



**IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH
DATED THIS THE 24TH DAY OF AUGUST, 2023**

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR

REGULAR FIRST APPEAL NO. 100301 OF 2019 C/W
REGULAR FIRST APPEAL NO. 100248 OF 2020 (PAR/POS)

IN RFA NO. 100301/2019

BETWEEN:

1. SMT. LATHA HOLEYAPPA BULLA,
AGE: 59 YEARS, OCC: HOUSEHOLD WORK,
R/O: BULLA COMPOUND, LAMINGTON ROAD,
HUBBALLI-580020.
2. ISHWARAPPA S/O. HOLEYAPPA BULLA,
AGE: 38 YEARS, OCC: BUSINESS,
R/O: BULLA COMPOUND, LAMINGTON ROAD,
HUBBALLI-580020.
3. SANGAMA D/O. HOLEYAPPA BULLA,
AGE: 26 YEARS, OCC: STUDENT,
R/O: BULLA COMPOUND, LAMINGTON ROAD,
HUBBALLI-580020.
4. PRIYANKA D/O. HOLEYAPPA BULLA,
AGE: 23 YEARS, OCC: STUDENT,
R/O: BULLA COMPOUND, LAMINGTON ROAD,
HUBBALLI-580020.

APPELLANT NO.1,3,4 REPTD BY
THEIR GPA HOLDER APPELLANT NO.2.

...APPELLANTS

(BY SMT. G. MEERABAI, ADVOCATE)

AND:

1. SMT. JAKKAVVA W/O. BASAVANEPPA KAMPLI,
AGE: 60 YEARS, OCC: HOUSEHOLD,
R/O: SANGATIKOPPA, TQ: KALAGHATAGI,



DIST: DHARWAD-581204.

2. SMT. SAVAKKA W/O CHANNABASAPPA SULLAD,
AGE: 57 YEARS, OCC: HOUSEHOLD, R/O: GANESHPETH,
HUBBALLI, DIST: DHARWAD-580020.
3. SRI. MALAPPA S/O. MARITAMAPPA AMARSHETTY,
AGE: 75 YEARS, OCC: AGRICULTURE,
R/O: AMMINABHAVI, DIST: DHARWAD-581201.
4. SMT. CHANNAVVA W/O. MALAPPA AMARSHETTY,
AGE: 54 YEARS, OCC: HOUSEHOLD,
R/O: AMMINABHAVI, DIST: DHARWAD-581201.
5. SRI. MAHESH @ MARITAMMAPPA,
S/O. MALAPPA AMARSHETTY,
AGE: 32 YEARS, OCC: AGRICULTURE,
R/O: AMMINABHAVI, DIST: DHARWAD-581201.
6. SRI. TAMMANNA S/O. MALAPPA AMARSHETTY,
AGE: 29 YEARS, OCC: AGRICULTURE,
R/O: AMMINABHAVI, DIST: DHARWAD-581201.
7. SMT. DYAMAVVA W/O. BASAVANEPPA SATYAPPANAVAR,
AGE: MAJOR, OCC: HOUSEHOLD,
R/O: PUDAKALKATTI, DIST: DHARWAD-581206.
8. SMT. NEELAVVA W/O. BASAPPA BENNY,
AGE: MAJOR, OCC: HOUSEHOLD,
R/O: AKKI ONI, SAUVADATTI, TQ: SAVADATTI,
DIST: BELAGAVI-591126.
9. SRI. HANUMANTAPPA S/O. RAMAPPA SHINGADE,
AGE: 47 YEARS, OCC: AGRICULTURE, R/O: KELAGERI,
TQ AND DIST: DHARWAD-580007.
10. SRI. NINGAPPA S/O. GULAPPA BYAHATTI,
AGE: 54 YEARS, OCC: AGRICULTURE,
R/O: AMMINABHAVI, DIST: DHARWAD-581201.
11. SMT. GANGAVVA W/O. FAKKIRAPPA BARKIHADAGALI,
SINCE DECEASED BY HER LR IS ALREADY ON RECORD
AS RESPONDENT NO.12.
12. SRI. NARAYAN S/O. FAKKIRAPPA BARKIHADAGALI,
AGE: MAJOR, OCC: AGRICULTURE,



R/O: AMMINABHAVI, DIST: DHARWAD-581201.

13. SRI. ANIL S/O. NARAYAN GHORAPADE,
AGE: 46 YEARS, OCC: BUSINESS,
R/O: VIKAS NAGAR, GOKUL ROAD, HUBBALLI,
TQ: HUBBALLI, DIST: DHARWAD-580030.
14. SRI. SANJAY S/O. NARAYAN GHORAPADE,
AGE: 40 YEARS, OCC: BUSINESS,
R/O: VIKAS NAGAR, GOKUL ROAD,
HUBBALLI, TQ: HUBBALLI,
DIST: DHARWAD-580030.
15. SRI. BALAJI AND COMPANY,
REPTD BY ITS PARTNERS,
T. SELVARAJ S/O. N. THANGAMUTHU,
AGE: 70 YEARS, OCC: BUSINESS,
TQ: HUBBALLI, DIST: DHARWAD-580020.
16. SRI. SANDEEP S/O. KISHANLAL GAMBHIR,
AGE: 47 YEARS, OCC: BUSNIESS,
R/O: LAMINGTON ROAD, HUBBALLI,
TQ: HUBBALLI, DIST: DHARWAD-580020.

