

(1981) 08 BOM CK 0053

Bombay High Court

Case No: Spl. Civil Appln, No. 3391 of 1975

Radhabai Bapurao Shelar and
Others

APPELLANT

Vs

Trimbak Madhavrao Shirole and
Others

RESPONDENT

Date of Decision: Aug. 5, 1981

Acts Referred:

- Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 - Section 13(1), 5(3)
- Transfer of Property Act, 1882 - Section 109

Citation: AIR 1983 Bom 303 : (1981) 83 BOMLR 612

Hon'ble Judges: Pendse, J; Kanade, J

Bench: Division Bench

Advocate: Ajit P. Shah, for the Appellant; M.S. Nargolkar and D.M. Nargolkar, for the Respondent

Judgement

Pendse, J.

This petition filed under Article 227 of the Constitution of India raises an interesting question as to whether successor-in-title of lessor can institute proceedings u/s 13(1)(a) and (b), of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the "Act") against lessee for the breaches committed prior to the date of accrual of interest. The petition has been referred to the Division Bench by Shri Justice Desai by reasoned order dt. July 22, 1980 as it was felt that the decision of the single Judge in the case of Shantinath S. Ghongade Vs. Rajmal Uttamchand Gugale, requires reconsideration. It was felt that the propositions enunciated in that case were framed in language much wider than was necessary by the facts of the case.

2-3. To appreciate the question involved in the petition, it is necessary to set out the relevant facts. The property in dispute consists of five rooms in addition to a

bath-room in House No. 1178/1, Shivaji Nagar, Poona. The suit property originally belonged to one Anandrao Shirole, the uncle of the present respondents Nos. 1 and 2. The property was leased in favour of the predecessors of the petitioners, Radhabai in the year 1962 at an agreed rent of Rs. 30/- per month in addition to education cess. Anandrao Shirole died on November 5, 1965 leaving behind a Will under which the suit property was bequeathed to respondents Nos. 1 and 2. The respondents Nos. 1 and 2 obtained the probate and thereafter terminated the tenancy of the lessee by notice dated January 8, 1966. The respondents claimed that the tenant had committed defaults in payment of rent and is also guilty of erecting a permanent structure without the prior consent of the landlord. The respondents also claimed that the tenant was guilty of damaging the property and the conduct of the tenant caused nuisance to the adjoining occupiers. The tenant on receipt of notice instituted Miscellaneous Application No. 102 of 1966 in the Court of the Small Causes at Poona for determination of the standard rent as provided by Section 11(3) of the Act. The respondents Nos. 1 and 2 filed Regular Civil Suit No. 3034 of 1969 in the Court of Small Causes at Poona on October 9, 1969 for recovery of possession . Several grounds like default in payment of rent, change of user, erection of permanent structure, nuisance and trespass were set out in the plaint in support of the claim for recovery of possession. The trial Court, after recording evidence, came to the conclusion that the respondents are entitled to a decree for possession as the requirements of the provisions of Section 13(1)(b) and (c) of the Act were proved. The trial Court found that the tenant had removed the roof of one room and had raised the height of the wall by using bricks with lime and mortar. The trial Court noticed that the tenant had erected a fresh roof, constructed the steps and has done regular flooring. The room so constructed was used by the tenant for the purpose of his residence and such construction was clearly a permanent structure, erected without the landlord's permission. The trial Court also found that the tenant was guilty of conduct which is a nuisance or annoyance to the adjoining occupiers. The other grounds set out by the landlord under Sections 12 and 13 of the Act were held not proved. The tenant carried and appeal before the District Court, Poona, but the learned Extra Assistant Judge, by his judgment dt. October 10, 1975, dismissed the appeal. The lower appellate Court concurred with the finding of the trial Court that the landlords have established the requirements of Section 13(1)(b)(c) of the Act and also held that the landlords are entitled to a decree under the provisions of Section 13(1)(a) of the Act as the tenant has committed an act contrary to the provisions of Clause (Court) of Section 108 of the Transfer of Property Act. The original tenant having died during the pendency of the appeal before the District Court, the legal representatives have filed this petition to challenge the decree of eviction.

