Mehta Suraya Pvt. Ltd. Vs United Investment Corporation

Court: Calcutta High Court

Date of Decision: April 11, 2008

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 1 Rule 10, Order 1 Rule 8, Order 11 Rule 2, Order 2 Rule 2, Order 21 Rule 35
Constitution of India, 1950 â€" Article 141
Penal Code, 1860 (IPC) â€" Section 120B, 208, 209, 210
Transfer of Property Act, 1882 â€" Section 106, 106(1), 108, 108(j), 108(m)
West Bengal Premises Tenancy Act, 1956 â€" Section 13, 13(2), 3, 5, 9

Citation: 112 CWN 859

Hon'ble Judges: Sanjib Banerjee, J

Bench: Single Bench

Advocate: D.K. Das and S. Bhattacharjee, L.C. Behani and A. Banerjee, M. Rajasekhar, S. Talukdar, H. Chakraborty and S. Manna, for the Appellant;

Judgement

Sanjib Banerjee, J.
The real litigation, and all the fun and games, began only after the decree for eviction in CS No. 183 of 1999 was

pronounced. The decree was passed on admission in a letter addressed by the now judgment-debtor lessee to the decree-holder which formed the

notice to quit on which the suit was founded. The decree of October 11, 1999 gave the judgment-debtor three months'' time to vacate the

premises and in default the decree provided that the lessor would be entitled to put the decree in execution. The judgment-debtor has not

contested the present execution proceedings, if it has been represented here at all. Various under-lessees, whose names figure in column 9 of the

tabular statement, seek to resist the decree-holder''s attempt to obtain possession of a building known as the World Trade Centre and stands at

the crossing of Ezra Street and Lower Chitpur Road in the business hub of the city.

2. By a deed of July 16, 1962 the decree-holder demised unto the judgment-debtor land measuring 10 cottah 2 chittack and 20 sq.ft. bearing

municipal holding No. 14/1 A, Ezra Street together with 2 cottah 1 chittack and 13.5 sq.ft. of the western portion of municipal holding No. 165,

Lower Chitpur Road for a period of 33 years beginning July 2, 1962 with an option on the part of the judgment-debtor to renew and continue the

lease for two further terms of 33 years each from the expiry of the initial period covered thereby.

3. By such document of July 16, 1962 the lessee covenanted with the lessor, inter alia, as follows:

1....

(b) To use the said demised premises for construction of messuages and buildings thereon for office and/or residential purposes according to the

map or plan duly signed by the parties hereto and for letting out the same.

(c) To erect with and complete in workmanlike and substantial manner and at its own expenses within the space of 3 years from the date of these

presents the said messuages and buildings.

(j) Not to assign the demised premises and/or the messuages and buildings thereon or any portion thereof without the previous consent in writing

of the Lessor but such consent shall not be unreasonably withheld.

(n) To deliver up peaceful possession of the demised premises and the messuages and building to be erected thereon as aforesaid at the expiration

or sooner determination of the said term.

4. The agreement also recorded in the fifth limb of clause 3 thereof as follows:

(e) That notwithstanding anything hereinbefore contained to the contrary, the Lessee shall be at liberty to terminate this lease at any time before the

expiry of 3 years from the second day of July one thousand (nine hundred and sixty-two by) six months'' notice in writing to the Lessor and upon

payment of arrears of rent and other dues, if any, and on such termination the Lessee shall restore the demised premises with the messuages and

buildings, if any, to the Lessor.

5. It is the decree-holder''s submission that within three years of the execution of the deed, by or about 1965, the judgment-debtor constructed a

ten-storey building at the said premises and immediately went about the business of sub-letting portions of the building. On September 23, 1975 an

agreement, supplemental to the original deed, was executed between the lessor and the lessee, the recital whereof explains the solitary effective

clause therein:

B. In pursuance to the said Principal Lease the Lessee had taken possession of the said demised premises and has constructed a multi-storeyed

building therein.

C. The Lessee has let out and/or granted sub-lease in respect of the several portions of the said building in pursuance to the powers and authority

conferred upon the Lessee.

D. Inasmuch as there is no express power conferred upon the Lessee in the said Principal Lease, to sublet the said demised premises and the

building constructed thereon, it has now been agreed between the Parties hereto to execute this Supplemental Deed to remove all doubts in future.

6. By the supplemental deed the parties thereto agreed and declared that the lessee had the power and authority to sub-let the demised premises

and the building constructed thereon or a portion, but not exceeding the term granted under the principal lease. It was recorded that the lessee

would continue to be entitled to sub-let or grant sublease of the demised premises or the building constructed thereon and any portion thereof

without any permission of the lessor. Clause l(j) of the document of July 16, 1962, thus, stood modified by the first clause of the supplemental

deed.

7. On April 8, 1995 the lessor confirmed the extension of the tenure till July 2, 2028 upon a request for renewal made by the lessee.

8. The lessor relies on a letter of December 15, 1997 issued by the lessee which the lessor claims to have been the notice to quit furnished by the

lessee, on the basis of which the lessor launched CS No. 183 of 1999 and obtained the decree for eviction therein. The lessor says that the

executing court may not travel behind the decree, but in the wake of the charge of fraud and collusion levelled by the persons listed under column 9

of the tabular statement (hereinafter referred to as the column 9 parties or the sub-lessees), the lessor seeks to come clean. The letter of December

15, 1997 appears to be clear and unequivocal:

Re: Lease of premises No. 14/113, Ezra Street and Western Portion of premises No. 155, Lower Circular Road, (now Rabindra Sarani)

Calcutta-700001.

This is to give you notice that in exercise of rights conferred on us under our lease dated 16.07.1962 which stands renewed with effect from

02.07.1995, to terminate the lease within three years of its commencement, we hereby terminate the lease in respect of the captioned premises

upon the expiry of 01.07.1998. Please note that we shall vacate the captioned premises accordingly.

9. The lessor acknowledged the notice of December 15, 1997 by its letter of January 5, 1998, informing the lessee that the lessor would depute its

authorised representative ""for receiving the vacant possession"" of the premises ""free from all encumbrances."" A further letter followed from the

lessor on January 22, 1998 naming its authorised representative who would receive ""the vacant possession of the premises.., from you free from all

encumbrances, in good order and condition."" The lessor reminded the lessee to identify the lessee''s representative and the time ""when you will

hand over the vacant possession to our representative.

10. An apparently jarring note was struck by the lessee thereafter. The under-lessees suggest that the alleged notice to quit and the subsequent

retraction thereof are all part of the lessee''s contrived conduct to present a pretence of resistance in the larger conspiracy between the lessor and

the lessee to show that the decree that they connived to obtain was on contest. The jarring note appears in the lessee''s letter of February 10, 1998

demanding Rs. 2.25 crore from the lessor as the value for the building that the lessee constructed at the demised premises. The lessee required

such payment by June 30, 1998, hinting that its quitting the said premises was conditional upon the payment being made.

11. The lessor protested by its writing of February 17, 1998, expressing surprise at the lessee''s change of tack and insisting that neither was there

any commitment on the lessor''s part to make payment for the building nor was the lessee entitled, under the agreement, to obtain payment

therefor. The lessor repeated its demand that the lessee make over ""the vacant premises to our authorised representative within the stipulated

date."" For four months thereafter there was a lull before a storm of activities was let loose by the lessee''s cryptic note of June 19, 1998 that its

letter of December 15, 1997 should be treated as withdrawn and cancelled. The suit followed, with the decree coming in tow.

12. The lessee carried the decree in appeal where the appellate court noticed the fourth and sixth paragraphs of the lessee''s affidavit in the

judgment upon admission proceedings before the Single Judge in the order dismissing the appeal. It is best that paragraphs 4 and 6 of such affidavit

as set out in the appellate court order of January 3, 2000 are reproduced, to get a flavour of the lessee''s extent of contest in the suit:

4. For the sake of justice and equity it is presumed that if at all the lease is determined and/or the defendant is required to return possession of the

building, the plaintiff would compensate the defendant at least with the cost of construction of the building at the market price prevailing on the date

of determination of the lease, accordingly the defendant demanded the same, which will be evident from the correspondence exchanged between

the parties, which correspondence are suppressed by the plaintiff."" The plaintiff knows the cost of construction of the building with structures and

material now existing in said premises.

6. I state that the some time on or about 1st December, 1997 a negotiation took place by and between the parties irrespective of defendant''s

application for renewal of lease as follows:

a) The defendant would quit and vacate the said premises with effect from 1st July, 1998.

b) The plaintiff and defendant will negotiate in between them and will mutually agree to the value /cost of the premises subject to depreciation:

c) the plaintiff would compensate the defendant as to cost of the premises subject to depreciation for long user to the extent of the value whereof to

be mutually agreed upon:

d) the payment of such agreed value to be made by the plaintiff to the defendant immediately after handing over of possession by the defendant to

the plaintiff of the said premises.

13. The lessee travelled to the Supreme Court and its petition for special leave to appeal stood dismissed on May 8, 2000. The decree-holder

cites the contest that is evident in both the trial court and the appellate court orders leading up to the decrees and to the judgment-debtor having

also knocked at the final doors of justice. The sub-lessees say that the real game began only after the show was perfected by the lessor and the

lessee upon the Supreme Court order being made.

