P.M.C. KUNHIRAMAN NAIR

v.

C.R. NAGANATHA IYER AND ORS.

MAY 15, 1992

[DR. T.K. THOMMEN AND S.C. AGRAWAL, JJ.]

Transfer of Property Act, 1882: Section 111 (f).

Lease—Determination of—Implied surrender—Agreement—Implied surrender of leasehold rights in property—Suit for recovery of possession not maintainable subsequent to surrender of right.

Doctrine of Merger—Trial Court—Judgment of—Appeal—Decision of High Court—Held judgment of Trial Court stood merged in the judgment of High Court.

Respondents No. 1 to 5 entered into an agreement with the appellant whereunder the appellant advanced money to the respondents and the respondents entrusted the management of their property, consisting of land and the buildings and the machinery of mills standing thereon, to the appellant for a period of one year. The agreement provided that on the expiry of period of one year, respondents would get back possession of their property after paying the amount due to the appellant. However, before the expiry of the period of one year fixed under the agreement the respondents entered into another agreement, dated March 22, 1955 with one TM which provided that on paying the amount due to the appellant after the stipulated period TM could take up the management by himself, pay the rent of the building, conduct the business and if necessary file a suit against the appellant and get the Mill vacated and do anything as per his will and pleasure. Thereafter, TM executed a Deed of Assignment, dated December 11, 1956, whereby he assigned the property to the appellant for a sale consideration with liberty to the appellant to manage the mills, to enter into rental agreement with the Jenmi of the building by paying the rent directly, to effect alienation etc. The said agreement also provided that TM would not have any right or liability thereafter.

Subsequently, respondent Nos. 1, 3 and 5 filed a suit against respondent Nos. 2, 4 and 6 as well as against the appellant and TM seeking

A partition and separate possession of their shares in the suit properties, and for possession of the mill contending that the agreement dated March 22, 1955 executed by respondent Nos. 1 to 5 in favour of TM was a sham transaction and no rights were conferred on TM under the said agreement. TM died during the pendency of the suit. In the suit all disputes between the parties and the legal representatives of TM were settled out of Court B and the only dispute requiring adjudication was that relating to the property in question which was claimed by the appellant as the assignee from TM. The said suit was dismissed by the Trial Court. Respondents 1 to 6 filed an appeal in the High Court against the said judgment which was dismissed. While the said appeal was pending before the High Court, C respondent Nos. 1 to 6 filed a suit for redemption and recovery of possession of property and decree for possession of the suit property excluding the plant and machinery was passed in favour of the respondents. The appeal filed by the appellant was dismissed by the First Appellate Court and the second appeal filed by the appellant was also dismissed by the D High Court. Relying upon the judgment of the Additional Sub-Judge in the earlier suit the High Court rejected the contention urged by the appellant that there was relationship of landlord and tenant between the plaintiff-respondents and him and he was entitled to protection of the Kerala Building (Lease and Rent Control) Act.

E In appeal to this Court, on the question whether the respondents had a subsisting leasehold interest in the property in question, it was contended on behalf of the appellant that the judgment of the Additional Sub-Judge, having merged in the judgment of the High Court on appeal, the said judgment of the High Court alone was operative and as per that F judgment the earlier suit only related to transfer of movable property, namely, the Oil Mill. As regards the leasehold rights in the suit property it was submitted that the respondents ceased to have any subsisting right in the property as lessee since they impliedly surrendered their leasehold rights in favour of TM by executing the agreement dated March 22, 1955; G thereafter a fresh tenancy was created in favour of TM by executing the agreement dated March 22,1955; thereafter a fresh tenancy was created in favour of TM which was assigned by him in favour of the appellant.

