2005 was filed by the appellant for production of letter and agreement of lease entered between the Government of Andhra Pradesh and Iqbal Alladdin. CCCAMP No. 434 of 2005 was filed seeking leave to file additional document i.e., additional notional possession given by the appellant to some of the shareholders through letter dated 22-2-2005 and permit him to adduce additional evidence by receiving additional affidavit. CCCAMP No. 476 of 2005 was filed seeking permission to adduce additional evidence by receiving affidavit filed by DW.1 CCCAMP No. 477 was filed to receive certified copy of the document, namely, sale deed obtained by him dated 20-6-2005 as Ex.B13. CCCAMP No. 515 was filed under Order XLI Rule 27 CPC to receive the orders in I.A. No. 2099 of 2003 in O.S. No. 202 of 2002 as Ex.B14. CCCAMP Nos. 516 of 2005 was filed under Order VII Rule 9 CPC seeking leave of the Court to file subsequent pleadings and receive the said documents on record. CCCAMP No. 517 of 2005 was filed under Order XLI Rule 27 CPC seeking permission to adduce additional evidence. CCCAMP No. 518 of 2005 was filed to mark copy of the document Ex.B12 by way of secondary evidence, wherein M/s. Voltas Ltd. delivered notional possession to shareholders. CCCAMP No. 538 was filed to receive the certified copy of agreement of sale cum GPA dated

30-7-2005 on record and mark the same as Ex.B15 by way of additional evidence.

12. Sri D. Prakash Reddy, learned Senior Counsel representing Mr. J. Prabhakar, appearing for the appellant/ defendant raised a preliminary objection urging that plaintiff-Company cannot prosecute the appeal in view of defendant/ appellant obtaining a registered sale deed and the grantor of licence loses interest in the property in view of Section 62(a)(e) of the Indian Easements Act, 1882 (for short "the Act").

13. Mr. J. Prabhakar further urged the following points.

14. When the plaintiff obtained several quarters including the suit schedule quarter from Mohd. Dosti Nooruddin, since the defendant was working as Production Manager, the quarter, which is in his possession since from 1950, was allotted to him. Ex.A3, licence deed executed by the defendant is sham and nominal and the same was executed under duress. When the defendant retired from service on 24-7-1979, his tenancy with the original landlord can revoke through eviction notice, but plaintiff has no locus standi to file the suit, as he is not being the lessee over the property. Since the defendant is paying the rent to the owner Mohd. Alladdin, Civil Court has no jurisdiction to adjudicate the matter. In the absence of proof that Exs.A3 (licence deed) and A5 (Xerox copy of Ex.A3) are acted upon by both the parties, the defendant's possession of the property since from 1950 and after retirement fortifies the said fact as he subsequently purchased the property. The possession surrendered by the plaintiff in favour of one of the co-owners will enure the possession of all the owners, which is evident from the counter filed by the plaintiff to the I.As. Without impleading all the legal representatives as parties to the suit in surrender of tenancy, plaintiff is not entitled to a decree. Hence appeal is liable to be dismissed.

15. Counsel also contended that when the respondent/plaintiff (grantor) itself lost its right of possession, it cannot have any decree. More so, the defendant acquired permanent title on purchasing the property from the persons to whom the plaintiff surrendered its rights. Where there is a merger of interest, plaintiff cannot have a decree.

16. Sri J.V. Suryanarayana Rao, learned Senior Counsel appearing for one of the heirs of the property, while adopting the submissions made by Sri D. Prakash Reddy contended that they have entered into an agreement with the defendant for sale of said property who was in possession as a lessee but not as licensee even prior to the plaintiff acquiring the rights in the said property and now executed the sale deed in their favour, therefore, defendant cannot be evicted from the suit schedule property and the said property can be allotted to their share in the suit filed for partition. He further contends that plaintiff cannot surrender the property to a few persons who are only co-owners. Therefore, petitioners in CMP Nos. 12055, 316 and 398 of 2005 cannot be excluded from surrender and they are entitled to protect their rights, as

they are necessary parties.

