

T. LAKSHMIPATHI AND ORS.  
v.  
P. NITHYANANDA REDDY AND ORS.

MARCH 31, 2003

[R.C. LAHOTI AND ARUN KUMAR, JJ.]

*Rent Control and Eviction:*

*A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960:*

*Landlord became co-owner of the suit property due to partition in property—Some of the co-owners sold their rights of ownership in the property—Tenants transferring possession to vendee—Eviction petition—Decreed by the courts below and affirmed by High Court—Landlord-tenant relationship—Determination of—Doctrine of merger—Scope of—Held: Interest of the landlord did not vest in the vendee since he acquired interest of only some of the co-owners—By the act of transferring possession by tenants, vendee acquired tenancy rights—Hence vendee acquired partial ownership and full tenancy rights—Under such circumstances interests of lessee and the lessor in the whole property not vested in the vendee at the same time and in the same right—Hence relationship of landlord-tenant continues to exist—Doctrine of merger not attracted—Lease not determined by merger—Transfer of Property Act, 1872—S.111.*

*Erection of new structure on the premises in occupation of tenant—Demolition of superstructure by tenant but continuance of the land thereunder—Tenancy—Effect on—Held: Tenancy continues to exist since entire premises have not been lost—Transfer of Property Act, 1882—Ss. 5 and 105.*

*Property—Co-owner—Rights of—Discussed.*

*Doctrines:*

*“Doctrine of merger” and “Doctrine of frustration”—Meaning and applicability of.*

**Landlord-respondent No. 1 became one of the co-owners along with other co-owners (viz. five sisters and widow of younger brother) of the**

- A disputed property as a result of partition in the family property. Against the preliminary decree passed by the Trial Court for partition of the property, an appeal was pending. In the meanwhile all the co-owners except one sister and respondent No. 1 transferred their ownership rights in suit premises to appellant Nos. 3 to 5 by executing a sale deed and thereafter the tenants handed over the possession in respect of suit premises to appellants. However, respondent No. 1 initiated eviction proceedings against tenants under the A.P. Buildings Control Act on grounds of *bonafide* requirement and for non-payment of arrears of rent. Further, appellants 3 to 5 transferred their rights and interest in the property to appellants Nos. 1 and 2 by a registered sale deed. Rent Controller decreed the eviction suit. Appellate Authority confirmed the order of eviction. On dismissal of revision petition by the High Court, appellants preferred the present appeal.

- D It was contended for the appellants that since the appellants were also co-owners of the suit property, the suit for eviction would not lie and that on demolition of tenancy premises, the subject matter of tenancy having ceased to exist the tenancy has come to an end.

- E On behalf of the respondent it was submitted that since tenants in the suit property had transferred possession to appellants without the consent of the landlord, it is a case of parting with possession by tenants; and that by such act of transferring of possession, tenancy could not have been merged with ownership and the relationship of the landlord-tenant could not be brought to an end.

Dismissing the appeal, the Court

- F HELD: 1.1. The doctrine of merger contemplates (i) coalescence of the interest of the lessee and the interest of the lessor; (ii) in the whole of the property; (iii) at the same time; (iv) in one person; (v) in the same right. There must be a complete union of the whole interests of the lessor and the lessee so as to enable the lesser interest of the lessee sinking into the larger interest of the lessor in the reversion. [183-B]

*Law Lexicon*, Second Edition, 1997 by P. Ramanatha Aiyar; Tomlins *Law Dictionary*; 2 Black Com., 177; and *General Law of Landlord and Tenant* by Foa Eighth Edition, 642, referred to.