14. On August 5, 2000 the decree-holder applied by way of G A No. 3181 of 2000 for amendment of the judgment and decree of October 11,

1999 and the plaint relating to the suit as also the application for judgment upon admission. The decree-holder asserted that a ten-storey building

had been constructed at the said premises and justified the amendment to obtain eviction of the judgment-debtor from the suit premises and the

building standing thereon. Such application was allowed by an order of August 17, 2000 and it appears from the order that the judgment-debtor

here did not altogether allow the order to be made without contest. The typographical errors in the order of August 17, 2000 were corrected on

August 22, 2000.

15. Within a month the decree-holder sought execution of the appellate decree as amended by the orders of August 17 and August 22, 2000, in

GA No. 3750 of 2000. A number of sub-lessees applied by GA No. 3 of 2001 for recalling the orders passed on the decree-holder''s application

for amendment and for dismissal of the execution proceedings. It is such sub-lessees who have now been joined by others of their ilk who resist

the present execution of the unamended appellate decree of January 3, 2000.

16. In March, 2001 a number of the sub-lessees instituted CS No. 171 of 2001 with leave under Order I Rule 8 and Order 11 Rule 2 of the

Code seeking a declaration that the trial court decree of October 11, 1999 and the appellate decree of January 3, 2000 were obtained by the

parties to CS No. 183 of 1999 by collusion and upon fraud being practiced upon court and other reliefs amounting to annulment of the decree. An

interlocutory application was taken out in CS No. 171 of 2001 seeking to arrest the decree and the execution proceedings launched in pursuance

thereof.

17. By an order of February 5, 2002, the three applications - for executing the appellate decree as amended, for recalling the orders passed on the

decree-holder''s application for amendment and the interlocutory application made by the plaintiffs in CS No. 171 of 2001-were disposed of by a

common judgment and order. The order held that the decree as amended was inexecutable but the decree as it stood prior to its amendment was

executable against the lessee though not executable against the sub-lessees till CS No. 171 of 2001 was disposed of and subject to the result of

that suit. An injunction was issued restraining the decreeholder from executing the decree against the plaintiffs in CS No. 171 of 2001 and the

intervenors therein till disposal of that suit. The sub-lessees were directed to pay rent to the judgment-debtor, without prejudice to the rights and

contentions of all the parties, till the decree-holder sought otherwise. The decree-holder was left free to receive rent directly from the sub-lessees.

The operative portion of the order of February 5, 2002 recorded as follows:

In the result the application No. 3750 of 2000, G.A. No. 3 of 2001 and T. No. 240 of 2001 are allowed to the extent indicted below:

(a) The execution shall be proceeded with only in respect of the unamended decree and shall not proceed in respect of the amendment made

pursuant to the Order dated 17th August, 2000 and 22nd August, 2000, which are hereby declared to have been passed without jurisdiction and

as such a nullity and void; and

(b) that such execution of the unamended decree, however; shall remain stayed as against the plaintiffs/intervenors in C.S. No. 171 of 2001 only,

till the disposal of C.S. No. 171 of 2001; and

(c) it may proceed as against the Judgment Debtor in C.S. No. 183 of 1999; and

(d) the plaintiff decree holder in C.S. No. 183 of 1999 is hereby restrained from executing the decree passed in C.S. No. 183 of 1999, as against

the plaintiff/intervenors in C.S. No. 171 of 2001, till disposal of C. S. No. 171 of 2001; and

(e) the plaintiff/intervenors in C.S. No. 171 of 2001 shall go on paying'' or depositing the rent including the arrears, if any, to the judgment debtor,

until the plaintiff decree holder in C.S. No. 183 of 1997, requires them to pay it to themselves (plaintiff decree holders in C.S. No. 183 of 1997),

upon notice to them and to the Judgment Debtor in C.S. No. 183 of 1999; and

(f) upon notice by the plaintiff/decree holder, in C. S. No. 183 of 1999, to the sub-lessee/tenant, as in (e), the sub-lessee/tenants shall pay or

deposit the rent for the months following the months of receipt of the notice until and subject to further orders of the Court, to the Plaintiff/Decree

holder in C. S. No. 183 of 1999; and

(g) in case the Judgment Debtor in the prior suit (C.S. No. 183 of 1999) objects to such payment in (e) or (f) above, in that event the parties shall

obtain appropriate order from the Court; and

(h) however, such payments and receipt in terms of (e) and (f) above, shall be without prejudice to the rights and contentions of the respective

parties.

18. It is also necessary that the conclusions arrived at, final as they were as to the executability of the appellate decree as amended and prima facie

as they were in respect of the interlocutory orders sought in the sub-lessees'' suit, be seen, for the sub-lessees insist that to the extent the order of

February 5, 2002 survives, such matters may not be revisited :

... Therefore, the decree as it stood prior to amendment could not be executed in respect of the building, which was neither the subject matter of

the suit nor in the application for decree on admission. As such the resultant decree could not be executed'' in respect of the building.... It could not

have been executed in respect of the building constructed thereon, nor it could be executed against IPM and others who were not sub-

lessee/tenant of the land, which was the subject matter of the suit....'''' (Paragraph 18.6)

A decree for eviction against the lessee/tenant is binding on the sub-lessee/tenant. But, there are some exceptions to it. One such exception is that

the sub-tenant/lessee has a right independent of the lessee/tenant. In case the sub-lessee/tenant is able to prove collusion then the sub-lessee/tenant

is'' said to have a right independent of the lessee/tenant. In this case collusion is alleged in this application as well as in the suit. The question can be

property and comprehensively dealt with in the suit. It would not be wise to decide the said question at this stage.... Thus, there appears to be a

very strong prima facie case of collusion between the lessor and the lessee.'''' (Paragraph. 19.1)

... third parties, who were not otherwise bound by the decree, cannot be made to be bound, particularly, when the relief that is now being sought

to be asked for, could have been included in the plaint or could have been kept open by obtaining leave under Order 2 Rule 2 CPC....

(Paragraph 24)

... The amendment that was allowed was in effect a re-trial of the whole case without the decree and judgment being set aside, in a case where it

stood affirmed by the Appeal Court. In the absence of any provision provided in CPC, by reason of Section 151, the Trial Court cannot assume

jurisdiction to amend the plaint and the application for decree on admission, after it had become functus officio, and that too, in a case where the

judgment stood affirmed by the Appeal Court."" (Paragraph 25.2)

19. The decree-holder preferred three appeals from the order dated February 5, 2002 : APO No. 395 of 2002 was directed against the order

passed in the interlocutory application in the under-lessees'' suit; APO No. 394 of 2002 was directed against the order made on GA No. 3 of

2001 that set aside the orders of amendment; and, APO No. 398 of 2002 was directed against the dismissal of the decree-holder''s attempt to

execute the amended decree by GA No. 3750 of 2001. The decree-holder abandoned the amendments as it did not press the appeal against the

setting aside of the orders passed for amendment and the appeal against dismissal of the execution of the amended decree. In the third appeal, the

order of February 5, 2002 restraining the decree-holder from putting the decree into execution was set aside and the under-lessees were permitted

to take such objection as would be available to them. The operative part of the appellate court order of August 23, 2006 records as follows:

We have considered the submissions made before us. We are of the view that the executability of the original decree passed in the suit of, 1999

should be considered at the stage when the decree may be put into execution. Accordingly, the order restraining the appellant from putting the

decree into execution is set aside. It is, however, clarified that it will be open to the respondents No. 1 to 15 to take such objection to the

executability of the decree as they may be advised including the executability, maintainability, fraud, collusion and any other ground which may be

available to them in accordance with law.

This disposes of the three appeals being APO No. 395 of 2002, APO No. 398 of 2002 and APO No. 394 of 2002.

20. It is in such context that the present execution application has to be assessed. The observations in the order of February 5, 2002 in so far as

they led up to the interlocutory order in the under-lessees'' suit restraining the decree-holder from putting the unamended decree into execution,

have been washed away by the appellate court order and the objections now taken have to be reassessed afresh.

21. The tabular statement in the present execution proceedings was taken out in March, 2007 and all persons named in column 9 thereof have

been invited to resist the execution. A number of affidavits have been filed by the various under-lessees and Andhra Bank has filed GA No. 2861

of 2007 ''seeking, inter alia, stay of the execution and for a declaration that the judgment and decree of October 11, 1999 is a nullity. The Bank

has also required the Court to take steps to lodge proceedings against the decree-holder under Sections 208, 209 and 210 read with Section

120B of the Indian Penal Code.

22. The decree-holder submits that Order XXI Rule 35 of the Code would apply and the decree-holder is entitled to possession of the immovable

property. It says that what it let out was a plot of vacant land and it is entitled to possession of the vacant land together with any construction that

may have been made thereon by the lessee in satisfaction of its decree. The decree-holder insists that it is the 35th, and not the 36th, Rule of Order

XXI of the Code that would apply:

35. Decree for immovable property. - (1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to

the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf and, if necessary, by removing any

person bound by the decree who refuses to vacate the property.

(2) Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some

conspicuous place on the property and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the

decree.

(3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free

access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the

customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the

decree-holder in possession.