H Allowing the appeal and setting aside the judgment of the High Court, this Court,

HELD : 1. The judgment of Additional Sub-Judge had merged in the judgment of the High Court on appeal which shows that the earlier suit was confined to the Oil Mill only, treating it as movable property and the said suit did not relate to the land and building in which the oil mill is installed and the plea raised in that suit can have no bearing in the subsequent suit relating to possession of land and building. [380A-B] A B

2. It was permissible for the appellant to raise the plea that the plaintiffs have no subsisting leasehold interest in the suit property and the appellant is in possession of the same as a tenant of the owner of the property. [380-C] C

3. Under Clause (f) of Section 111 of the Transfer of Property Act, 1882, implied surrender is a mode for determination of a lease of immovable property. In English Law, delivery of possession by tenant to a landlord and his acceptance of possession effects a surrender by operation of law. It is also called implied surrender in contradistinction to express surrender which must be either by deed or in writing. Directing the occupier to acknowledge the landlord as his landlord, i.e., to attorn to the landlord, is a sufficient delivery of possession by the tenant to the landlord. Receipt of rent from a person in possession may be evidence of the landlord's acceptance of him as tenant, whether he is a stranger or whether he was already in possession as sub-tenant. [380F-G] D E

Under the illustration to clause (f) of Section 111 of the Transfer of Property Act, there would be an implied surrender of the former lease if a lessee accepts from his lessor a new lease of the property leased to take effect during the continuance of the existing lease. The said illustration is, however, not exhaustive of cases in which there may be an implied surrender of the lease. Just as under the English Law, there can be an implied surrender under the law of transfer of property in India, if the lessor grants a new lease to a third person with the assent of the lessee under the existing lease who delivers the possession to such person or where the lessee directs his sub-tenant to pay the rent directly to a lessor. [380H, 381-A-B] F G

***Konijeti Venkayya & Anr.* v. *Thammana Peda Venkata Subbarao & Anr.*, AIR 1957 A.P. 619; *Noratmal* v. *Mohanlal*, AIR 1966 Raj. 89, referred to.**

Halsbury's *Laws of England*, 4th end. Vol. 27, paras 444, 445, 446 and H

A 450, referred to.

4. By executing the agreement dated March 22, 1955 respondent Nos. 1 to 5 surrendered their leasehold interest in favour of TM inasmuch as in clause 4 of the said agreement they have clearly stated that respondents will not have any responsibility or objection for TM paying the amount B **due to the appellant after the stipulated period and take up the management by himself and pay the rent of the building and conduct its business. [382-F]**

5. After the execution of the agreement dated March 22, 1955, TM entered into an agreement with the landlord for a fresh lease on a higher C **rent and by Deed of Assignment dated December 11, 1956, TM impliedly surrendered his leasehold rights in the suit property. [383A-C]**

6. On the date of the filing of the present suit the respondents had no subsisting leasehold interest in the suit property. The suit for the D **recovery of the possession of the suit property filed by them on the basis that they are the lessees thereof was, therefore, not maintainable and is liable to be dismissed. [383-E]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2460(N) of 1977.

E

From the Judgment and Order dated 10.3.1977 of the Kerala High Court in S.A. No. 1206 of 1976.

T.R.G. Wariyar, Smt. Shanta Vasudevan and P.K Manohar for the Appellant.

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S. Balakrishnan and G. Srinivasan for the Respondents.

The Judgment of the Court was delivered by

S.C. AGRAWAL. J. This appeal is directed against the judgment and G decree dated March 10, 1977 of the High Court of Kerala. It arises out of a suit filed by respondents Nos. 1 to 6 against the appellant and respondent No. 7 for redemption and recovery of possession of property consisting of 25 cents of land in Valiyaveetuparamba in Nagaram Amson, District Kozhikode, and the buildings and the machinery of the Flour Mill standing on H the said land.

