

DR. AMBICA PRASAD

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v.

MD. ALAM AND ANOTHER

(Civil Appeal No. 3391 of 2015)

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APRIL 08, 2015

[M. Y. EQBAL AND S. A. BOBDE, JJ.]

Assam Urban Areas Rent Control Act, 1972: s.2(c) – Eviction suit – Claim of plaintiff-appellant that he became owner of the tenanted property by virtue of exchange deeds executed by his brother who was the original owner – Dismissal of eviction suit on the ground that the appellant was not landlord of the suit property – Held: There was evidence to show that respondent-tenant on many occasions went to appellant to receive rent – Respondent was paying electricity and other charges of the tenanted premises to the appellant – The ownership of the appellant by virtue of exchange deed was neither denied nor disputed by respondent-tenant – Appellant entitled to evict the tenant – Transfer of Property Act, 1882 – s. 109 – Rent control and eviction.

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Transfer of Property Act, 1882: s.109 – Held: Transferee of the landlord's rights steps into the shoes of the landlord with all the rights and liabilities of the transferor landlord in respect of the subsisting tenancy – s.109 does not require that the transfer of the right of the landlord can take effect only if the tenant attorns to him – Attornment by the tenant is not necessary to confer validity of the transfer of landlord's right.

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Allowing the appeal, the Court

HELD: 1. The definition of 'landlord' under Section

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A **2(c) of the Assam Urban Areas Rent Control Act, 1972 is**
couched in a very wide language, according to which
not only the owner but also any person receiving rent,
whether on his own account or on behalf of or for the
benefit of any other person or as a trustee, guardian,
B or receiver for any other person, is also the landlord.
However, for the purpose of eviction of a tenant on the
ground of personal need or reasonable requirement, one
must show that he is the owner of the building. [Para
C 13 and 14] [102-G-H; 103-A]

*M.M. Quasim vs. Manohar Lal Sharma & Ors. AIR 1981
SC 113 – referred to.*

D **2. The finding of the High Court to the effect that**
there exists no relationship of landlord and tenant was
not in accordance with the true meaning of the term
'landlord'. On the contrary, the High Court proceeded
on the basis that the relationship of 'landlord and tenant'
E has not been established although the ownership of the
appellant by virtue of the deed of exchange has neither
been denied nor been disputed by the respondent-
tenant. Admittedly, the respondent-tenant was paying
electricity and other charges of the tenanted premises
F to the appellant. As per Section 109 of the Transfer of
Property Act, after the transfer of lessor's right in favour
of the transferee, the latter gets all rights and liabilities
of the lessor in respect of subsisting tenancy. The
Section does not insist that transfer will take effect only
G when the tenant attorns. It is well settled that a
transferee of the landlord's rights steps into the shoes
of the landlord with all the rights and liabilities of the
transferor landlord in respect of the subsisting tenancy.
The section does not require that the transfer of the right
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of the landlord can take effect only if the tenant attorns to him. Attornment by the tenant is not necessary to confer validity of the transfer of the landlord's rights. Since attornment by the tenant is not required, a notice under Section 106 in terms of the old terms of lease by the transferor landlord would be proper and so also the suit for ejection. [Paras 16 and 18] [105-E-H; 106-A, H; 107-A-C]

3. The respondent-tenant on many occasions approached the appellant, the transferee, owner and the landlord to receive the rent. Further, admittedly, the electricity charges of the tenanted premises were paid by the tenant to the present appellant. Non-consideration of subsequent tenancy agreement executed by the erstwhile owner namely the brother of the appellant will not come in the way of the appellant to seek eviction of the tenant on the ground of personal necessity as also on the ground of non-payment of rent. The approach of the High Court reversing the appellate court's finding cannot be sustained in law. [Para 19] [107-D-F]

Case Law Reference

AIR 1981 SC 113 referred to. Para 15

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 3391 of 2015

From the Judgment and Order dated 04.04.2014 of the Gauhati High Court at Guwahati, Assam in CRP No. 161 of 2013

Jaideep Gupta, Santosh Kumar for the Appellant.

A Arunabh Chowdhury, Karma Dorjee, Gainilung Panmei
(for Anupam Lal Das) for the Respondents.