- H 1.2. In the instant case, the appellants are not purchasers of the entire

ownership interest in the property. They have purchased interest of some out of all the co-owners of the property. The interest of the respondent No. 1 has not come to vest in the appellants. The appellants have also acquired the tenancy rights in the property. Thus they have acquired partial ownership and full tenancy rights. It cannot be said that the interests of the lessee and the lessor in the whole of the property have become vested in the appellants at the same time and in the same right. The lease cannot be said to have been determined by merger. So long as the interests of the lessee, the lesser estate and of the owner, the larger estate do not come to coalesce in full either the water of larger estate is not deep enough to enable annihilation or the body of lesser interest does not sink or drown fully. [184-A, B, C]

*Badri Narain Jha and Ors. v. Rameshwar Dayal Singh & Ors.*, [1951] SCR 153; *Shaikh Fqir Bakhsh v. Murli Dhar and Ors.*, AIR (1931) PC 63; *Parmeshwar Singh and Ors. v. Mt. Sureba Kuer and Ors.*, AIR (1925) 530; *Lala Nathuni Prasad and Ors. v. Syed Anwar Karim and Ors.*, (1919) IC 16(Pat.) and *Nalakath Sainuddin v. Koorikadan Sulaiman*, [2002] 6 SCC 1, relied on.

1.3. The tenancy cannot be said to have been determined by attracting applicability of the doctrine of frustration consequent upon demolition of the tenancy premises. Doctrine of frustration belongs to the realm of Law of Contracts; it does not apply to a transaction where not only a privity of contract but a privity of estate has also been created inasmuch as lease is the transfer of an interest in immovable property. [184-F, G]

*Raja Dhruv Dev Chand v. Raja Harmohinder Singh and Anr.*, [1968] 3 SCR 339, relied on.

*Laws of Landlord and Tenant by Woodfall 28th Edn. Vol. 1* - referred to.

1.4. A lease of a house or of a shop is a lease not only of the superstructure but also of its site. It would be different if not only the site but also the land beneath ceases to exist by an act of nature. In the instant case the appellants who are the successor of the tenancy right have demolished the superstructure but the land beneath continues to exist. The entire tenancy premises have not been lost. Moreover, the appellants cannot be permitted to take shelter behind their own act prejudicial to

- A the interest of respondent No. 1 under whom respondents No. 2 and 3 were holding as tenants and then inducted the appellants. In the event of the tenancy having been created in respect of a building standing on the land, it is building and the land which are both components of subject matter of demise and the destruction of the building alone does not determine the tenancy when the land which was site of the building continues to exist;
- B more so when the building has been destroyed or demolished neither by the landlord nor by an act of nature but solely by the act of the tenant or the person claiming under him. [185-F, G, H; 186-C, D]

- C *D.G. Gousa & Co.(Agents) Pvt. Ltd. v. State of Kerala and Anr.*, [1980] 2 SCC 410 and *Corporation of the City of Victoria v. Bishop of Vancouver Island*, AIR (1921) PC 240, relied on.

- George J. Ovingal v. Peter*, AIR (1991) Kerala 55; *Rahim Bux and Ors. v. Mohammad Shafi*, AIR (1971) Allahabad 16; *Hind Rubber Industries Pvt. Ltd. v. Tayebhal Nohammedbhai Baasarwalla and Ors.*, AIR (1996) Bom. 389; *Jiwanlal & Co and Ors. v. Marot & Co. Ltd.* 64 CWN 932 and *Dr. V. Sidharthan v. Pattlori Ramadasan*, AIR (1984) Kerala 181, referred to.

- 1.5. The law as to co-owners is well settled. Where any property is held by several co-owners, each co-owner has interest in every inch of the common property, but his interest is qualified and limited by similar interest of the other co-owners. One co-owner cannot take exclusive possession of the property nor commit an act of waste, ouster or illegitimate use, and if he does so he may be restrained by an injunction. A co-owner may, by an arrangement, express or implied, with his other co-owners, possess and enjoy any property exclusively. Such a co-owner can also protect his possession against the other co-owner and if he is dispossessed by latter, he can recover exclusive possession. Neither respondents No. 2 and 3 nor their successors in interest or the persons claiming under them could have denied the title of respondent No. 1 during the continuance of the tenancy and even thereafter unless they had restored possession over the tenancy premises to respondent No. 1.
- G Looking at the status of the appellants whether as co-owners or as persons inducted in possession by the tenants they have no legs to stand on. If other co-owners could not have dispossessed respondent No. 1 or demolished the property without the consent of respondent No. 1 it is difficult to conceive how their transferees could have demolished the tenancy premises and raised their own construction over the land on which the tenancy premises
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stood earlier. [186-G, H; 187-D, E]

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*Jahuri Sah and Ors. v. Dwarika Prasad Jhunjhunwala and Ors.*, [1966] Supp. SCR 280 and *Vasudeo v. Balkishan*, [2002] 2 SCC 50, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4526 of 1999.

