THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 31.08.2019

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

RFA No.09 of 2016

Appellant **:** Joybells School Authority,
Through Mr. P.J.S. Walia,
Chairman, Joy Bells School,
Near Khangri Petrol Pump,
Tadong, East Sikkim.

versus

Respondents **:**

1. Mr. Tsewang Gyatso Kaleon,
   S/o Late Karma Pintso,
   R/o Syari, Gangtok, East Sikkim.
2. Mrs. Althea Joy Singh,
   W/o Col. S.S. Singh,
   Principal of Joy Bells School,
   Near Khangri Petrol Pump,
   Tadong, Gangtok, East Sikkim.
3. Mr. N.D. Chingapa,
   S/o T.N. Chingapa,
   R/o Lucy Building,
   Nam-Nang, Gangtok, East Sikkim.
4. Mrs. Tashi Dolma Kazini,
   W/o Mr. N.D. Chingapa,
   R/o Lucy Building,
   Nam-Nang, Gangtok, East Sikkim.

Appeal under Order XLI of the Code of Civil Procedure, 1908

Appearance

Mr. T.B. Thapa, Senior Advocate with Mr. Ranjan Chettri and Mr. Khem Raj Sapkota, Advocates, for the Appellant.

Mr. A.K. Upadhyaya, Senior Advocate with Mr. Sonam Rinchen Lepcha, Advocate, for the Respondent No.1.

None present for Respondent No.2.

Mr. S.S. Hamal, Advocate, for Respondents No.3 and 4.

CO No.01 of 2016

Petitioner **:** Mr. Tsewang Gyatso Kaleon,
S/o Late Karma Pintso,
R/o Syari, Gangtok, East Sikkim.

versus

Respondents **:**

1. Mrs. Althea Joy Singh,
   W/o Col. S.S. Singh,
   Principal of Joy Bells School,
   Near Khangri Petrol Pump,
   Tadong, Gangtok, East Sikkim.
2. Joybells School Authority,
   Through Mr. P.J.S. Walia,
   Chairman, Joy Bells School,
   Near Khangri Petrol Pump,
   Tadong, East Sikkim.
3. Mr. N.D. Chingapa,
   S/o T.N. Chingapa,
   R/o Lucy Building,
   Nam-Nang, Gangtok, East Sikkim.
4. Mrs. Tashi Dolma Kazini,
   W/o Mr. N.D. Chingapa,
   R/o Lucy Building,
   Nam-Nang, Gangtok, East Sikkim.

Cross-Objection under Order XLI Rule 22 of the Code of Civil Procedure, 1908

Appearance

Mr. A.K. Upadhyaya, Senior Advocate with Mr. Sonam Rinchen Lepcha, Advocate, for the Petitioner.

None present for Respondent No.1.

Mr. T.B. Thapa, Senior Advocate with Mr. Ranjan Chettri and Mr. Khem Raj Sapkota, Advocates, for Respondent No.2.

Mr. S.S. Hamal, Advocate, for Respondents No.3 and 4.

J U D G M E N T

Meenakshi Madan Rai, J.

1. The learned trial Court vide the impugned Judgment dated 30.04.2016*,* decreed the Suit of the Plaintiff (Respondent No.1 in this Appeal and Petitioner in the Cross Objection), on grounds of "*bona fide* requirement for personal occupation" of the Plaintiff. Arrears in rent were ordered to be paid by the Defendant No.2 (Appellant herein and Respondent No.2 in the Cross Objection), from April 2012, till filing of the Suit with *pendent lite* and future interest, till recovery of possession. The

Counter-Claim of the Defendant No.2 (Appellant herein) was dismissed. Aggrieved thereof, the Appellant assails the impugned Judgment *supra*.

2. A Cross Objection was filed by the Respondent No.1 before this Court, assailing the finding of the learned trial Court on Issues No.1 and 2. The Appeal and the Cross Objection are being disposed of by this Judgment.

3. (a) The Respondent No.1 (in the Appeal herein and the Petitioner in the Cross Objection) was the Plaintiff before the learned trial Court;

(b) the Respondent no.2 (in the Appeal herein and Respondent No.1 in the Cross Objection) was the Defendant No.1 before the learned trial Court;

(c) the Appellant (in the Appeal herein and Respondent No.2 in the Cross Objection) was the Defendant No.2 before the learned trial Court; and

(d) the Respondents No.3 and 4 (in the Appeal herein and Respondents No.3 and 4 in the Cross Objection) were the proforma Defendants No.3 and 4 before the learned trial Court.

The parties shall be referred to in their order of appearance before this Court, in the Appeal.

4. The facts briefly stated, as set out by the Respondent No.1, are that he had purchased two RCC buildings *viz.* (i) four storeyed building measuring 48 feet x 47 feet, and (ii) three storeyed building measuring 36 feet x 36 feet, with surrounding land, standing on Plot No.104/904 alongside

National Highway 31A, under Tadong Block at Sokeythang, East Sikkim, from the Respondents No.3 and 4, vide a Sale Deed dated 11.11.2011, duly registered and mutated in his name on 19.12.2011. The property in dispute is the four storeyed RCC building at (i) *supra,* measuring 48 feet x 47 feet, (hereinafter the "suit property"). The Respondent No.2 used to be the Principal of the Appellant School, while P.J.S. Walia representing the Appellant, is the present Chairman of the School. Vide Lease Deed, dated 23.03.1996, the Respondent No.3 leased out the suit property to Respondent No.2, who later left Gangtok having handed over the suit property to the Appellant, without the consent or knowledge of the Respondents No.3 and 4, despite Clause 9 of the Lease Deed prohibiting subletting. That, the Respondent No.1, aged above 50 years and being beset with physical ailments, decided to discontinue working as a Contractor and instead sought to develop the suit property into a hotel complex. Pursuant thereto, on 21.08.2012, he issued three months' advance Legal Notice to the Appellant, requiring him to vacate the suit property by the end of the Academic Session of 2012, which the Appellant failed to comply. This gave rise to the Eviction Suit on the grounds of "*bona fide* use and occupation" and default in payment of rent for four months continuously. It was also asserted that the Appellant was a trespasser in the suit property.

5. Denying and disputing the allegations, the Appellant in his Written Statement, expressed ignorance of the change in ownership of the suit property from the Respondents No.3 and 4

to the Respondent No.1, which he learnt of, only on receipt of a copy of the alleged Sale Deed document and *khatian parcha,* appended to the summons served on him. Claiming a right of pre-emption over the suit property being the tenant, for the amount as indicated in the Sale Deed, he alleged that the sale transaction was a sham transaction to cause him loss. The Lease Deed, executed between Respondent No.2 and Respondent No.3 did not bind him as the period therein had expired prior to his taking over as the Chairman of the Appellant School, in 2002. That, the School started in 1984 and has continued to be a tenant under the tenancy laws of the State and the Respondent No.2 was the Principal from 1990. Denying default in payment of rent, it was averred that the Respondents No.3 and 4 received rent till November, 2011, thereafter rent was remitted to the Respondent No.1, on Legal Notice dated 18.05.2012, being issued by him to the Appellant. That, the Respondent No.1 owns a multi storeyed RCC building at Syari, from which he earns sufficient income from rent, besides, a hotel could be opened in any of the buildings purchased by him from the Respondent No.3 near the Appellant School.

6. A Counter-Claim was filed by the Appellant, seeking to exercise the right of pre-emption on payment of the amount mentioned in the Sale Deed, executed between the Respondent No.1 and Respondents No.3 and 4. In his Written Statement to the Counter-Claim, the Respondent No.1 reiterated that Respondent No.2 and not the Appellant, had been originally inducted as a tenant, rendering the Appellant a trespasser in the

suit property. The consideration value reflected on the Sale Deed was due to family relations between the Respondents No.1, 3 and 4 but the market value would be much higher. Besides, the provisions of Revenue Order No.I of 1917 prohibits the Appellant from exercising the right of pre-emption, hence the Counter-Claim be dismissed.