- RESPONDENTS

(BY SRI. ARUN L. NEELOPANT, ADVOCATE FOR C/R1 AND R2,
SRI. CHETAN MUNOLLI, ADVOCATE FOR 3 TO 6,
SRI. DEEPAK C. KULAKARNI, ADVOCATE TAKE NOTICE FOR R7,
SRI. MALLIKARJUN B. HIEMATH, ADVOCATE FOR R8,
SRI. J.S. SHETTY, ADVOCATE FOR R9 AND R10,
SRI. SHIVANAND MALASHETTI, ADVOCATE FOR R12,
SRI. R.V. ITAGI, ADVOCATE FOR R15 AND R16
(VK FILED FOR R15 ONLY),
R11 DECEASED, R12 IS LR OF DECEASED R11,
NOTICE TO R13 AND R14 ARE SERVED)

THIS RFA IS FILED UNDER ORDER 41 RULE 3 READ WITH
SEC.96 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED
26.04.2019 PASSED IN O.S.NO.2/2009 ON THE FILE OF THE I
ADDITIONAL SENIOR CIVIL JUDGE AND CHIEF JUDICIAL
MAGISTRATE, DHARWAD, PARTLY DECREERING THE SUIT FILED FOR
PARTITION AND SEPARATE POSSESSION, MANDATORY INJUNCTION
AND FUTURE MESNE PROFITS.



IN RFA NO. 100248/2020

BETWEEN:

1. SMT. LATHA HOLEYAPPA BULLA,
AGE: 50 YEARS, OCC: HOUSEHOLD,
R/O: LAMINGTON ROAD, HUBBALLI, DIST: DHARWAD.
2. ISHWARAPPA S/O. HOLEYAPPA BULLA,
AGE: 29 YEARS, OCC: BUSINESS,
R/O: LAMINGTON ROAD, HUBBALLI, DIST: DHARWAD.
3. SANGAMA D/O. HOLEYAPPA BULLA,
AGE: 26 YEARS, OCC: STUDENT,
R/O: LAMINGTON ROAD, HUBBALLI, DIST: DHARWAD.
4. PRIYANKA D/O. HOLEYAPPA BULLA,
AGE: 23 YEARS, OCC: STUDENT,
R/O: LAMINGTON ROAD, HUBBALLI, DIST: DHARWAD.

(APPELLANT NO.1,3 AND 4 ARE REPTD BY
THEIR GENERAL POWER OF ATTORNEY HOLDER
APPELLANT NO.2.)

- APPELLANTS

(BY SRI. V.M. SHEELAVANT, ADVOCATE)

AND:

1. SMT. JAKKAVVA W/O. BASAVANEPPA KAMPLI,
AGE: 60 YEARS, OCC: HOUSEHOLD WORK,
R/O: SANGATIKOPPA, TQ: KALAGHATAGI,
DIST: DHARWAD.
2. SMT. SAVAKKA W/O CHANNABASAPPA SULLAD,
AGE: 58 YEARS, OCC: HOUSEHOLD WORK,
R/O: VINAY COLONY, KESHWAPUR,
HUBBALLI, DIST: DHARWAD.
3. MALAPPA S/O. MARITAMMAPPA AMARSHETTY,
AGE: 73 YEARS, OCC: AGRICULTURE,
R/O: AMMINABHAVI, TQ/DIST: DHARWAD.
4. CHANNAVVA W/O. MALAPPA AMARSHETTY,
AGE: 52 YEARS, OCC: AGRICULTURE,
R/O: AMMINABHAVI, TQ/DIST: DHARWAD.



5. MAHESH @ MARITAMMAPPA AMARSHETTY,
AGE: 30 YEARS, OCC: AGRICULTURE,
R/O: AMMINABHAVI, TQ/DIST: DHARWAD.
6. TAMMANNA S/O. MALAPPA AMARSHETTY,
AGE: 27 YEARS, OCC: AGRICULTURE,
R/O: AMMINABHAVI, TQ/DIST: DHARWAD.
7. SMT. DYAMAVVA,
W/O. BASAVANNEPPA SATYAPPANAVAR,
AGE: 63 YEARS, OCC: AGRICULTURE,
R/O: PUDAKALAKATTI, TQ/DIST: DHARWAD.
8. SMT. NEELAVVA W/O. BASAPPA BENNI,
AGE: 62 YEARS, OCC: HOUSEHOLD WORK,
R/O: SANGATIKOPPA, TQ: KALAGHATAGI,
DIST: DHARWAD.
9. HANUMANTAPPA S/O. RAMAPPA SHINGADE,
AGE: 45 YEARS, OCC: AGRICULTURE,
R/O: KELAGERI, DHARWAD.
10. NINGAPPA S/O. GULAPPA BYAHATTI,
AGE: 52 YEARS, OCC: AGRICULTURE,
R/O: AMMINABHAVI, TQ/DIST: DHARWAD.
11. GANGAVVA,
W/O. FAKKIRAPPA BARKIHADAGALI,
SINCE DECEASED BY HER LR
IS ALREADY ON RECORD AS
RESPONDENT NO.12
12. NARAYAN S/O. FAKKIRAPPA BARKIHADAGALI,
AGE: 41 YEARS, OCC: AGRICULTURE,
R/O: AMMINABHAVI, PRESENTY RESIDING AT
KANAKUR VILLAGE, TQ/DIST: DHARWAD.
13. ANIL S/O. NARAYAN GHORAPADE,
AGE: 37 YEARS, OCC: BUSINESS,
R/O: VIKAS NAGAR, GOKUL ROAD,
HUBBALLI, DIST: DHARWAD.
14. SANJAY S/O. NARAYAN GHORAPADE,
AGE: 31 YEARS, OCC: BUSINESS,
R/O: VIKAS NAGAR, GOKUL ROAD,
HUBBALLI, DIST: DHARWAD.



NC: 2023:KHC-D:9490-DB
RFA No. 100301 of 2019
C/W RFA No. 100248 of 2020

15. SRI. BALAJI AND COMPANY,
REPRESENTED BY ITS PARTNERS,
T. SELVARAJ S/O. N. THANGAMUTHU,
AGE: 61 YEARS, OCC: BUSINESS,
R/O: PINTO ROAD, HUBBALLI,
DIST: DHARWAD.