4. As the entire petition is referred to the Division Bench, it is necessary first to consider the contention of the petitioners that the decree of eviction under S. 13(1)(a) and (b) of the Act is not in accordance with evidence on record. S. 13(1)(b) of

the Act provides with notwithstanding anything contained in the Act, a landlord shall be entitled to recover possession of the premises if the Court is satisfied that the tenant has, without landlord's consent given in writing, erected on the premises any permanent structure. Both the Courts below have concurrently found that the tenant had erected a permanent structure without the prior consent of the landlord and that being a finding based on appreciation of evidence cannot be disturbed in exercise of the writ jurisdiction. Apart from this consideration, we find that there is ample material on record to hold that the tenant had constructed a permanent structure. As mentioned hereinabove, the tenant had removed the roof and had erected the walls built in bricks with lime and mortar and a fresh roof was constructed and steps were provided for approaching the room. The Commissioner appointed by the trial Court found that the newly constructed structure was not merely a loft as claimed by the tenant but was a room used for the purpose of residence. The two courts below also recorded a finding, based on appreciation of evidence, that the consent of the appellants was never obtained prior to the erection of the structure. On the other hand, the evidence unmistakably indicates that Anandrao had protested against the construction and had threatened to commence proceedings but was unable to do so because of the illness which confined him to the hospital for a period of three to four months prior to his death. In our judgment, the conclusion recorded by the two Courts below is in accordance with evidence on record and requires no interference.

5. The finding recorded by the lower appellate Court that landlords are entitled to recover possession under the provisions of Section 13(1)(a) of the Act also deserves acceptance. Section 13(1)(b) of the Act enables the landlord to recover possession if the tenant has committed any act contrary to the provisions of clause (o) of Section 108 of the T. P. Act. Section 108(o) of the T. P. Act provides that the lessee must use the property as a person of ordinary prudence would use, if it were his own and shall not commit any act which is destructive or permanently injurious thereto. The learned Extra Assistant Judge has found that the tin roof was removed by the tenant and the walls were raised and new tin roof was erected and a regular room was built for being used as a separate residence. The appellate Court noticed that the act of the tenant required demolition of the portion of the original structure and as the roof was pulled down, it did affect the structure injuriously. In our judgment, the conclusion recorded by the lower appellate Court is in accordance with evidence on record and is fully justified. The submission of the petitioners that erection of the structure has caused no destruction or permanent injury to the building is without any substance and cannot be entertained in the face of evidence on record. In our judgment, the conclusion recorded by the lower appellate Court that the facts of the case attract the provisions of Section 13(1)(b) of the Act is correct and requires no interference.

6. That takes us to the main question which arises for determination in the petition. The petitioners claim that in spite of the finding recorded by the lower appellate

Court, no decree of eviction could have been passed, because the breaches were committed by the tenant while Anandrao Shirole was the landlord and not the present respondents. The submission is that the person who is a landlord on the date of the breach only can recover possession u/s 13(1) of the Act and that right is not available to his successor-in-interest. The successor-in-interest can acquire title to the property either by operation of law or by act of parties. The transfers effected by the landlord during his lifetime like sale, mortgage or a gift would confer the rights on the transferee as provided by the provisions of the T. P. Act, while the interest can be acquired by the successor, by operation of law, if the landlord dies intestate or by leaving behind a will. The submission advanced by the petitioners is that in case the person who was the landlord on the date of commission of the breach takes no proceedings u/s 13(1) of the Act, it is not permissible for the successor to recover possession on the strength of those breaches. In support of this submission, reliance is placed on the decision of the single Judge of this Court in the case of [Shantinath S. Ghongade Vs. Rajmal Uttamchand Gugale,](#). In the case before the learned single Judge, the interest in the leasehold property was transferred by the lessor during his lifetime under a registered sale deed. The learned single Judge did not consider the question about the rights of the successor-in-interest on whom the property stands devolved by operation of law but as the question is interlinked, we propose to answer the larger question argued at the Bar.

7. Before advertiring to the decision of the learned single Judge and some other decisions cited during the hearing, it is necessary to take a brief resume" of the relevant provisions of the Act. The Act was enacted to amend and consolidate the law relating to the control of rents and repairs of certain premises and the intention of the Legislature was to confer protection upon the tenants from being evicted at the sweet will of the landlord. Though the Act confers protection on the tenant, it requires the tenant, to observe and perform certain obligations. Section 12 of the Act requires the tenant to pay the amount of the standard rent and permitted increases and observe and perform the other conditions of the tenancy. Section 12 of the Act also prohibits the landlord from claiming recovery of possession as long as the tenant is ready and willing to pay the rent. Section 13 of Act sets out several grounds under which the landlord can recover possession. The expression "landlord" is defined u/s 5(3) of the Act and it reads as under.