7. On account of her non-appearance before the learned trial Court despite service of summons, the Respondent No.2 was proceeded *ex parte.*

8. The learned trial Court initially struck the following four issues for settlement;

> "**1**. Whether the Defendants No. 1 and 2 are liable to be evicted from the Suit Premises allegedly being trespassers in the Suit Premises and the Plaintiff requiring the same for his bona fide use and occupation? *(Onus on the Plaintiff)*
>
> **2**. Whether the Plaintiff is entitled to arrears of rent from the Defendants No.1 and 2 from November, 2011 till decision in the Suit? *(Onus on the Plaintiff)*
>
> **3**. Whether the Defendant No.2 has a right of pre-emption over the Suit Premises from Plaintiff and the Proforma Defendants No.3 and 4? *(Onus on the Defendant No.2)*
>
> **4**. Whether the Defendant No.2 has the right to purchase the Suit Property in view of the provisions of Revenue Order No.1 of 1917? *(Onus on the Defendant No.2)*"

Later in time, on the Suit being transferred to the Court of the learned District Judge, Special Division-II, East Sikkim at Gangtok from that of the learned District Judge, (East) Sikkim, the learned Presiding Officer of this Court, in his wisdom, vide Order dated 21.04.2016, opined that although Issue No.2 *supra* was framed regarding arrears of rent but the issue of default had not been specifically framed and proceeded to re-frame Issue No.2 as follows;

> "**2**.Whether defendants have defaulted in payment of monthly rent from November, 2011 up to December, 2012 and are liable to be evicted from the suit premises? Whether the Plaintiff is entitled to arrears of rent from the defendant No.1 and 2 from November, 2011 till decision in the suit?"

9. Before the learned trial Court, the Respondent No.1 examined two witnesses including himself. The Appellant also examined two witnesses including P.J.S. Walia (representing the Appellant School). On behalf of Respondents No.3 and 4, Respondent No.3 was examined. Each party filed documents in support of their respective contentions. On consideration of the evidence and documents furnished before it, the learned trial Court in Issue No.1, concluded as follows;

> *"… **65**. It is seen in the evidence that the plaintiff in the instant suit is suffering from blood pressure and backache. Undoubtedly the suit premises is required for the bonafide reason for the "personal occupation" of the plaintiff, i.e., for the establishment of hotel business at the fag end of his life for his livelihood.*
>
> *……*
>
> ***71**. ……Therefore, in my humble view the defendant No. 2 cannot use and occupy the suit premises unless expressly consented in written or oral by the plaintiff. However, considering the future of the students who are studying in the said School and are in the mid session, the defendant No. 2 should be allowed to run the School till the end of this session. Thus, this Issue is decided in affirmative."*

In Issue No.2, the learned trial Court went into an elaborate discussion of the words "willful default" while relying on a decision of the Hon'ble Supreme Court in a matter dealing with the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 and *inter alia* concluded that;

> *"**82**. ……I hold that there is no willful default of rent on the part of the defendants. However, the plaintiff entitled (sic) to recover the arrear rent from the defendants from the month of April, 2012 till disposal of this case at the rate of ₹12,000/- per month since there is no fresh or new agreement of enhancement of rents with the plaintiff. Although the plaintiff has stepped into the*

> *shoes of the original owner but he cannot take the benefit of the earlier Lease Deed (Exhibit-1) drawn between the proforma defendants and the defendant No. 1 in the year 1996 which has been already expired on 2001 and not entitled to claim the enhanced rate by virtue of the said Lease Deed as same became ineffective or nonest. Thus, this Issue is decided accordingly."*

Issues No.3 and 4 were taken up together and the prayers of the Respondent No.1 seeking to pay fifty times the usual registration fees and to validate the Lease Deed of 1996, Exhibit 1, in terms of the provisions contained in Notification No.2947/G dated 22.11.1946 was rejected by the Court with the reasoning that the Respondent No.1 was not the original signatory to Exhibit 1. The learned Court further concluded that the Appellant had no right of pre-emption over the suit property, the same having been lost by estoppel and acquiescence and the provisions of Revenue Order No.I of 1917.

10. Before this Court, learned Senior Counsel for the Appellant canvassed the arguments that contrary to the ratiocination of this Court on "personal occupation" as held in ***Ashok Kumar Rai v. Girmey Goparma***[1], wherein eviction was granted to enable the grown son of the Appellant to set up a separate establishment, and his daughter-in-law to earn an income, the learned trial Court held that the Respondent No.1 required the suit property for his personal occupation, for the purpose of establishing a hotel business. That, no evidence either oral or documentary was forwarded in support of personal occupation or *bona fide* requirement of the Respondent No.1. Dwelling on the differences between the phrase "personal

[1] AIR 2012 Sikk 29

occupation" as used in Notification No.6326-600-H&W-B, dated 14.04.1949, (for short the "Notification of 1949") as opposed to the phrase "*bona fide* requirement," as emanates in the Gangtok Rent Control and Eviction Act 1 of 1956, (for short the "Act of 1956"), it was urged that the term 'personal occupation of the landlords' in the Notification of 1949 connotes the idea that accommodation is needed directly and substantially for the occupation of the landlord as interpreted by this Court in ***Paul Sangay v. Mahabir Prasad Agarwalla***[2]. That, interpretation of the words "personal occupation" as found in other Rent Acts cannot be resorted to. That, the term "*bona fide"* suggests that the need must be genuine and not a mere desire or motivated by extraneous considerations in trying to recover possession from the tenant and the terms "personal occupation" and "*bona fide* requirement" are neither synonymous nor interchangeable. It was next contended that there was collusion between the Respondent No.1 and the Respondent No.3, who, in cross-examination, admitted that, he had sent a letter dated 16.11.2011 to the Principal, Joy Bells School, stating that he required the suit property for running a hotel business when, in fact, the alleged sale transaction was already executed between the Respondent No.3 and the Respondent No.1. This collusion was not considered by the learned trial Court. Besides, the prohibition of Revenue Order No.I of 1917 is not applicable to the Appellant as the suit falls outside the rural area. Prolix arguments were advanced by learned Senior Counsel pertaining

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[2] AIR 1980 SIKKIM 13

to a Gift Deed, dated 22.09.1977, executed by the father of Respondent No.4 to her, the area covered by the Gift Deed, the Sale Deed dated 11.11.2011 executed between the Respondents No.3, 4 and Respondent No.1, emphasizing that, the documents *supra* pertaining to the same property contradict each other in terms of details and measurements. That, the Respondent No.3, has falsely claimed to be the owner of the building and sans authority granted "No Objection" on 16.11.1995, to the functioning of the School, when Respondent No.4 is the actual owner. The undervaluation of the suit property, as also non-production of attesting witnesses to the alleged Sale Deed, was questioned by the Appellant. That, despite determination of the Lease Deed, Exhibit 1, on 23.03.2001, the School Management continued to pay rents to the Respondents No.3 and 4 who continued to accept the rents till November, 2011 and thereafter vide Exhibit 2/S and Exhibit 2/T. That, no benefit accrues from the default clause of the Lease Deed, to the Respondent No.1, as afforded by the learned trial Court, vide the impugned Judgment. That, the Lease, if any, is governed by the Transfer of Property Act, 1882 (for short the "T.P. Act") and determination thereof must be as per the said Act, while the Tenancy is governed by the relevant Tenancy Act. Thus, the Respondent No.1 cannot seek eviction of the tenant, both on grounds of determination of the Lease Deed and under the Notification of 1949. That, the Appellant does not challenge the title but only the alleged sham sale transaction, shearing the Respondent No.1 of *locus standi* to

file the Suit. Hence, the impugned Judgment and Decree be set aside and a Decree be passed dismissing the Eviction Suit.