16. SANDEEP S/O. KISHANLAL GAMBHIR,
AGE: 38 YEARS, OCC: BUSNIESS,
R/O: LAMINGTON ROAD, HUBBALLI,
DIST: DHARWAD.

- RESPONDENTS

(BY SRI. ARUN L. NEELOPANT, ADV. FOR C/R1 AND R2,
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SRI. R.V. ITAGI, ADV. FOR R13, R15 AND R16
(VK FILED FOR R15 ONLY),
R11 DECEASED - R12 IS LR OF DECEASED R11,
NOTICE TO R14 IS SERVED)

THIS RFA IS FILED UNDER SEC. 96 R/W ORDER 41 RULE 3 OF
CPC., AGAINST THE JUDGMENT AND DECREE DATED 30.05.2020
PASSED IN F.D.P. NO.13/2019 ON THE FILE OF THE I ADDITIONAL
SENIOR CIVIL JUDGE AND CHIEF JUDICIAL MAGISTRATE,
DHARWAD, PARTLY ALLOWING THE SUIT FILED FOR PARTITION AND
SEPARATE POSSESSION.

THESE APPEALS HAVING BEEN HEARD RESERVED FOR JUDGE
ON 24.08.2023 AND COMING ON FOR PRONOUNCEMENT OF
JUDGMENT THIS DAY, **SREENIVAS HARISH KUMAR J.**, DELIVERED
THE FOLLOWING:



COMMON JUDGMENT IN

R.F.A. No. 100301/2019 AND R.F.A. No.100248/2020

The question arising for decision in both the appeals is, whether the plaintiffs and defendants 1, 5 and 6 are precluded from taking possession of Plaintiff-B schedule property (other than B-1 schedule property) in proportion to the shares declared by the trial court in its preliminary decree dated 26.04.2019 in O.S.No.2/2009 followed by final decree dated 30.05.2020 in FDP.No.13/2019 on the file of I Additional Senior Civil Judge, Dharwad?"

2. These two appeals have the following factual background.

2.1 The appellants in both the appeals are the legal representatives of defendant No.12, Holiyappa, the adopted son of Siddalingappa Bulla. Respondent Nos.1 and 2 are the plaintiffs in the suit. The plaintiffs brought a suit for partition in respect of eight items of the property described in A schedule and three items of property described in B schedule of the plaint on the premise that after the death of



their father Marithimmappa on 17.06.1964, they became entitled to 1/5th share each in the properties described in schedules A and B. Defendant No.1 is the brother and defendant Nos.5 and 6 are the sisters of the plaintiffs. Defendant No.2 is the wife and defendant Nos.3 and 4 are the children of 1st defendant. The appellants are concerned with schedule B property.

2.2 In regard to the properties in schedule B, the plaintiffs pleaded that one Savavva wife of Rudrappa Bengeri was the original owner and she bequeathed schedule B properties in favour of Marithimmappa by executing a registered will dated 11.01.1919. Much before she made the will, she had leased the said properties for a period of 10 years to a company called Indian Cotton Company Limited, Bombay (referred to as 'Company' for short) by a lease deed dated 07.11.1894. The company transferred its lease hold rights to Siddalingappa Bulla, the adoptive father of defendant No.12. DefendantNo.13 is the wife of Siddalingappa Bulla. The plaintiffs learnt that the 1st



defendant had illegally sold certain items of B schedule property to defendant Nos.14 to 17 in order to deprive their legitimate share. The properties described in schedule B1 are said to have been sold to defendant Nos.14 to 17. Therefore in addition to claiming share in the properties which remained unsold in schedule B, they sought for share in the sale consideration amounts relating to properties in schedule B1.

2.3 Defendant Nos.12 and 13 filed a joint written statement contending specifically that the lease deed dated 07.11.1894 executed by Savavva in favour of the company was a permanent lease. The company went into liquidation, and during the winding up proceedings before the High Court of Judicature at Bombay, the assets of the company were brought to sale by the official liquidator. Siddalingappa Bulla, the adoptive father of defendant No.12 and husband of defendant No.13 purchased permanent lease hold rights of the company under a registered indenture dated 19.04.1941. As Siddalingappa Bulla became a permanent



lessee, the plaintiffs were not entitled to claim possession of B schedule properties, all that they could claim was share in the rent.

3. The findings of the trial court as regards the nature of tenancy is found in paragraphs 54 to 56 of its judgment. The findings are – the judgment in O.S. No. 126/2003 c/w O.S. No. 513/2004 (Ex.D.15, the certified copy of the judgment) is not binding on the plaintiffs as they were not parties in those suits, that neither Siddalingappa Bulla nor defendants 12 and 13 became the permanent lessees of schedule 'B' properties and that the lease in respect of 'B' schedule properties was for the lifetime of Siddalingappa Bulla and it ended with his death. For this reason the plaintiffs and the defendants 1, 5 and 6 have right over 'B' schedule properties. Defendants 12 and 13 have no locus standi to contend that the plaintiffs are not entitled to seek partition in 'B' schedule properties and that they can only claim share in the rental amount. It is the conclusion of the trial court that the company took



schedule 'B' properties on lease for a period of 10 years from 07.11.1894 and that the lease was only a lifetime tenancy.

4. Sri V.M. Sheelavant, learned counsel for the appellants in R.F.A. No.100301/2019 assails the findings of the trial court canvassing the points that the trial court has committed an error both on facts and law in recording a finding that the lease was not permanent. He refers to Ex.P.30, the lease deed dated 07.11.1894 in favour of the company and the Deed of Indenture as per Ex.D.6 in favour of Siddalingappa Bulla to argue that the plain language of these two documents do very well indicate that the lease was permanent. In Ex.P.30, though it is stipulated that the period of lease is for 10 years, it is also further stipulated that after expiry of 10 years, the lessee was either at liberty to give up the land or, continue to occupy the land thereafter as long as the lessee liked at the above mentioned rent and that the lessor was not entitled to raise the rent or eject the lessee. In



accordance with this stipulation, the company continued in the demised land after expiry of 10 years till it went into liquidation. The company was regularly paying rent to the lessor, and therefore it was a permanent lessee. During winding up proceedings, the official liquidator sold away the leasehold rights of the company in favour of Siddalingappa Bulla as evidenced by Ex.D.6. The same was with the permission of the Court. And the official liquidator had the authority to effect sale during winding up proceedings. In Ex.D.6 the contextual meaning of the expression 'purchaser' is shown as to include his heirs, executors, administrators and assigns, etc. In this view, defendants 12 and 13 being the legal heirs of the purchaser Siddalingappa Bulla continued as permanent lessees. Referring to Ex.D.5 which is a copy of the judgment of this Court in F.A. No. 346/1945, he argued further that in the said judgment there is a clear finding that lease is permanent. The trial court has not referred to Ex.D.5 in its judgment. Then referring to Ex.D.15, copy of the judgment in O.S. No. 126/2003 c/w O.S. No.