" "landlord" means any person who is for the time being, receiving, or entitled to receive rent in respect of any premises whether on his own account or on account, or on behalf, or for the benefit of any other person or as a trustee guardian, or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant; and includes any person not being a tenant who from time to time derives title under a landlord; and further includes in respect of his sub-tenant, a tenant who has sublet any premises; and also includes in respect of a licensee deemed to be a tenant by Section 15A, the

licenser who has given such licence."

The expression can be conveniently divided into three parts. The first part refers to any person who is entitled to receive rent in respect of any premises. The second part includes any person not being a tenant who from time to time derives title under a landlord, while the third part makes provision in respect of the relation between a tenant and sub-tenant. The expression "landlord" clearly provides that the person who secures derivative title is landlord for the purpose of this Act. In other words, successor-in-interest or the transferee of a title from the landlord is the landlord for all purposes.

8. It would be convenient in this connection to make a reference to the expression "tenant" defined u/s 5(11) of the Act. Though it is permissible for the lessor to transfer his interest during his lifetime, it is not so in the case of a tenant except in some circumstances, but the expression "tenant" under the Act covers the legal representatives of the tenant who succeed to the leasehold right on the death of the tenant. The Act had clearly contemplated succession of the leasehold rights, both by operation of law and by act of parties. The person who succeeds to the leasehold estate either by operation of law or by act of parties, holds such estate subject to all the rights and liabilities. Section 109 of the Transfer of Property Act provides for the rights of lessor's transferee and which inter alia provides that if the lessor transfers the property leased, the transferee, in the absence of a contract to the contrary, shall possess all the rights and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property transferred. The Section makes it clear that the transfers effected by the lessor would put the transferee in the shoes of the lessor and such transferee would be entitled to exercise all the rights which the transferor lessor had unless there is contract to the contrary. The proviso to Section 109 of the Act lays down that the transferee is not entitled to arrears of rent due before the transfer unless the contract otherwise provides. It is clear that all the rights possessed by the transferor-lessor in respect of the property stand transferred to the transferee in view of the provisions of Section 109 of the T. P. Act. The case in respect of transfer by operation of law stands on a better footing. It is well-settled that all the interest in the property devolves upon the successor in interest who is entitled to succeed to the estate by operation of law. In the present case, the respondents No. 1 and 2 are successors under the will executed by the original landlord and it is not in dispute that the respondents have obtained the probate as required by the provisions of the Succession Act. S. 211 onwards in Part VIII of the Succession Act refers to the representatives title to the property of the deceased on succession and it is well-settled that though vesting of the title in the property of the deceased takes place on grant of probate, it relates back to the time of the testator's death. It can hardly be debated that on the grant of the probate in favour of the respondents, the title of the original landlord devolves upon the respondents. It is clear from the provisions of the T. P. Act and other laws relating to that succession of the estate of the deceased that the person who derives title from the

owner becomes landlord as contemplated under S. 5(3) of the Act.