36. Decree for delivery of immovable property when in occupancy of tenant. - Where a decree is for the delivery of any immovable property in

the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court shall

order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of

drum or other customary mode, at some convenient place, the substance of the decree in regard to the property.

23. According to the decree-holder, there was no surrender, whether express or implied, of the lease by the lessee. The decree, it claims, amounts

to forfeiture of the lease and in a case of forfeiture the under-lessees fall along with the lessee. The decree-holder contends that the sub-lessees

have not been able to show any fraud on the decree-holder''s part for the sub-lessees to be now considered as lessees under the decreeholder

upon the original lessee having been obliterated by the decree. The essence of the decree-holder''s submission is that since there was no surrender

of the lease, the first paragraph of Section 115 of the Transfer of Property Act, 1882 would not come to the aid of the under-lessees and in the

absence of fraud being demonstrated on the decree-holder''s part by the under-lessees, the window that is available under the second paragraph of

Section 115 does not open to them.

24. The decree-holder refers to a judgment reported at M.S. Ram Singh Vs. Bijoy Singh Surana and Another, in support of its contention that

abandonment does not amount to surrender as surrender cannot be infuturo and delivery of possession has to accompany surrender of a lease. A

surrender is, unlike abandonment, a bilateral act involving both the lessor and the lessee and does not happen in the lack of participation of either.

A surrender has to be made, and received, along with delivery of possession. The following extract from paragraph 17 is apposite:

17. In the light of above discussion there is force in the contention of Mr. Banerjee that in absence of pleading as to surrender, the substituted

plaintiffs claim to have the carriage of the suit and to the reliefs prayed should have been rejected. It is obvious that there was no surrender on May

15, 1963 as stated in the application for substitution and in the evidence of P.W. 1. The deed of surrender recited as follows :

... Messrs Oswal Jain and Co. hereby surrender and yield up all its right, title and interest and possession as the Lessee in respect of the

premises... in favour of the Landlords (i.e. Trustees... with effect from expiry of the last day of the month of May, 1963.

Such surrender is not legal or valid, nor being in terms with express surrender mentioned in Clause (e) in Section 111 which as we have seen,

provides for immediate yielding up of the interest and a surrender infuturo is not warranted by law. Faced with this difficulty Mr., Ghosh asked us

to read the document as a whole and also suggested that the surrender was oral, and no writing is necessary therefor. There is no dispute that a

surrender takes place by yielding up of the interest of the lessee and no writing is necessary. Even so, nowhere in the pleadings or in the application

for substitution there is a whisper of oral surrender at all or of surrender on a date other than May 15, 1963. Though in the application for

substitution, the surrender is stated to have taken place on that date, which could be oral, the plaintiffs only witness stated in evidence that ""that

company (the original plaintiff) by this deed of surrender surrendered the monthly tenancy in favour of the Trust."" As is well known, the plaintiff, in

a suit for recovery of possession, must affirmatively prove that he is the rightful owner entitled to possession as enunciated in Mohima Chunder

Mozoomdar vs. Mohesh Chunder Neogi, 16 Ind App 23 at p. 26 (PC) and that the plaintiff must recover by the strength of his own title. The

same principle was again enunciated in AIR 1949 278 (Privy Council) . There can therefore be no doubt that the plaint suffers from fatal infirmity,

firstly because it contains no pleading of surrender and secondly if the pleading in the application be treated as a part of the plaint, such pleading of

surrender and the evidence in support do not establish a surrender valid in law.

25. For the same principle, the decree-holder relies on the judgment reported at Shah Mathuradas Maganlal and Co. Vs. Nagappa Shankarappa

Malage and Others, and places paragraphs 11 and 19 thereof:

11. The deed of Mortgage shows these features indicating that there was surrender of tenancy and the appellant was only a mortgagee. The High

Court found that there was a surrender of tenancy right. No particular form of words is essential to make a valid surrender. A surrender may be

oral. A surrender may be express although delivery of possession is necessary for surrender in the facts and circumstances of a given case. In the

present case, delivery of possession was immediately followed by a redelivery of possession of the appellant as mortgagee. The mortgage deed

establishes beyond doubt that the effect of the deed was inconsistent with the continuance or subsistence of the lease because the parties

themselves stipulated that the lease was to exist only upto 6 November, 1953. On the redemption of the mortgage the respondent had a right to

recover possession both on the terms of the mortgage deed and u/s 62 of the Transfer of Property Act.

19. A surrender under clauses (e) and (f) of Section 111 of the Transfer of Property Act, is an yielding up of the term of the lessee''s interest to

him who has the immediate reversion or the lessor''s interest. It takes effect like a contract by mutual consent on the lessor''s acceptance of the act

of the lessee. The lessee cannot, therefore, surrender unless the term is vested in him; and the surrender must be to a person in whom the

immediate reversion expectant on the term is vested. Implied surrender by operation of law occurs by the creation of a new relationship, or by

relinquishment of possession. If the lessee accepts a new lease that in itself is a surrender. Surrender can also be implied from the consent of the

parties or from such facts as the relinquishment of possession by the lessee and taking over possession by the lessor. Relinquishment of possession

operates as an implied surrender. There must be a taking of possession, not necessarily a physical taking, but something amounting to a virtual

taking of possession. Whether this has occurred is a question of fact. In the present case if the mortgagor was not able to redeem the appellant

mortgagee was to enjoy the property in accordance with the terms of the mortgage and also to sell the property for recovery of debts. This feature

shows that the appellant surrendered the tenancy from 7 November, 1953.

26. The judgment reported at Romesh Chand and Others Vs. Kirpu and Others, is next placed for the same purpose. The court held in such case

that possession has to be made over by the lessee for the relinquishment or surrender to be complete and effective :

(10) One thing is clear that relinquishment of his tenancy, by a tenant, puts an end to the relationship of landlord and tenant. It wilt be, therefore,

relevant to examine how that relationship comes into existence. In this connection, the oft-quoted passage, from the judgment of Plowden, J., in

Joti vs. Maya, 44 Pun Re 1891 (FB) may be cited:

The conclusion, his Lordship observed, to which I come from all these considerations is that, to establish the complete relation of landlord and

tenant between two persons in respect of land, within the meaning of the Tenancy Act, it is essential that two things shall concur, viz. (1) a right to

enter upon and possess the land, and (2) an entry into possession. Upon entry, and not before the person having the right becomes a "tenant" and

holds" the land under the person called the landlord.

(11) The above observations were made by his Lordship in a case, under the Punjab Tenancy Act. That Act was in force in Himachal Pradesh,

before the enactment of the Himachal Act. The definitions of "tenant", landlord" and "tenancy" are substantially the same in both the Acts. The

observations of his Lordship are, therefore, applicable to the establishment of the relationship of landlord and tenant, under the Himachal Act. To

constitute a complete relationship of landlord and tenant, the tenant must have a right to enter upon and possess the land and must have entered

into possession. Conversely, it may be said, that the relationship of landlord and tenant will come to an end when the tenant loses the right to enter

upon the land and also vacates or surrenders possession. It follows that, for relinquishment of a tenancy, it is necessary that the tenant should

actually surrender possession of the land or do all what he can do to surrender possession. Unless and until that is done, the relinquishment of

tenancy will not be complete and the relationship of landlord and tenant will not come to end. A mere execution of a relinquishment deed, by a

tenant, without surrender of possession will not operate as relinquishment of tenancy rights. There is authority for this view. It was held in Amar

Nath Singh vs. Har Prasad Singh, AIR 1932 Oudh 79, that the relinquishment of a holding merely in writing is ineffectual in law, if there has been

no surrender of possession of the holding by the tenant to the landlord, accompanying the relinquishment. The facts, in that case, were almost on all

fours with the present case. The defendant-tenants had executed a registered deed of relinquishment of their tenancy rights in favour of the plaintiff-

landlord, though actually they had not surrendered possession of the land. The plaintiff-landlord brought a suit for possession of the land. His suit

was dismissed and the dismissal was upheld by the High Court.

27. A further judgment on the same point, reported at 1969(1) Mad LJ 503 (Mumgayya Angurar & Anr. vs. Nataraja Iyer & Ors.) has also been

placed. The Madras High Court has observed at page 505 of the report that there can be no surrender as contemplated under the Transfer of

Property Act (the said Act) without possession being made over simultaneously. The case of surrender was disbelieved on appreciating the law

and the evidence as follows:

Even assuming the truth of the surrender pleaded by the first defendant, it is not valid for more than one reason. In Wood/all on Landlord and

Tenant, 26th Edition, Volume I, page 918, Section 2004, it is stated that a surrender could be by unequivocal giving and acceptance of

possession. It is stated that an agreement by landlord and tenant that the term shall be put an end to, acted upon by the tenant''s quitting the

premises, and the landlord by some unequivocal act taking possession, amounts to a surrender by operation of law....