The Judgment of the Court was delivered by

B **M. Y. EQBAL, J.** 1. Leave granted.

C 2. This appeal by special leave is directed against the
judgment and order dated 04.04.2014 of the Gauhati High
Court whereby the revision petition filed by the respondents
was allowed and the eviction suit filed by the appellant was
dismissed.

D 3. The litigation between the parties commenced when
the appellant filed an eviction suit against Abdul Karim, the
father of the respondents. The case of the appellant was that
he had become the owner of the suit property by virtue of two
exchange deeds executed on 23.04.1975 with his brother PW3
Ranjeet Prasad, the original owner. In 1968, before the
execution of the said exchange deed, PW3 Ranjeet Prasad
E was said to have let one of the rooms in the building in the suit
property to Rahim Baksh, the father of Abdul Karim and the
grandfather of the respondents. However, even after the
execution of the exchange deed, PW3 Ranjeet Prasad was
stated to have continued collecting rent from the tenants of the
F suit property including Rahim Baksh and on Rahim's death,
his son Abdul Karim till February, 2007 with the consent of the
appellant. In 2007, the appellant was stated to have taken over
the affairs of the suit property, mutated his name as the owner
and requested Abdul Karim to execute a fresh agreement with
G him. The appellant contended that Abdul Karim had not only
failed to execute a fresh agreement but also failed to pay the
rent except for the electricity bills. The appellant also cited
bonafide need of the suit property for the purpose of opening
H a medical clinic being a retired surgeon. The appellant hence

prayed for the eviction of Abdul Karim. A

4. Defendant Abdul Karim filed written statement denying all the allegations and alleged that PW3 Ranjeet Prasad had executed tenancy agreement dated 28.12.1968 in favour of Rahim Baksh and later on executed tenancy agreement dated 20.05.2006 in his favour. He denied being informed of the exchange deed dated 23.04.1975 and contended that Ranjeet Prasad was his landlord and not the appellant. The defendant Abdul Karim alleged that since they refused to accept the rent from him from March, 2007 onwards, the defendant deposited the rent in court. The defendant prayed for the dismissal of the suit. B C

5. The trial court noted that PW3 Ranjeet Prasad had represented himself to be the landlord in the agreement dated 20.05.2006 and in the rent receipts and also filed a suit for eviction against one of the tenants in the suit property in the capacity of a landlord. PW3 was noted to have never stated being the representative of the appellant or there being a property exchange. Even if it was assumed that he had received the electricity charges, the appellant was held to have failed to prove himself as the landlord as the appellant had not produced any evidence of having received rent from any of tenants. The mutation entry in his name was held to be not proof of title in the suit property. Considering the deposition of Abdul Karim as DW1, wherein he stated that the appellant had refused to accept the rent from him, the trial court held that the appellant had waived his right to be called a landlord. The trial court held that PW3 Ranjeet Prasad was the landlord of the suit property under section 2(c) of the Assam Urban Areas Rent Control Act, 1972 (in short, "Rent Act"). The trial court dismissed the suit, rejecting plaintiff-appellant's contention that Abdul Karim had defaulted in the payment of rent and that he needed the D E F G

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A suit property for bonafide use on the grounds that the appellant was not the landlord of the suit property and Abdul Karim had been admittedly depositing the rent in the court.

6. Aggrieved by the decision of the trial court, the appellant preferred an appeal before the District Court. The appellate court noted that the ownership of the suit property has been proved in the light of the exchange deed, which remained unchallenged by the defendant and supported by PW3 Ranjeet Prasad. The appellate court further noted that the plaintiff served notice requesting Abdul Karim to attorn the appellant as the landlord and pay the rent to him. The appellate court, therefore, held that the appellant is the landlord of the suit property considering the deposition of Abdul Karim that the appellant had refused to accept the rent from him, the deposition of PW3 Ranjeet Prasad that he had directed all the tenants to pay the rent to the appellant from March, 2007 onwards and the admission of the respondent no. 1 (DW2) son of Abdul Karim, that he was paying the electricity charges to the appellant. Abdul Karim was held to have defaulted in the payment of rent from March, 2007 onwards as he was depositing rent in the court in the name of PW3 Ranjeet Prasad and not the appellant despite knowing that the appellant was the landlord. The appellant also proved the need for bonafide use as he and his wife were medical practitioners wanting to open a clinic in the rented premises and as the defendant Abdul Karim owns another premises and would not hence be facing difficulty. Allowing the appeal, the appellate court directed the defendant Abdul Karim to vacate the suit property.

