In the High Court at Calcutta
Civil Appellate Jurisdiction
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Supratim Bhattacharya

APD 56 of 2015
With CS 84 of 1977
IA No: GA 4 of 2019

M/S J.K. PURE OIL MILL & FIRM & ANR
VS
MAHESWAR PARAMANICK & ORS

With

APD 183 of 2015

M/S J.K. PURE OIL MILL & ANR
VS
MAHESWAR PARAMANICK & ORS

For the appellants	:	Mr. Pradip Kumar Ghosh, Sr. Adv., Mr. Rajesh Gupta Ms. Sumitra Das ….Advs
For the respondents	:	Mr. Sabyasachi Chaudhury, Sr. Adv. Mr. Rajarshi Dutta Mr. Deepesh Sharma, Mr. Lalratan Mondal, ….Advs
Heard on	:	08.07.2026, 22.07.2026, 29.07.2026, 05.08.2026 & 21.08.2026
Reserved on	:	21.08.2026
Judgment on	:	18.09.2026

Sabyasachi Bhattacharyya, J.:-

1. At the outset, it may be pointed out that during arguments, spread over several dates, an impression was given to the court that APD 183 of 2015 has been preferred against an eviction decree passed in CS 84 of 1977 whereas APD 56 of 2015 has been filed against the decree of mesne profits passed in the self-same suit. The numbers of the appeals have been referred to in the earlier orders accordingly, under such mistaken notion. However, from the records, it is evident that it is just the reverse, that is, APD 56 of 2015 is against the eviction decree whereas APD 183 of 2015 is against the decree of mesne profits. Hence, the reference to the numbers of the appeals in the earlier orders be deemed to stand corrected accordingly. Be that as it may, the arguments were advanced at length on the appeal against the eviction decree and we proceed to adjudicate on such premise.

2. The present appeal, bearing APD 56 of 2015, has been preferred by defendant nos. 7 and 1 (b) against a decree of eviction on the ground of expiry of lease by efflux of time, whereas APD 183 of 2015 has been preferred against a decree of mesne profits passed against the appellants in the same suit.

3. An application under Order XLI Rule 27 of the Code of Civil procedure (hereinafter referred to as "the Code") has also been filed by the appellants to bring on record documents in connection with an application filed under Order XXI Rule 97 of the Code in an execution proceeding arising out of an eviction decree obtained by the Kolkata Port Trust (for short, "KoPT"),

previously known as the "Calcutta Port Trust", against the present plaintiffs/respondents.

4. Learned senior counsel appearing for the appellants argues that the documents sought to be produced as additional evidence by way of the application under Order XLI Rule 27 are germane for a complete adjudication of the present appeal and, thus, ought to be permitted to be produced before this Court. In support of such contention, learned senior counsel cites the following judgments:

(1) *Syed Abdul Khader v. Rami Reddy and Others*, reported at *(1979) 2 SCC 601*

(2) *Union of India v. Ibrahim Uddin and Another*, reported at *(2012) 8 SCC 148*

(3) *Ceean International Private Limited v. Ashok Surana and Another, reported at AIR 2003 Cal 263*;

(4) *Hindusthan Petroleum Corporation Ltd. v. R.P. Agarwalla & Brothers (Pvt.) Ltd.* reported at *AIR 1986 Cal 403.*

5. Learned senior counsel next contends that the plaintiffs/respondents have no *locus standi* or any subsisting right, title and interest in the suit property in order to maintain the present suit for recovery of possession and mesne profits. Learned senior counsel relies on Section 111(a) of the Transfer of Property Act, 1882 (hereinafter referred to as "the TP Act"), which provides that one of the modes of determination of a lease is expiry of the lease by efflux of time. Learned senior counsel also cites Section 108 (q) of the said Act to argue that it is the bounden duty of the lessee, upon expiry of the lease or its determination by any other mode, to hand over physical

possession of the property to the lessor. If the said provisions are read together, it is argued, the plaintiffs in the present suit, who inducted the appellants, had lost their right in the suit property by dint of the expiry of the plaintiffs' lease even before the institution of the present suit.