11. *Per contra,* learned Senior Counsel for the Respondent No.1, while conceding that the Lease Deed was executed between the Respondent No.2 and Respondent No.3, contended on the one hand, that the School is the lessee of the suit property by virtue of the fact that the Appellant had been paying rent in terms of Clauses 2, 14 and 15 of the Lease Deed, Exhibit 1. That, after the suit property was purchased by the Respondent No.1 he has stepped into the shoes of the original owner and thereby sought eviction of the Appellant. The refusal of the Respondent No.1 to accept the rent amount of Rs.12,000/- (Rupees twelve thousand) only, was for the reason that it was less than the enhanced rent, liable to be paid in terms of Clause 12 of the Lease Deed, resulting in a clear default of over more than four months. That, Clause 13 of the Lease Deed permits the Respondent No.1 to ask Respondent No.2 and the Appellant to vacate the suit property, by issuing an advance Notice of three months. In a contradictory argument, it was strangely canvassed that Clause 12 of the Lease Deed is a Renewal Clause providing for renewal of the Lease on expiry of five years but as no such renewal was sought, the Appellant thereby became a trespasser into the suit property, on and from 23.03.2001 and is liable to pay *mesne profits* by way of damages. That, the Lease Deed cannot be impliedly renewed as sought to be made out by the Appellant, for which support was garnered from the ruling in ***Shanti Prasad Devi and Another v.***

Shankar Mahto and Others[3]. That, the Respondent No.1 commenced preparations for building a hotel in the suit property as the Appellant had agreed to vacate by the end of the Academic Session of 2012, hence, the provisions of Section 115 of the Indian Evidence Act, 1872 are applicable. That, the suit property is required *bona fide* by the Respondent No.1 due to his advancing age and physical ailments disabling him to work as a Contractor and was not demolished under cross-examination. On this count reliance was placed on ***Ashok Kumar Rai v. Girmey Goparma***[4]***.*** That, the Notification of 1949 being dealt with herein, is concerned only with "personal occupation" and hence the words "*bona fide"* as required in the Act of 1956, is extraneous, for which reliance was placed on ***Renula Bose, Srimati v. Rai Manmatha Nath Bose and Others***[5]. While rueing the denial of the learned trial Court for eviction on ground of default, it was contended that despite this finding, the Respondent No.1 was, however, found to be entitled to arrears of rent.

12. That, sale transaction and value thereof was due to the family relations between the Respondents No.1, 3 and 4 and inapplicable to the Appellant. Despite awareness of the sale transaction, the Appellant allowed its completion and thereafter put forth claims of pre-emption but the provisions of Revenue Order No.I of 1917, renders the Appellant ineligible thereof. Relying on the ratio of ***Lingala Kondala Rao v. Vootukuri Narayana***

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[3] AIR 2005 SC 2905
[4] AIR 2012 Sikk 29
[5] AIR 1945 PC 108

Rao[6]*,* it was next contended that the tenant cannot challenge the document conferring title on the landlord, besides, the Appellant had accepted the Respondent No.1 as his landlord by virtue of the rent remittance. The issue of sham transaction found no place before the learned trial Court, as evident from the absence of an issue struck on this aspect. That, Issues No.3 and 4 have been discussed and decided against the Appellant, thus no further question need arise on these.

13. Learned Counsel for the Respondents No.3 and 4, while supporting the contention of the Appellant, reiterated that the question of sham transaction cannot be raised at the Appellate stage, not having been averred or argued at trial. That, the legality of the sale transaction between the Respondent No.1 and the Respondents No.3 and 4, suffers no infirmity and questions on title cannot be raised by a tenant in an Eviction Suit. That, the provisions of Revenue Order No.I of 1917 debars the Appellant from pre-emption, hence, the Appeal deserves to be dismissed.

14. In his Cross Objection to the Appeal, the Respondent No.1 agitated that the Judgment of the learned trial Court in respect of Issues No.1 and 2, are contrary to law and deserve to be set aside. The conclusion of the learned trial Court at not having held the Appellant and Respondent No.2 as trespassers, in view of the non-renewal of the Lease Deed, was also assailed. That, the decision of the learned trial Court to reject the prayer

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[6] (2003) 1 SCC 672

for validation of Exhibit 1, in terms of Notification No.2947/G, dated 22.11.1946, was contrary to the decisions of this Court. Pausing here for a moment, it may be pointed out that the prayer for setting aside the finding in Issue No.1, was subsequently withdrawn at the final hearing, by learned Senior Counsel for the Respondent No.1.

15. Learned Senior Counsel for the Appellant submitted that the Cross-Objection deserves a dismissal as no grounds arise to sustain it. While urging the grounds put forth in Interlocutory Application (I.A.) No.5 of 2017 which is an application under Order XLI Rule 27 read with Section 151 of the Code of Civil Procedure, 1908 (for short the "CPC, 1908"), learned Senior Counsel for the Appellant sought admission of a copy of the *khasra* records of Respondent No.1, which were not in their possession during trial. That, the document establishes that the property was not in the joint names of Respondents No.3 and 4 but only of Respondent No.4, contrary to the Sale Deed, Exhibit 2. To establish this assertion, the Appellant filed I.A. No.7 of 2018, another application under Order XLI Rule 27 read with Section 151 of the CPC, 1908, seeking to admit and exhibit the entire records of the registration proceedings relating to registration of the Sale Deed dated 11.11.2011.

16. Disputing the maintainability of both the petitions *supra*, learned Senior Counsel for the Respondent No.1 contended that the title of the Respondent No.1 as the landlord, is being assailed, which was not the case of the Appellant at

trial, besides, the Appellant had attorned to the Respondent No.1 as his landlord, by tendering rent to him. That, the additional evidence proposed to be brought in Appeal, was available in the Office of the District Collector and the Appellant is seeking to introduce fresh pleadings and evidence at this stage, which is impermissible, hence both the petitions be dismissed.

17. Learned Counsel for the Respondents No.3 and 4, while, also objecting to the I.As *supra,* sought outright rejection of the petitions, lacking ingredients stipulated in Order XLI Rule 27 of the CPC, 1908, and the *khas* records, being public documents, were maintained in the Office of the Registrar/ District Collector, East, and therefore available, had it been sought for. That, the title of the Respondent No.1 was never in dispute and no issue on this aspect was framed by the learned trial Court. That the Hon'ble Supreme Court in ***Lingala Kondala Rao*** *(supra)* has held that the tenant cannot challenge the title of the landlord. That in view of the said submissions, these documents are not required for pronouncement of Judgment herein, and the I.As consequently be disregarded.

18. I.A. No.8 of 2019 was filed by the Respondent No.3 under Order XLI Rule 27 read with Section 151 of the CPC, 1908, seeking permission of this Court to produce attested copy of registered Gift Deed document executed on 22.09.1977, by the father of Respondent No.4 in respect of his three storeyed RCC building located at Tadong Block and another Gift Deed document executed on 01.09.1981, by Respondent No.4 in

favour of the Respondent No.3, with respect to the suit property along with Construction Order issued to the Respondent No.3, by the concerned authority. That, these documents were necessary to abrogate the allegations made by the Appellant in the I.As *supra*.

19. Learned Senior Counsel for the Appellant, sought rejection of the petition, as the Sale transaction is false, sham, collusive and void.

20. The rival submissions canvassed by learned Counsel for the parties were heard and carefully considered, the documents and evidence on record as also the impugned Judgment were meticulously perused including the citations made at the Bar.

21. The questions that fall for consideration before this Court are;

(i) Whether there was a jural relationship between the Appellant and the Respondent No.1?