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From the Judgment and Order dated 2.12.1998 of the Andhra Pradesh High Court in C.R.P. No. 3796 of 1998.

P.P. Rao, B.M. Rao, Ranjan Kr. Jha, G. Balaji and Ramesh Babu M.R., for the Appellant.

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Uday U. Lalit and V.N. Raghupathy for the Respondents.

The Judgment of the Court was delivered by

**R.C. LAHOTI, J.** A decree for eviction passed in favour of the respondent no.1 on the grounds available under Section 10(2)(i) and 10(3)(b)(iii) of A.P. Buildings (Lease, Rent & Eviction) Control Act, 1960 by the courts below and upheld by the High Court is under challenge in this appeal by special leave, filed by the persons in occupation of the premises. The facts of the case are complex and litigations between the parties are multiple. It will be useful to notice in brief the several litigations between the parties which will have an incidental bearing on the principal controversy and would enable precise appreciation of the facts.

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The suit premises are non-residential bearing Door No.18-7-4 situated in Ponniammman Koli Street of Chittoor town. This property was initially owned by one P. Nayarana Reddy. In the year 1959 a suit was instituted for partition of certain joint family properties wherein the suit property was one of the items. P. Narayana Reddy had two sons, namely, P. Nithyananda Reddy, the respondent no.1 and P. Manohar Reddy and five daughters. Late P. Narayana Reddy, his wife and his two sons were arrayed as plaintiffs. Partition of joint family properties was sought for from the other branch of the family headed by brother of late P. Narayana Reddy. P. Narayana Reddy expired in the year 1981. By that time P. Manohar Reddy, the second son, had pre-deceased the father. Five daughters and the widow of pre-deceased son were brought on record by way of substitution in place of late P. Narayana Reddy and his wife who had also expired. A preliminary decree for partition was passed. At one stage in the appeals pending against the preliminary decree there was a compromise entered into by some of the parties in the year

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A 1983. The compromise had the effect of allotting the suit property to the share of P. Nithyananda Reddy, the respondent no.1. However, the compromise decree was recalled and set aside on an application filed by some of the co-sharers who were not joined as parties to the compromise. The appeal against the preliminary decree is still pending. Final decree in the partition suit is yet to be passed. Therefore, for all practical purposes though the shares of the parties to partition stand declared by the decree of the trial court, the declaration is still hanging fire in the pending appeal and partition by metes and bounds is yet to take place.

C Here it would be relevant to state that during the course of hearing in the present appeal before us, some controversy was sought to be raised as to the extent of share to which P. Nithyananda Reddy, the respondent no.1, would be entitled to in the suit premises. However, we are not concerned with that controversy in the present appeal and leave the same to be adjudicated upon in the partition suit and the pending appeal and proceedings subsequent thereto. For the purposes of the present appeal, we will proceed on an assumption that P. Nithyananda Reddy, the respondent no.1, is a co-owner in the suit premises and there are other co-owners as well; the exact extent or proportion of co-ownership interests being irrelevant for the present proceedings.

E Late P. Narayana Reddy had inducted a tenant in the suit premises, namely, G. Ethirajulu, the respondent no.2. On the death of P. Narayana Reddy in the year 1981, the tenant, G. Ethirajulu acknowledged P. Nithyananda Reddy as landlord of the property and started paying rent solely to him. He also paid Rs. 3000 by way of advance and incurred Rs. 1300 by way of repairs which was adjusted in payment of rent for the period January 1982 to April, 1984. Upto the end of April, 1985 the tenant G. Ithirajulu went on paying rent of the suit premises to P. Nithyananda Reddy, the respondent no.1 treating him as landlord. Thereafter, P. Varadarajulu, the respondent no.3, entered upon the scene. The respondent no.3 is the brother-in-law of respondent no.2. The respondent no.3 claiming himself as tenant, tendered rent in April 1986 to the respondent no.1 which he refused to receive on the ground that the respondent no.3 had nothing to do with the suit property and the respondent no.1 did not recognize the respondent no.3 as tenant. Thereupon, the respondent no.3 initiated proceedings under Section 8(5) of the Act seeking permission to deposit rent in the Court on account of respondent no.1 having refused to receive the rent. In these proceedings the respondent no.3 claimed himself to be tenant and alleged and acknowledged the respondent no.1 to be