17. Mr. M.S. Ramachandra Rao, learned Counsel for the respondent/plaintiff filed a memo to substitute the name of the plaintiff as M/s. Voltas Ltd. in the place of M/s Hyderabad Allwyn Limited, which was taken over pursuant to an order passed by the Board for Industrial and Financial Reconstruction (BIFR) in Case No. 631/1992 under a scheme. Pursuant to the said scheme any suit, appeal or other proceedings by or against M/s. Hyderabad Allwyn Ltd., which are pending, shall not be abated or discontinued by reason of transfer of undertaking. In support of the judgment under appeal he contends that since the defendant is a licensee under the plaintiff, the licensor can file a suit against the licensee for his due eviction. The surrender made by the licensor to a few people can be believed as surrender to the rest of the owners. Once the tenancy is indivisible, it is not a valid surrender in the eye of law. At best, possession of licensee is that of a trespasser but not any lawful possession. Counsel placed reliance on the following judgments:

1. [Sk. Sattar Sk. Mohd. Choudhari Vs. Gundappa AMabadas Bukate,](#)
2. [T. Lakshmipathi and Others Vs. P. Nithyananda Reddy and Others,](#)
3. [Sant Lal Jain Vs. Avtar Singh,](#)
4. [D.H. Maniar and Others Vs. Waman Laxman Kudav,](#)
5. [Delta International Limited Vs. Shyam Sundar Ganeriwalla and Another,](#)

He further contends that once the appellant retires from service first he has to surrender his rights to the licensor and can work out his remedies under the agreement of sale entered by him. He also contends that whether the plaintiff validly surrendered the tenancy or not has to be worked out elsewhere and ouster of title by the licensee's vendor, one co-owner accepting the surrender on behalf of other owners are separate issues and no third party can be impleaded in the suit between the landlord and tenant. For the said proposition he placed reliance on the following judgments:

1. G. Nagaraju v. Government of Andhra Pradesh 2003 (3) ALD 592
2. [Bandikatta Satyavathi Vs. Bandkatta Venkata Rao and another,](#)
3. Manni Gir v. Amar Jati AIR 1936 All 94

Further, it was contended that on issuance of notice severance takes place and suit for partition is pending.

18. Whereas, Sri Y. Ratnakar, who filed implead petition, contends that the agreement entered by the defendant was not acted upon and defendant having accepted that he is a licensee under Exs.A3 and A5 he cannot approbate and reprobate the same. The defendant neither in the written statement nor in his evidence spell out the mode of payment in respect of suit schedule quarter.

Therefore, defendant cannot acquire any right in the suit property as a purchaser unless the properties are allotted to a particular party in a suit filed for partition.

19. Before I proceed to answer the issue that arises in the appeal it is necessary to answer the interlocutory applications filed by both the parties and also third parties.

20. CCCAMP Nos. 12055 and 316 of 2005 are filed by one of the co-sharers, whereas CCCAMP Nos. 398 and 449 of 2005 are filed by other branch of co-sharers claiming that they have executed sale deed in favour of defendant. Since the suit for partition is pending the petitioners can work out their remedies in the said suit, but the scope of the present lis cannot be enlarged and their inter se claims cannot be decided in the suit filed for simplicitor and eviction of the licensee. Therefore, the CCCAMPs are accordingly dismissed with liberty to workout their remedies in appropriate proceedings.

21. In view of rival submissions made by the parties the points that arise for consideration in this appeal are as under:

1. Whether the respondent/plaintiff can further prosecute the appeal and can have locus standi to prosecute the same?

2. Whether the defendant is a licensee of the plaintiff and entitled to be evicted from the suit schedule property/quarter or not?