The land and the buildings belong in Jenm to the Vetteth Tarwad who leased out the same in or about 1939 to Sivarama Iyer, respondent No. 2 on a rent of Rs. 40 per mensem. Late C.N. Rama Iyer, father of respondents Nos. 1 to 5 and husband of respondent No. 6 started a flour mill known as 'Sivaram Mills' on the said premises in or about 1940 and for that purpose, he installed an engine and necessary plant and machinery and also made some further constructions over the land. C.N.Rama Iyer died on May 2, 1953 and after his death, respondents No. 1 to 5 entered into an agreement with the appellant on February 7, 1954 whereunder the appellant advanced Rs. 4,500 to respondents Nos. 1 to 5 and respondents Nos. 1 to 5 agreed to entrust the appellant with the management of the mill for a period of one year from March 5, 1954 on a monthly payment of Rs. 300 out of which Rs. 125 was to be appropriated every month towards the advance given. Respondents Nos. 1 to 5 could not entrust the management of Mill to the appellant on or before March 5, 1954 and they could do so only in the middle of April 1954 and on April 13, 1954, a fresh agreement (Ex. B2) modifying the terms of the previous agreement was entered into between respondents Nos. 1 to 5 and the appellant. Under the said agreement dated April 13, 1954 a further sum of Rs. 1,900 (in addition to the sum of Rs.4,500) was advanced by the appellant to respondents Nos. 1 to 5 and it was agreed by respondents 1 to 5 that the total sum of Rs. 6,400 which had been advanced by the appellant to respondents Nos. 1 to 5 will not bear any interest from the date of the said agreement and that the appellant shall run the mill for one year and after the stipulated period, respondents Nos. 1 to 5 would get the possession of the mill back from the appellant. It was also agreed that a sum of Rs. 40 which is the rent of the building where the mill is situate and current charges for each month of the electric lights of the mill should be paid by the appellant to respondent Nos. 1 to 5 and a sum of Rs. 100 per month would be paid by the appellant as rent for the mill, out of which a sum of Rs. 50 shall be adjusted by the appellant towards Rs. 6,400 paid in advance and the balance amount of Rs. 50 should be paid to respondents Nos. 1 to 5 every month. It was also agreed that on the expiry of the period of one year, respondents Nos. 1 to 5 would get back the possession of the mill after paying the balance amount of Rs. 5,800 to the appellant. Before the expiry of the period of one year fixed under the agreement dated April 13, 1954, the plaintiffs-respondents Nos. 1 to 5 entered into an agreement (Ex. B3) dated March

A 22, 1955 with one T.M. Rama Iyer (who happened to be the father-in-law of respondent No. 2). In the said agreement, reference has been made to the agreement dated April 13, 1954 with the appellant and it was stated that a sum of Rs. 5,600 is to be paid as balance amount to the appellant after adjusting the sum of Rs. 800 which has already been paid to him. It B was further stated that a sum of Rs. 5,072 and annas 2 was payable to T.M. Rama Iyer towards the arrears of rent for the building belonging to the said T.N. Rama Iyer, which has been taken on rent by respondent Nos. 1 to 5 a: d that since there was difficulty for respondents Nos. 1 to 5 to clear the said liability, they have decided to assign the Company (named C 'Sivaram Mills & Co.) to T.M. Rama Iyer for a consideration of Rs. 10,672 and annas 2, out of which Rs. 5,072 and annas 2 had been adjusted and from the balance amount due to them the sum Rs. 5,600 due to be paid to the appellant may be paid to him. In the said agreement, it was also stated that the said T.M. Rama Iyer on paying the amount due to the appellant after the stipulated period could take up the management by D himself, pay the rent of the building, conduct the business and if necessary to file a suit against the appellant and get the company vacated and do anything as per his will and pleasure. In the said agreement, respondents Nos. 1 to 5 further agreed that either after his taking the possession of the company or whenever demanded by T.M. Rama Iyer, they would execute E the sale deed and get the same registered. On December 11, 1956, the said T.M. Rama Iyer executed a Deed of Assignment (Ex. B4) in favour of the appellant and his younger brother, Gopalan Nair, whereby he assigned the Sivaram Oil Mill and Flour Mill to the appellant and his younger brother on a sale consideration of Rs. 8,000. The sum of Rs. 6,000 that was payable F to the appellant inclusive of interest was adjusted against the said consideration and the balance amount of Rs. 2,000 was paid by the appellant to the said T.M. Rama Iyer. In the said document, it was stated that after execution of the agreement dated March 22, 1955, T.M. Rama Iyer had taken the building where the mills are situated on a monthly rent of Rs. 75 G for a period of one year from Vettathu Tharavad under an oral agreement. In the said document, it was further mentioned that the appellant and his younger brother had the liberty to mange the mills, to enter into rental agreements with the Jenmi of the building by paying the rent directly, to effect alienation etc. as per their wishes and he (T.M. Rama Iyer) would not have any right or liability hereafter. In the said document, it is also