the owner. Rent upto January 1990 was deposited in the proceedings under Section 8(5) of the Act. The proceedings came to be dismissed in default of appearance of the applicant therein. A

On 24.1.1990, the appellants no. 3 to 5 before us got a sale deed of the suit premises executed in their favour from four daughters of P. Narayana Reddy and the widow of pre-deceased son late Manohar Reddy. P. Nithyananda Reddy, the respondent no.1 and his one sister, did not join in the execution of sale deed and therefore their rights, to the extent they may be, do not stand transferred to the appellants. P. Varadarajulu, respondent no.3 claims himself to be the tenant in the suit premises, while according to respondent no.1, it is the respondent no.2 who is the tenant and P. Varadarajulu was inducted illegally as a sub-tenant. The fact remains that subsequent to the execution of the sale deed dated 24.1.1990 referred to hereinabove, P. Varadarajulu, respondent no.3 has with the consent, express or implied, of G. Ithirajulu, respondent no.2, handed-over possession over the suit premises to the appellants no. 3 to 5 herein. The rights and interests of the respondents no.2 and 3, have come to vest in the appellants no. 3 to 5 apart from their being purchasers of interest of some of the co-owners of the joint property. B C D

On 26.3.1990 the respondent no.1 initiated the present proceedings for eviction of the respondent nos. 2 and 3 (allegedly the tenant and the sub-tenant) under Section 13 of the A.P. Buildings Control Act. It was alleged that the respondent no.1 required the premises bona fide for his own use and that the tenant was in arrears of rent and had also sub-let the premises parting with possession in favour of a third person. In these proceedings the appellants no. 3 to 5 herein sought for intervention and being joined as parties to the proceedings. The prayer for impleadment was rejected by the learned Rent Controller vide his order dated 14.2.1992. However, in revision preferred by the appellants no. 3 to 5, the prayer for their impleadment was allowed by the High Court vide order dated 16.4.1992 in view of their having entered into possession of the premises. On 17.7.1993 appellants nos. 3 to 5 transferred their right and interest in the property along with possession in favour of the appellant nos. 1 and 2 through a registered deed of sale. They were also joined as parties and this is how the five appellants are parties to the eviction proceedings. E F G

On 10.4.1990 the respondent no.1 filed Original Suit No. 59 of 1990 seeking an injunction against the appellant nos. 3 to 5 restraining them for interfering with the possession over the suit premises. The Trial Court granted H

A the temporary injunction. However, the Appellate Court, vide its order dated 1.10.1990 directed the injunction to be vacated recording a finding that the appellant nos. 3 to 5 had entered into actual possession of the property in the purported exercise of their title under the sale deed dated 24.1.1990, and therefore the temporary preventive injunction against them was uncalled for.

B Reverting back to the present proceedings, the appellant nos. 3 to 5, on having been joined as parties to the eviction proceedings, filed a written statement on 12.7.1994, taking a plea that they were owners in possession of the property and there was no landlord-tenant relationship between them and the respondent no.1. On being joined as parties to the proceedings, the appellant  
C nos. 1 and 2 also filed their written statement on 7.3.1996 raising a similar plea.