It is clear from the evidence in this case that according to the first defendant the first plaintiff met him at Thanjavur and merely stated that he was

not willing to be a tenant and asked the first defendant to take possession of his lands and that the first defendant accepted it. But the first

defendant did not state that he went with the first plaintiff to the village where the suit lands are situate or that the first plaintiff delivered possession

of the lands. In fact the first defendant returned to Madras on the same day, there was a dispute about the possession of the lands and there was

an enquiry by the Police in that connection."" (Page 505)

28. The decree-holder argues that the relationship between a lessee and his sub-lessee has no bearing on the head lessor''s rights for there is no

privity of contract between the head lessor and the sub-lessee. It is only in exceptional cases, the decree-holder asserts, that a decree obtained by

the lessor against the lessee will not bind the under-lessee. The general rule, according to the decree-holder, is that the decree would be binding

unless there was a surrender for the first limb of Section 115 of the said Act to come into play or there was forfeiture of the lease procured by the

lessor in fraud of the ''under-lessees for the second limb of such section to apply.

29. The decree-holder relies on a judgment reported at Burmah Shell Oil Distributing now known as Bharat Petroleum Corporation Ltd. Vs.

Khaja Midhat Noor and Others, in support of its contention that a sub lessee is bound by the decree of eviction against the lessee. In such case

there was a tenure lease and the suit for ejectment was filed upon expiry of the lease by efflux of time. Paragraphs 1, 2 and 12 of the report have

been placed:

1.... On January 16, 1958 a lease deed was executed between the lessee Latifur Rehman and lessor Khaja Midhat Noor (hereinafter called the

respondent) with permission to sub-lease the same. The said Latifur Rehman sub-leased the premises to Burmah Shell Oil Distributing Company

(the petitioner herein) for running a petrol pump and making necessary constructions thereon. The lease was for a period of ten years which

expired on January 16, 1968. It appears further that after the lease period had expired, the sub-lessee, petitioner continued to pay the rent which

was being accepted continuously from month to month by the respondent, the lessor. A notice was issued by the respondent to the lessee

terminating the lease and for giving vacant possession of the land by January 15, 1973 and also requiring the removal of the buildings, plant, etc.,

by January 16, 1973. In the last two paras of the said notice, it was stated that the lessee was to surrender the leasehold land on the expiry of

January 15, 1973. No notice was given separately to the petitioner terminating its lease. A suit for ejectment was filed thereafter. The lessee Latifur

Rehman did not contest the suit for ejectment. The petitioner, however, contested that proceeding. The learned Munsiff I, Gaya, by his judgment

dated May 8, 1979 dismissed the suit holding that the notice terminating the lease was necessary and the notice in this case was invalid. The plea of

the landlord that the tenancy expired by efflux of time, was rejected. On February 22, 1983 the First Additional Sub-Judge, Gaya allowed the

appeal of the landlord and held that the notice terminating the tenancy and asking the petitioner to surrender by January 15, 1973 was a valid

notice.

2. The main question involved is, whether there was a valid termination of the lease and as such the sub-lessee, the petitioner herein was bound to

deliver vacant possession, A written statement had been filed by the petitioner, the sub-lessee, wherein it was, inter alia stated that it was holding

over the lease hold property after the expiry of the lease by paying rent. No notice terminating tenancy was received by it. The validity of the notice

to the lessee was also challenged. The trial Court held that the lease was not extended for a fixed period of five years in absence of any written

instrument.

12. In Rup Chand Gupta Vs. Raghuvanshi Private Limited and Another, it was held by this Court that it is quite clear that law does not require

that the sub-lessee need be made a party, if there was a valid termination of the lease. This Court reiterated that in all cases where the landlord

instituted a suit against the lessee for possession of the land on the basis of a valid notice to quit served on the lessee and did not implead the sub-

lessee as a party to the suit, the object of the landlord is to eject the sub-lessee from the land in execution of he decree and such an object is quite

legitimate. The decree in such a suit would bind the sub-lessee. This Court noted at page 1892 of the report that this might act harshly on the sub-

lessee; but this was a position well understood by him when he took the sub-lease. The law allows this and so the omission cannot be said to be an

improper act. In the facts of this case these observations apply more effectively. The termination of the lease was not disputed by the lessee. There

is no allegation of any collusion between the lessee and the respondent.

30. A judgment reported at Rajat Bose Vs. Yogo Intraco Pvt. Ltd., has been cited, where the law as recognised by a Division Bench of this Court

appears from paragraphs 7 and 9 the report:

7. But in the instant case any decision inter se the plaintiff and his tenant, the defendant, would not affect the terms of the lease granted by Anil

Kumar Mitra in favour of the plaintiff for a term of 21 years and which enjoyed immunity u/s 3 of the West Bengal Premises Tenancy Act, 1956.

Our attention has been drawn to a clause under the said registered lease in plaintiffs favour giving it right to sublet a portion of the demised

premises not exceeding one half thereof without any consent from the lessor or any person claiming through him. Prima facie no privity of estate

had been created as between the said lessor, Anil Kumar Mitra, and the present defendant by reason of the plaintiff granting a sub-tenancy in

favour of the defendant. Prima facie so far as the said superior lessor is concerned, the position of the defendant vis-a-vis the said superior lessor

would be akin to that of a sub-lessee or sub-tenant under the general law and who did not enjoy protection-under the rent control legislation. In

this connection, reference may be made to the discussion about the legal position of sub-lessees and sub-tenants under the general law and rent

control legislation in the case of Debabrata Mukherjee, vs. Kalyan Kumar Roy reported in (1981) 1 CLJ 339.

9. The reported decision of G. N. Das and Mitter, JJ. In West Bengal Engineering Co. etc. Vs. Manindra Land and Building Corporation, , fully

supports our view that the provisions of Section 13 of the West Bengal Premises Tenancy Act, 1956 would apply to the tenancy of the defendant

under the plaintiff notwithstanding the fact that the registered lease in plaintiffs favour was immune from the provisions of the said Act. The Division

Bench in West Bengal Engineering Co. vs. Manindra Land and Building Corporation (supra) held inter alia that the applicant u/s 9 of the West

Bengal Premises Rent Control (Temporary Provisions) Act by a subtenant for fixation of rent would be maintainable even though his landlord

himself was a lessee of the entire premises for a term of 51 years in view of the Section 5 of the West Bengal Premises Rent Control (Temporary

Provisions) Act,. 1950 was not applicable to his said lease held under superior landlord. The learned Judges pointed out that Section 5 of the Act

of 1950 (corresponding to Section 3 of the West Bengal Premises Tenancy Act, 1956) had only a limited operation and prevented direct

encroachment on the incidents"" of the lease by a resort to the provisions of the Act. If the application for standardisation of rent was granted, this

would only interfere with the contractual rent as between the opposite party landlord and its tenant. It would not in any way affect or interfere with

the incidents of the lease held by the landlord opposite party. Therefore, the application for fixation of standard rent was maintainable in law. We

respectfully agree with the above propositions of law and for the similar reasons find that any adjudication between the plaintiff and the defendant in

the present suit will not affect the right of the superior landlord, Anil Kumar Mitra, or the incidents of the said registered lease granted by the said

lessor in plaintiff respondent''s, favour. The unregistered monthly lease of the defendant under the plaintiff did not enjoy immunity u/s 3 of the West

Bengal Premises Tenancy Act, 1956 and if the defendant is granted protection under the West Bengal Premises Tenancy Act, the same would not

either directly or indirectly interfere with the terms of the registered lease in plaintiffs favour.

31. The decree-holder relies on a line from the judgment reported at Rup Chand Gupta Vs. Raghuvanshi Private Limited and Another, as its sheet-

anchor and says that it is not open to question that a decree for eviction against a lessee in every case would be binding on the under-lessees. Such

judgment has to be appreciated in detail.

32. Company Raghuvanshi took a lease for 75 years beginning 1950 from the official trustee, under which the lessee was to construct a three or

four-storeyed building on the land within ten years. Shortly after obtaining the lease, R let out a portion of the leasehold land to company L by way

of a monthly tenancy. L sublet the entire land that it obtained from R to G who undertook not to sublet the land to anybody, to vacate the land as

soon as it was required by L for any purpose and not to construct anything on the land but to only use the open land for garage purpose for motor

vehicles. In breach of the covenant, G constructed a pacca structure despite L''s protest. L applied to the municipal corporation for demolition of

the structure and failed. L then issued a notice to quit which was not followed up by any suit. Instead, L lodged a suit for arrears of rent and

followed it up with another similar suit. Both suits were disposed of on consent terms. R wanted possession of the land from L which L could not

make over until it obtained possession from G. In such circumstances R determined the lease in favour of L by a notice to quit, instituted a suit in

this Court in pursuance thereof where G was not impleaded, and obtained an ex parte decree.

33. G brought a suit against L and R claiming that the ex parte decree had been obtained ""by fraud and collusion between the defendants in order

to injure the plaintiff and to evict the plaintiff from the said premises without any decree being passed against the plaintiff."" The case of the decree

being obtained by fraud was abandoned at the hearing of the suit and the only charge against the defendants was that the previous suit was brought

by collusion between R and L. The trial Judge held that there was collusion between the parties in the previous suit and recognised G as a tenant

under R and not liable to be ejected under the decree passed in the previous suit. In appeal the decree in G"s suit was set aside which was carried

before the Supreme Court. The only question that the Supreme Court considered is set out at paragraph 7 of the report, as to whether G had

established that the previous decree had been obtained as a result of collusion between R and L. The judgment was rendered in such context and

the law was laid down in the following paragraphs:

(10) Thus the mere fact that the defendant agrees with the plaintiff that if a suit is brought he would not defend it, would not necessarily prove

collusion. It is only if this agreement is done improperly in the sense that a dishonest purpose is intended to be achieved that they can be said to

have colluded.