513/2004, he argued that the nature of the lease was an issue in those two suits and finding therein is that lease is permanent. He also referred to certified copies of the judgment and decree passed by the First Addl. Sr. Civil Judge, Hubballi, in O.S. Nos. 419/2007 and 420/2007, xerox copy of the order passed in Execution Case No. 97/2014, copy of the plaint in O.S. No. 54/2013 and the order sheet therein, and deposition of a witness in Execution Case No. 97/2014 that are all produced along with an application under Order 41 Rule 27 CPC (I.A. No. 4/2019 filed in R.F.A. No. 100301/2019) to garner support for his argument that the lease was permanent. He therefore argued that when the courts have already held that the lease is permanent, the trial court should not have come to a contrary conclusion.

5. Sri Sheelavant argued that while defendants 12 and 13 have no objection for partitioning of schedule 'B' properties amongst the plaintiffs and other shareholders, but having obtained decree of partition, they cannot claim



possession of schedule 'B' properties, and they could only share the rental amount. The appellants are regularly paying the rent and they will continue to do so. As they are permanent lessees, they cannot be directed to deliver possession in terms of the final decree drawn and therefore the final decree needs a modification in that the parties who are allotted specific shares can be directed to receive the rent in proportion to share of each one of them. In support of his arguments he has placed reliance on some rulings which will be referred to later.

6. Though Sri Arun L. Neelopant, learned counsel for respondent No.2 and Sri Mallikarjunswamy B. Hiremath, learned counsel for respondent no. 9 argued individually, they raised common points with regard to nature of lease. Their argument was that Ex.P.30, the first lease deed that came into existence on 07.11.1894 alone must be considered to construe whether lease was perpetual or not. The terms of Ex.P.30 are so clear that the initial period of lease was for 10 years certain and



thereafter the lease could be discontinued or continued, and if it was continued, it was for a period as long as the lessee wished to continue on the same rate of rent of Rs.550/- p.a. The duration of lease was mentioned; though liberty was granted for continuation of the lease at the option of the lessee, it did not make that lease a permanent one. If the lease were to be permanent, it should have been mentioned in specific words. As to the construction of the document of this type, they submitted that the judgment of the Supreme Court in the case of ***Chapsibhai Dhanjibhai Dand Vs. Purushotham (AIR 1971 SC 1878)*** is applicable directly to the facts of the case. The Supreme Court has clearly held that such kind of a lease cannot be treated as permanent one. Then referring to Ex.D.5, the judgment of the Division Bench of this Court in F.A. 346/1945, they argued that the clear finding therein is that the lease is not permanent and that the appellants are under a misconception that the said judgment is helpful to them. But the finding given in F.A. No. 346/1945 is otherwise. In regard to Ex.D.6, the



indenture dated 19.04.1941, they contended that the appellants cannot take the support of that document because the official liquidator could not have passed on to Siddalingappa Bulla any interest higher than what was held by the original lessee, i.e., the company.

6.1 Referring to Ex.D.15, they submitted that in O.S. No. 126/2003 and 513/2004, the defendants 12 and 13 were the plaintiffs and the judgment in those two suits was to the effect that they were permanent tenants. But the said judgment does not bind the plaintiffs herein as they were not parties to those two suits and moreover the judgment is questioned in two appeals, R.A. No. 103/2016 and R.A. No. 104/2016 in which the operation of judgment has been stayed. Therefore the appellants cannot urge that the judgment in the said suits has become final.

6.2 Sri Arun Neelopant contended in particular that DW2 has admitted in the cross examination that Ex.P.30 does not contain any clause as to lease being permanent and at the time when the company was to deliver back the



possession to the lessor, it should leave the godown and the office premises to the lessor namely Savakka. These clauses make it very clear that the purchaser of the leasehold rights was aware of the true position in regard to the nature of the lease. He also further argued that the will marked as Ex.D.4 and the disputed rent receipts as per Ex.D.10 to 13 cannot be used for interpreting Ex.P.30 in view of specific bar u/s 91 of the Indian Evidence Act and as has been held by the Supreme Court in the cases of ***Bai Heera Devi & Others vs. Official Assignee of Bombay (AIR 1958 SC 448)***, ***Tamil Nadu Electricity Board & Another Vs. N. Raju Reddiar & Another (AIR 1996 SC 2025)*** and ***Roopkumar Vs. Mohan Thedani (AIR 2003 SC 2418)***.

6.3 Another point of argument of Sri Neelopant was that the lease in question which was created for the lifetime of the lessee stood determined on the day when the company went into liquidation or on the date of death of the transferee namely Siddalingappa Bulla. The



appellants though continued to pay the rents to the owner, their position was no better than tenants by sufferance and therefore there was no necessity to issue notice of termination of the lease.

6.4 Thus arguing, Sri Arun Neelopant and Sri Mallikarjunswamy urged for dismissing the appeals.

7. In reply, Sri Sheelavant submitted that when defendants 12 and 13 pleaded in the written statement that they were permanent tenants and possession could not be sought from them for this reason, the plaintiffs ought to have denied the specific plea by filing a rejoinder to the written statement. Plaintiffs' failure to file rejoinder had the effect of admitting the specific plea about permanent lease; the trial court should not have raised an issue casting burden on defendants 12 and 13 to prove that issue. This is also an error found in the impugned judgment, he argued.