On 12.3.1996 the Rent Controller directed the eviction petition to be decreed. According to the Rent Controller the respondent no.1 was landlord of the suit premises and the respondent nos. 2 and 3 were the tenants having  
D attorned in favour of respondent no.1, and therefore, the persons inducted into possession by them were also liable to be evicted along with them. On 24.7.1998 the Principal Senior Civil Judge dismissed the appeal, confirming the order of the Rent Controller. The Civil Revision preferred before the High Court also came to be dismissed on 2.12.1998. Two relevant facts may  
E be stated here by way of clarification. The judgment of the High Court records under a mistaken apprehension as to the facts either on the part of the Court or on the part of the learned counsel for the appellants that the two sale deeds executed respectively in favour of the appellant nos. 3 to 5 and then appellant nos. 1 and 2 were unregistered and therefore did not have the effect of transferring title to them. It was conceded at the Bar and very fairly by the  
F learned counsel for both the parties before us that the sale deeds are in fact registered and the statement of fact contained in the judgment of the High Court in that regard is incorrect. Both the learned counsels appearing before us made their submissions proceeding on the foundation that the two sale deeds are registered. The other point is that the only plea raised before the  
G High Court on behalf of the appellants was that they being transferees in possession from some of the co-owners, they would also acquire the status of co-owner and they can never be tenants of the respondent no.1 who is just one of the co-owners and, therefore, the eviction proceedings based on landlord-tenant relationship are fundamentally misconceived and deserve to be dismissed so far as they are concerned. The remedy of one co-owner  
H against the other co-owner in possession is by way of suit for partition and



not by way of eviction. It is noteworthy that before the High Court no challenge was laid to the findings on the availability of the grounds of eviction arrived at by the courts below. The result is that the finding as to availability of grounds of eviction has achieved a finality and is immune from challenge before this Court. Very fairly the learned senior counsel for the appellants has not made any submissions in that regard. The controversy surviving for decision is as to the nature and character of possession of the appellants over the suit premises. If the appellants can be held to be co-owners in possession of the property the suit for eviction would not lie, submits Shri P.P. Rao, the learned senior counsel for the appellants. On the contrary, the stand taken by Shri Lalit, the learned counsel for the respondent no.1, is that the appellants have been inducted into possession by the tenants in the suit property, without consent of the landlord-respondent no.1, and therefore, it is a clear case of parting with possession by the tenant. The fact that the appellants have also acquired title from some of the co-owners would not make any difference. The respondent nos.2 and 3 have acknowledged and attorned the respondent no.1 as landlord of the property. They have not surrendered possession to the respondent no.1. They have admittedly transferred possession to the appellant nos.3 to 5 who have in their turn transferred the possession to appellant nos. 1 and 2. They are inducted into possession of the tenancy premises by the tenants or the tenant and his sub-tenant. Simply because the appellants have also acquired title of some of the co-owners it would not have the effect of merging the tenancy with ownership and bringing the landlord-tenant relationship between the respondent no.1 and respondent nos.2 and 3 to an end so as to get rid of their obligation of placing the landlord in possession of the tenancy premises on the tenancy coming to an end.

It is not disputed that the tenancy premises have been demolished and new premises have been reconstructed in place of the old one by the transferees in connivance with the tenants.

We have set out the facts in brief incorporating the bare essential details by way of backdrop. Certain neat questions of law arise for decision in this appeal. For dealing with those questions, we sum up and set out as follows the factual foundation on which we are now proceeding. Out of the several co-owners of the property, the respondent No.1 was a landlord dealing with the tenants as such and his landlordship was attorned to and acknowledged by the tenants; the respondents No.2 and 3 shall both be treated as tenants, as they themselves claim to be, without entering into the controversy whether one of them is tenant and other is a sub-tenant or a person inducted in

- A possession by the tenant; the tenants i.e. respondents No. 2 and 3 have parted with possession in favour of the appellants without the consent, express or implied, of the respondent no.1, who is landlord-cum-co-owner of the suit premises; and the appellants being transferees from some of the co-owners of the property, have acquired partial proprietary interest (to the extent of the interest held by their predecessors in interest) in the suit premises. These facts are beyond any pale of controversy so far as the present appeal is concerned.

The first question which arises for decision is whether the appellants are absolved of their obligation of delivering possession over the suit premises to the landlord-respondent No.1 because the tenancy rights in the suit premises held by respondents No.2 and 3 and transferred by them to the appellants have merged in the ownership entailing determination of tenancy. The learned senior counsel for the appellants has placed strong reliance on the doctrine of merger.