(11) There is little doubt that in the present case Land and Bricks agreed with Raghuvanshi that the suit for ejectment would not be contested.

When the suit was instituted Land and Bricks did not contest and the ex parte decree was passed. Raghuvanshi did not implead this appellant in

that suit. Can any of these acts viz. Land and Bricks agreeing with Raghuvanshi that it would not contest the suit, the actual refraining by Land and

Bricks from contesting the suit or the act of Raghuvanshi in not impleading the appellant be an improper act or improper refraining from an act? We

do not see how any of these things can be said to be improper.

(12) Taking the last action first viz. Raghuvanshi"s omission ". implead the appellant, it is quite clear that the law does not require that the sub-

lessee need be made a party. It has been rightly pointed out by the High Court that in all cases where the landlord institutes a suit against the lessee

for possession of the land on the basis of a valid notice to quit served on the lessee and does not implead the sub-lessee as a party to the suit, the

object of the landlord is to eject the sub-lessee from the land in execution of the decree and such an object is quite legitimate. The decree in such a

suit would bind the sub-lessee. This may act harshly on the sub-lessee; but this is a position well understood by him when he took the sub-lease.

The law allows this and so the omission cannot be said to be an improper act.

(13) Nor is it possible, in our opinion, to say that the omission of Land and Bricks to contest the ejectment suit was an improper act. It has not

been suggested that Land and Bricks had a good defence against the claim for ejectment but did not take it for the mere purpose of helping

Raghuvanshi to get possession of the land. Even if it had a good defence, we do not think it was bound to take it. It may be that if Land and Bricks

had a defence and the defence was such which if brought to the notice of the court would have stood in the way of any decree being passed in

favour of Raghuvanshi there would be reason to say that the omission to implead the sub-lessee was actuated by a dishonest purpose and

consequently was improper. It is not necessary for us however to consider the matter further as neither in the courts below nor before us was any

suggestion made on behalf of the appellant sub-lessee that Land and Bricks had even a plausible defence against Raghuvanshi''s claim for

ejectment.

(15) The crux of the matter is: Was this attempt by Raghuvanshi to get possession of the land a dishonest or sinister purpose ? We are asked by

Mr. Desai to spell dishonesty out of the fact that the directors of Raghuvanshi and Land and Bricks were common and so the persons who were

interested in Land and Bricks were also interested in seeing that Raghuvanshi had not to suffer for forfeiture of his lease for failure to comply with

the covenant to construct a building by 1960. All this may be taken to be true. But, we are unable to see how this would make Raghuvanshi''s

attempt to get possession of the land dishonest or sinister. It is not as if Raghuvanshi did not actually want to get possession of the land but wanted

to help Land and Bricks to get possession. It has also to be remembered that the identity of the directors and the identity of the main shareholders

do not in any way affect the position that in law and in fact Raghuvanshi and Land and Bricks were distinct and separate entities. It is not even

remotely suggested that Raghuvanshi and Land and Bricks were really one and the same person with two names. If that had been so, there might

have been good reason for thinking that it was in an attempt to surmount the obstacle represented by the Calcutta Thika Tenancy Act, 1949, that

this mode of Raghuvanshi suing Land and Bricks for ejectment was resorted to. Indeed, if Raghuvanshi and Land and Bricks were one and the

same person possession of Land and Bricks would be possession of Raghuvanshi and a suit by Raghuvanshi to eject Land and Bricks would be

meaningless. But, that is not the appellant''s case. It appears from the High Court''s judgment that the plaintiffs counsel made it plain before the

court that it was not his client''s case that the plaintiffs real lessor was Raghuvanshi Private Ltd., and not Land and Bricks Ltd. In the present

appeal before us also Mr. Desai argued on the basis that Land and Bricks and Raghuvanshi were distinct entities and that the lease of Land and

Bricks under Raghuvanshi was a real subsisting lease at the time of Suit No. 3283 of 1955.

34. The decree-holder here insists that there is no case of collusion that has been made out, far less established. At the time of institution of the suit,

the decree-holder claims, the parties were distinct and it was not as if that the one was the alter ego of the other in the sense that the two were

really the same person with different names. The decree-holder says that the building would come with the land as, in terms of the lease, the lessor

is entitled to the building at the expiration or sooner determination of the term reserved under the lease. That the building has to come with the land

is emphasised by reference to a judgment reported at Joy Kissen Arora Vs. Raghunath Prosad Gupta, .

35. In the Joy Kissen Arora case the plaintiff sought recovery of vacant possession after due determination of the tenancy. Only the lessee was

impleaded and not the under-lessees though the judgment records that it appeared from the evidence adduced in the suit that the plaintiff was

aware that the lessee had built structures on the land that had been let out and had inducted tenants thereat. A decree for possession was made

and in course of execution, the Sheriffs officer met with resistance from the under-lessees whereupon proceedings under Order XXI Rule 97 of the

Code ensued. The court considered the question as to whether the decree for vacant possession of land against the lessee to whom the open plot

had been let out could be executed against the under-lessees. The court found that the under-lessees were bound by the decree and the mere

existence of structures was no bar to the execution of the decree for vacant possession of the land.

36. The belligerent under-lessees in the present case scoff at the decree-holder''s attempt to oust them. They allege fraud, collusion and connivance

on the part of the parties to the suit and set out 50 counts in the particulars found between pages 17 and 35 of the principal affidavit on their behalf

affirmed by one Kamal Jain of Modern Fibotex India Limited. The under-lessees allege that the parties to the suit were under the common

management of the Suraya and Mehta families prior to 1997 and that in 1997-98 ""Dugars and Prakash"", acquired control of both entities. They

allege that the plaint was replete with half-truths, misleading statements and active concealment of material facts. They refer to the supplemental

deed of September 23, 1975 not finding mention in the plaint; to the decree-holder having notice and knowledge of the sub-lessees being inducted;

to the parties'' failure to recognise that the sub-lessees were protected both under the said Act and the West Bengal Premises Tenancy Act, 1956;

of the letter of December 15, 1997 forming the. basis of the suit being an exceptional instance of rank collusion; of the monthly profit that the

judgment-debtor made by letting out the said building against the paltry rent payable to the decree-holder; of the parties'' mala fides being evident

from the subsequent attempt to amend the decree in the knowledge that without the amendment the under-lessees could not be proceeded against;

and, generally of the pantomime played out to anoint the decree with laboured authenticity.

37. It is unusual, the under-lessees continue, for a goose laying golden eggs to be made over to the decree-holder, three years into the first

extended period with 30 years of the first extension and another right of renewal of 33 years going abegging. They refer to the contrived exchange

of absurd letters and say that the entire exercise was pre-planned and tailored to obtain and concede the decree with a mock show of resistance.

They stress that their rights are protected under the Rent Control Act and it has all been an exercise in futility by the decree-holder.

38. A judgment reported a Tirath Ram Gupta Vs. Gurubachan Singh and Another, is first placed by the under-lessees for the proposition that a

lessee who has parted with a part of the interest in the property in favour of a sub-lessee, cannot surrender the entirety of the lease as it would be

beyond him to surrender that part which is in possession of the sub-lessee. The landlord in such case let out a shop-cum-flat to the lessee in 1963

and subsequently let out two adjoining flats to the lessee, who, in turn, sub-let the flats subsequently let out''. The landlord sued the tenant and the

sub-tenant on various grounds but urged only the ground of unauthorised sub-letting. Both defendants initially contested the suit, but the tenant

compromised with the landlord by which the landlord gave up his claim in respect of the shop-cum-flat under the tenant''s occupation. The tenant

conceded that he had sublet the two other flats without the consent of the landlord. The Supreme Court found that the sub-lease had been effected

before any notice of termination was issued and the lease did not prohibit the creation of a sub-lease. An argument was then made that there was a

surrender of the tenancy restricted to the two flats and the sub-tenant was bound by the surrender. Such argument was met by the Supreme Court

at paragraphs 9 and 10 of the report :

9. There was also a contention that when there was a surrender of tenancy rights restricted to the two flats in question, the first respondent is

bound by the surrender and cannot claim sub-tenancy rights any further. The contention is unsustainable for a host of reasons. A lease is a transfer

of a right to enjoy the property. It creates an interest in the property by virtue of the contract of lease which may be either oral or written. The

interest created in the property can be put an end to by terminating the contract. The contract, however, cannot be terminated in part. In this case

though the two items of property were given on lease at different times, the parties had treated the lease as a composite one and that was why a

common notice had been issued for terminating the tenancy of both the items and furthermore a single petition had been filed u/s 13(2) to seek an

order of eviction, in respect of both the items of the lease property.