22. The submissions made by the learned Counsel have to be considered in the context of Section 62 of the Indian Easements Act, which reads as under:

62. Licence when deemed revoked. A licence is deemed to be revoked--

(a) when, from a cause preceding the grant of it, the grantor ceases to have any interest in the property, affected by the licence;

(b) when the licensee releases it, expressly or impliedly to the grantor or his representative;

(c) where it has been granted for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires or the condition is fulfilled;

(d) where the property affected by the licence is destroyed or by superior force so permanently altered that the licensee can no longer exercise his right;

(e) where the licensee becomes entitled to the absolute ownership of the property affected by the licence;

(f) where the licence is granted for a specified purpose and the purpose is attained, or abandoned, or becomes impracticable;

(g) where the licence is granted to the licensee as holding a particular office, employment or character, and such office, employment or character ceases to exist;

(h) where the licence totally ceases to be used to such for an unbroken period of twenty years, and such cessation is not in pursuance of a contract between the grantor and the licensee;

(i) in the case of an accessory licence, when the interest or right to which it is accessory ceases to exist.

23. I shall take up first the Point No. 2: Undisputedly the defendant who was working as Production Manager of the plaintiff-Company was retired from service on 24-7-1979. On his retirement when he failed to handover the possession of the quarter, which was in his occupation, he was informed as per intimation dated 18-9-1979 followed by a memo dated 26-10-1979 asking him to vacate and handover the possession of the quarter and the same was reminded under Ex.A2 intimating that if the defendant fails to evict the quarter before the end of November, necessary legal action will be taken for his eviction and till such time rent will be deducted at the rate of Rs. 1,000/- per month as per the licence deed under Ex.A3. As the defendant failed to vacate the suit quarter, the above suit came to be instituted for his due eviction on 29-7-1980, which was decreed on 29-7-1987 in favour of the plaintiff-Company. Defendant in his written statement including the additional written statement pleaded that the licence deed under Ex.A3 is neither written on sufficient stamp paper nor it was registered being a lease deed for more than one year and it was not admissible in evidence and the same was signed under threat and coercion. The said quarter was in his occupation since from 1950 as a tenant obtained from Dosth Mohammed Alladdin and on his death he was the tenant of his son Iqbal Mohd. Aladdin and the said quarter was never obtained by the plaintiff-Company from Khan Bahadur Alladdin solely for the officers of the Company as an incentive to promote efficiency among the officers during their employment with the plaintiff. The defendant joined in service of the plaintiff in the year 1956 and he became the direct tenant of Khan Bahadur Alladdin and Sons and he was threatened to execute the alleged licence deed which is neither written on sufficient stamp paper nor it was registered being a lease deed for more than one year which is not admissible in evidence u/s 35 of the Indian Stamp Act and Section 49 of the Registration Act. He denied about retiring from service, which is only on paper, since he gave an application for extension of service on which he has not received any reply. Since the plaintiff has not made any settlement of gratuity so far and having not given notice, suit is liable to be dismissed.

24. It is well settled principle when the defendant taken a plea that the licence deed, Ex.A3 was obtained by the plaintiff under threat, coercion, undue influence etc. the burden heavily lies on the defendant to establish the same.

25. In order to prove the assertion defendant himself was examined as D.W.1. In chief examination on 11-8-1983 he admitted that there is relationship of landlord and tenant between him and the plaintiff and further stated that he is not the tenant of the plaintiff. He stated that Khan Bahadur Ahmed Alladdin had purchased the