H

mentioned that the rent receipts for the rent paid to the Jenmi were being handed over with the document. A

Respondents Nos. 1, 3 and 5 filed a suit (O.S.No. 3 of 1964) against respondents Nos. 2, 4 and 6 as well as against the appellant and T.M. Rama Iyer. In the said suit, the plaintiffs, while seeking partition and separate possession of their shares in the suit properties, had also prayed for possession of the oil and flour mills and had asserted that the agreement dated March 22, 1955 executed by respondents Nos. 1 to 5 in favour of T.M. Rama Iyer, was a sham transaction and no rights were conferred on T.M. Rama Iyer under the said agreement. T.M Rama Iyer, who was defendant no. 1 in the said suit, died during the pendency of the suit. In the suit all disputes between the plaintiffs (respondents Nos. 1, 3 and 5) and Defendants nos. 2 to 4 (respondents Nos. 2, 4 and 6) and the legal representatives of T.M. Rama Iyer were settled out of court and the only dispute requiring adjudication was that relating to the property in question in these proceedings which was claimed by the appellant as the assignee from T.M. Rama Iyer. The said suit was dismissed by the Additional Sub-Judge, Kozhikode by judgment (Ex.A1) dated January 25, 1968. It was held that the agreement dated March 22, 1955 was not sham, nominal and void and it operates as an outright sale of plant and machinery. It was, however, held that the tenancy right of the plaintiffs had not been affected by either the agreement dated March 22, 1954 or the Deed of Assignment dated December 11, 1956 and that the plaintiffs would be entitled to possession of the site and buildings in which the plant and machinery were installed. It was further held that the appellant had been inducted into possession of the site and buildings by virtue of the agreement dated April 13, 1954, and that the appellant would be entitled to continue in possession of the same until the right created in his favour as per agreement dated April 13, 1954 was extinguished. Respondents 1 to 6 filed an appeal (A.S. No.129/68) in the High Court against the said judgment and decree of the Additional Sub-Judge. The said appeal was dismissed by the High Court by its judgment dated April 6, 1973. The High Court found that according to the averments in the plaint what was conveyed under the agreement dated March 22, 1955 was only the oil mill and it was not the case of the plaintiffs that immovable property was conveyed under the said agreement and that in view of the pleadings, there was no scope for considering whether any immovable property had been transferred and therefore, no question of registration of the document arose. B C D E F G H

A While the said appeal was pending before the High Court, respondents Nos. 1 to 6 filed the suit giving rise to this appeal in the Court on Munsif, Kozhikode wherein it was prayed that the possession of the suit property may be restored to the plaintiffs-respondents by way of redemption and that the plaintiffs-respondents were willing to pay any amount that is found payable by them to the appellant. The said suit is based on the B footing that the earlier suit was resisted by the appellant on the ground that he was in possession of and management of the business of the Mill as possessory mortgagee thereof and the same had found favour with the court. The plaintiffs-respondents have, however, pleaded that since the appellant has continued in possession and management of the property C even after the expiry of the term, no amount is likely to be payable on settlement of accounts. Respondent No. 7 was impleaded as defendant in the said suit on the ground that the appellant had leased the mill to him. The said suit was contested by the appellant. In the said suit, a decree for possession of the suit property excluding the plant and machinery was D passed in favour of the plaintiffs-respondents by the Additional Munsif, Kozhikode-I by his judgment dated June 22, 1972. The appeal filed by the appellant against the judgment and decree of the Additional Munsif was dismissed by the District Judge, Kozhikode by judgment dated November 20, 1976 and the second appeal filed by the appellant was also dismissed by the learned Single Judge of the High Court by judgment dated March E 10, 1977.