10. The lessee has a right to transfer by sub-lease even a part of his interest in the property as provided in Section 108(j) of the Transfer of

Property Act. A transferee from the lessee has a right to claim the benefit of contract to the lessee''s interest, vis-a-vis the landlord, (vide Section

108 second para of clause (c) of the Transfer of Property Act). Thus a sub-lessee who has obtained a part of the interest of the head tenant will be

entitled to claim the benefit of the contract vis-a-vis the lessor, as the lessee (head tenant) cannot surrender the lease in part. Section 111(e)

contemplates a surrender of the entire interest under the lease and not a part of the interest alone. Moreover, a lease can be determined only by

restoring possession in respect of the entire property which was taken on lease [see Section 108(m)]. Section 115 of the Transfer of Property Act

provides that the surrender of a lease does not prejudice an under-lease of the property or any part thereof previously granted by the lessee. The

lessee, having parted with a part of the interest in the property in favour of the sub-lessee, cannot surrender that part of the property which is in the

possession of the sub-lessee for he cannot restore possession of the same to the lessor apart from the fact that he can terminate the contract of

lease only as a whole and not in respect of a part of it. Having regard to all these factors, even without going into the question of the partial

surrender of lease being vitiated by collusion, it is not open to the appellant in law to contend that the second respondent is entitled to and had

validly surrendered a portion of the leasehold property and the first respondent, being the sub-tenant is bound by the surrender and should deliver

possession.

39. The under-lessees next refer to the case of Sailendra Nath Bhattachrjee Vs. Bijan Lal Chakravarty and Others, The plaintiff in that case

commenced an action for declaration of his permanent tenancy rights in the lands in suit and for a permanent injunction restraining the firs4:

defendant from proceeding in execution of a decree obtained against the plaintiffs/landlords. The question that the Court framed was whether the

decree for possession obtained by the first defendant in the previous suit was binding on the plaintiff as he was a sub-lessee under the defendant in

the earlier suit. The Court noticed that judicial opinion on the point did not seem to be uniform and concluded :

... In our opinion, the proper way to approach the question would be to ascertain on principles of general law as to whether a sub-lessee who is

not made a party to a suit for ejectment brought by the lessor against the lessee can be said to be bound by the decree made therein. If he is so

bound he would undoubtedly come within the purview of Order 21, Rule 35, Civil Procedure Code, and the provisions of Order 21, Rule 98 and

99, Civil Procedure Code, would not be attracted to such cases at all.- Now, it is a settled principle of law that a judgment inter parties can bind

only those who are parties or privies to it. In the Law of Estoppel, as Bigello points out, one person can become a privy to another, (1) by

succeeding to the position of that other as regards the subject of the estoppel and (2) by holding in subordination to that other. The ground of

privity is properly and not personal relation. To make a man privy to an action he must have acquired an interest in the sub-matter of the action by

inheritance, succession or purchase from a party subsequent to the action or he must hold the property subordinately (vide Bigello on Estoppel,

Edn. 6, pp. 158 and 159). Thus, a man cannot be privy to a judgment by succession unless he has acquired the property to which the judgment

relates by way of inheritance, purchase etc., subsequent to the institution of the suit. Nobody can represent an interest which he has already parted

with and consequently a transferee prior to the institution of the suit cannot be privy to or bound by a judgment obtained against the transferor; but

the position may be different in the case of the subordinate holder, e.g., when a sub-lessee holds under a lessee. If the interest of the subordinate

holder is of such a character that it is entirely dependent on that of the superior holder and automatically comes to an end as soon as the superior

interest is extinguished, the subordinate holder would be a privy to the judgment obtained against the superior holder even though he was not a

party to the action. If the interest of the lessee, therefore, is determined in such a way that the interest of the sub-lessee is extinguished along with it,

a lawful judgment against the lessee which gives effect to the determination of the lessee''s rights must of necessity extinguish the subordinate rights

of the under-tenant. In such cases, it is immaterial whether the interest of the under-tenant began before or after the suit. In our opinion, therefore, a

sub-lessee would be bound by a decree for possession obtained by the lessor against the lessee if the eviction is based upon a ground which

determines the under-lease also, unless he succeeds in showing that the judgment was vitiated by fraud or that the lessee collusively suffered the

decree to be passed against him. If, however, the decree for possession proceeds on a ground which does not by itself annul the sub-lease, the

decree would not be binding on the sub-lessee nor could the sub-lessee be evicted in execution of the decree if he had acquired a statutory right or

protection, e.g., under the Bengal Tenancy Act which he could assert against the lessor. Within these limits, we think a sub-lessee could be held to

be bound by a decree obtained against his lessor and when he is so bound he can undoubtedly be ousted in execution of the decree obtained

against his lessor under Order 21, Rule 35, Civil Procedure Code, though he was not made a party to the suit itself.

... Here was a dispute regarding title between two rival claimants, one of whom was found to be without any right and unless the person who

possessed the property under a grant made by the trespasser before the institution of the suit was made a party to it, he could not possibly be

bound by the decision made therein. In a suit for possession against a trespasser the person in actual possession of the property must be made a

party even though he purports to be a lessee under the defendant. But the position is otherwise when the landlord sues his tenants on the footing

that the tenancy has come to an end and the act which determines the tenancy extinguishes in law the sub-tenancy also.

40. The under-lessees refer to a judgment reported at Benimadhab Mahrotra Vs. Howrah Flour Mills Ltd. and Another, where a sub-tenant

attempted to clamber on board to queer the parties'' pitch in a suit for eviction on divers grounds including default in rent and wrongful sub-letting.

The suit was not being contested by the defendant at the stage that the applicant under Order I Rule 10 of the Code sought to be added as a

defendant. The trial court rejected the application for impleadment and the would-be added defendant carried the order in revision where this

Court held that though a decree against a lessee is otherwise binding upon a sub-lessee ""save and except where the sub-lessee has got his

independent right of his own, yet such a decree must not be a collusive one."" The Court held that effectual and complete adjudication of a dispute

is not always limited to the parties to the suit and on appreciation that the presence of the sub-lessee would effectively conclude the lis, the order

was revised by adding the sub-lessee as the second defendant in the suit.

41. In the case of Suleman Haji Ahmed Oomer Vs. Darabshaw Pirojshaw Dubash, that the under-lessees next refer to, Section 115 of the said

Act came to be considered and the following opinion was expressed :

... The plain meaning of the Section is that when a lessee has given a sub-lease and thereafter surrenders the head-lease to the lessor, the position

of the sub-lessee remains unaffected and he becomes the lessee of the original lessor on the same terms as in the sub-lease. That is the ordinary

rule. If however, the lessee surrenders the head-lease for the purpose of obtaining a new lease, the sub-lessee continues as before to hold under

the lessee. This is the only way in which the latter part of the Section can be given effect to, unless one were to entirely ignore the exception

introduced there by the words ""unless the surrender is made... &c."" The exception implies that the ordinary rule is not to be followed when the

surrender is made for the purpose of obtaining a new lease.

42. The under-lessees say that the building would not follow the land covered by the decree that the decree-holder obtained, as it has to be

satisfied with an execution under Order XXI Rule 36 and not under the preceding rule. They place a judgment reported at Bishan Das and Others

Vs. The State of Punjab and Others, and point out a line from paragraph 11 of the report that the maxim, what is annexed to the soil goes with the

soil, has not been accepted as an absolute rule of law in this country. They say that a person who bona fide puts up constructions on land belonging

to others with their permission would not be a trespasser, nor would the buildings so constructed vest in the owner of the land by operation of the

maxim quicquid plantatur solo, solo cedit

43. A decision reported at ILR 1952 (2) Cal 167 (Mahammad Ibrahim vs. Beni Madhab Mallik) is also placed by the under-lessees for the

proposition that if sub-letting was permissible under a lease, the rights created thereby remain wholly unaffected by the surrender pursuant to

Section 115 of the said Act. The following passage from page 170 of the report is relevant:

Section 115 of the Transfer of Property Act provides that a surrender express or implied, of a lease does not prejudice an under-lease of the

property. The section proceeds on the principle that a man is not permitted to derogate from his own grant. As between the parties to the

transaction, a surrender by the lessee puts an end to his interest, but it does not affect third persons who have acquired an interest from him. A

lessee who has assigned his interest by way of mortgage or otherwise cannot defeat his assignee''s right by a surrender to the lessor and in the

same way of surrender by the lessee cannot prejudice the under-lessee. Such a surrender operates as an assignment to the lessor of the lessee''s

interest and thus brings the under-lessee into immediate relations with the lessor. This is a well-established principle of law which is clearly stated in

books of authorities like Woodfall, Foa and Redman.

44. As to what amounts to fraud, the under-lessees refer to a judgment reported at S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath

(dead) by L.Rs. and others, and rely on paragraphs 5 and 6 of the report:

5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this

case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations

which are wholly perverse. We do not agree with the High Court that ""there is no legal duty cast upon the plaintiff to come to court with a true case

and prove it by true evidence"". The principle of ""finality of litigation"" cannot be pressed to the extent of such an absurdity that it becomes an engine

of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court,

must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-

evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal

gains indefinitely. We have no hesitation to say that a person, whose case is based on falsehood, has no right to approach the court. He can be

summarily thrown out at any stage of the litigation.

6. The facts of the present case leave no manner of doubt that-Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is

an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by

another"s loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in

the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex. B-15) in favour of Chunilal

Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without

disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and

not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the

court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered

copy of Ex.B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which

are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud

on the court as well as on the opposite party.