8. It may be noted in the beginning itself that since defendants 12 and 13 have claimed right to remain in possession of 'B' schedule property being permanent tenants, they may not, and cannot take objection to the preliminary decree passed in the suit. From the submission made by Sri Sheelavant, it became clear that defendants 12 and 13 have no objection for the preliminary decree which declared the extent of share that the plaintiffs and the defendants 1, 5 and 6 would each take. For this reason, it is not necessary for us to decide RFA No. 100301/2019. Only R.F.A. No. 100248/2020 remains for adjudication.

9. Given an analysis to the contentions raised before us, we find that creation of lease by Smt. Savavva, the erstwhile owner of the property in favour of the company is not disputed. So also the company going into liquidation and sale of leasehold rights by the official liquidator to Sri. Siddalingappa Bulla in the process of liquidation with the permission of the Company Court is



also not at dispute. The dispute is about the nature of lease in favour of the company, whether the lease was in perpetuity or for a period certain.

10. Sec. 105 of Transfer of Property Act defines lease. It is a transfer of right of enjoyment of a property for a certain time or in perpetuity for a consideration in the nature of premium or rent. It is to be noted that whether the lease is for a certain period or in perpetuity, the ownership over the property remains with the lessor; the lessee gets only a right of enjoyment of the property. If the lease is created in perpetuity, the lessor will be deprived of right to take back possession of the leased property, and it is for this reason whenever a contention as regards permanent lease is put forth, the court is expected to be very cautious and careful while interpreting the terms of lease. Appositely we may refer to a judgment of a Single Judge Bench of this Court in the case of ***Channabasapa Gurappa Belagavi and Others Vs.***

***Laxmidas Bapudas Darbar and another (1999 (1)******Kar. L.J. 216)*** where it is observed as below.

"7-A. Therefore, from the precedents, referred to above, what appears to me to be the correct view to be taken when a question arises as to whether the lease is a perpetual lease or a term lease, is that though there is no presumption against perpetual lease, clear and unambiguous language is required to infer such a lease. If the language is ambiguous, not clear and admits of some doubt, the Court is required to opt for an interpretation rejecting the plea of a perpetual lease in the absence of the language being clear and unambiguous, the effect of such interpretation would be to deprive a owner of his right to enjoy the property for ever. If the intention of the parties is to give a perpetual lease, for ever or in perpetuity or the tenant can continue to enjoy the property as long as he likes and generation after generation. These are the simple sentences which could be, without any confusion or ambiguity or doubt, could be incorporated if really the parties intend that the lease is a permanent or a perpetual lease. In the absence of such stipulations in a lease deed, the Court is required to scrutinize the terms very carefully keeping in mind the consequences that would flow on the rights of the parties in considering or properly understanding the stipulations in a lease deed. Therefore, I am of the view that as observed in the decisions referred to above, the Courts will have to proceed on the basis that there is no presumption in favour of the perpetual lease and the Courts are required to lean against perpetual lease in the absence of stipulations in that behalf being unambiguous or clear."

11. Ex.P.30, Ex.D.5, Ex.D.6 are the main documents to be considered. Ex.P.30 is the copy of the



lease deed dated 07.12.1894 between Savavva and the company, Ex.D.5 is the certified copy of the order in F.A. No. 346/1945 and Ex.D.6 is the certified copy of the Deed of Indenture executed by the official liquidator in favour of Siddalingappa Bulla. In addition to these documents, Sri Sheelavant referred to Ex.D.4, certified copy of the will executed by Smt.Savakka in favour of Marithimmappa and Ex.D.10 to 13, the certified copies of rent receipts. Ex.D.4 and Ex.D.10 to 13 are not the primary documents, they were produced by defendants 12 and 13 as supplemental to their specific contention about permanent tenancy.

12. It is true that in the will executed by Savavva, there is a reference to the lease made by her in favour of the company, and while referring to it, she used Kannada word, 'Khayam' meaning thereby 'permanent'. Likewise in Ex.D.10 to D.13, the receipts issued by Marithimmappa to Siddalingappa Bulla, he used the Kannada word "Nirantara" which according to Sheelavant takes the meaning permanent, but we do not think that such a meaning can



be attributed to it, and in our opinion “continuous” or ‘without stop’ is its translation. Anyway it does not matter, because what the parties meant when schedule ‘B’ property was leased in the year of 1894 should be understood only with reference to lease deed Ex.P.30. In this context, we may pertinently place reliance on a judgment of the Supreme Court cited by Sri Arun Neelopant. In ***Tamil Nadu Electricity Board and another vs. N. Raju Reddiar and another (AIR 1996 SC 2025)***, it is held in para 7 as under:

“7. At the outset it must be borne in mind that the agreement between the parties was a written agreement and therefore the parties are bound by the terms and conditions of the agreement. Once a contract is reduced to writing, by operation of Section 91 of the Evidence Act it is not open to any of the parties to seek to prove the terms of the contract with reference to some oral or other documentary evidence to find out the intention of the parties.”

(emphasis supplied)

So also in ***Roop Kumar Vs. Mohan Thedani (AIR 2003 SC 2418)***, the following is the observation of the Hon’ble Supreme Court:



"The practical consequence of integration is that its scattered parts, in their former and inchoate shape, have no longer any jural effect; they are replaced by a single embodiment of the act. In other words, when a jural act is embodied in a single memorial all other utterances of the parties on the topic are legally immaterial for the purpose of determining what are the terms of their act. This rule is based upon an assumed intention on the part of the contracting parties, evidenced by the existence of the written contract, to place themselves above the uncertainties of oral evidence and on a disinclination of the Courts to defeat this object. When persons express their agreements in writing, it is for the express purpose of getting rid of any indefiniteness and to put their ideas in such shape that there can be no misunderstanding, which so often occurs when reliance is placed upon oral statements. Written contracts presume deliberation on the part of the contracting parties and it is natural they should be treated with careful consideration by the Courts and with a disinclination to disturb the conditions of matters as embodied in them by the act of the parties, (See Mc Kelvey's Evidence p. 294). As observed in Greelea's Evidence page 563, one of the most presumed under the general notion that the best evidence must be produced and that one with which the phrase "best evidence" is now exclusively associated is the rule that when the contents of a writing are to be proved, the writing itself must be produced before the Court or its absence accounted for before testimony to its contents is admitted."