9. It was urged that though the title to the properties stand transferred either by act of parties or by operation of law, still the right to recover precession under S. 13(1) of the Act cannot devolve upon the transferee because it is a mere right to sue. It is urged that under S. 6(e) of the T. P. Act, there is a prohibition to transfer a mere right to sue. The submission proceeds on a total misconception of the true position of law. On execution of contract of lease, the lessor acquires rights some of which are personal in nature, while the remaining would go with the property or attach to the property. A right of re-entry is on the breach committed by the lessee is the right which goes along with the property and is not a personal right conferred upon the lessor who enters into a contract. The rights which are attached to the property stand transferred when the title to the property is acquired by the transferee. The rights to recover possession conferred under S. 13(1)(a) and (b) of the Act are rights arising out of the breaches committed by the tenant in respect of the property and such right must go with the property itself. The right to recover possession is not a personal right and it is not restricted only to the person who has executed the lease but can be enjoyed by every successor-in-interest. In case a restrictive meaning as suggested by the petitioners is given to the expression "landlord", it would lead to very curious results. A tenant commits a breach and the landlord transfers the property on the next day by execution of document of sale, and if the contention is to be upheld then it would lead to the situation that the transferee cannot file any action for breach committed by the tenant. In another instance, if landlord dies immediately after a commission of breach by the tenant, the successor of the landlord would not be entitled to recover possession because he was not a landlord at the time when the breach was committed. Surely, the Legislature could have never intended to create such anomalous situation. On the other hand, it is clear from the definition of the expression "landlord" that the person who secures a derivative title is entitled to exercise all the rights of the original landlord. The acceptance of the submission of the petitioners would also lead to another anomaly. The tenant would commit the breach and before the landlord institutes the suit to recover possession, the tenant may unfortunately die and the remedy of the landlord against his successor would be defeated, by claiming that if right to recover is limited only to person who was landlord on the date of commission of breach, then it could be enforced only against person who was tenant on such date. It is obvious that such a situation would lead to absurdity. It is clear that the right to recover possession is not attached to an individual or is not a personal right but is a right which goes along with the estate. The submission that a mere right to sue for recovery of possession cannot be transferred and, therefore, expression "landlord" under S. 13(1) of the Act should be limited to the person who was the landlord on the date of the breach is without any substance. It is undoubtedly true that a mere right to sue cannot be transferred but if it is held that by a transfer of estate the right to recover possession is not transferred, then would it mean that a right to

recover possession still continues with the transferor? The answer must be in the negative because a landlord cannot transfer the property by execution of a sale deed but reserve to himself the right to recover possession from the tenant because of the breach committed prior to the date of the transfer. The vesting of title in the estate means vesting of absolute rights in the estate and would certainly include the right to recover possession, and the submission of the petitioners that though the title vested in the transferee, he is not entitled to recover possession from the lessee but that right still subsists in judgment, it is impossible to put such construction on the provisions of S. 13(1) of the Act because it is contrary to the well-settled principles of law.

10. In this connection, our attention was invited to the decision of the Court of Appeal in the case of *Robinson v. Gray* reported in (1963) 1 All Ers 781. In that case, a lease of certain land and the factory thereon, contained covenants by the lessee to keep the premises in repair, was executed on Dec. 5, 1895. The lessee sublet the premises on Sept. 29, 1944 and covenanted in the sub-lease with the sub-lease to perform the covenants in the lease. In Dec. 1944, the factory was destroyed by fire and it could not be re-built owing to wartime restrictions. The premises were insured as per the covenant of the lease and the insurance monies were duly paid into the joint name of the lessor and lessee. In the year 1951, the lessors served notice on the lessee's executors alleging breaches of the covenants. The executors of the lessee did not repair or reinstate the premises as required by the covenant. In July 1954, the lessor and the subleases claimed damages from lessee's estate for breaches of covenants. On Sept. 4, 1955, a compulsory purchase order for the premises was made for the acquisition of the property by the local authority. The question which arose for the decision of the appeal Court was whether the lessor was entitled to damages for breaches, before the assignment, of the covenants to repair and reinstate. The question arose because it was claimed on behalf of the lessee that as the property stands transferred to the local authority on acquisition, it is not permissible for the lessor to recover the damages in respect of breaches prior to the date of transfer. The appeal was heard by Bench of three Judges consisting of Lord Denning, the Master of Rolls and Mr. Justices Upjohn and Diplock. The Judges unanimously held that on the assignment of the reversion, the benefit of the covenants passes to the assignee and the original lessor lost his remedy against lessee in respect of prior breaches of the covenants. Lord Denning in his judgment observed that the important question which arises in the matter was when a lessor assigns his reversion to the purchaser, does he still retain the right to sue the lessee for breaches of covenants that occurred before the assignment? The Master of Rolls, after considering the various authorities of the English Court and observations made by the recognised writers observed as follows:---
"Which of these conflicting views is right? Let maintenance take the covenant to keep in repair. The premises fall out of repair during the assignor's time and remain unprepared during the assignee's time. A year or so later the lease comes to an end