- D Law Lexicon (P. Ramanatha Aiyar, Second Edition, 1997) defines “merger” as the “destruction or ‘drowning’ by operation of law of the less in the greater of two estates coming together and vesting without any intervening estate in one and the same person in the same right.” “Whenever a greater estate and a less coincide and meet in one and the same person without any intermediate estate, the less is immediately annihilated, or in the law phrase is said to be merged that is, sunk or drowned in the greater (2 Black. Com.177; Tomlins Law Dic.). According to Foa (General Law of Landlord and Tenant, Eighth Edition, p.642), a lease may be determined by merger. A merger takes place where a tenant acquires the immediate reversion: for when a greater estate and a less coincide in the same person without any intermediate estate, the less is said to be merged in the greater. . . . . For merger, however, to take place, the two interests must come to one and the same person in one and the same right.”

The common law doctrine of merger is statutorily embodied in Transfer of Property Act, 1882. Section 111 (d) provides:-”

- G 111. Determination of lease.\_\_\_\_ A lease of immovable property determines \_\_\_\_

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- H (d) in case the interests of the lessee and the lessor in the whole

of the property become vested at the same time in one person in the same right; A

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A bare reading of the doctrine of merger, as statutorily recognized in India, contemplates (i) coalescence of the interest of the lessee and the interest of the lessor (ii) in the whole of the property (iii) at the same time (iv) in one person (v) in the same right. There must be a complete union of the whole interests of the lessor and the lessee so as to enable the lesser interest of the lessee sinking into the larger interest of the lessor in the reversion. B

In *Badri Narain Jha and Ors. v. Rameshwar Dayal Singh and Ors.*, [1951] SCR 153, it was held by this Court that if the lessor purchases the lessee's interest, the lease no doubt is extinguished as the same man cannot at the same time be both a landlord and a tenant, but there is no extinction of the lease if one of the several lessees purchased only a part of the lessor's interest. In such a case the leasehold and the reversion cannot be said to coincide. C D

In *Shaikh Faqir Bakhsh v. Murli Dhar and Ors.*, AIR (1931) PC 63, the plaintiff was holding on lease a portion of the entire property. Subsequently, plaintiff and defendant became pro indiviso joint proprietors of the property by purchasing shares from the earlier owners. The lease was subsisting when the shares were bought by the parties. In a suit for accounts filed by the plaintiff it was held that the plaintiff's rights under lease of a part do not merge in his rights as joint proprietor of the whole of the property and as between the parties the plaintiff held a valid and subsisting lease. E

A Division Bench of Patna High Court in *Parmeshwar Singh & Ors. v. Mt. Sureba Kuer and Ors.*, AIR (1925) Patna 530, held that Section 111(d) applies only to a case where the interests of the lessee and of the lessor in the whole of the property become vested at the same time in one person in the same right. Where a co-proprietor in the property purchased for himself, the interest of the lessees of the whole property, there could be no merger. On purchase of a partial interest in tenancy rights by the owner, the onus of proving that the distinction between the interests continued to be kept alive subsequently also cannot be placed on the party alleging that the distinction was so kept alive. To the same effect is the view of the law taken in *Lala Nathuni Prasad and Ors. v. Syed Anwar Karim and Ors.*, (1919) IC 16 (Patna). Merger is largely a question of intention, dependent on circumstances, F G H

A and the courts will presume against it when it operates to the disadvantage of a party, as was held by this Court in *Nalakath Saimuddin v. Koorikadan Sulaiman*, [2002] 6 SCC 1 (Para 20).

B In the case at hand, it cannot be denied, nor has it been denied, that the appellants herein are not purchasers of the entire ownership interest in the property. What they have purchased is interest of some out of all the co-owners of the property. The interest of the respondent No.1, whatever be its extent, has not come to vest in the appellants. The appellants have also acquired the tenancy rights in the property. Thus they have acquired partial ownership and full tenancy rights. It cannot be said that the interests of the lessee and the lessor in the whole of the property have become vested in the appellants at the same time and in the same right. The lease cannot be said to have been determined by merger. So long as the interests of the lessee, the lesser estate and of the owner, the larger estate do not come to coalesce in full either the water of larger estate is not deep enough to enable annihilation or the body of lesser interest does not sink or drown fully.