(ii) Whether the suit premises were required by the Respondent No.1 for his "personal occupation" as envisaged in Notification No.6326—600-H&W—B of the Health and Works Department, Government of Sikkim, dated 14.04.1949?

(iii) Whether the finding of the learned trial Court with regard to arrears of rent to be paid by the Appellant to the Respondent No.1 from the month of April, 2012 till the filing of the Suit, despite concluding absence of default in rent payment, was correct?

(iv) Whether the learned trial Court ought to have allowed validation of the Lease Deed in terms of Notification No.2947/G dated 22.11.1946?

22. To address the first question formulated, it is essential to note that contradictory arguments were variously raised by the Respondent No.1, as regards the status of the Appellant *vis-à-vis* the Respondent No.1, (i) that the Appellant was paying rent in terms of the Lease Deed and was therefore a lessee on the suit property; (ii) refusal by the Respondent No.1 to accept the rent of Rs.12,000/- (Rupees twelve thousand) only, as it was less than the amount envisaged under Clause 12 of the Lease Deed, resulted in default in rent for more than four months; (iii) contrarily, it was urged that as the Lease Deed had expired and was not renewed, the Appellant was a trespasser on the suit property as the Lease Deed cannot be impliedly renewed, revealing a confusion in his stance.

23. It is an admitted position that a Lease Deed, Exhibit 1, was executed between the Respondent No.2 and Respondent No.3 in the year 1996, for a period of five years, from 23.03.1996 up to 22.03.2001. The School undisputedly started running from the premises since 1984. The Lease Deed determined on 23.03.2001 and despite non-renewal, the School continued to function from the same premises while rent continued to be remitted by the Appellant and accepted by the Respondents No.3 and 4. In 2011, the Respondents No. 3 and 4 sold the property to Respondent No.1, vide Exhibit 2, a Sale

Deed dated 11.11.2011, registered on 09.12.2011. The property thus came to be mutated in the name of the Respondent No.1 vide the *parcha khatiyan,* Exhibit 3. Thus, after the transaction, it is evident that the Respondent No.1 stepped into the shoes of the Respondents No.3 and 4. Indeed, the provisions of Section 109 of the T.P. Act, which deals with the rights of the Lessor's transferee are relevant herein. The Section is reproduced hereinbelow for easy reference;

> "**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 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 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 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.
>
> 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 determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased."

The Section, as evident, postulates that the rights attached to a property which arise out of the possession and control of the property, will pass with the property. The Section does not insist that the transfer of the landlord's rights can take effect only if the tenant attorns. The Hon'ble Supreme Court in ***Ambica Prasad***

v. Mohd. Alam and Another[7], while discussing the provisions of Section 109 of the T.P. Act, held as hereinbelow extracted;

> *"**15.** … From a 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 (sic transferee) landlord would be proper and so also the suit for ejectment."*
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> **(emphasis supplied)**

The evidence establishes sale vide Exhibit 2 hence, in terms of this provision and Exhibit 2, Sale Deed, the Respondent No.1 has unequivocally stepped into the shoes of Respondents No.3 and 4.

24. The Sale Deed between the Respondent No.1 and Respondents No.3 and 4 was executed on 11.11.2011 and the property registered in the name of the Respondent No.1 on 19.12.2011. A Notice for eviction was issued to the Appellant by the Respondent No.1 on 21.08.2012 vide Exhibit 2/Y, which is not denied by the Appellant. Perusal of Exhibit 2/U indicates that during August 2012, rent was being remitted by the Appellant to the Respondent No.1.

25. It is relevant now to consider the provisions of Section 111 of the T.P. Act, which provides for determination of Lease and states *inter alia* that a Lease of immoveable property

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[7] (2015) 13 SCC 13

determines by efflux of the time limited thereby. The relevant provision is, as extracted below;

> "**111.**Determination of lease.—A lease of immoveable property determines—
> **(a) by efflux of the time limited thereby**;
> (b) ……
> (c) ……
> (d) ……
> (e) ……
> (f) ……
> (g) ……
> (h) ……"
>
> **(emphasis supplied)**

On the anvil of this statute, it is clear that the Lease Deed, Exhibit 1, entered into between the Respondents No.2 and 3, determined on 23.03.2001, the period of existence of the Lease being from 23.03.1996 to 22.03.2001. Clause 12 of Exhibit 1, which provides for renewal of the Lease with enhancement of rent to the extent of 10% to 15% above the existing rent, was not resorted to by either of the concerned parties. The documents Exhibit 2/S (collectively) and Exhibit 2/T (collectively) are conclusive of the fact that the amount of rent of Rs.12,000/- (Rupees twelve thousand) only, continued to be paid by the Appellant School and received by the Respondents No.3 and 4 till November, 2011. Exhibit 2/T and Exhibit 2/U reveal that rent for the month of December, 2011 was sent to both the Respondent No.4 and the Respondent No.1, although it was refused by both payees. This mode of remittance to both Respondents No.3 and 4 and to Respondent No.1, albeit separately, continued till March, 2012 vide Exhibit 2/T. From April, 2012 vide Exhibit 2/U, it appears that rent remittance, by Money Order, was made to the Respondent No.1, upto April, 2013. The act of rent

remittance coupled with the specific admission of the Appellant in his evidence that Joy Bells School was the tenant under Respondents No.3 and 4, and thereafter of Respondent No.1 after the School came to learn of the alleged sale, discloses his indubitable attornment to the Respondent No.1 as his landlord.

26. That having been said, the provisions of Section 116 of the T.P. Act, which deals with the effect of holding over, is of relevance here, which reads as follows;

> "**116. Effect of holding over**.- If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106."

The provision is self-explanatory and does not necessitate elucidation. Section 106, the provision referred to in the Section *supra,* deals with duration of certain Leases in absence of written contract or local usage, and provides as follows;

> "**106**. Duration of certain leases in absence of written contract or local usage.— **(1) In the absence of a contract** or local law or usage **to the contrary**, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice; **and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice**.
>
> **(2)** Notwithstanding anything contained in any other law for the time being in force, the period mentioned in sub-section (1) shall commence from the date of receipt of notice.
>
> **(3)** A notice under sub-section (1) shall not be deemed to be invalid merely because the period mentioned therein falls short of the period specified under that sub-section, where a suit or proceeding is filed after the expiry of the period mentioned in that sub-section.
>
> **(4)** Every notice under sub-section (1) must be in writing, signed by or on behalf of the person giving it, and either be sent by post to the party who is intended to be

> bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property."
>
> **(emphasis supplied)**

27. On the determination of Exhibit 1, the Lease of the immoveable property, being neither for agricultural or manufacturing purposes, is deemed to be a Lease from month to month. Although the purchase and mutation has been vehemently contested by the Appellant, terming it to be a sham transaction, however this is altogether a tangential matter and cannot be considered in an eviction proceeding. Besides, during the course of arguments, learned Senior Counsel for the Appellant conceded that he had no challenge to the title of the property, he only assailed the process of transfer. On this aspect, appropriate reference may be made to the observation of the Hon'ble Supreme Court, in ***Keshar Bai v. Chhunulal***[8], as follows;

> *"…**15. The High Court has expressed that the respondent was justified in asking the appellant to produce the documents. Implicit in this observation is the High Court's view that the respondent could have in an eviction suit got the title of the appellant finally adjudicated upon. There is a fallacy in this reasoning. In eviction proceedings the question of title to the properties in question may be incidentally gone into, but cannot be decided finally**.*
>
> ***16.** A similar question fell for consideration of this Court in Bhogadi Kannababu [Bhogadi Kannababu v. Vuggina Pydamma*[9]*. **In that case it was argued that the landlady was not entitled to inherit the properties in question and hence could not maintain the application for eviction on the ground of default and sub-letting under the A.P. Tenancy Act. This Court referred to its decision in Tej Bhan Madan v. Addl. District Judge**[10] **in which it was held that a tenant was precluded from denying the title of the landlady on the general principle of estoppel between the landlord and the tenant and that this principle, in its basic foundations, means no more than that under certain circumstances law considers it unjust***