and the premises are delivered up still out of repair. The assignee can clearly sue the lessee for dilapidation and he will recover the cost of making them good: for that is, in the ordinary way, the amount by which the value of the reversion is diminished. No distinction is ever drawn between those dilapidations that occurred before the assignment and those that occurred after the assignment. The assignee reoccurs for the whole of them. Such is the law and it has been so applied in numberless cases to my knowledge. I ask myself: can the assignor in those circumstances afterwards sue the lessee for the breach that occurred, before the assignment, of the covenant to keep in repair? Clearly no; for that would mean that the lessee would be made liable twice over. I have taken that case when the assignee sues first. But suppose the assignor sues first. Can that make any difference? Surely not. The rights of the parties cannot depend on which of the two is first in time in issuing a writ. It would, of course, be different if the assignor, before the assignment, had recovered damages from the lessee for the breach. That would go in mitigation of the damages which the assignee could recover from the lessee, but would not otherwise affect his claim."

The conclusion recorded by Lord Denning thereafter is that as matter of principle after the assignor assigns his reversion, he cannot thereafter sue the lessee on the covenants to repair or reinstate but only the assignee can do so. The conclusion of Lord Denning though based on the construction of Law of Property Act, 1925 as amended by Conveyancing Act, is applicable with equal force to the law in this country regarding the transfer of interest. In our judgment, it is clear that on transfer of estate whether by act of parties or by operation of law, the right to recover possession under S. 13(1) of the Act can such transfer the right to recover possession would not be retained with the transferor, nor would it stand extinguished.

11. We may, at this stage, make a reference to the decision in the case of Vishveshvar Vighneshvar Shastri Vs. Mahableshvar Subba Bhatta, In that the lessee was not to alienate the property leased, but the lessee committed a breach of the condition by sale of his rights under the lease in the year 1908. In the year 1911, the plaintiff purchased the landlord's rights from the lessor who had not given the lessee notice of his intention to enforce the forfeiture before the transfer. The plaintiff having sued to recover possession of the property on breach of the condition, the transferee of the lessee's right contended that the plaintiff could not take advantage of the breach of condition incurred before the assignment in his favour. Shri Justice Shah who delivered the judgment in Second Appeal held that in the absence of a contract to the contrary, the transferee under S. 109 of the T. P. Act possesses all the rights of the lessor. It was further held that what is transferred is not a right of re-entry but whole of the landlord's interest in the land and, therefore, the plaintiff is entitled to enforce the forfeiture. The transferee of the lessee's right carried appeal under the Letters Patent and it was heard by the Division Bench of Justice Beaman and Justice Heaton. Justice Beaman held that what was transferred

was a reversion primarily but what is assigned is only the right to sue for damages as regards the right to enforce the clause of forfeiture. Justice Beaman held that the transferor could assign the reversion but he could not transfer the right recover possession on the ground of breach of condition on the part of the lessee. Justice Beaman, after making these observations, proceeded to dismiss the appeal on the ground that since the law of England has been altered, there is no reason why the administration of the law in India should not be made as systematic as possible by bringing on par with modification of principles in England. Justice Heaton delivering a separate judgment, disagreed with the observations of Justice Beaman and held that there was nothing illegal if the right to sue for the breach committed prior to the date of transfer passes to the transferee. Justice Heaton observed that though Justice Beaman is disposed to think otherwise, the transfer in the case is one which is exactly covered by the words under S. 109 of the T. P. Act. With respect to Justice Beaman, it is not possible to uphold the observation made by the learned Judge. In our judgment, Justice Shah and Justice Heaton have laid down the correct law and we are in respectful agreement with it.

12. We will not proceed to consider the judgment delivered by the learned single Judge in Shantinath S. Ghongade Vs. Rajmal Uttamchand Gugale, in that case, the premises were let out on March 4, 1966 and the tenant executed a rent note in favour of the original owner Sonabai. Sonabai executed an agreement of sale in favour of the plaintiff on Feb. 2, 1966. The sale deed was obtained five years thereafter on Jan. 20, 1971 and was registered on April 16, 1971. The plaintiff thereafter terminated the tenancy by a notice dated May 24, 1971. The notice sets out various grounds for claiming back possession of the leased premises. The grounds were that the tenant had started using the premises for shop when it was let for the purpose of residence: that the tenant had closed the doors and windows unauthorisedly and has made alterations of permanent nature. The suit for recovery of possession was resisted by the tenant, inter alia, claiming that the tenant was not guilty of change of user as the lease was a composite, lease both for the purpose of residence and business. It was also claimed that the original landlady had waived the breach, if any, as no action was taken for a considerable long period. the ground of alteration of permanent nature was denied. The trial Court and the lower appellate Court passed a decree for eviction against the tenant on both the grounds and the tenant filed the petition under Art. 227 if the Constitution in this Court. The learned single Judge turned down the contention of tenant that the grounds claimed by the landlord were not established and the findings of the two Courts below were unheld. The learned Judge then proceeded to consider the question whether the plaintiff who obtained the title to the property on Jan. 20, 1971 could validly claim possession on the ground that prior to the purchase the defendant had committed certain defaults. According to the learned Judge, the question has to be decided on the plain construction of the provisions of S. 13(1)(a) and (b) read with S. 5(3) of the Act. The learned Judge, after setting out the relevant provisions of the