property from the Government in the year 1947 and died in 1954 executing a Will, by which his sons Noor Mohd. Aladdin, Dost Md. Aladdin and his wife became the heirs to the property. Dost Md. Aladdin is the father of Iqbal Aladdin who is looking after the entire properties. Defendant asked the plaintiff factory to deduct from his salary and pay the rent to his landlord. Thus, from 1-9-1956 till he retires the acquittance rolls show that the factory had deducted the rent from his salary and paid the rents to his landlord. On 5-10-1978 defendant's landlord sent a letter stating that he wishes to sell the house to defendant under Ex.B10, which has not been cancelled. Therefore, plaintiff has no right to file the suit. Plaintiff filed suits-O.S. Nos. 111 of 1973, 223 of 1974 and 319 of 1973 on the file of IV Additional Judge, City Civil Court, Hyderabad to declare them as owners of the buildings at Czech Colony. The said suits were dismissed under Ex.B1 against which appeals are pending. Plaintiff is not a tenant or lessee of Allauddin regarding suit house. There is no registered lease between the plaintiff and Allauddin. Defendant was living in the suit house even prior to the execution of Ex.A3 licence deed. The then Managing Director of the plaintiff-Company forced him to sign on Ex.A3 else he threatened him to remove from the service. Therefore, it is not binding on defendant. As per service conditions he is entitled to serve till 24-8-1982, but he was retired on 24-8-1979 and he gave an application to retain him for further period, for which there was no reply. On further examination on 15-9-1988 he stated that there was no relationship of licensee and licensor between him and the plaintiff and Rent Control Act governs the suit house and there is no relationship of landlord and tenant between him and the plaintiff. In the cross-examination he stated that Mr. Dittiya, Managing Director of the plaintiff-Company threatened him with dismissal from service and obtained his signature on Ex.A3, licence deed and admitted that from the date of execution of Ex.A3 till the date of deposition he has not given any notice questioning the document and further admitted that Mr. Dittiya left the plaintiff's Company around 1966. After him Mr. Pratap Reddy was the Chairman and he do not know the contents of Ex.A3 and he signed on it without looking into the same. When the Production Manager was examined as P.W.1, a suggestion was made to him that Ex.A3 is a lease deed but not licence deed and it is not properly stamped, which was denied by him. He denied the suggestion that Ex.A3 was obtained by threat and force and Ex.A3 deed does not reveal of taking building on lease and that the defendant is a tenant of Allauddin and not licensee of the plaintiff and defendant paying the rent to Allauddin by instructing to deduct the said amount from his salary and receipts were issued to that effect. It is admitted that the defendant was living in the suit schedule house/quarter even prior to execution of Ex.A3, and he denied as tenant of Allauddin and the licensee of the plaintiff. Except the above suggestion no other evidence was let in. He denied the suggestion that Ex.B5 does not show that the same was issued for the income tax purpose and ever since 1950 plaintiff-Company is paying rent for the said house to the landlord till date and admitted issuing of salary certificates Exs.B1 to B5. The monthly rent, which the company was paying to the landlord, has been mentioned on the rent

page to enable them for getting income tax benefits. PW.1 knows that he signed as an attester, which discloses that the defendant was occupying the quarter/suit schedule house by the date of Ex.A3. Except the above evidence no other oral evidence was let in to prove Ex.A3 was obtained by use of force. Ex.A3, which is the licence deed, Xerox copy-Ex.A5, clearly discloses that the plaintiff/licensor has taken on lease a number of quarters in the Czech Colony situated at Sanathnagar, Hyderabad to make the said quarters available to their officers and employees who do not have any interest in any of the said quarters and the parties are now desirous of recording in writing the terms and conditions of the licence in respect of one such quarter being made available to the aforesaid licensee. Clause No. 9 of the licence deed reads as under:

This is only a licence and not lease which is expressly made clear herein and this deed of licence shall not be deemed to create any interest or right in the said building in favour of the licensee, it being the EXPRESS intention of the parties that the relationship between the tenants and sub-tenants or between the landlords and the tenants shall not be deemed to have been coated hereby or otherwise between them or between them and any other party or parties and under any circumstances, whatsoever.

Clause 12 reads as follows:

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES that after the expiration of the stipulated period or on the termination or retirement of the licensee from the employment or the licensors or in the event of non-fulfilment or non-observance of any of the terms and conditions herein contained, the licensors shall be entitled at any time to revoke the licence evict the licensee without notice, deducting from the amount of deposit or salary, any arrears of licence fee, all costs, charges, expenses payable by the licensee to the licensors hereunder and also all losses and damages which might have been suffered by the licensors by reason of breach of any of the terms and conditions hereinbefore contained and on the part of the licensee to be observed and performed and if the sum or sums to be deducted except the amount of deposit or salary the difference shall be made good by the licensee to the licensors forthwith on demand.