The High Court was of the view that the appellant could not come forward with a case that there was relationship of landlord and tenant between the plaintiffs-respondents and him and he could not be evicted F from the suit property since he is entitled to protection of the Kerala Building (Lease and Rent Control) Act. In this regard, the High Court, after referring to the judgment of the Additional Sub-Judge in the earlier suit (O.S. No. 3 of 1964), has observed that in that suit the appellant did not put forward the case that as per the agreement (Ex.B2) dated April 13, 1954 there was a relationship of landlord and tenant between plaintiffs- G respondents and him and the case of the appellant in that suit was that the plaintiffs-respondents could get the possession of the property only on extinguishment of the charge created by the said agreement. The High Court held that in the circumstances the appellant could not be permitted to plead in this suit what he did not plead in the earlier suit. According to H the High Court, the consideration paid for the movables under Deed of

Assignment (Ex. B4) dated December 11, 1956 would not make the appellant the tenant of the property. The High Court was of the view that the appellant could not be allowed to put forward inconsistent pleas to the detriment of the opposite side. The High Court was also of the view that since there was a lease for running a business, it could not be said that the appellant is a tenant of a building and is entitled to the protection of the Kerala Building (Lease and Rent Control) Act.

In support of this appeal, Shri Wariyar, the learned counsel for the appellant, has submitted that the High court was in error in relying upon the observations contained in the judgment of the trial court in a previous suit (O.S No. 3 of 1964) inasmuch as after the decision of the High Court in appeal (A.S. No. 129/68), the said judgment of the trial court had merged in the judgment of the High Court dated April 6, 1973 and that is the only judgment which is operative and that the said judgment of the High Court shows that the only question which was considered by the High Court was whether the agreement (Ex. B3) dated March 22, 1955 was inoperative on account of non-registration. According to Shri Wariyar, the High Court has held that the said agreement did not require registration inasmuch as it related to transfer of movable property, namely, the oil mill and that the effect of the said judgment of the High Court is that the plaintiffs-respondents are precluded from claiming possession of the oil mill. The only question that remains is whether plaintiffs-respondents can claim possession of the land and building in which the mill is installed and that involves the question as to whether plaintiffs-respondents, who were originally the lessee of the land and building, had a subsisting right in the same on the date of filing of the subsequent suit by them. Shri Wariyar has urged that the plaintiffs-respondents ceased to have any subsisting right in the property as a lessee in view of the agreement (Ex.B3) dated March 22, 1955 which shows that there was an implied surrender by the plaintiffs-respondents of their leasehold right in the property in favour of T.M. Rama Iyer which fact is further established by Deed of Assignment (Ex.B4) dated December 11, 1956 executed by T.M. Rama Iyer in favour of the appellant and his younger brother which indicates that a fresh lease had been created by the landlord in favour of T.M. Rama Iyer and T.M. Rama Iyer had surrendered his leasehold rights in favour of the appellant.

We find considerable force in the aforesaid submissions of Shri Wariyar.