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[8] (2014) 11 SCC 438
[9] (2006) 5 SCC 532
[10] (1988) 3 SCC 137

> ***to allow a person to approbate and reprobate. Section 116 of the Evidence Act is clearly applicable to such a situation. This Court held that even if the landlady was not entitled to inherit the properties in question, she could still maintain the application for eviction and the finding of fact recorded by the courts below in favour of the landlady, was not liable to be disturbed.*** *The position on law was stated by this Court as under: (Bhogadi Kannababu case [Bhogadi Kannababu v. Vuggina Pydamma.]*
>
> *"**19. In this connection, we may also point out that in an eviction petition filed on the ground of sub-letting and default, the court needs to decide whether relationship of landlord and tenant exists and not the question of title to the properties in question, which may be incidentally gone into, but cannot be decided finally in the eviction proceeding**.""*
>
> **(emphasis supplied)**

Hence, no further discussions need ensue on the title of the suit property to finally decide it. Consequently, the requirement of filing documents by the Respondent No.3, as depicted in I.A. No.8 of 2019, does not arise. Neither are the documents sought to be filed by the Appellant under I.A.5 of 2017 and I.A.7 of 2018, necessary or relevant. The Appellant cannot, in view of the foregoing discussions, be tainted with the brush of a trespasser, and the ambiguous stand adopted by the Respondent No.1, on this point, finds no foothold. The finding of the learned trial Court that *"the defendant No.2 cannot use and occupy the suit premises unless expressly consented in written or oral by the plaintiff"* in my considered opinion, is an erroneous conclusion in view of the afore discussed provisions of law. In conclusion, considering the action of both the Appellant and the Respondent No.1, it cannot, but be concluded that jural relationship exists between the Respondent No.1 and the Appellant, which answers the first question.

28. While addressing the second question formulated hereinabove i.e. "*Whether the suit premises were required by the Respondent No.1 for his "personal occupation" as envisaged in Notification No.6326—600-H&W—B of the Health and Works Department, Government of Sikkim, dated 14.04.1949?,"* it is essential to reproduce the relevant provisions of the Notification of 1949 which reads as hereunder;

> ***"GOVERNMENT OF SIKKIM***
> ***Health and Works Department***
> ***Notification No.6326—600-H&W—B.***
>
> *Under powers conferred in para 2 of Notification No.1366-G, dated the 28th July 1947, the following Rules have been framed to regulate letting and sub-letting of premises controlling rents thereof and unreasonable eviction of tenants as the scarcity of housing accommodation still exists in Sikkim.*
>
> *I The landlords can charge rent for premises either for residential or business purposes on the basis of the rents prevailing in locality in year 1939, plus an increase upto 50 per cent so long as the scarcity of housing accommodation lasts.*
>
> *2. The landlords cannot eject the tenants so long as the scarcity of housing accommodation lasts, but when the whole or part of the premises are required for their* ***personal occupation*** *or for thorough overhauling the premises or on failure by the tenants to pay rent for four months the landlords may be permitted to evict the tenant on due application to the Chief Court.*
>
> *3- Any tenant may apply to this Department for fixing his rent. On receipt of such application the Department will enquire about the rent prevailing in the locality in 1939, and fix rent as per Rule (I) above.*
>
> *4- Any person acting in contravention of this Notification will be liable to prosecution under para. 4. of notification No.I366-066-G, dated the 28th July, 1947.*
>
> *5. The tenant means those person in actual occupation. Landlord means owners of the premises.*
>
> *These rules will come into force with immediate effect.*
>
> *By order of his Highness the Maharaja of Sikkim.*

R.B. Singh

Gangtok,
The 14th, April, 1949.

Secretary,
Health and Works Department;
Government of Sikkim."

(emphasis supplied)

29. The Notification *inter alia* seeks to regulate unreasonable eviction of tenants so long as the scarcity of housing accommodation still exists in Sikkim. As per the Notification, *"Landlords means owners of the premises,"* and *"The tenant means those person(sic) in actual occupation."* In view of the discussions that have ensued in Question No.1, it cannot be disputed that the Respondent No.1 is the owner of the premises and thus the landlord, while the position of the Appellant as the tenant, thereby remains undisputed. The Notification enumerates three grounds for the eviction of a tenant; (i) personal occupation of the landlord; (ii) thorough overhauling of the premises; and (iii) failure by the tenants to pay rent for four months. We may notice that the Notification mandates that there cannot be unreasonable eviction of tenants as the scarcity of "housing accommodation" exists in Sikkim. It would pertinently be questioned as to whether running a School in tenanted premises for business purposes would also tantamount to "housing accommodation." **Stroud's Judicial Dictionary of Words and Phrases, Fifth Edition by John S. James, Volume 2 D-H at page No.1188** explains the meaning of "house" *inter alia* as follows;

> "(12) (Public Health (London) Act 1891 (c.76), s.141), "'house' includes schools, also factories and other buildings in which persons are employed"; a building used by day for religious exercises, and by night as a refuge for the destitute, but which contained sleeping

> accommodation, was a "house" within s.2(1)(e) of that Act (*R. v. Mead,* 64 L.J.M.C. 108)."

30. The Hon'ble Supreme Court in ***The Tata Engineering And Locomotive Company Ltd. v. The Gram Panchayat, Pimpri Waghere***[11] *inter alia* held that;

> *"**20.** The weight of judicial opinion is conclusively in favour of the view that the word "house" extends to a building which is used for business and should not be restricted to a mere dwelling house (see Land Law, Cases and Materials by R.H. Mandsley and E.H. Burn, Third Edition, p.832)."*

Besides the dictionary meaning and judicial opinion *supra*, while perusing the Notification of 1949, paragraph I of the Notification mentions that *"landlords can charge rent for premises either for residential or "business purposes" on the basis of the rents prevailing in locality in year 1939,* (sic) *plus an increase upto 50 per cent so long as the scarcity of housing accommodation lasts."* Thus, the answer to the question is found in the Notification itself, which conclusively includes accommodation used for 'business purposes' as also 'housing accommodation.'

31. That having been settled, it is now essential to examine what "personal occupation" would include. While citing the decision in ***Paul Sangay's*** case *(supra),* it was contended by learned Senior Counsel for the Appellant at great length, that the ratio interprets the said term as accommodation which is needed directly and substantially for occupation of the landlord and is narrower in scope than "*bona fide* occupation" which has already been detailed in his arguments. Pausing here for a moment, it

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[11] (1976) 4 SCC 177

may be noticed that the Judgment also records that the Court is aware of the long catena of cases of the different High Courts construing the expression "landlord" or "for the occupation of the landlord" or "his own occupation" and after referring to the Judgments of several High Courts, concluded that;

> *"**20**. I can understand that if the enactment in question providing for ejectment of tenants on the ground of a requirement of the landlord uses the expression "occupation of the landlord" or "his own occupation" or other similar expressions referring to the landlord only, like the enactments which were considered and construed by the Calcutta High Court in Pushpalata's case and the Patna High Court in Bidhu Bhusan's case, and the Andhra Pradesh High Court in Balaiah's case, such expressions may be required to be construed as not applying strictly or exclusively to the landlord himself, but as including his family or dependents or other normal emanations. …"*