7. Aggrieved respondents, therefore, preferred a revision petition before the High Court. The High Court observed that the appellate court has not considered the tenancy agreements dated 20.12.1968 and 20.05.2006, which

were also not mentioned in the depositions of the appellant (PW1) and Ranjeet Prasad (PW3) and the plaint. The High Court upheld the trial court findings regarding the various instances when PW3 represented himself as the landlord. Observing that there was no conveyance of title after the execution of the agreement dated 20.05.2006, the High Court opined that the appellant could not be held to be the owner or landlord of the suit property on the basis of the exchange deed dated 23.04.1975. The High Court observed that the definitions of the terms 'tenant' and 'landlord' were not related to ownership of the suit property. PW3 Ranjeet Prasad was held to be the landlord of defendant Abdul Karim considering the agreements dated 20.12.1968 and 20.05.2006 and that Ranjeet Prasad had filed eviction suits as a landlord. Once landlord-tenant relationship existed between the PW3 Ranjeet Prasad and the defendant Abdul Karim, the same should have been determined only as per the provisions of the Rent Control Act. Holding that there was no need to give a finding regarding default in the payment of rent or bonafide requirement when there was no landlord-tenant relationship between the appellant and the defendant Abdul Karim, the High Court allowed the revision petition filed by the respondents-tenants and dismissed the suit for eviction filed by the appellant.

8. Hence, the present appeal by special leave by the plaintiff.

9. While reversing the appellate court judgment, the High Court in paragraph nos. 11 and 13 of the impugned order held as under:-

"11. This revision petition arises out of a claim of relief under Section 5 of the Assam Urban Areas Rent Control Act, 1972. Unlike general law governing tenancy, this Act confers a statutory status on tenant and on attainment of

A such status a tenant earns protection guaranteed under
Section 5 of this Act. No tenant under this Act can be
evicted without a decree of Court. The landlord, therefore,
is duty bound to obtain a decree from court by
B establishing the conditions precedent laid down under
Section 5 referred to above. The foundation of such a
suit is relationship of landlord and tenant. The fact that
there exists a relationship of landlord and tenant between
C the parties is the starting point for conferring jurisdiction
on a court to entertain and decide the dispute. Such fact
constituting landlord-tenant relationship, therefore, is a
jurisdictional fact and not a mere fact and as such High
D Court, in exercise of revisional jurisdiction under Section
115 of the Code of Civil Procedure, is duty bound to
examine as to whether such a finding arrived at by the
learned Court or Courts below is tenable and/or based
on materials on record.

E 13. These aspects are no doubt relevant for the purpose
of adjudicating a jurisdictional fact as to landlord tenant
relationship in a proceeding under Section 5 of the
Assam Urban Areas Rent Control Act, 1972. Apparently,
these relevant aspects were not considered by the
learned appellate court. The finding of the learned
F appellate court, therefore, on issue No.4 is vitiated by
non-consideration of relevant aspect and non-
consideration of exhibits Ka, Kha and Gha. The finding
of the first appellate court that there is a landlord and
tenant relationship between the plaintiff and the defendant
G is liable to be held as perverse, inasmuch as, plaintiff
has failed to meet the challenges thrown by the defendant
by bringing on record exhibits Ka, Kha and Gha and
claiming that plaintiff never derived the title from Ranjeet
Prasad subsequent to creation of tenancy in 2006. The
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decision of appellate court, on issue No.4, therefore, is liable to be interfered with. Once it is held that there is no landlord and tenant relationship between the plaintiff and the defendant, there is no question of giving any decision on the issue of default or bona-fide requirement. Consequently, findings of the first appellate court on these 2 (two) issues are also set aside. In the result, civil revision petition is allowed and the impugned appellate judgment is set aside restoring the judgment of the learned Trial court.”