A After the decision of the High Court dated April 6, 1973 in A.S. 129 of 1968 the judgment of the Additional Subordinate Judge stood merged in the judgment of the High Court. The judgment of the High Court shows that the earlier suit was confined to the oil mill only, treating it as movable property independent of the property. Since the said suit did not relate to the land and building in which the oil mill is installed the said suit and the B plea raised by the appellant in that suit can have no bearing in the present suit relating to possession of the land and building. The learned Judge of the High Court, with due respect, was not right in negativing the plea raised by the appellant that he is in possession of property as a tenant on the view that the appellant did not raise this plea in the earlier suit and he could C not to be allowed to put forward inconsistent pleas. Since the question with regard to possession of the land and building arises in the present suit only it was permissible for the appellant to raise the plea that the plaintiffs have no subsisting leasehold interest in the suit property and that the appellant is in possession of the same as a tenant of the owner of the said property.

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As to whether the plaintiffs had a subsisting leasehold interest in the property involves the question whether they had surrendered the said rights. The case of the appellant is that the plaintiffs had impliedly surrendered their leasehold rights when they executed the agreement (Ex. B-3) dated March 22, 1955 and thereafter a fresh a tenancy was created in E favour of T.M. Rama Iyer which was assigned by T.M. Rama Iyer in favour of the appellant.

Under clause (f) of s.111 of the Transfer of Property Act, 1908, implied surrender is a mode for determination of a lease of immovable F property. In English Law, delivery of possession by the tenant to a landlord and his acceptance of possession effects a surrender by operation of law. It is also called implied surrender in contradistinction to express surrender which must be either by deed or in writing. It has been held that directing the occupier to acknowledge the landlord as his landlord, i.e., to attorn to the landlord, is a sufficient delivery of possession by the tenant to the G landlord. It also been held that receipt of rent from a person in possession may be evidence of the landlord's acceptance of him as tenant, whether he is a stranger, or whether he was already in possession as sub-tenant. [See *Halsbury's Laws of England;* 4th Edn. Vol.27, paras 444, 445, 446 and 450; and Note (1) to para 446]. Under the illustration to clause (f) of s.111 of H the Transfer of Property Act, there would be an implied surrender of the

former lease if a lessee accepts from his lessor a new lease of the property leased to take effect during the continuance of the existing lease. The said illustration is, however, not exhaustive of the cases in which there may be an implied surrender of the lease. Just as under the English law, there can be an implied surrender under the law of transfer of property in India, if the a lessor grants a new lease to a third person with the assent of the lessee under the existing lease who delivers the possession to such person or where the lessee directs his sub-tenant to pay the rent directly to a lessor. [See : *Konijeti Venkayya & Anr.* v. *Thammana Peda Venkata Subbarao & Anr.,* AIR 1957 A.P. 619 at pp. 624 and 625; and *Noratmal* v. *Mohanlal,* AIR 1966 Raj. 89, at pp. 90 and 91].

Reference may, therefore, be made to the relevant clauses in the agreement (Ex. B3) dated March 22, 1955 and the Deed of Assignment (Ex.B4) December 11, 1956 on which reliance has been placed by Shri Wariyar. In the agreement (Ex. B3) dated March 22, 1955, executed by respondents Nos. 1 to 5 in favour of T.M. Rama Iyer, it is stated :

> "(4) We will not have any responsibility or objection for your paying the amount due to Kunhiraman Nair after the stipulated period and to take up the management by yourself, pay the rent of the building, conduct the business and if necessary to file a suit against Kunhiraman Nair and get the Company vacated; and to do any thing as per your will and pleasure.
>
> (5) The Company is not charged by and other liability except the loan mentioned above. The gift deed given to us and the copy of the agreement with Kunhiraman Nair are hereby given to you. Either after your taking possession of the Company or whenever you make demand we shall execute sale deed and get the same registered."

In the Deed of Assignment (Ex. B4) dated December 11, 1956 executed by T.M. Rama Iyer in favour of the appellant and his younger brother, it is stated :

> "(2) After this for the purpose of clearing of the loan liability to you; the mill etc. started by the abovesaid Naganatha Iyer and others was given to me as per the agreement dated the 22nd of March, 1955. They belong to me and I have on oral

A agreement taken the building where the mills situate on a monthly rent of Rs. 75 for a period of I year from the Vettathu Tharavad which is the jenmi of the same.