Act, held that the breaches contemplated by cl. (a) and (b) of S. 13(1) of the Act are those committed by the tenants during the subsistence of the tenancy qua the landlord who wants to invoke the provisions of clause (a) or clause (b) of S. 13(1) of the Act and on the strength of that finding. the decree passed by the two courts below was reversed. To arrive at this conclusion, the learned judge has given three or four reasons in para 12 of the judgment. The first reason suggested by the learned Jurisdiction is that the word "landlord" under S. 5(3) of the Act is not framed as an inclusive definition so as to include the successor-in-interest of a landlord, but on the other hand, the definition uses the word "for the time being". With utmost respect to the learned Judge, it is not possible to accept this reasoning. The expression "landlord" under S. 5(3) of the Act is not restricted to a person who can recover the rent for the time derives the title under a landlord. with respect to the learned Judge, the definition is inclusive definition so as to include successor-in-interest of the landlord. The learned Judge further observes that if the definition of the landlord and tenant is read properly, it is clear that the breaches which are contemplated must be breaches qua a tenant of that landlord who claims to exercise right. It is not possible to accept the said construction on the expression "landlord" and "tenant" contained in S. 5(3) and S. 5(11) of the Act respectively. With utmost respect to the learned Judge, his attention was not invited to the relevant words in S. 5(3) of the Act which reads as under: "and includes any person not being a tenant who from time to time derives title under the landlord".

The second reason given by the learned Judge is that a landlord may not proceed on a cause of action founded on cl. (a) and (b) of S. 13(1) of the Act for a considerable period of time and in such cases the legislature could have never intended that the cause of action arising out of the breach could ensure for the benefit of the purchaser. From the observations of the learned Judge. it is obvious that the learned Judge had in mind the cases where, though a breach is committed by the lessee, the lessor waives it specifically or by implication. In case, the right accrued because of the breach by the lessee is waived by the original landlord, then such right did not vest in the transferor on the date of the transfer and consequently it could not be passed over to the transferee. The rights which a person can validly transfer are those which are subsisting in the transferor at the time of the transfer. If the original landlord has waived the right to recover possession, then surely the purchaser would not get that right because it was not available to his transferor. It is not possible to conclude that because in some cases the original landlord may waive his right, therefore in all cases, even though the right was never waived, the transferee would not be entitled to recover possession under S. 13(1) of the Act. The third ground assigned by the learned Judge is that the purchaser purchased the property in that case with open eyes and with full knowledge that the door and windows were closed long back and therefore, clause (b) of S. 13(1) of the Act could not be so construed as to confer a right upon the purchaser to recover possession on the ground of breach committed long before. With utmost deference to the learned

Judge, the reason suggested is coupled with the earlier ground of waiver and was restricted to the facts of the particular case before the learned Judge. It is obvious that the learned Judge did not rely upon this ground to lay down a principle of law binding in all cases. The last reason which appealed to the learned Judge was that the right to sue which was a statutory right of a vendor, though not exercised, could not be transferred. We have already observed possession for the breach committed in respect of the property is not the right which is a personal right but a right which goes with the property and as such the transferee is entitled to exercise that right. In our judgment, it is not possible to uphold the conclusion that the successor-in-title of a landlord is not entitled to institute the proceedings for re-breaches committed by the tenant prior to the date of transfer. In our judgment, the cause of action is not limited to the person who was a landlord on the date of the breach but it is available to the successor-in-interest of such landlord also. We wish to make it clear that in case it is found that the original landlord has waived the right, then the question of transferee exercising the right would not arise. With respect to the learned Judge, we are not inclined to accept the conclusion recorded in Shantinath's case and we overrule the same.