6. It is argued that the lessor of the plaintiffs, namely Lalita Sadhukhan, ceased to be a lessee post-expiry of her lease. Moreover, she also suffered an eviction decree dated December 20, 1979 in a suit instituted by the then Calcutta Port Trust (now KoPT), thus denuding her of any title in the suit property. Hence, as on the date when the present suit was decreed, the plaintiffs/respondents were neither lessees, in view of the expiry of their parent lease, nor were in occupation of the suit property with possessory rights, since possession was all along with the appellant. At best, the plaintiffs/respondents were tenants by sufferance or trespassers in respect of the suit property.

7. Since Lalita herself could not maintain any action for eviction after an eviction decree was passed against her, but ought to have returned the property to KoPT, the superior landlord, the plaintiffs, who claim under Lalita, could not maintain the eviction suit as well.

8. Learned senior counsel next submits that in view of the KoPT having attempted to disturb the possession of the appellants in respect of the suit property, a writ petition bearing no. CO (W) 3194 of 1992 had been moved, wherein an order was passed by a learned Single Judge of this court on September 24, 1992, restraining the KoPT (then "Calcutta Port Trust"), from taking possession of or interfering with the appellants' possession in respect of the suit property without initiating appropriate proceedings in accordance

with law and without prior notice to the appellant. Thus, it is contended that even if the appellants were to lose in the writ petition, it would be the KoPT, the superior landlord, in whose favour the property had to be handed over by the appellants, and not to the present plaintiffs/respondents.

9. Learned senior counsel cites *Kewal Chand Mimani (D) v. S.K.Sen and Others*, reported at *(2001) 6 SCC 512*, and *Charu Diesels LLP v. E.L. Properties (P) Ltd.*, reported at *2025 SCC OnLine Cal 4255*, to argue that if, on the relevant date, the lessor was not in actual physical possession, nor the lease in its favour subsisted, it would not be entitled to the possession being restored to it.

10. Learned senior counsel then argues that Section 116 of the Indian Evidence Act debars the lessee from disputing the title of the lessor only at the point of induction, that too, during subsistence of the lease. However, in the present case, the immediate lessor's lease was no longer subsisting and the appellants do not challenge the title of the lessor at the inception, but plead their lessors' subsequent loss of title.

11. Learned senior counsel argues that although the learned Single Judge relied on *In Re: Ganesh Trading Co. Pvt. Ltd.,* reported at *AIR 1985 Cal 37*, to hold otherwise, the ratio in the said judgment was criticised in a subsequent judgment of this Court in *Union Bank of India v. Vithalbhai Pvt. Ltd.*, reported at *AIR 2002 Cal 144.*

12. The KoPT proceedings against Lalita, the lessor of the plaintiffs, in the City Civil Court at Calcutta, were not disclosed by the plaintiffs before the Trial Court, which is why certified copies of the relevant documents in connection

therewith have been sought to be brought on record by way of the appellants' application under Order XLI Rule 27 of the Code.

13. After the eviction decree was passed against Lalita in 1979, Lalita, along with all sub-lessees claiming under her, including the present plaintiffs, were rendered trespassers except the appellant, who continued to exercise possessory rights in respect of the subject property.

14. Thus, it is argued that the impugned judgment and decree of eviction ought to be set aside.

15. Learned senior counsel appearing for the plaintiffs/respondents, on the other hand, argues that by way of the application under Order XLI Rule 27 of the Code, the appellants seek to raise a new ground of eviction by title holder paramount, which is beyond the grounds taken in the memorandum of the present appeal.

16. Insofar as the appellants' right to challenge the title of their inducting lessor, that is, the plaintiffs/respondents, is concerned, it is argued that Section 116 of the Evidence Act clearly debars them from doing so. In this context, learned senior counsel cites *Vithalbhai Pvt. Ltd. v. Union Bank of India,* reported at *1992 SCC Online Cal 34*, which was a judgment passed by a learned Single Judge of this Court and ultimately upheld by the Hon'ble Supreme Court, which set aside the Division Bench judgment which reversed the judgment of the learned Single Judge, in *Vithalbhai (P) Ltd. v. Union Bank of India*, reported at *(2005) 4 SCC 315*. Learned senior counsel also relies on *Ashok Bimal Ghosh v. Beant Kaur*, reported at *MANU/SC/0742/2002*, for the proposition that Section 116 of the Evidence

Act operates so long as either the tenants surrender possession to their lessors or the lessors are evicted by the paramount title holder.