26. Except ipsi dixit in the written statement that the defendant was threatened with dismissal from service and obtained the signature on the licence deed Ex.A3 under duress, the circumstances under which the licence deed was obtained has not been specifically stated. The suggestion, which was made to P.W.1, also shows that it was a lease deed but not a licence deed. When the defendant in his evidence stated that the then Managing Director of plaintiff-Company has forced him to sign on Ex.A3 and he admitted in the cross-examination that Mr. Dittiya threatened with dismissal from service and obtained the signature on Ex.A3, after Mr. Dittiya left the plaintiff-Company around 1966 what made him to make a complaint to higher ups regarding duress is not forthcoming. If that be the case, the theory set up by the

defendant that he was forced to sign on Ex.A3 falls to ground.

27. In the licence deed under Ex.A3 xerox copy Ex.A5 the defendant categorically admitted about plaintiff taking number of quarters on lease from the owners, Mr. Khan Bahadur Allauddin and Sons, in the year 1948 and ever since they are exclusive, continuous and uninterrupted possession. The licensor has taken lease of the said quarters for the purpose of making them available to their officers and employees. It is further stated that the licensee is fully aware and accorded permission to use and occupy. It does not amount to lease and it is only a licence and licensor will have a right to revoke the licence and possession of the licensee on such revocation is that a trespasser.

28. In Sant Lal Jain's case (supra) lessee granted portion of the land leased out to him on licence. Lessor terminated the licence after expiry of licence period and filed suit for mandatory injunction directing to vacate the premises against the licensee. The suit was initially dismissed by the trial Court. On appeal the same was allowed decreeing the suit. Against which the licensee filed second appeal and filed an application for receiving the sale deed as additional evidence, claiming to have purchased the entire property from its original owner and contended before the High Court in view of sale deed obtained by him it is not open to the appellant to contend that the respondent in whom the title to the property has come to be vested after the date of the suit, is liable to be rejected on the revocation of the licence granted to him by the appellant. The High Court allowed the second appeal and set aside the judgment and decree of the Additional District Judge restoring the decree of the trial Court dismissing the suit. On further appeal by the plaintiff the Supreme Court held as under:

The respondent was a licensee, and he must be deemed to be always a licensee. It is not open to him, during the subsistence of the licence or in the suit for recovery of possession of the property instituted after the revocation of the licence to setup title to the property in himself or anyone else. It is his plain duty to surrender possession of the property as a licensee and seek his remedy separately in case he has acquired title to the property subsequently through some other person. He need not do so if he has acquired title to the property from the licensor or from someone else lawfully claiming under him, in which case there would be clear merger. The respondent has not surrendered possession of the property to the appellant even after the termination of the licence and the institution of the suit. The appellant is, therefore, entitled to recover possession of the property. We accordingly allow the appeal with costs throughout and direct the respondent to deliver possession of the property to the appellant forthwith failing which it will be open to the appellant to execute the decree and obtain possession.

29. In D.H. Maniar v. Woman's case (supra), the appellant allowed the respondent to occupy the shop premises as per the lease agreement, which prescribes the duration of licence and on expiry of duration respondent shall remove himself from