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10. We have heard learned counsel appearing for the parties. Before coming to the conclusion, we would like to refer to the relevant provisions of the Assam Urban Area Rent Control Act, 1972.

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11. The expression “landlord” has been defined in Section 2(c) of the Rent Act which reads as under:-

“(c) Landlord” means any person who is, for the time being receiving, or entitled to receive rent in respect of any house 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; and includes, in respect of his subtenant, a tenant who has sub-let any house and includes every person not being a tenant who from time to time derives title under a landlord.”

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12. Section 5 of the Act creates a bar against the passing or execution of a decree or order for ejection. Section 5 reads as under:-

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“5. (1) No order or decree for the recovery of possession of any house shall be made or executed by any Court so long as the tenant pays rent to the full extent allowable

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A under this Act and performs the conditions of the tenancy:

Provided that nothing in this sub-section shall apply in a suit or proceedings for eviction of the tenant from the house:—

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(a) Where the tenant has done anything contrary to the provisions of clause (m), clause (o) or clause (p) of Section 108 of the Transfer of Property Act, 1882 or to the spirit of the aforesaid clause in areas where the said Act does not apply, or

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(b) Where the tenant has been guilty of conduct which is a nuisance or an annoyance to the occupiers of the adjoining or neighbouring houses, or

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(c) Where the house is bonafide required by the landlord either for purposes of repairs or rebuilding, or for his own occupation or for the occupation of any person for whose benefit the house is held, or whether the landlord can show any other cause which may be deemed satisfactory by the Court, or

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(d) Where the tenant sublets the house or any part thereof or otherwise transfers his interest in the house or any part thereof without permission in writing from the landlord, or

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(e) Where the tenant has not paid the rent lawfully due from him in respect of the house within a fortnight of its falling due, or

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(f) Where the tenant has built, acquired or been allotted a suitable residence.”

13. From the definition of 'landlord', it is clear that the

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definition is couched in a very wide language, according to which not only the owner but also any person receiving rent, whether on his own account or on behalf of or for the benefit of any other person or as a trustee, guardian, or receiver for any other person, is also the landlord. A

14. However, for the purpose of eviction of a tenant on the ground of personal need or reasonable requirement, one must show that he is the owner of the building. B

15. A similar question came for consideration before a three Judges Bench of this Court in the case of *M.M. Quasim vs. Manohar Lal Sharma & Ors.*, AIR 1981 SC 113. The matter related to the Bihar Building (Lease, Rent and Eviction) Control Act, 1947. In the Bihar Rent Act, the definition of expression 'landlord' is similar as that of Assam Rent Act. Further the ground for eviction of personal necessity is also similar to that of the Assam Act. Considering these provisions, this Court held:- C D

"14... Therefore, while taking advantage of the enabling provision, enacted in Section 11(1)(c), the person claiming possession on the ground of his reasonable requirement of the leased building must show that he is a landlord in the sense that he is owner of the building and has a right to occupy the same in his own right. A mere rent collector, though may be included in the expression "landlord" in its wide amplitude, cannot be treated as a landlord for the purposes of Section 11(1)(c). This becomes manifestly clear from the explanation appended to the clause. By restricting the meaning of expression "landlord" for the purpose of Section 11(1)(c), the legislature manifested its intention namely that landlord alone can seek eviction on the ground of his personal requirement if he is one who has a right against E F G H

A the whole world to occupy the building himself and exclude any one holding a title lesser than his own. Such landlord who is an owner and who would have a right to occupy the building in his own right, can seek possession for his own use. The latter part of the section envisages a

B situation where the landlord is holding the building for the benefit of some other person but in that case landlord can seek to evict tenant not for his personal use but for the personal requirement of that person for whose benefit he holds the building. The second clause contemplates

C a situation of trustees and cesti que trust but when the case is governed by the first part of clause (c) of subsection (1) of Section 11, the person claiming possession for personal requirement must be such a

D landlord who wants possession for his own occupation and this would imply that he must be a person who has a right to remain in occupation against the whole world and not someone who has no subsisting interest in the property and is merely a rent collector such as an agent,

E executor, administrator or a receiver of the property. For the purposes of Section 11(1)(c) the expression 'landlord' could, therefore, mean a person who is the owner of the building and who has a right to remain in occupation and actual possession of the building to the exclusion of

F everyone else. It is such a person who can seek to evict the tenant on the ground that he requires possession in good faith for his own occupation. A rent collector or an agent is not entitled to occupy the house in his own right.