17. By placing reliance on the judgment in *Sm.Urmila Pyne v. Amiya Kumar Pyne*, reported at *1984 SCC Online Cal 128*, passed by a co-ordinate Bench of this Court, learned senior counsel for the plaintiffs/respondents argues that mere subsistence of an eviction decree alone cannot tantamount to the termination of the lessor-lessee relationship, unless there is actual physical dispossession.

18. It is submitted that the judgment in *Charu Diesels LLP (supra)*[1] is *per incuriam*, since it did not consider the co-ordinate Bench judgment in *Ganesh Trading (supra)*[2]

19. From the judgments cited by the plaintiffs/respondents, it is argued, it is clear that in order to constitute termination of the lessor-lessee relationship, a mere decree of eviction in favour of the paramount title holder is not sufficient but actual dispossession is required. The relationship with the immediate landlord has to stand disrupted, not only *de jure* but also *de facto*, for the lessee to get over the principle of estoppel, as embodied in Section 116 of the Evidence Act.

20. The plaintiffs/respondents argue that Section 108(q) of the TP Act, if it remains an unenforced right not upheld by a court of law, is insufficient to overcome the bar under Section 116 of the Evidence Act. In any event, it is argued that the appellants have not disclosed any better or independent title to reside at the premises than that of the plaintiffs.

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[1] **Charu Diesels LLP v. E.L. Properties (P) Ltd., reported at 2025 SCC OnLine Cal 4255**

[2] ***In Re: Ganesh Trading Co. Pvt. Ltd.,* reported at *AIR 1985 Cal 37***

21. Learned senior counsel next points out that in their own written statement, the defendants have controverted eviction by paramount title holder, by stating that the superior landlord of the plaintiffs, namely Lalita, agreed for the defendant no. 7 to continue as a direct tenant.

22. In *Vashu Deo v. Balkishan*, reported at *(2002) 2 SCC 50,* it is contended, three conditions for eviction by title paramount were laid down:

a) The person evicting has to have a good title;

b) The tenant has to quit/directly attorn to the paramount title holder *against his will*;

c) The landlord has to be a willing/consenting party to such direct attornment or an event, like change in law or a decree by a competent court, has to intervene.

23. Only under such circumstances, the need of consent/willingness by the landlord is dispensed with.

24. The paramount title holder, it is argued, must be armed with a legal process for eviction which cannot be lawfully resisted. In the present case, by resisting execution by KoPT, the appellants themselves have admitted that the decree for eviction obtained by KOPT can be resisted.

25. It is further submitted that Exhibit-2 in the suit, being a letter dated September 26, 2014 by the appellants to get a direct tenancy from KoPT, is to be construed as an attempt to attorn in favour of the appellants. Thus, such attornment was not against the appellants' will as held by the Hon'ble Supreme Court in the above judgment.

26. Moreover, the appellants' lawyer in the suit court was examined in the mesne profits proceeding and accepted that he had written a letter dated

September 12, 2002 under the instruction of Balaram Sadukhan, one of the partners of appellant no. 1, to the Land Manager of the KoPT, seeking a long term lease. Thus, it is argued that none of the conditions as laid down in *Vashu Deo (supra)*[3] were fulfilled in the present case.

27. Upon considering the arguments of both sides, the application under Order XLI Rule 27 of the Code is taken up for adjudication first. Although the proceedings in connection with the KoPT execution case against Lalita Sadhukhan, the immediate landlord of the lessor/plaintiffs, were not disclosed in the Trial Court by the plaintiffs, those are, in our opinion, germane for a comprehensive and proper adjudication of the present appeal, having a direct bearing on the *lis*. Since the contention regarding loss of title of the plaintiffs due to eviction by the paramount title holder is a relevant consideration in the present adjudication, the provisions of Order XLI Rule 27(1)(b) are attracted, which provides that if the Appellate Court requires any evidence or document to be produced to enable it to pronounce judgment or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced.

28. What is required under sub-rule (2) of Order XLI Rule 27 is only that the court is to record reasons for admission of such documents.

29. The principles governing Order XLI Rule 27 have been elaborated at length by the Hon'ble Supreme Court in *Syed Abdul Khader (supra)*[4]. It was held therein that the said provision enables the Appellate Court to admit additional evidence in the circumstances or situations therein mentioned,

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[3] **Vashu Deo v. Balkishan, reported at (2002) 2 SCC 50**

[4] ***Syed Abdul Khader v. Rami Reddy and Others, reported at (1979) 2 SCC 601***

one such being where the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment or for any other substantial cause. It was further held that Order XLI Rule 27 does not confer a right on the party to produce additional evidence, but if the court hearing the action requires any document so as to enable it to pronounce judgment, it has the jurisdiction to permit additional evidence to be produced.