the premises and failure to do so the appellant is entitled to remove the goods at the cost of the respondent. The appellant filed the suit for possession of premises in question. The Small Causes Court decreed the suit of the appellant. On a revision being filed by the respondent therein the High Court of Bombay set aside the order and dismissed the suit. On further appeal the Supreme Court after considering Section 62 of the Easements Act, 1882 in Para-10 of the judgment held that in order to get the advantage of Section 15-A of the Bombay Rent Act, the occupant must be in occupation of the premises as a licensee as defined in Section 5(4A) on the first of February, 1973. If he be such a licensee, the non-obstante clause of Section 15-A(1) gives him the status and protection of a tenant in spite of there being anything to the contrary in any other law or in any contract. In other words, even as against the express terms of the subsisting contract of licence the licensee would enjoy the benefits of Section 15-A. But if he is not a licensee under a subsisting agreement on the first of February, 1973, then he does not get the advantage of the amended provision of the Bombay Rent Act. A person continuing in possession of the premises after termination, withdrawal or revocation of the licence continues to occupy it as a trespasser or as a person who has no semblance of any right to continue in occupation of the premises. Such a person by no stretch of imagination can be called a licensee to claim the benefit of Section 15A and accordingly allowed the appeal restoring the eviction decree passed by the trial Court.

30. In Delta International Ltd's case (supra) it was held that to find out whether the document creates lease or a licence, the real test is to find out "the intention of the parties" which is to be gathered from the document itself. Further, in cases where contract for licence is executed by handovering exclusive possession of the property, the distinction line between lease and licence is in such case, terms of the document are to be read as they are and it would be unreasonable and inference can be drawn that the parties intended to create relationship between themselves. Holding so restored the decree granted in favour of the licensor after setting aside the Division Bench judgment of the Calcutta High Court.

31. It is not the case of the defendant herein that the licence deed is camouflage to circumvent the provision of law or to defeat the rights of the owner or tenant who granted the licence and inducted the licensee in possession. The execution of the licence deed is admitted but it was contended that the same was signed by force. Further, it was argued that Ex.A3 licence deed has not been acted upon by both the parties, since the defendant was in possession of the property from 1950 and continues even after retirement. In view of I the same, the reliance placed by the learned Counsel for the appellant in Chinnan v. Ranjithammal AIR 1931 Mad. 216 and [Ravuru Punnamma Vs. Lakkaraju Venkata Subba Rao](#), are misplaced to the facts in case on hand.

32. Even assuming that the defendant was in possession of the suit property prior to entering into licence deed under Ex.A3, having accepted the right of the licensor

who has been obtained the lease of the properties from the original owners and he is a licensee under the plaintiff- Company, waived his right of tenancy, if any had, by accepting the licence. In view of the same, it is not open for the appellant/defendant to contend that he still continues to be the lessee under the original grantor. Once the defendant failed to discharge the burden cast upon him, namely, that he executed the licence deed under duress or force, it is not open for him to plead that he cannot be evicted from the suit schedule property by the plaintiff as per the terms and conditions of the licence deed.

33. I proceed to consider the next argument presented on Point No. 1, namely, defendant purchased the property in his occupation from the heirs of the original grantor, plaintiff-Company surrendered the property to one of the co-sharers which will enure to the benefit of all the owners once he is in possession of the property in his own independent right and plaintiff-Company cannot prosecute the appeal, unless they are all impleaded as legal representatives of the grantor who are necessary parties to the proceedings, having surrendered the tenancy in favour of co-owners, further surrender is complete on M/s. Voltas accepting Rs. 25 lakhs. For the said proposition he relied on [Syed Shah Ghulam Ghouse Mohiuddin and Others Vs. Syed Shah Ahmed Mohiuddin Kamisul Quadri \(Died\) by Lrs. and Others](#), [Jahuri Sah and Others Vs. Dwarka Prasad Jhunjhunwala and Others](#), and [Krishna Kishore Firm Vs. The Govt. of A.P. and others](#), .

34. When one owner can maintain the suit for eviction without impleading, the other co-owners can always sell his properties without the consent of the other co-owners and placed reliance on [Champan Cane Concern Vs. State of Bihar and Another](#), and T. Lakshmi pathi v. P. Nithyananda Reddy (supra). It was further contended that when the grantor himself loses the right where there is a merger and defendant acquires title with whom the plaintiff surrendered his rights. In view of Section 44 of the Transfer of Property Act he acquires a share or interest and entitles to joint possession along with other heirs. Prima facie, to a true and fair consideration of Section 44 of the T.P. Act which manifestly makes it clear that where the transferee of a share of a building belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house. Hence, I am unable to accede the contention put forward by the learned Counsel that on defendant purchasing the property from one of the joint owners he is under joint possession along other heirs with whom the property has been surrendered by the grantor/ plaintiff.