(emphasis supplied)

13. Therefore applying the best evidence rule, it may be stated that except Ex.P.30, other documents such as Ex.D.4 and Ex.D.10 to D.13 are of no use. Even Ex.D.6 is of little help to defendants 12 and 13 for, it is an



indenture evidencing sale of leasehold rights executed by the official liquidator pursuant to an order passed by the Company Court; Ex.D.6 is not a document of contract of lease to be interpreted to ascertain the nature of lease. Since it was sale of leasehold rights by the official liquidator, who represented the company under liquidation for all practical purposes, could not have conveyed a better right than what was conferred on the lessee-company under Ex.P.30, according to Sec. 48 of the Transfer of Property Act.

14. Now if Ex.P.30 is seen, the following are the clauses that require interpretation.

"Second: The term of the lease as mentioned above being ten years, the said lessees shall not during that period quit or give up the said lease and in case they do so they shall be liable to pay the yearly rent during the whole period of ten years but after the expiry of the said period of ten years the lessees shall be at liberty to either to give up the land and end the demise hereby created or retain and continue to occupy the land thereafter as long as they like at the above mentioned rent, the lessor not being entitled to raise the rent or eject the lessees. In the event of the said lessees transferring the property to others it is hereby agreed that the rent of the said land shall continue the same, namely five hundred and fifty rupees only per annum.



Third: The lessees shall be entitled to erect or construct such buildings as may be necessary for the conduct and purpose of their business. The lessees shall be at liberty to plant trees on the said land and shall be entitled to the produce thereof and to remove the said trees at their discretion.

Fourth:The lessees on the expiration of the above term of ten years or on their determination of this lease anytime thereafter shall be at liberty to remove their press or presses, engine and boilers and all fixtures and plant and machinery also the roof, flooring, windows, etc. of the press house, leaving the godowns and office premises only."

(emphasis supplied)

Along with these clauses, there is one sentence which stipulated the period of lease to be for a term 'ten years certain' from the seventh day of November 1894 at a yearly rent of Rupees Five hundred and Fifty only....".

15. The terms are very clear in the sense that initially the period of lease was for 10 years certain. Option was given to the lessee either to continue or give up the lease after 10 years. And in case the lessee opted to continue the lease after ten years, the lessee i.e, the company was permitted to remain in possession as long as it liked on the same rate of rent having right to transfer



the leased property to others without change in the rate of rent, and in the event of lessee continuing the lease after expiry of ten years, the lessor was precluded from enhancing the rent and ejecting the lessee. The fourth clause provides for determination of lease. Might be owing to reason that the company continued to be a lessee even after expiry of ten years and that after Shivalingappa Bulla purchased leasehold rights, the plaintiffs' father Marithimmappa received rents from him as evidenced by Ex.D.10 to D.13, the defendants 12 and 13 are contending that they are permanent tenants or lessees. But the controversy as to nature of lease arose long back when a part of leased property was acquired by the Government, and while deciding the appeal relating to apportionment of compensation, the Division Bench of this Court in F.A. No. 346/1945 had an occasion to deal with nature of tenancy. Ex.D.5 is the certified copy of the judgment produced by defendants 12 and 13. The finding of this Court regarding nature of tenancy is extracted below:



"In the present case there are words suggesting that the interest created by the lease was both transferable as well as heritable. But we need not go so far as that. For the purpose of the decision of this appeal, it is sufficient to observe that in the present case the lease was to be for a period of 10 years certain and thereafter the lessees were either to surrender possession during their pleasure. It may not be correct to define that interest as the interest of a permanent tenant. But certainly the interest created by the lease is of a permanent nature so long as the lessees or their transferees chose to continue in possession. That being our view, on the construction of the lease it must be held that the lessees could not be regarded to be tenants at will."

(emphasis supplied)

16. All the learned counsel referred to the above extracted paragraph from Ex.D.5 to argue in their own way as to nature of lease. Sri Sheelavant argued that the interest created under the lease deed as Ex.P.30 was permanent, but Sri Arun Neelopant and Sri Mallikarjunswamy B. Hiremath argued that the period of lease did not extent beyond the lifetime of Shivalingappa Bulla. They both referred to judgment of the Supreme Court in the case of ***Chapsibhai Dhanjibhai Dand Vs. Purushotham (AIR 1971 SC 1878)***. The factual position in the said case is that on May 5th 1906 a premises was let out to the father of the appellant for the



purpose of constructing buildings and the period of lease was 30 years certain at the annual rate of Rs.130/-. The other stipulations in the lease were like this:

"Even after the prescribed time limit, I shall have a right to keep my structure on the leased out land, so long as I like, and I shall be paying to you the rent every year as stated above. You will have no right to increase the rent and I shall also not pay it, myself and my heirs shall use this land in whatever manner we please. After the lease period, we shall, if we like, remove our building right from the foundation and vacate your land. In case we remove our structure before the stipulated period, we shall be liable to pay to you, the rent for all the thirty years, as agreed to above,.... In case I were to sell away the buildings, which I shall be constructing on the above land, to anyone else, then, the purchaser shall be bound by all the terms in this lease-deed....."