30. Again, in *Ibrahim Uddin (supra)*[5], the Hon'ble Supreme Court reiterated that the discretion under Order XLI Rule 27 is to be exercised by the court judicially taking into consideration the relevance of the document in respect of the issues involved in the case and the circumstances under which such evidence could not be led in the court below. It was further held that the admissibility of additional evidence does not depend upon the relevancy to the issue at hand or on the fact whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the Appellate Court requires the evidence sought to be adduced to enable it to pronounce judgment or any other substantial cause. The true test was laid down to be whether the Appellate Court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced, which occasion would arise only if on examining the evidence as it stands, the court comes to the conclusion that some inherent lacunae or defect becomes apparent to the court.

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[5] ***Union of India v. Ibrahim Uddin and Another, reported at (2012) 8 SCC 148***

31. In *Ceean International Private Limited (supra)*[6], a co-ordinate Bench of this court reiterated that in order to exercise the distinction under Order XLI Rule 27 of the Code, if it appears to the court that production of certain documents are required for the purpose of pronouncing judgment, the Appellate Court may resort to Clause (b) of Order XLI Rule 27(1) of the Code. In such a case, if the application is made and documents are produced and leave is sought for, then it is the bounden duty of the court to examine the said documents and arriving at a conclusion as to whether the court would require such documents for pronouncing judgment having regard to the discretion cast upon it by the statute.

32. Lastly, in *Hindusthan Petroleum Corporation Ltd. (supra)*[7], another co-ordinate Bench of this Court elaborated the phrase "any other substantial cause" in Order XLI Rule 27(1)(b) of the Code and held that there may well be cases where even though the court finds that it is able to pronounce judgment on the state of record as it is, and so it cannot strictly say that it requires additional evidence to enable it to pronounce judgment, it still considers that in the interest of justice something which remains obscure should be filled up so that it can pronounce its judgment in a more satisfactory manner, it will be a case for allowing additional evidence for any other substantial cause under Rule 27(1)(b) of the Code, apart from observing that such requirement of the Court is not likely to arise ordinarily unless some inherent lacuna or defect becomes apparent on an examination

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[6] ***Ceean International Private Limited v. Ashok Surana and Another, reported at AIR 2003 Cal 263***

[7] ***Hindusthan Petroleum Corporation Ltd. v. R.P. Agarwalla & Brothers (Pvt.) Ltd.*** **reported at** ***AIR 1986 Cal 403.***

of the evidence. The Division Bench further observed that such an application would be allowed if the Courts consider the necessity for production of the documents for any other substantial cause which would also include the question of doing due, proper and substantial justice, including the case of "ends of justice", and while making an order for any reasons as mentioned above, the Courts must also be satisfied that for some good or sufficient reason or cause, the concerned evidence could not be produced before the trial Court. The Courts, at the same time, were held to have right, authority and power to refuse admission of additional evidence, if the action is not bona fide and intended to fill up the lacunae in the evidence.

33. Applying the aforesaid principles, in the present case, the lacunae which afflicted the suit due to non-production of the relevant documents relating to the eviction decree against the superior landlord was only due to the suppression of such material facts by the plaintiffs/respondents, having nothing to do with the laches of the appellants. Moreover, the said issue being germane for adjudication of the present *lis* and both sides having been granted an opportunity and having actually addressed such issue in the present appeal, mere lack of a specific ground in the memorandum of appeal to that effect does not preclude the Court from looking into the documents-in-question, particularly since no material objection has been raised to the existence and veracity of the documents sought to be produced.

34. Accordingly, the application under Order XLI Rule 27, bearing GA 4 of 2019 is hereby allowed.

35. The next question which falls for consideration is whether the plaintiffs/respondents had the *locus standi* to maintain the eviction suit against the appellants.

36. Certain dates are relevant to decide the said question.

37. Lalita Sadhukhan, who had obtained a lease in respect of the suit property from the Calcutta Port Trust (now "KoPT"), granted a sub-lease to the original plaintiff Panchkari Pramanick on December 13, 1965, for a period of 10 years starting from February 9, 1965 and ending on February 8, 1975.