The Court observed that as the Gangtok Rent Control and Eviction Act, 1956, uses both the expressions "landlord" and also "his dependents," it would neither be proper nor be permissible to allow the expression "landlord" to expand and emanate indefinitely and thus to include members of his family or any other person, whether dependent upon him or not. The Court was of the opinion that this would amount to adding words to the provisions of the enactment and thus to redraft the same. The Court went on to hold that it was not shown by any clear or clinching evidence that the two sons of the Plaintiff therein were also his dependents. Thereafter taking into consideration the evidence on record, the Court held that it is not the case of the plaintiff at any stage that he requires the suit-premises as he genuinely intends to establish his sons in business but his case all-through was that his sons have said

that they want to start separate and independent business and the suit-premises are necessary therefor. The two sons were not examined during trial. The learned Court was of the view that unless both the sons of the Plaintiff step into the witness box, the Plaintiff's case fails. Before parting with the case, the Court went on to observe as hereinbelow;

> ***"27.*** *... As I have already pointed out at the out-set, I have proceeded on the basis that the Gangtok Rent Control and Eviction Act, 1956 applies to this case. I have also pointed out that this Court has both in Jokhiram's case (1977-1 Sikkim LJ 30) and in Sakuntala Bai's case (1977-1 Sikkim LJ 33) held that even if the said Act of 1956 is not applicable, the suit for eviction of tenants would be governed by the provisions of law contained in the Notification No. 6326-600/H&WB, dated 14th Apr. 1949 and that the provisions of law as contained in the said notification are also more or less similar. But I should, however, point out that in Para. 2 of the Notification of 1949, the ground of ejectment is requirement of the premises for the "personal occupation" of the landlord, while as I have already noted, under the Act of 1956 the ground of ejectment is requirement of the premises for the bona fide occupation of the landlord or his dependents. I have already pointed out, relying on the Supreme Court case of D.N. Sangavi v. A.T. Das (AIR 1974 SC 1026),* ***that the expression "personal occupation" must connote the idea that the accommodation is needed directly and substantially for the occupation of the landlord*** *and I have already pointed out hereinbefore that even if the occupation of the suit-premises was necessary for starting independent business for the two sons, that would not have been a case of requirement "for the personal "occupation" of the landlord".* ***That being so, the plaintiff's claim for ejectment of the tenant must also fail even if the provisions of law contained in the aforesaid Notification of 1949 were to apply to this case****."*
>
> **(emphasis supplied)**

Since the Judgment *supra* was dealing with the Gangtok Rent Control and Eviction Act 1 of 1956, the Court was differentiating between what 'landlord' and 'his dependents,' in the context of the Act entailed, as already extracted *supra.* At best the remarks made in the concluding portion of Paragraph 27 of the Judgment referring to the Notification of 1949, which is highlighted, is

obiter dictum and the Appellant can obtain no benefit from this observation whatsoever. Besides, it may pertinently be pointed out that it is no more *res integra* that a landlord cannot be non-suited for the purpose that he failed to examine his family member who intends to do business in the required premises.

32. In this context, it would be appropriate to refer to the decision of the Hon'ble Supreme Court in ***Mehmooda Gulshan v. Javaid Hussain Mungloo***[12] wherein the Hon'ble Court was taking into consideration an Appeal under Section (11)(i)(h) of the Jammu and Kashmir Houses and Shop Rent Control Act, 1966, which reads as follows;

> "11.(1)(*h*) where the house or shop is reasonably required by the landlord either for the purposes of building or re-building, **or his own occupation** or for the occupation of any person for whose benefit the house or shop is held."
>
> **(emphasis supplied)**

Allowing the Appeal of the landlady, the Hon'ble Supreme Court *inter alia* held as follows;

> *"**12.** We fail to understand the approach made by the High Court. It has clearly come in evidence of the appellant that her one son is unemployed and in view of unemployment, he was frustrated. The appellant's husband had contracted second marriage and he had deserted the appellant. The appellant herself was unemployed with no source of income. The appellant, hence, prayed that the property be returned to her so that her son can look after the family. In cross-examination, she denied the suggestion that the son was doing business with his father. It had also been stated further that "except the premises and the residential house, the plaintiff has no other property". The trial court has meticulously analysed and appreciated the reasonable requirement of the premises for the business to be*

[12] (2017) 5 SCC 683

> *managed by the son of the appellant especially in her peculiar family circumstances. In our view, the trial court has appreciated the evidence in the right perspective and held that it is not mere desire but genuine need. The finding of the trial court was challenged mainly on the ground that the son, for whose benefit the eviction is sought, has not been examined.*
>
> ***13. Mere non-examination of the family member who intends to do the business cannot be taken as a ground for repelling the reasonable requirement of the landlord. Under the Act, the landlord needs to establish only a reasonable requirement. No doubt, it is not a simple desire. It must be a genuine need. Whether the requirement is based on a desire or need, will depend on the facts of each case.***
>
> *.....”*

33. With regard to the term “personal occupation,” in ***Mst. Bega Begum and Others v. Abdul Ahad Khan (dead) by L.Rs and others***[13] the Hon'ble Supreme Court was considering the provisions of Section 11(1)(h) of the Jammu and Kashmir Houses and Shops Rent Control Act, 1966. The landlords sought eviction on the grounds that they required to extend their business by running a hotel business themselves. The learned trial Court dismissed the suit of the Plaintiffs which was confirmed by the Hon’ble High Court of Jammu and Kashmir on grounds that the Plaintiffs had not proved their *“personal necessity.”* Allowing the Appeal, the Hon’ble Supreme Court held that the words “reasonable requirement” in sub-section 11(h) of the Act postulates that there must be an element of need as opposed to a mere desire or wish and concluded as follows;

> *“**13.** Moreover, Section 11(h) of the Act uses the words ‘reasonable requirement’ which undoubtedly postulate that there must be an element of need as opposed to a mere desire or wish. **The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire as the High Court has done in this case. It seems to us that the connotation of the term***

[13] (1979) 1 SCC 273

> ***'need' or 'requirement' should not be artificially extended nor its language so unduly stretched or strained as to make it impossible or extremely difficult for the landlord to get a decree for eviction****. Such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds. This appears to us to be the general scheme of all the Rent Control Acts prevalent in other States in the country.* ***This Court has considered the import of the word 'requirement' and pointed out that it merely connotes that there should be an element of need****.*
>
> ……
>
> ***19.*** *Having regard, therefore, to the circumstances mentioned above, we are unable to subscribe to the view that the words "own occupation" must be so narrowly interpreted so as to indicate actual physical possession of the landlord personally and nothing short of that. We, therefore, overrule the argument of the respondents on this point."*
>
> **(emphasis supplied)**

It was reasoned that if the Plaintiff's (landlords) found that their present business had become dull and was not yielding sufficient income to maintain themselves and it was necessary to occupy the house as to run a hotel business, it cannot by any stretch of imagination be said that the plaintiffs had merely a desire rather than a *bona fide* need for evicting the tenants.