17. If the above stipulations are compared with the stipulations or the conditions found in Ex.P.30, it may be stated that they are almost identical. While interpreting the clauses of the lease dated May 5th 1906, the Hon'ble Supreme Court held as below:

"12. The effect of these clauses is that the first part of the document ensures that the lessor cannot charge rent higher than the agreed rent even if the lessee were to remain in possession after the period of 30 years. That part is consistent with the lease being for an indefinite period, which means for the lifetime of the lessee. The



next part provides for the right to remove the lifetime of the lessee. The next part provides for the right to remove the structures "after the lease period". The words "after the lease period" mean either at the end of the 30 years, or on the death of the lessee, because, it also says that if the lessee were to remove the buildings before the expiry of 30 years, he would have to pay the rent for the remainder of that period. This part of the document does not show the intention that the lease was to be a permanent lease. It merely ensures the right to remove the structures if the lessee or his heirs so desired on the expiry of the lease period, i.e., either at the end of 30 years, or after the lifetime of the lessee. The heirs are mentioned here to provide for the contingency of the lessee dying before the expiry of 30 years and also for the contingency of his living beyond that period and continuing to occupy the land. In the event of the first contingency, the lessee's heirs would continue in possession till the expiry of 30 years and then remove the structures if they wished. In the case of the second contingency, the heirs of the lessee would have the right to remove the structures on the death of the lessee. In either event the right provided for is the right to remove the structures. It is not a provision for the lease being heritable and its being consequently a permanent lease. Thus, the lease is for a period certain, i.e., 30 years and on the expiry of that period if the lessee still were to continue to pay the rent, for his lifetime. In the event of his dying before that period, the benefit of the lease would enure to his heirs till the completion of 30 years. They would be entitled to remove the structures either at the end of the 30 years if the lessee were to die before the expiry of that period or at the end of the lessee's life were he to continue to be in possession of the leased property after the expiry of 30 years. But the lease did not create hereditary rights so that on the death of the lessee his heirs could succeed to them."

(emphasis supplied)



18. But Sri V.M. Sheelavant referred to a judgment of the Hon'ble Supreme Court in the case of Shivayogeshwara Cotton Press Vs. Panchaksharappa (AIR 1962 SC 413) in support of his argument that in the context of the terms and conditions of the lease deed as per Ex.P.30, the interpretation that can be given is that the lease was perpetual. The reason for placing reliance on Shivayogeshwara Cotton Press (supra) is that in Ex.P.30 it is mentioned that the property was demised on to the lessees, their successors and assignees and the expression 'lessor' is defined as to include her heirs, executors, administrators and assigns. In Ex.D.6, the expression 'purchaser' is indicated as to include his heirs, executors, administrators and assigns. It appears that the language in Ex.P.30 is carefully worded. The lessee therein was a company which was an industrial concern being a legal entity and therefore its successor could only be another legal entity and not an individual. This meaning becomes amply clear if we look at the meaning of the word lessor who being an individual would include her



heirs. In this view, the lease to the company was only transferable or assignable, and not heritable from one individual to another. But the company went into liquidation, and the official liquidator sold the leasehold rights to Siddalingappa Bulla, an individual. Because of this sale, a question, whether the purchaser would include his heirs i.e., wife and children, obviously arises. Answer to this is found in Ex.D.6, which contains two recitals that are extracted as below:

(i) unto and to the use of the purchaser for ever at the rent and under and subject to covenants and conditions by and in the said indenture of lease reserved and contained

(ii) purchaser doth hereby covenants with the Company by its Liquidator that he will at all times hereafter during the term of the said lease pay the yearly rent reserved by the said lease and observe and perform all the covenants and conditions contained in the said lease.

(emphasis supplied)

19. From the above recitals what figures out is that the purchaser Siddalingappa Bulla covenanted with the company, not with the liquidator. For this reason, though the expression 'purchaser' is indicated in Ex.D.6 as to



include his heirs, executors, administrators and assigns, Siddalingappa Bulla was bound by the terms and conditions stipulated in the Indenture of Lease in Ex.P.30, and the lease in his favour did not become heritable enuring to the benefit of defendants 12 and 13. Only possible interpretation that can be given is that the lease continued till the lifetime of Siddalingappa Bulla, and he did not purchase heritable interest. Looked in this view, the judgment of the Hon'ble Supreme Court in **Chapsibhai** (supra), is applicable and not **Shivayogeshwara** (supra). Therefore defendants 12 and 13 cannot claim to be permanent tenants.

20. Sri Shieelavant has also relied on the judgment of the Supreme Court in **Bejoy Gopal Mukherji Vs. Pratul Chandra Ghose (1953 SCR 930)**, where it has been held that tenancy was heritable and permanent, but that finding was given in the background of facts and circumstances of that case and while holding so on facts, the Supreme Court observed as below:



"Shri N.C. Chatterjee then contends, relying on the decisions in Rasmoy Purkatt v. Srinath Moyra (1), Digbijoy Roy v. Shaikh Aya Rahaman (2), Satyendra Nath v. Charu Sankar (3) and Kamal Kumar Datta v. Nanda Lal Dule (4) that the tenancy in this case cannot be regarded as a permanent one. The decisions in those cases have to be read in the light of the facts of those particular cases. The mere fact of rent having been received from a certain person may not, as held in Rasamoy Purkatt v. Srinath Moyra (supra) and Digbijoy Roy v. Shaikh Aya Rahman (supra), amount to a recognition of that person as a tenant. Mere possession for generations at a uniform rent or construction of permanent structure by itself may not be conclusive proof of a permanent right as held in Kamal Kumar Dutt v. Nanda Lal Dule (supra) but the cumulative effect of such fact coupled with several other facts may lead to the inference of a permanent tenancy as indicated even in the case of Satyendra Nath v. Charu Sankar (supra) on which Shri N.C. Chatterjee relies. What, then, are the salient facts before us? It is not known how the earliest known tenant Shaik Manik acquired the tenancy or what the nature of that tenancy was. The tenancy has passed from one person to another by inheritance or by will or by transfers inter vivos. In the deeds of transfer the transferee has been given the right to enjoy the property from generation to generation for ever. A tank has been excavated and a pucca ghat built on the land. Bricks have been manufactured with the earth taken from the land and the premises have been enclosed with pucca walls. Pucca buildings have been erected and mortgages have been executed for substantial amounts. Although there was an enhancement of rent in 1860 that rent has continued to be paid ever since then. Portion of the premises, namely, No.2, Watkin's Lane, has been used as a factory by the plaintiffs and on the other portion, namely, No. 3, Watkin's Lane, residential buildings were erected which indicate that the lease was for residential purposes.