(3) I have decided to assign the Oil Mill and Flour Mill described in the schedule below to you. The sale consideration B is fixed at Rs. 8,000 inclusive of Rs. 100 given by me as advance to the jenmi. Of this Rs. 8,000 the sum of Rs. 6,000/- due to you inclusive of interest is adjusted and after deducting the same, the balance amount of Rs. 2,000 due to me is paid and the entire sale consideration has been paid to me in full satis- C faction in the above said 2 counters and I have handed over to you the mills described in; the schedule with all the quipments and all the other rights pertaining to the same. You have derived the same and hereafter you are at liberty to manage the mills by yourself; to enter into rental agreements with the D Jenmi of the building by paying the rent directly, to effect alienation etc. as per your wishes. I will not have any right, question or liability hereafter. I have made you believe and hereby certify that the properties are not charged by any loan liability or alienation and none except myself have any right over the same. The abovesaid agreement, the gift deed obtained E by Naganatha Iyer and others and the rent receipts for having paid rent to the Jenmi are hereby given."

From the aforesaid clauses, it would appear that by executing the agreement (Ex. B3) dated March 22, 1955, respondents Nos 1 to 5 sur- F rendered their leasehold interest in favour of T.M. Rama Iyer inasmuch as in Clause 4 of the said agreement they have clearly stated that plaintiffs-respondents will not have any responsibility or objection for T.M. Rama Iyer paying the amount due to the appellant after the stipulated period and take up the management by himself and *pay the rent* of the building and G conduct its business. By empowering T.M. Rama Iyer to pay the rent of the building respondents Nos. 1 to 5 were impliedly surrendering their leasehold interest in the premises in favour of T.M. Rama Iyer. This is borne out by the Deed of Assignment (Ex. B4) dated December 11, 1956 wherein in clause 2, T.M. Rama Iyer had stated "I have on oral agreement taken the building where the mills situate on a monthly rent of Rs. 75 for H a period of one year from Vettathu Tharavad which is the jenmi of the

same." The original rent for the property as let out to respondent No. 2 was Rs. 40 per month. The fact that after execution of the agreement dated March 22, 1955, T.M. Rama Iyer entered into another agreement with the landlord on a higher majority rent of Rs. 75 would show that fresh lease was created by the landlord in favour of T.M. Rama Iyer and the earlier lease in Favour of respondent No. 2 stood determined by implied surrender. In clause 3 of the Deed of Assignment (Ex. B4) dated December 11, 1956, T.M. Rama Iyer has empowered the appellant "to enter into rental agreements with the Jenmi of the building by paying the rent directly to effect alienation". This shows that T.M. Rama Iyer had impliedly surrendered his leasehold rights by agreeing that the appellant could enter into rental agreements with the landlord by paying the rent directly. The case of the appellant is that ever since the execution of the Deed of Assignment (Ex. B4) dated December 11, 1956, rent is being paid by him to the landlord directly. It is not the case of the plaintiffs-respondents that they had paid the rent for the premises to the landlord after March 22, 1955. In these circumstances, we are of the opinion that the plaintiffs-respondents, by executing the agreement (Ex. B3) dated March 22, 1955, had impliedly surrendered their leasehold rights in the suit property in favour of T.M. Rama Iyer and on the date of the filing of the present suit they had no subsisting leasehold interest in the same. The suit for the recovery of the possession of the suit property filed by them on the basis that the plaintiffs-respondents are the lessees thereof was, therefore, not maintainable and is liable to be dismissed.

A B C D E

The appeal is consequently allowed, the judgment and decree of the High Court of Kerala dated March 10, 1977 in S. No. 1206/76-E is set aside and O.S.No.636/68 filed by respondents Nos. 1 to 6 against the appellant is dismissed. There will be no order as to costs.

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T.N.A. Appeal allowed.