D It was submitted by the learned senior counsel for the appellants that assuming if the tenancy has not determined by merger still what was held by the respondents No.2 and 3 on tenancy was 'building' or super structure only and not the land beneath. Admittedly, the building has been demolished. As tenancy premises have ceased to exist, the tenancy has come to an end in view of the very subject matter of tenancy having ceased to exist. Assuming also that the act of the appellants is wrongful still the remedy of the respondent No.1 who is only a co-owner in the property would be to sue for partition and seek recovery of damages; a suit based on landlord-tenant relationship and seeking recovery of possession is misconceived and must fail, submitted the learned senior counsel Shri P.P. Rao.

G The tenancy cannot be said to have been determined by attracting applicability of the doctrine of frustration consequent upon demolishing of the tenancy premises. Doctrine of frustration belongs to the realm of Law of Contracts; it does not apply to a transaction where not only a privity of contract but a privity of estate has also been created inasmuch as lease is the transfer of an interest in immovable property within the meaning of Section 5 of the Transfer of Property Act (wherein the phrase 'the transfer of property' has been defined), read with Section 105, which defines a lease of immovable property as a transfer of a right to enjoy such property. (See observations of this Court in this regard in *Raja Dhruv Dev Chand v. Raja Harmohinder*

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*Singh and Anr.*, [1968] 3 SCR 339. It is neither the case of the appellants nor of the respondents No.2 and 3 that the subject matter of lease was the building and the building alone, excluding land whereon the building forming subject matter of tenancy stood at the time of creation of lease.

In Woodfall's Laws of Landlord and Tenant (28th Edition, Vol.1) the relevant law is so stated:-

"Where the lessee covenants to pay rent at stated period (without any exception in case of fire), he is bound to pay it, though the house be burnt down: for the land remains, and he might have provided to the contrary by express stipulation, if both parties had so intended. And this rule applies, although the lessee's covenant to repair contain an exception in case of fire. Similarly, an action for use and occupation still lies in respect of the whole period of the tenancy notwithstanding the destruction of the premises by fire." (Para 1-0778)

"In a lease of land with buildings upon it the destruction of even the entirety of the buildings does not affect the continuance of the lease or of the lessee's liabilities under it, unless so provided by express contract." (Para 1-2055)

"A demise must have a subject-matter, either corporeal or incorporeal. If the subject-matter is destroyed entirely, it is submitted that the lease comes automatically to an end, for there is no longer any demise. The mere destruction of a building on land is not total destruction of the subject-matter of a lease of the land and building, so the demise continues. But if by some convulsion of nature the very site ceases to exist, by being swallowed up altogether or buried in the depths of the sea, it seems clear that any lease of the property must come to an end." (Para 1-2056)

A lease of a house or of a shop is a lease not only of the superstructure but also of its site. It would be different if not only the site but also the land beneath ceases to exist by an act of nature. In the present case the appellants who are the successors of the tenancy right have demolished the superstructure but the land beneath continues to exist. The entire tenancy premises have not been lost. Moreover, the appellants cannot be permitted to take shelter behind their own act prejudicial to the interest of the respondent No.1 under whom the respondents no.2 and 3 were holding as tenants and then inducted the appellants.

A In *D.G. Gouse & Co. (Agents) Pvt. Ltd. v. State of Kerala and Anr.*, [1980] 2 SCC 410, while dealing with Entry 49 of List II of the Seventh Schedule of the Constitution, making a reference to Oxford English Dictionary, this Court has held that the site of the building is a component part of the building and therefore inheres in the concept or ordinary meaning of the expression 'building'. Referring to Corporation of the *City of Victoria v. Bishop of Vancouver Island*, AIR (1921) PC 240, it was held that the word 'building' must receive its natural and ordinary meaning as 'including the fabric of which it is composed, the ground upon which its walls stand and the ground embraced within those walls'.