45. The under-lessees seek to distinguish the Raghuvanshi case on facts; that the charge of fraud was given up and the finding that there was no

collusion established. The M. S. Ram Singh, Shah Mathuradas Maganlal and Romesh Chand cases, according to the under-lessees, are inapposite

as the decree-holder does not found its entitlement to possession on surrender of the lease by the judgment-debtor. The under-lessees say that

Burmah Shell case applied the law as recognised in the Raghuvanshi decision and, though there is no dispute as to the legal principle, the facts in

the present case do not match. The Rajat Bose case is sought to be distinguished as laying down the general principles of sub-tenancy. The under-

lessees say that the Joy Kissen Arora case is inapposite in the context as the court found that the sub-lessees were bound by the notice to-quit

issued on the lessee.

46. Two other judgments have been finally glaced as to the meaning of Section 106 of the said Act Eranhikal Talappil Moosa Kutty Vs. Kozhikote

Puthia Kovilakath Thekke, and Ram Kumar Das Vs. Jagadish Chandra Deb Dhabal Deb and Another, In the Moosa. Kutty case that the decree-

holder has placed, the Madras High Court held that it is only in cases where there are no contracts as to the notice that the provisions of Section

106 of the Act would apply, but where there is a contract as to giving notice or waiving notice the parties would[be governed by the terms of their

contract. In the Ram Kumar judgment the Supreme Court held that Section 106 of the said Act would determine the duration of the tenancy unless

there was a contract to the contrary.

47. The decree-holder seeks to bind the under-lessees on two alternative grounds. It says that the decree is a recognition of the lessor"s right to

forfeit the lease. Alternatively, it suggests that the decree was made on a suit founded on a notice to quit, whether of the lessor or of the lessee. The

argument is that if it is a case of forfeiture, then the under-lessees may not be bound only upon their establishing that the forfeiture had been

procured by the decree-holder in fraud of the under-lessees. If the decree is regarded as one based on a notice to quit, it is urged by the decree-

holder, then the window available to the under-lessees under either limb of Section 115 of the said Act does not open up.

48. The first consideration, thus, is whether the decree-holder''s conduct qua the under-lessees has been fraudulent. If this is answered in the

under-lessees'' favour, only then arises the next question as to whether the decree is based on forfeiture of the lease.

49. What amounts to fraud depends on facts. Even a perfectly legal act may be unjust and inequitable and may not pass muster in the context of

the larger picture. A thing obtained in collusion between two may amount to fraud on a third. There is no direct attempt by the decree-holder here

to unfairly prejudice the under-lessees, save in its attempt to have the decree amended and thereby seek to bind the under-lessees. But since that

has been undone, no element of the prejudice argument based thereon may be carried to assess the fraud that the under-lessees allege the decree-

holder perpetrated on them by obtaining the decree.

50. The under-lessees claim that the two arrayed as plaintiff and defendant in the suit were but one, with the same unseen hands and mind guiding

both in a common venture to obtain a modicum of legality to divest the under-lessees of their lawful right to remain in possession. As a first shot at

establishing the conspiracy theory, the under-lessees point to the addresses of the decree-holder and the judgment-debtor being the same,

emphasising for effect that the flurry of letters cited in the suit were received and stamped at the same desk from which they were issued. They next

say that there was common management of the decreeholder and judgment-debtor prior to 1997 and a changed, but common, management

thereafter. These allegations may be grounds for better material as to collusion being rooted to, but do not by them prove collusion. The under-

lessees need to build the edifice of collusion on the firm ground that they find.

51. And yet, that is not all that can be said of the charge of collusion. Two unconnected persons at two corners of this planet that is getting

increasingly small, may act in concert in furtherance of an improper motive to injure another. That the two may be continents apart or may share no

relation by blood or common control, is as inappropriate a consideration as would be a presumption of collusion based on the identity of their

address and controlling mind. It the purpose that is the guiding factor, the effect and not always the cause.

52. The decree-holder labours to show that it did not exactly have a Cakewalk in the suit; that the initial letter of December 15, 1997 was resiled

from by the judgment-debtor; that its decree was challenged and further assailed, that the orders it obtained on amendment were subject to the

judgment-debtor''s right to carry the objections at a later stage. But all this does not answer as to what prompted the judgment-debtor to want to

relieve itself of its golden goose. The decree-holder skirts the issue as to the judgment-debtor''s motive, now that it is up to the decreeholder to

justify the judgment-debtor''s conduct.

53. If the judgment-debtor''s position is seen, the enormity of its sacrifice would be apparent. A person obtains vacant land in prime commercial

district and constructs a building thereon that yields substantial profit. Whether or not the person recovered the cost of construction, the excess of

the inflow over the outflow on account of the meagre lease rent is overwhelming. A first extension of the tenure is obtained and a second extension

has to be granted for the asking. If in such a situation the lessee seeks to abandon the lease three years into the first renewed term, the motive has

to be questioned. Why, for instance, was an unequivocal letter of December 15, 1997 addressed without any mention of the price for the building

? Why did the lessee cite a clause that had become dead wood upon the renewal, as if to assert that on its offer to quit the lessor was bound to

accept? Why, again, did the lessee subsequently raise the bogey of consideration for the building when it had overlooked such enormous fact at

first flush? The acts and deed, more than the relationship between the parties to the suit or the proximity of their offices, may provide all the

answers.

54. The decree-holder''s stand is that there was no reason for it to question why the judgment-debtor wanted to surrender the lease. In the

absence of the judgment-debtor standing up to be counted among the appearing parties, no clear answer to the question is received. But it is

baffling that a lessee who had expended substantial money in raising a ten-storey building and earned sizable revenue therefrom would so

unequivocally and unconditionally issue a notice to quit as the one dated December 15, 1997. It was not a single-liner as a notice to quit may be. It

is particularly amazing that a lessee in the position of the judgment-debtor sought to base its notice to quit on a right that it cited under the original

deed of July 16, 1962. After the lessee''s and the lessor''s covenants were recorded in the deed, the third clause detailed the mutual obligations.

Sub-clause (e) of the third clause of the deed has to be read in the context of sub-clause (c) of the lessee''s covenants under the opening clause of

the document. The lessee was to erect and complete buildings at the demised premises within three years from the execution of the deed. Sub-

clause 3(e) gave the lessee an option to terminate the lease before the expiry of three years. The lessee''s right to so terminate the lease may

probably have been specifically reserved in the event the lessee was unable to construct any building at the said premises; the rationale being that if

the lessee could not construct and use the premises, it would not have been compelled to endure the burden of paying lease rent and discharging

other obligations for the remainder of the initial tenure. Though the relevant sub-clause misses a few words but the mistake is too apparent to

ignore. The words, ""nine hundred and sixty-two by"" had obviously and inadvertently been dropped from the expression ""at any time before the

expiry of 3 years from the second day of July one thousand six months'' notice in writing"". Such a term as the fifth sub-clause became an executed

part of the contract upon the expiry of- three years from July 2, 1962 and did not survive the renewal, notwithstanding the usual term in the lease

that the renewal was to be on the same terms. It was a laboured notice to quit that the lessee issued, trying to give it a vestige of reason but

completely opposed to common sense and betraying unbusiness-like conduct.

55. The lessor cannot be faulted for not looking the gift horse in the mouth in its letter of January 5, 1998, but it was expected for it to dawn upon

the lessee on receipt of the lessor''s letter of January 5, 1998 that it had committed a blunder, if its subsequent resistance is to he taken seriously.

The lessee stayed put despite receiving the letter of January 5, 1998, that put a seal on its notice to quit. The lessee woke up only after the

reminder of January 22, 1998 by the lessor but the mischief had by then been done; or viewed from another perspective, the mission had been

substantially accomplished. Then began the charade. The lessee demanded payment for the building; the lessor spurned the afterthought; the lessee

issued a single-sentence letter rescinding its notice to quit and the parties landed in court. It was as if the entire drama was played on a rewind, for

a single-sentence notice to quit would have sufficed and a little more by way of explanation was called for in the withdrawal of the notice. If the

entire exchange of letters was to be genuine, the parsimony should have been in the notice to quit and a little more generosity with words was

expected in its withdrawal.

56. The decree-holder may say that collusion between the lessor and the lessee may be proved but that would be irrelevant as the under-lessees

are required to establish a fraud on the under-lessees to get the benefit under the second limb of Section 115 of the said Act. There is method in

the apparent madness in the lessee''s conduct. Had it not acted thus it may have sullied the turf that had thoughtfully been laid for the suit to be

played out. There is a motive that can be discerned in the conduct of the lessee. The decree-holder may suggest that even if the lessor and the

lessee had colluded with each other, that may not amount to fraud on the under-lessees. But the second limb of Section 115 of the said Act

protects the under-lessees if forfeiture has been procured by the lessor in fraud of the under-lessees. The fraud that is referred to in Section 115,

takes in the entire genus and all species. A deliberate deception with the design of securing some unfair or undeserved benefit would amount to

fraud and even the most solemn proceedings may be vitiated if they are actuated by ill motive. It is an extrinsic collateral act that vitiates all. A

judgment by the highest legal authority, indeed, Article 141 of the Constitution is susceptible to the exception of fraud, for the courts would then

have been required to pronounce upon a lis without the ramification of the verdict thereon on a person not impleaded being known or being made

known to court.