13. Reliance was placed on behalf of the petitioners on a decision of the single Judge in the case of Narendra Singh Virdi v. N. N. Engineer reported in 1979 Mah LJ 851 where the learned Judge approved the view in Sshantinath's case to which we have referred to in the earlier paragraph. In this case, the property was owned by plaintiff and his wife Banoobai and was leased on a monthly rent of Rs. 130/- Banoobai died on Oct. 3, 1966 and the plaintiff terminated the tenancy on May 2, 1967, in his capacity of co-owner as well as the legal representative of deceased Banoobai, together with other legal representatives. The notice was one under S. 12(2) of the Act calling upon the tenant to pay the arrears of rent. The tenant did not pay the arrears within one month of the receipt of the notice but prior to the institution of the suit by the plaintiff on June 8, 1967. the other heirs of the deceased Banoobai released their share in favour of the plaintiff. The plaintiff accordingly filed the suit for recovery of possession and joined the other legal representatives of Banoobai as part defendants. The trial Court and the lower Appellate Court passed decree for eviction against the tenant on the ground that the case clearly attracts the provisions of S. 12(3)(a) of the Act. The tenant approached this Court in its writ jurisdiction and the learned single Judge set aside the decree on the ground that since the date of release of share by the legal representative of Banoobai in favour of the plaintiff, the arrears due lost their identity as rent and no complaint could be made by the plaintiff that there were defaults in the payment of rent as required by notice dated May 2, 1967. According to the learned Judge, the rent due changes its character as rent and becomes only a debt or actionable claim after the property changes hands. The learned Judge further held that the purchaser cannot be considered as the landlord and the amount due to the original landlord which may be recoverable by the purchaser by virtue of assignment would not enable him to

claim recovery of possession. To record this conclusion, the learned Judge drew strong support from the decision of the Division Bench of the Gujarat High Court in the case *Khatri Kasam Sidi v. Dostmohmed Cham* reported in 1976 *Ren CJ* 562 abd the decision of the Calcutta High Court in the case of [Daya Debi Vs. Chapala Debi](#) . The learned Judge distinguished the judgment of the Division Bench of this Court in Special Civil Application No. 410 if 1963 decided on Sept. 18, 1964 on the ground that in the decision of the Division Bench, there was no discussion whatsoever as to whether the rent due prior to the date of transfer continue to retain its character as rent even after the transfer and whether the transferee could avail of the arrears of rent due prior to the transfer as a ground for evicting the tenant. The learned single Judge then placed reliance upon the decision in *Shantinath*"s case and drew support from the observation that the legislature never intended that in cases where a cause of action which was never taken advantage of by the earlier landlord, should ensure for the benefit of the purchaser and the purchaser should be able to base an action for ejectment on the basis of the alleged violation of the provisions of the Act. With respect to the learned Judge, we are unable to share the view propounded in this case. There are two or three reasons which weighed with us while differing with the view of the is that the decision of the Division Bench of the Gujarat High Court from which strong support was drawn by the learned Judge stands overruled by the Full Bench decision of the Gujarat High Court in the case of *Champaklal Dahyabhai Natali v. Saraswatiben* reported in *AIR 1977 Guj 48*. The Full Bench specifically overruled the earlier decision of the Division Bench and so also disapproved the decision of the Calcutta High Court reported in *Daya Debi*"s case on which the single Judge of this Court placed reliance. Shri Justice D. A. Desai, as he then was, presiding over the Full Bench observed that when the lessor transfers the entire interest in the property including the arrears of rent due prior to the transfer, the assignee also obtains the right to such arrears of rent it being a right relating to property. On such a transfer what vests in the transferee is all the rights of the lessor relating to the property transferred and this includes the right in respect of arrears of rent due prior to the transfer. The learned Judge further observed that the substantive part of Section 109 of the Transfer of Property Act read with the proviso necessarily indicates that arrears of rent due before a transfer is one of the lessor" s right as to the property transferred. Such a transferee observes the Full Bench, stands in the same position as an heir of the deceased lessor, as what is transferred to him is all rights of the lessor as to the transferred property. The question need not be looked from the point of character of the rent due prior to the transfer but must be viewed from the angle of the right to take possession of the property which arises because the tenant then remains in arrears of rent. Such right originally vested in the lessor and on Transfer of all his rights, the same vests in his transferee as per the provisions of Section 109 of the T. P. Act. The Full Bench observed that the decision reported in *Daya Debi*"s case did not take notice of a contrary view taken by the same High Court earlier and, in any event, the Full Bench was unable to accept the position of law laid down in *Daya Debi*"s case (supra). We have considered the