C We are, therefore, of the opinion that in the event of the tenancy having been created in respect of a building standing on the land, it is the building and the land which are both components of subject matter of demise and the destruction of the building alone does not determine the tenancy when the land which was site of the building continues to exist; more so when the building has been destroyed or demolished neither by the landlord nor by an act of nature but solely by the act of the tenant or the person claiming under him. Ample judicial authority is available in support of this proposition and illustratively we refer to *George J. Ovungal v. Peter*, AIR (1991) Kerala 55, *Rahim Bux and Ors. v. Mohammad Shafi*, AIR (1971) Allahabad 16, *Hind Rubber Industries Pvt. Ltd. v. Tayebhai Mohammedbhai Bagasarwalla & Ors.*, AIR (1996) Bombay 389 and *Jiwanlal & Co. and Ors. v. Manot & Co., Ltd.*, 64 CWN 932. The Division Bench decision of Kerala High Court in *Dr. V. Sidharthan v. Pattiori Ramadasan*, AIR (1984) Kerala 181, appears to take a view to the contrary. But that was a case where the building was totally destroyed by fire by negligence of the tenant. It is a case which proceeds on very peculiar facts of its own and was rightly dissented from by Bombay High Court in *Hind Rubber Industries Pvt. Ltd. v. Tayebhai Mohammedbhai Bagasarwalla and Ors.*, (supra).

In the facts and circumstances of the case, no defence or shelter is available to the appellants behind the plea that they have acquired interest of some of the co-owners. The law as to co-owners is well settled. Where any property is held by several co-owners, each co-owner has interest in every inch of the common property, but his interest is qualified and limited by similar interest of the other co-owners. One co-owner cannot take exclusive possession of the property nor commit an act of waste, ouster or illegitimate use, and if he does so he may be restrained by an injunction. A co-owner may, by an arrangement, expressed or implied, with his other co-owners,

possess and enjoy any property exclusively. Such a co-owner can also protect A  
his possession against the other co-owners and if he is dispossessed by the  
latter, he can recover exclusive possession. (See *Jahuri Sah and Ors. v.*  
*Dwarika Prasad Jhunjhunwala and Ors.*, [1966] Supp SCR 280. It is beyond  
any controversy that on the death of late P. Narayana Reddy, his rights B  
devolved upon the several heirs including respondent no.1. The respondent  
no.1 is the only male person in the body of the co-owners, all others being  
women. It may be for this reason, or otherwise, that the respondent no.1 was  
in possession of the property, through tenants, realizing the rent peacefully  
and with the consent, expressed or implied, of other co-heirs of late P.  
Nithyananda Reddy. So far as the respondents no.2 and 3 are concerned, by C  
operation of Section 116 of the Evidence Act, they were estopped from  
challenging or denying the ownership of the respondent no.1 and his rights  
in the tenancy premises. As held in *Vasudeo v. Balkishan*, [2002] 2 SCC 50,  
the rule of estoppel between landlord and tenant continues to operate so long  
as the tenancy continues and unless the tenant has surrendered possession to  
the landlord. The estoppel would cease to operate only on the tenant openly D  
restoring possession by surrender to the landlord. Neither the respondents no.  
2 and 3 nor their successors in interest or the persons claiming under them  
could have denied the title of the respondent no.1 during the continuance of  
the tenancy and even thereafter unless they had restored possession over the  
tenancy premises to the respondent No.1. Looking at the status of the appellants E  
whether as co-owners or as persons inducted in possession by the tenants  
they have no legs to stand on. If other co-owners could not have dispossessed  
the respondent no.1 or demolished the property without the consent of  
respondent no.1 it is difficult to conceive how their transferees could have  
demolished the tenancy premises and raised their own construction over the  
land on which the tenancy premises stood earlier. F

For the foregoing reasons, we find the appeal devoid of any merit and  
liable to be dismissed. It is dismissed accordingly and with costs. The judgment  
and decree of the Trial Court as upheld by the High Court are maintained.

S.K.S.

Appeal dismissed.