34. In ***Joginder Pal v. Naval Kishore Behal***[14]*,* the Hon'ble Supreme Court while interpreting "own use," *inter alia* concluded that;

> *"****33.*** *Our conclusions are crystallised as under:*
>
> *(i) The words "for his own use" as occurring in Section 13(3)(a)(ii) of the East Punjab Urban Rent Restriction Act, 1949 must receive a wide, liberal and useful meaning rather than a strict or narrow construction.*
>
> *(ii) The expression—landlord requires for* ***"his own use", is not confined in its meaning to actual physical user by the landlord personally. The requirement not only of the landlord himself but also of the normal "emanations" of the landlord is included therein****. All the cases and circumstances in which actual physical occupation or user by someone else, would amount to occupation or user by the landlord himself, cannot be*

[14] (2002) 5 SCC 397

> *exhaustively enumerated. It will depend on a variety of factors such as interrelationship and interdependence — economic or otherwise, between the landlord and such person in the background of social, socio-religious and local customs and obligations of the society or region to which they belong.*
>
> *(iii) The tests to be applied are:* ***(i) whether the requirement pleaded and proved may properly be regarded as the landlord's own requirement; and, (ii) whether on the facts and in the circumstances of a given case, actual occupation and user by a person other than the landlord would be deemed by the landlord as "his own" occupation or user. The answer would, in its turn, depend on (i) the nature and degree of relationship and/or dependence between the landlord pleading the requirement as "his own" and the person who would actually use the premises; (ii) the circumstances in which the claim arises and is put forward; and (iii) the intrinsic tenability of the claim. The court on being satisfied of the reasonability and genuineness of claim, as distinguished from a mere ruse to get rid of the tenant, will uphold the landlord's claim.***
>
> *(iv) While casting its judicial verdict, the court shall adopt a practical and meaningful approach guided by the realities of life.*
>
> *(v) In the present case, the requirement of the landlord of the suit premises for user as office of his chartered accountant son is the requirement of landlord "for his own use" within the meaning of Section 13(3)(a)(ii)."*
>
> **(emphasis supplied)**

35. In the same vein, in ***Kailash Chand and Another v. Dharam Dass***[15] an application seeking an order of eviction under Section 14(3)(a)(i) of the Himachal Pradesh Urban Rent Control Act, 1987 (hereinafter the "Act") was allowed by the Rent Controller and the tenant was ordered to be evicted. The order was maintained in Appeal by the Appellate Authority. The Hon'ble High Court in exercise of revisional jurisdiction set aside the order of eviction. Before the Hon'ble Supreme Court, the aggrieved landlords urged that the residential accommodation on the first floor which was in occupation of the tenants was required by them to accommodate their large family. The Hon'ble Supreme Court, set aside the Order of the Hon'ble High

[15] (2005) 5 SCC 375

Court and upholding that of the Rent Controller and the Appellate Authority, dealt with the expression "his own occupation" and *inter alia* observed as follows;

> "***24. The expression "his own occupation" as occurring in sub-clause (i) of clause (a) of sub-section (3) is not to be assigned a narrow meaning. It has to be read liberally and given a practical meaning. "His own occupation" does not mean occupation by the landlord alone and as an individual. The expressions "for his own use" and "for occupation by himself" as occurring in two other Rent Control Acts, have come up for the consideration of this Court in Joginder Pal v. Naval Kishore Behal[16] and Dwarkaprasad v. Niranjan[17]. It was held that the requirement of members of the family of the landlord or of the one who is dependent on the landlord, is the landlord's own requirement. Regard will be had to the social or socio-religious milieu and practices prevalent in a particular section of society or a particular region to which the landlord belongs, while interpreting such expressions. The requirement of the family members for residence is certainly the requirement by the landlord for "his own occupation".***
>
> **(emphasis supplied)**

36. In ***Phiroze Bamanji Desai v. Chandrakant M. Patel and others[18]***, the Hon'ble Supreme Court considered the terms **reasonable and *bona fide* requirement** in the Bombay Rents, Hotel and Lodging House Rates Control Act (57 of 1947) and *inter alia* held as follows;

> "***7.*** *Now, the decision of the District Judge was based on two findings recorded by him in favour of the appellant. One was that the appellant reasonably and bona fide required the ground floor premises for his own use and occupation, and the other was that greater hardship would not be caused to the first respondent by passing a decree for eviction than what would be caused to the appellant by refusing to pass it. Both these findings were interfered with by the High Court and the question is whether the High Court was within its power in doing so. Taking up first for consideration the finding that the appellant reasonably and bona fide required the ground floor premises for his own use and occupation, it may be pointed out straight away that this finding was clearly one of fact. The District Judge did not misdirect himself in*

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[16] (2002) 5 SCC 397
[17] (2003) 4 SCC 549
[18] AIR 1974 SC 1059

> *regard to the true meaning of the word "requires" in Section 13(1)(g) and interpreted it correctly to mean that there must be an element of need before a landlord can be said to "require" premises for his own use and occupation. It is not enough that the landlord should merely desire to use and occupy the premises. What is necessary is that he should need them for his own use and occupation. This was the correct test applied by the District Judge to the facts found by him. If he had applied a wrong test on a misconstruction of the word "requires", the finding recorded by him would have been vitiated by an error of law. But the correct test having been applied, the finding of the District Judge that the appellant reasonably and bona fide required the ground floor premises for his own use and occupation was unquestionably a finding of fact and it was not competent to the High Court, in the exercise of its revisional power under Section 29, sub-section (3), to interfere with this finding by reappreciating the evidence. …"*

37. The plethora of decisions interpreting the terms "for himself," "for his own occupation," "by himself," "for his own use," are all, in my considered opinion, to be construed as "personal occupation of the landlord." "Personal occupation" would, therefore, on the cornerstone of the ratiocinations *supra*, include not only the landlord but all normal emanations of the landlord, including his dependents and kith and kin, while also duly considering the social milieu in the Indian context and cannot be constricted only to the landlord. Thus, the intention of the enactment is not to deprive the landlord of his premises when it is indeed required for his personal occupation, be it for himself or anyone dependent on him. The interpretation of these words 'personal occupation' as emanates in the Notification of 1949, would therefore be covered by the umbrella of the interpretations *supra.* The argument of learned Senior Counsel for the Appellant that the Respondent No.1 is well to do, has sufficient property whereby he derives sufficient income, is of no consequence. In any event, no evidence was led by the

Appellant to establish ownership of property and sufficiency of income thereof. Further, the Hon'ble Supreme Court has *inter alia* held in ***Sait Nagjee Purushotham & Co. Ltd. v. Vimalabai Prabhulal and Others***[19] as follows;

> *"**4.** … It is true that the landlords have their business spreading over Chennai and Hyderabad and if they wanted to expand their business at Calicut it cannot be said to be unnatural thereby denying the eviction of the tenant from the premises in question. **It is always the prerogative of the landlord that if he requires the premises in question for his bona fide use for expansion of business this is no ground to say that the landlords are already having their business at Chennai and Hyderabad therefore, it is not genuine need. It is not the tenant who can dictate the terms to the landlord and advise him what he should do and what he should not.** It is always the privilege of the landlord to choose the nature of the business and the place of business. However, the Trial Court held in favour of the tenant-appellant. But the appellate court as well as the High Court after scrutinizing the evidence on record reversed the finding of the trial court and held that the need of establishing the business at Calicut by the landlords cannot be said to be lacking in bona fides."*
>
> **(emphasis supplied)**

38. Thus, as observed in the Judgment *supra* it is always the prerogative of the landlord that if he requires the premises in question for his *bona fide* use for expansion of business, the tenants cannot be heard to say that the landlords already have their business at other places. The tenant cannot dictate terms to the landlord and advise him about what he should do and what he should not. It is for the landlord to choose the nature and place of business, as also earlier held in ***Mst. Begum and Others*** *supra.* Although learned Senior Counsel for the Appellant sought to make it appear as though the learned trial Court had arrived at the finding that the Appellant required the premises

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[19] (2005) 8 SCC 252

for his personal occupation, on account of his hypertension and backache but on a reading of the Judgment, it is clear that the learned trial Court while considering "personal occupation" held that the suit property is required for *"the bonafide reason for the "personal occupation" of the plaintiff, i.e., for the establishment of hotel business at the fag end of his life for his livelihood."* On this point, the finding of the learned trial Court cannot be faulted.