All these circumstances put together are explicable only on the hypothesis of permanency of the tenure and they irresistibly lead to the conclusion, as held by the lower Courts, that the tenancy in question was heritable and a permanent one. The decision of Mukherjea, J., in the case of Probhas Chandra Mallick v. Debendra nath Das (supra) is definitely in point. In this view of the matter we hold that the Courts below were right in dismissing the plaintiff's claim for ejectment.' In the result this appeal must fail and we dismiss it with costs."

(emphasis supplied)

21. Therefore mere payment of rent by defendants 12 and 13 does not lead to an inference about permanent tenancy. The underlined sentences in the extracted portion of the judgment make it clear that the terms and conditions of the original lease deed decide the nature of tenancy.

22. If the entire situation is analyzed in the backdrop of above discussion and Ex.D.5 is considered again, the sentence "But certainly the interest created by the lease is of a permanent nature so long as the lessees or their transferees chose to continue in possession" only gives the meaning that the lease continued till lifetime of Siddalingappa Bulla and not beyond his lifetime.



23. Two more decisions relied on by Sri Sheelavant are, ***Ashok Kumar Krishnalal Patel & Anr. V. Continental Textile Mills Ltd., (AIR 2013 DELHI 166)*** and ***Anil Kumar Vaikuthlal Patel V. O.L. of A'Bad Jubili Spinning & Mfg. Mills Co. & 8 other(s)*** of the High Court of Gujarat (Company Application No. 16/1999 and connected cases). Both these cases deal with powers of official liquidator about which legal position is settled and therefore applicability of these decisions to the present appeals is not necessary to be discussed.

24. Defendants 12 and 13 have sought to rely upon Ex.D.15, i.e., judgment passed in O.S. No. 126/2003 and O.S. No. 513/2004 where it is held that lease was permanent. It was submitted by Mr.Mallikarjunswamy B. Hiremath that the judgment in these two suits is now a subject matter of two appeals in R.A. No. 103/2016 and 104/2016 and therefore the judgment in the suits cannot be said to have attained finality.



25. The appellants have produced certified copy of the judgment and decree in O.S. No. 419/2007 and 420/2007 decided by the I Addl. Sr. Civil Judge, Hubli along with an application under Order 41 Rule 27 of CPC. Three more documents are also produced along with this application. The reason for production of these documents by way of additional evidence is to fortify the stand of the appellants who are the legal representatives of defendant no. 12 that in those two suits defendants 12 and 13 were held to be permanent tenants and that the said judgment has not been challenged and hence the same issue cannot be once again agitated. It appears that the appeals were not filed against the said judgment, but merely for that reason, the findings in the suits cannot be accepted to be binding on the plaintiffs because of the judgment of the Division Bench of this Court in F.A. No. 346/1945 prevails and the finding therein is conclusive. Therefore no purpose would be served by allowing the application filed under Order 41 Rule 27 CPC.



26. Lastly one argument of Sri Sheelavant is to be dealt with. His argument was that the plaintiffs did not file rejoinder under Order VIII Rule 9 CPC to the written statement filed by defendants 12 and 13 contending about permanent tenancy and thereby their specific contention stood admitted impliedly and therefore there was no need to frame an issue casting burden on defendants 12 and 13 to prove that they were permanent tenants. We find it difficult to accept this argument. It is not the rule of pleading that whenever a defendant takes up a specific contention in his written statement, the plaintiff must meet it by filing a rejoinder. The plaintiff may choose to file a rejoinder under Order VIII Rule 9 CPC with the permission of the court, it is not always mandatory or compulsory. Merely for the reason that rejoinder is not filed, it cannot be stated that there is a deemed admission by the plaintiff of the specific contention. In this context, we refer to Section 103 of the Indian Evidence Act which reads as below:



"The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person."

(emphasis supplied)

27. In the case on hand defendants 12 and 13 particularly pleaded about permanent tenancy and the burden lay on them to prove it; it was not the argument of Sri Sheelavant that defendants 12 and 13 were not required to prove that issue or another person was to prove it.

28. As we have held that lease was not permanent, neither the appellants or any person deriving interest under defendants 12 and 13 can claim immunity from eviction from leased property. They must deliver possession to the plaintiffs and defendants 1, 5 and 6. Sri Arun Neelopanth submitted that the appellants are tenants by sufferance, and there was no need to issue ejectment notice to them. As the relief of possession was claimed in the suit, the lawful owner can execute the final decree to



recover possession. He sought to seek support for his argument by referring to two judgments of the Supreme Court, viz., ***Smt. Shanti Devi v. Amal Kumar Banerjee (AIR 1991 SC 550)*** and ***Badrilal v. Municipal Corporation of Indore (AIR 1973 SC 508)***.

29. In the case of ***Smt. Shanti Devi*** (supra), it is held that after the determination of lease by efflux of time, service of quit notice under Section 106 of Transfer of Property Act is not necessary. And in the case of ***Badrilal*** (supra) also it is held that for ejecting a tenant by sufferance, notice is not necessary to be issued. In the present case, after the death of Siddalingappa Bulla, the position of defendants 12 and 13, and now that of appellants is no better than tenants by sufferance. Mere acceptance of rent by the landlords did not place them at the altar of tenants. Possession of property demised under Ex.P.30 can be recovered without issuing notice. The suit was not only for partition but also for possession. We find force in the argument of Sri Arun Neelopanth.



30. From the above discussion, the conclusion is that the appeals are dismissed with costs.

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