reasons given by the Full Bench in depth and we are in respectful agreement with the conclusion recorded by the Full Bench of the Gujarat High Court. In our judgment, the view taken by the learned single Judge of this Court in Narendra Singh Virdi's case is incorrect and we overrule the same.

14. The other reason which has led us to overrule the judgment of the single Judge is that the decision of the Calcutta High Court on which the single Judge relied was specifically disapproved by the Supreme Court in the judgment delivered in Spl. Leave petn. No. 2257 of 1977. Shri Justice Bhagwati who spoke for the Bench observed after making reference to the Calcutta decision:

"That decision (Calcutta) has taken the view that when a claim for arrears of rent is assigned by "A" to "B", it loses the character of a claim for rent as soon as it is assigned and it becomes merely an actionable claim. This view is, of course, not shared by most of the High Courts and even the Calcutta High Court itself in other decisions has not accepted this view. It does appear to maintenance that this view is not correct because it is different ceases to be such when it is assigned by the owner when he transfers his properties to another."

In view of the decision of the Supreme Court, the Calcutta view clearly stands overruled.

15. One more aspect of the matter is that the decision of the Full Bench of the Gujarat High Court and the judgment of the Supreme Court was considered by a single Judge in the judgment delivered on August 20, 1980 in Spl. Civil Applns. Nos. 2809 and 2811 of 1975.* The question which came up for consideration was whether the defaults committed by the tenants with regard to the previous landlord can be taken advantage of by the transferee-landlords and will ensure to the benefit of the transferee-landlords in order to get possession. the learned Judge considered the decision in Narendra Singh Virdi's case 1979 M LJ 851 and pointed out that it is no longer good law in view of the subsequent decisions. The learned Judge also made reference to the judgment in Shantinath S. Ghongade Vs. Rajmal Uttamchand Gugale, and distinguished it by observing that the breach or default committed by the tenant was not a continuing or repeated default, but a default committed once for all. the learned single Judge held that the right to recover possession which arises in a lessor is capable of devolution and transfer and is capable of being exercised by his legal representatives upon whom the interest of the lessor devolves. The learned Judge further observed that purely personal rights may not be capable of such devolution but where a covenant which arises out of the property and runs with the property, then it is capable of being exercised by a person acquiring the interest on devolution, whether by law or by deed. the view taken by the single Judge is in accordance with our view and with respect, we approve the judgment of the single Judge and hold that the contrary view taken in Narendra Singh Virdi's case is no longer a good law.

16. For the reasons stated hereinabove, the view taken in Shantinath's case by the learned single Judge is overruled and we hold that the right of recovery of possession under sub-secs. (a) and (b) of Section 13(1) of the Act can be exercised by the successor-in-interest either by operation of law or by act of parties, of the original landlord and such right is not restricted only to the person who was a landlord on the date of the commission of the breach. In the present case, the record clearly indicates that the breach was committed by the tenant by erecting permanent structure, a couple of months before the death of the original owner and the original owner was protesting against the said breach and was unable to institute proceedings because of the illness and confinement in the hospital. It is obvious that the original landlord had not waived his right to recover possession and as such the right did devolve upon his successor-in-interest and the respondents are perfectly entitled to claim recovery of possession on that count. On the findings recorded by the two Courts below and approved by us, the decree of eviction passed against the tenant requires to be upheld. As we are upholding the decree of eviction on this ground, it is not necessary to consider the claim of recovery of possession on the ground of nuisance, trespass and default in payment of rent. The lower Appellate Court has passed the decree on the ground of default. Though the arguments were advanced on behalf of the tenants and landlords in regard to those findings, it is not necessary for us to investigate the same as we are confirming the decree on the grounds covered by Section 13(1)(a) and (b) of the Act.

17. Accordingly, the petition fails and the rule is discharged with costs.

18. Rule discharged.