39. The contention of the Appellant that the terms "personal occupation" and "*bona fide* requirement" are neither synonymous nor interchangeable, also appears to be a rather restricted view of the matter, since the two terms cannot be ensconed into water tight compartments completely isolated from each other. When a personal necessity arises then essentially a *bona fide* requirement is also to be proved. This would be evident from a reading of the Judgment of the Hon'ble Supreme Court in ***Mst. Bega Begum and Others*** *supra,* wherein, while discussing "personal necessity," it has been stated that the Hon'ble Supreme Court was in disagreement with the finding of the Hon'ble High Court that the Plaintiffs had not proved that they had any *bona fide* need for occupation of the building in question. Further, in ***Kailash Chand and Another*** *supra*, the words were used together inasmuch as it was held as follows;

> *"**25.** ……Take the case of a landlord knocking the doors of the court seeking its assistance for a roof over his head or for a reasonably comfortable living, when he is himself either in a rented accommodation or squeezing himself and his family members in a limited space, while the tenant protected by the rent control law is comfortably occupying the premises of the landlord or a*

> *part thereof. Provisions like Section 14(3)(a)(i) of the Act should be so interpreted as to advance the cause of justice instructed by the realities of life and practical wisdom.* ***While the tenant needs to be protected, the courts would not ordinarily deny the relief to the landlord, who genuinely and bona fide requires the premises in occupation of the tenant for occupation by himself or for the members of his family, unless they feel convinced that the so-called requirement of the landlord was a ruse for getting rid of an inconvenient tenant or was otherwise mala fide and did not fall within the four corners of the ground for eviction provided by the law.*** *"*
>
> **(emphasis supplied)**

Hence, where personal necessity arises, *bona fide* requirement is to be established along with an element of need as opposed to desire. In order to prove *bona fide* requirement, the Respondent No.1 herein entered the dock before the learned trial Court and deposed that he is 50 years of age and suffering from various physical ailments and therefore decided to purchase the suit property along with other attached properties to develop the same into a hotel complex. These facts went undecimated in cross-examination. It is thus concluded that the Respondent No.1 has proved that the premises were required for his personal occupation which also includes occupation for business purposes.

40. Coming to Question No.3 formulated hereinabove i.e. *"Whether the finding of the learned trial Court with regard to arrears of rent to be paid by the Appellant to the Respondent No.1 from the month of April, 2012 till the filing of the Suit, despite concluding absence of default in rent payment, was correct?,"* the finding of the learned trial Court on Issue No.2 has already been extracted hereinabove. The learned trial Court has held that there was no wilful default of rent on the part of the Appellant. It is further stated that the arrears of rent is to be paid from April, 2012 till disposal of the case. In the first

instance, the Notification of 1949 nowhere provides for "willful default," the words discussed at length by the learned trial Court is alien to the Notification of 1949, under discussion herein. It specifically provides only for *"failure by the tenants to pay rent for four months"* and bears no qualifying term such as "wilful." It is essential to remark here that the Notification does not specify that the four months are to be in continuation. Be that as it may, since this point has not been raised before this Court, it requires no discussion. It is now appropriate to consider whether there was default in rent payment and thereby arrears of rent. Exbt. 2/S, the rent receipts reveal that rent was received by the Respondent No.4 for the months of December 2005, January 2006, February 2006, April 2006 to December 2006, January 2007 to December 2007, January 2008 to December 2008, January 2009 to December 2009 and January 2011 to October, 2011. Exhibit 2/T which are Money Order Acknowledgment Cards reveal that it was sent by the Appellant School to the Respondent No.4 for the months of December 2011 which was refused by her. Thereafter rent appears to have been sent for the month of January, 2012 which was also refused by the payee and returned to sender. This continued for the months of February, 2012 to February, 2013. From March 2013, it was addressed to the Respondent No.1. Thus, the documents speak for themselves. Hence, there was no default in payment of rent at any point in time but on the refusal of the Respondent No.1 to accept the rent and in view of the continuing occupation of the Appellant of the suit premises, arrears of rent have accrued. The

finding of the learned trial Court that the arrears of rent from April, 2012 appears to be erroneous in view of the documentary evidence on record. The arrears, evidently accrues from December, 2011. Thus, the finding of the learned trial Court that there was no default of rent on the part of the Defendants, is not erroneous except that the word "wilful" has been erroneously employed. The finding that the Respondent No. 1 was entitled to recover the arrears of rent, is also not erroneous. The finding of the learned trial Court that the Respondent No.1 cannot take the benefit of the Lease Deed, Exhibit 1 which had already expired, is also not erroneous, in view of the detailed discussions in Question No.1 *supra*.

41. With regard to the last question formulated hereinabove i.e. *"Whether the learned trial Court ought to have allowed validation of the Lease Deed in terms of Notification No.2947/G dated 22.11.1946?,"* it is an admitted position that the Lease Deed was entered into on 23.03.1996 and determined on 23.03.2001. As discussed *supra* in Question No.1, the provisions of the T.P. Act fell into place. Neither the Respondent No.1 nor the Appellant were the original parties to the Lease Deed. The Notification No.2947/G dated 22.11.1946 reads as follows;

> *"**SIKKIM STATE***
> ***GENERAL DEPARTMENT***
> *Notification No. 2947/G*
>
> *Amendment of para 2 of Notification No: 385/G dated the 11th April, 1928.*
>
> *An unregistered document (which ought in the opinion of the court to have been registered) may*

however be validated and admitted in court to prove title or other matters contained in the document on payment of a penalty upto fifty times the usual registration fee.

Issued by order of H.H. the Maharaja of Sikkim.

Gangtok *T. Tsering*
The 22nd Nov., 46 *(Offs) General Secretary to*
H.H. The Maharaja of Sikkim.

Copy of memo No. 2553/C&F dated the 18th Sept., 1949, from the Dewan, Sikkim State to the Tahasildar, East Sikkim.

A copy of Rule regarding registration of document (1930) is sent herewith.

The seals of registration fees is one rupee fee every Rs.100/- or fraction thereof on the value of property or properties."

How validation of the document would have helped the case of the Appellant is beyond comprehension.

42. So far as I.A. No.05 of 2017, I.A. No.07 of 2018 and I.A. No.08 of 2019 are concerned, since the matters pertaining to title cannot be taken up in an Eviction Suit and since all the documents sought to be filed by the parties vide the I.As pertain to title, I am of the considered opinion that it is not necessary for a just decision in the matter. I.A. No.05 of 2017, I.A. No.07 of 2018 and I.A. No.08 of 2019 stand rejected and disposed of accordingly.

43. In the end result, it is ordered as follows;

(i) the Appellant shall vacate the suit premises within six months from today and hand over vacant possession to the Respondent No.1;

(ii) the Respondent No. 1 is entitled to arrears of rent from December, 2011 till the Appellant vacates the suit property in terms of the orders *supra;*

(iii) the amount of rent deposited by the Appellant with effect from September, 2016 till August, 2019 in terms of the undertaking given by the Appellant on 28.10.2016, in the State Bank of Sikkim Account bearing No.502672, maintained in the name of the Registrar General, High Court of Sikkim, be released to the Respondent No.1 with the interest accrued on the deposit, if any; and

(iv) the sum of Rs.6,84,000/- (Rupees six lakhs and eighty four thousand) only, (along with the interest accrued on the deposit, if any), deposited vide Cheque of the IDBI Bank bearing No.035162, dated 28.09.2016, by the Appellant, in compliance of the Orders of this Court, dated 22.09.2016, and presently deposited in the State Bank of Sikkim Account bearing No.502672, maintained in the name of the Registrar General, High Court of Sikkim, also be released to the Respondent No.1. This shall be on completion of the period of Appeal.

44. Appeal dismissed.

45. Cross Objection allowed to the extent as discussed hereinabove.

46. Copy of this Judgment be sent to the learned trial Court for information.

47. In the circumstances, no order as to costs.

48. Records of the learned trial Court be remitted forthwith.

(Meenakshi Madan Rai)
Judge
31.08.2019

Approved for reporting : **Yes**
ml Internet : **Yes**