35. Further, learned Counsel for the petitioners in CCCAMP Nos. 12055, 316 and 398 of 2005 contends that plaintiff cannot surrender the property to a few persons who are only co-owners and petitioners cannot be excluded from surrender, they are entitled to be impleaded to protect their rights.

36. It was contended by Mr. M.S. Ramachandra Rao that in view of pendency of suit for partition, ouster cannot be pleaded. The defendant acquires no right under the

sale deed. Since there is no valid merger of his interest with the property, suit of the plaintiff can be maintainable.

37. It is well settled that rights of the parties will have to be determined on the basis of rights available in the plaint on the date when the suit is filed for due eviction of the defendant that he is a trespasser on determining the licence and not in lawful possession. Whether he is entitled to resist the claim of the plaintiff for possession on the said date assumes importance.

38. Undisputedly the appellant who claims to have entered into an agreement of sale dated 28-9-2000 with the petitioners in CCCAMP No. 12055, which is sought to be marked as Ex.B9 filed in CCCAMP No. 12002 of 2005 and subsequently obtained sale deed under document No. 203/2005 dated 20-6-2005 which is sought to be marked as Ex.B13 in CCCAMP No. 477 of 2005. Accordingly, all the CCCAMPs. filed by the appellant/defendant are dismissed.

39. Much emphasis was laid on Section 62(a) and (e) of the Act and contended that licence is deemed to be revoked when grantor ceases to have any interest in the property affected by the licence. Section 62(a)(e) does not apply to the facts of the case, since grantor has not ceased to have interest from a cause proceeding to grant of it. Even for applying Clause (e) of Section 62 of the Act the licensee should become absolute owner of the property affected by the licence, if he acquires only limited interest, licence cannot be revoked. Admittedly, the suit filed for partition is still pending for determining the rights of the parties. Unless the rights of the defendant's vendor are crystallized and said property is allotted to them, he cannot plead that licence is revoked u/s 62(a) and (e) of the Act.

40. The Supreme Court in SK. Sattar Sk. Mohd. Choudari's case (supra) categorically held that 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. The right of joint lessor contemplated by Section 109 of the Transfer of Property Act comes to be possessed by each of them separately and independently. There is no right in the tenant to prevent the joint owners and 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 lessor or they would partition it among themselves, is the exclusive right of the lessors to which no objection can be taken by the 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.

41. Similarly in T. Lakshmipathi's case (supra) the Supreme Court held that to operate doctrine of Merger u/s 111(d) the entire property must be acquired by lessee where appellants acquired only partial ownership interest and thus interests of the lessee and lessor in the whole of the property not vested in the appellants at the same time and in the same right there was no merger and Clause (d) not attracted.

42. Having regard to the fact that suit for partition is pending, it is not open for the appellant/defendant to plead merger and he cannot acquire any right in the property unless the property is allotted to his vendor in the said suit. He cannot resist the claim of the plaintiff for due eviction. If he acquired any right in the suit schedule property under the registered sale deed, first he has to vacate and handover the possession of the property to the plaintiff and implead in the suit filed for partition and can plead equities by allotting the said property to his vendors but not otherwise.

43. Accordingly, I do not see any force in the submission made by the learned Counsel for the appellant/defendant that the plaintiff cannot prosecute the appeal. Appeal is accordingly dismissed. No costs.

14-11-2005

44. After delivery of the judgment, learned Counsel for the appellant/defendant seeks time for eviction. Since the defendant who was successfully dragged on eviction proceedings from the date of his retirement i.e., 24-8-1979 for a period of 26 years, Counsel's request is rejected.