57. If one can see impropriety in the suit brought or decided, on the part of the parties thereto, in it being recognized that it was launched for a

dishonest or sinister purpose, such act would amount to fraud on the person sought to be prejudiced in his absence. It is such fraud that the under-

lessees have been able to show, never mind their failure to link the parties to the suit by a common bond or to tie them by the common umbilical

cord of their identical address. The window under the second limb of Section 115 of the said Act opens up, but the under-lessees would pass

through only if the decree is seen to be in recognition of the lessor''s right to forfeit ""he lease.

58. The alternative case run by the decree-holder, that of the decree being upon a valid notice to quit may now be tested. Section 106 of the said

Act operates both for the lessor and the lessee and is subject to any contract or local law or usage to the contrary:

106. Duration of certain leases in absence of written contract or local usage.-(1) In the absence of a contract or local law or usage to the

contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on

the part of either lessor or lessee, by six months'' notice; and a lease of immovable property for any other purpose shall be deemed to be a lease

from month to month, terminable, on the part of either lessor or lessee, by fifteen days'' notice.

(2) Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (1) shall commence from

the date of receipt of notice.

(3) A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified

under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.

(4) Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who

is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such

tender or delivery is not practicable) affixed to a conspicuous part of the property.

59. Section 106(1) of the said Act has two variables, so to say: the duration of the lease and the period of the notice. The Madras High Court in

the Moosa Kutty case said that where there is no contract as to the notice, the provisions of the section would apply. The Supreme Court opinion

in the Ram Kumar judgment is that the section would determine the duration of the tenancy unless there was a contract to the contrary. The

expression ""contract or local law or usage to the contrary"" operates both on the tenure of the lease and on the period of the notice to terminate the

lease. Since the present case does not involve the lease of an immovable property for agricultural or manufacturing purpose, the relevant words of

Section 106(1) of the said Act for the present purpose are:

In the absence of a contract or local law or usage to the contrary, a lease of immovable property shall be deemed to be a lease from year to year,

terminable, on the part of either lessor or lessee, by fifteen days'' notice.

60. If the said expression operates both on the duration of the lease and on the period of the notice, in its expanded form the relevant portion of the

sub-section could be worded as follows :

In the absence of a contract or local law or usage to the contrary, a lease of immovable property shall be deemed to be a lease from-month to

month and in the absence, of a contract or local law or usage to the contrary, such lease shall be deemed to be terminable, on the part of either

lessor or lessee, by fifteen days'' notice.

61. That appears to be the true purport of Section 106(1) of the said Act as there may be a contract (or local law or usage) governing the lease

other than as provided under that provision; and, equally, there could be a contract (or local law or usage) governing the period of the notice of

termination other than as provided in the said provision. If the contract as to the duration of the lease or the contract as to the period of the notice

is at variance with what Section 106(1) of the said Act provides, a notice to quit in terms of Section 106(1) of the Act would not be a valid notice

for the validity of the notice is subject to the contract as to the duration of the lease and subject to the contract as to the period of the notice. A and

B may agree as to the duration of the lease and a notice to quit by either during the currency of the tenure would be invalid unless acquiesced in or

accepted by the other upon waiver of the benefit conferred by the contract. Similarly, A and B may agree as to the period (or a complete waiver)

of the notice to terminate the lease and a notice in derogation of the contract would be invalid unless acquiesced in or accepted by the other upon

waiver of the benefit conferred by the contract. There is no embargo on there being a contract for lease of an immovable property other than as

seen u/s 106(1) of the said Act, nor would there be any bar for the parties to a lease providing for a period (or dispensing with) the notice to

terminate recognized in the said provision.

62. In the present case, the notice of December 15, 1997 issued by the lessee or any of the subsequent notices issued by the lessor may have been

viewed as a notice to quit within the meaning of Section 106(1) of the said Act. If Section 106(1) of the Act is subject to a contract to the contrary

between the parties, it is also subject to the waiver of the contract to the contrary. Once it is seen that the validity of the notice to quit is open to

question only by the notice, the alternative case run by the decree-holder appears to be a red herring.

63. Thence to the impact of a notice to quit by a lessor which is not protested by the lessee or a notice to quit by a lessee which is gleefully

accepted by a lessor in the position of this decree-holder. It would be oppressive to suggest that if the validity of a notice to quit received by a

lessee is not questioned, it would remain valid and bind persons claiming under the lessee. It would be equally harsh to accept that a notice given

by a lessee in complete disregard of the rights conferred by the lessee to the under-lessees, would wish away the under-lessees'' rights in its wake.

Hence the rights of the under-lessees.

64. The spirit of the second paragraph of Section 115 of the said Act is that a forfeiture of the lease by the lessee would not impact the under-

lessees if the forfeiture was due to no fault of the under-lessees and the forfeiture operates harshly on the under-lessees. It is then that the under-

lessees can remove the lessee from the transaction and claim directly under the lessor if the forfeiture is procured by the lessor in fraud of the

under-lessees. Forfeiture is an act of default as it stands out from the other limbs of Section 111 of the said Act:

111. Determination of lease.-A lease of immovable property determines -

(a) by efflux of the time limited thereby:

(b) where such time is limited conditionally on the happening of some event - by the happening of such event:

(c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event -

by the happening of such event:

(d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right:

(e) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them :

(f) by implied surrender:

(g) by forfeiture; that it to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter;

or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is

adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or

his transferee gives notice in writing to the lessee of his intention to determine the lease :

(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

65. If a notice to quit is given by either the lessor or the lessee to the other and such notice is not in derogation of the terms of the lease, the effect

of the notice and the decree that may be passed in a suit founded on such notice would reign over the rights of all who claim under either the lessee

or the lessor. But if the notice is contrary to the tenor of the contract, it will not bind any person claiming under the noticee or under the party that

issues the notice unless such person is a party to the suit. This is the key to the present matter, notwithstanding the complex web that has been spun

around. If a lessee takes a lease for a certain duration and creates sub-leases which do not run against the grant obtained by the lessee in its lease,

the sub-lessees cannot be bound by a notice to quit issued either by the lessee or upon the lessee if such notice is at variance with the terms of the

principal lease. It would run against all cannons of justice, equity and good conscience to hold otherwise. If a person enters upon an immovable

property as a sub-lessee, he is required to inform himself of the extent of his lessor"s right. He cannot obtain a sub-lease that exceeds the period of

the grant that his lessor has. But if he takes under a sub-lease for a duration covered by the grant unto his lessor, his lessor"s waiver of the rights

under the superior lease in issuing or receiving a notice to quit or in forfeiting the superior lease, would leave the sub-lessee unaffected and the sub-

lessee will have a right to the leased property directly under the lessor unless he is a party to the decree for eviction. The sub-lessee need not cite

or establish any fraud in such case to retain possession.

66. There is no doubt that it is the under-lessees who must aver and prove the fraud in the pure case of forfeiture to avoid its disagreeable effect on

them, but despite the onus to do so being on the under-lessees, in the state of the evidence, the burden may shift. It is best that the wording of

Section 115 be first noticed:

115. Effect of surrender and forfeiture on under-leases. The surrender, express or implied, of a lease of immoveable property does not prejudice

an under-lease of the property or any part thereof previously granted by the lessee, on terms and conditions substantially the same (except as

regards the amount of rent) as those of the original lease; but, unless the surrender is made for the purpose of obtaining a new lease, the rent

payable by, and the contracts binding on, the under-lessee shall be respectively payable to and enforceable by the lessor.

The forfeiture of such a lease annuls all such under-leases, except where such forfeiture has been procured by the lessor in fraud of the under-

lessees, or relief against the forfeiture is granted u/s 114.

67. The under-lessees in the present case entered upon possession of parts of the building on their understanding as to the long tenure of the lease

that their lessor had obtained from the decree-holder. It is to be appreciated that the decree was passed on admission found in a document issued

by the judgment-debtor. The judgment-debtor could admit, and give up or waive, only its rights under the lease and could not speak for the under-

lessees or give up the under-lessees'' rights by its admission, for it was not the judgment-debtor''s any more to concede as the judgment-debtor

had granted rights, permissible under its lease with the decree-holder, to the under-lessees.

68. There was no forfeiture of the lease as the decree-holder suggests, and even if there was forfeiture, it was procured in fraud of the under-

lessees. The decree was based on admission pursuant to a notice to quit given by the judgment-debtor which was followed up by notices to quit

being issued by the decree-holder. But any action founded on a notice in each case could yield only such of the rights that the lessee had and not

any of the rights that was not the lessee''s to give to the lessor upon the lessee having conferred them on the under-lessees.

69. The effect is that the unamended decree is not executable against the under-lessees and it is declared as such. The decree-holder may obtain

execution under Order XXI Rule 36 of the Code by beat of drum, or even an orchestra or band-parry if the rules as to noise pollution permit, but

such execution will leave the under-lessees unaffected save the temporary commotion. The decree-holder will pay 1000 GMs to each of the

under-lessees that have filed any affidavit or application to resist the execution. Andhra Bank may proceed to launch independent proceedings if it

chooses but its indignation here is left to be assuaged by the token award of costs.

70. G.A No. 1046 of 2007 and G. A. No. 2861 of 2007 are disposed of as above. Urgent certified photostat copies of this judgment, if applied

for, be supplied to the parties upon compliance with all requisite formalities.

Later:

The decree-holder prays for a stay of operation of the order which is declined.