G Even if such a person be a lessor and, therefore, a landlord within the expanded inclusive definition of the expression landlord, nonetheless he cannot seek to evict the tenant on the ground that he wants to personally occupy the house. He cannot claim such a right against

H the real owner and as a necessary corollary he cannot

seek to evict the tenant on the ground that he wants possession of the premises for his own occupation. That can be the only reasonable interpretation one can put on the ingredients of clause (c) of Section 11(1) which reads: "Where the building is reasonably and in good faith required by the landlord for his own occupation ..."

Assuming that the expression "landlord" has to be understood with the same connotation as is spelt out by the definition clause, even a rent collector or a receiver of the property appointed by the court in bankruptcy proceedings would be able to evict the tenant alleging that he wants the building for his own occupation, a right which he could not have claimed against the real owner. Therefore, the explanation to clause (c) which cuts down the wide amplitude of the expression "landlord" would unmistakably show that for the purposes of clause (c) such landlord who in the sense in which the word 'owner' is understood can claim as of right to the exclusion of everyone, to occupy the house, would be entitled to evict the tenant for his own occupation."

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16. The High Court appears to have taken a very narrow meaning and interpretation of the expression 'landlord' as defined in the Assam Rent Act. The finding recorded on that score to the effect that there exists no relationship of landlord and tenant is not in accordance with the true meaning of the term 'landlord'. This aspect of the law has not been considered by the High Court. On the contrary, the High Court proceeded on the basis that the relationship of 'landlord and tenant' has not been established although the ownership of the appellant by virtue of the deed of exchange has neither been denied nor been disputed by the respondent-tenant. Even assuming for the sake of argument that the elder brother of the appellant was acting as a landlord by receiving rent, it will not debar the

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- A original owner from filing a suit for eviction not only on the ground of personal necessity but also on the ground of default when it has come in evidence that the respondent on many occasions went to the appellant to pay rent but the latter refused to receive the rent. Moreover, admittedly, the respondent-tenant was
- B paying electricity and other charges of the tenanted premises to the appellant.

17. On the question of tenancy, both the trial court and the High Court have not considered the provision of Section
- C 109 of the Transfer of Property Act.

- “109. **Rights of lessor’s transferee.**—If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence
- D 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 or part transferred so long as he is the owner of it; but the lessor shall not, by reason
- E only of such transfer cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him:

- Provided that the transferee is not entitled to arrears
- F of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

- G The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such
- H determination may be made by any Court having

jurisdiction to entertain a suit for the possession of the property leased. A

18. From perusal of the aforesaid Section, it is manifest that after the transfer of lessor's right in favour of the transferee, the latter gets all rights and liabilities of the lessor in respect of subsisting tenancy. The Section does not insist that transfer will take effect only when the tenant attorns. It is well settled that a transferee of the landlord's rights steps into the shoes of the landlord with all the rights and liabilities of the transferor landlord in respect of the subsisting tenancy. The section does not require that the transfer of the right of the landlord can take effect only if the tenant attorns to him. Attornment by the tenant is not necessary to confer validity of the transfer of the landlord's rights. Since attornment by the tenant is not required, a notice under Section 106 in terms of the old terms of lease by the transferor landlord would be proper and so also the suit for ejection. B
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19. As noticed above, the respondent-tenant on many occasions approached the appellant, the transferee, owner and the landlord to receive the rent. Further, admittedly, the electricity charges of the tenanted premises were paid by the tenant to the present appellant. Non-consideration of subsequent tenancy agreement executed by the erstwhile owner namely the brother of the appellant will not come in the way of the present appellant to seek eviction of the tenant on the ground of personal necessity as also on the ground of non-payment of rent. The approach of the High Court reversing the appellate court's finding cannot be sustained in law. E
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20. For the aforesaid reasons, this appeal is allowed and the impugned judgment and order passed by the High Court is set aside. However, there shall be no order as to costs.