38. Panchkari, in turn, granted a further sub-lease to the appellant no.1, through its partners, the Sadhukhans, on December 16, 1965, for a co-extensive period, that is between February 9, 1965 and February 8, 1975.

39. Thus, on February 8, 1975, both the sub-lease in favour of Panchkari and the further sub-lease granted by him in favour of the appellants expired by efflux of time, by operation of Section 111(a) of the TP Act. Lalita gave a notice to quit to the predecessor of the plaintiffs/respondents and, consequentially, the said predecessor also gave a notice to quit to the appellants' predecessor.

40. Thus, as on the date of instituting the present eviction suit, bearing Ejectment Suit No. 84 of 1977, that is December 18, 1977, both the lease granted by Lalita in favour of the plaintiffs and the sub-lease granted in favour of the appellants stood expired. However, it is to be noted that an eviction notice had also been issued by KoPT to Lalita, which was received by one Jagannath Paramanick, the brother of Lalita, on February 21, 1974, and Ejectment Suit No. 1444 of 1974 was also instituted by KoPT against

Lalita, both much prior to the institution of the present suit on December 18, 1977.

41. The said facts, however, were suppressed in the present eviction suit by the original plaintiff Panchkari.

42. On December 20, 1979, the eviction suit filed by the KoPT was decreed against Lalita and in the month of September, 1991, Ejectment Execution No. 189 of 1991 was consequentially filed by KoPT against Lalita. In the month of September 1992, the representative of the KoPT went to take possession of the premises, which attempt was thwarted by Balaram Sadhukhan, one of the partners of the appellant no.1, pursuant to which KoPT filed an application under Order XXI Rule 97 of the Code, impleading Balaram as opposite party no. 2, thereby giving rise to Miscellaneous Case No. 65 of 2003.

43. The possession of the appellants being thus threatened, they took out a writ petition, bearing CO (W) No. 3194 of 1992, in connection with which a learned Single Judge of this Court, on September 24, 1992, passed an order restraining the KoPT (then Calcutta Port Trust) from taking possession of or interfering with the appellants' possession without initiating appropriate proceedings in accordance with law and without prior notice to the appellants.

44. The application filed by KoPT under Order XXI Rule 97 of the Code was, however, dismissed for default on June 9, 2005.

45. Thus, when the judgment and decree impugned herein was passed, not only had an eviction decree being passed at the behest of the paramount title holder KoPT against Lalita, the immediate landlord of the plaintiffs, but

execution in connection therewith had also been levied. Even prior to the institution of the present suit, the superior lease granted by Lalita to the plaintiffs' predecessor-in-interest had expired. Since such lease was coextensive with that granted to Lalita, the latter had also expired much before the institution of the present suit.

46. Thus, fact remains that as on the date of institution of the present suit, the plaintiffs had no subsisting lease-hold rights in respect of the suit property, nor did its immediate landlord Lalita have any such rights.

47. The plaintiffs/respondents have laid much stress on the proposition laid down in *Ganesh Trading (supra)*[8] by a learned Single Judge of this Court that an eviction decree alone cannot be sufficient to overcome Section 116 of the Evidence Act, unless there was actual dispossession of the lessor.

48. However, in the facts of the present case, admittedly, the immediate lessors of the appellants, that is, the plaintiffs/respondents were not in physical possession of the premises on the date of institution of the eviction suit, which is implicit in the fact that an eviction suit had to be instituted by the plaintiffs against the defendants/appellants in the first place.

49. As opposed to a licence, the cardinal characteristics of a lease are that the lessor parts with control as well as exclusive possession of the property in favour of the lessee. Thus, it cannot be argued that the plaintiffs/lessors retained physical possession in view of the admitted grant of lease in favour of the defendants/appellants. Thus, even going by the principle laid down in *Ganesh Trading (supra)*[8] and *Vithalbhai Pvt. Ltd. (supra)*[9], the plaintiffs

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[8] ***In Re: Ganesh Trading Co. Pvt. Ltd.,*** **reported at** ***AIR 1985 Cal 37***

[9] ***Vithalbhai Pvt. Ltd. v. Union Bank of India, reported at 1992 SCC Online Cal 34***

were actually not in *de facto* possession of the suit property the moment lease was granted in favour of the defendants/appellants.

50. A closer scrutiny of the *Vithalbhai* judgments would also bring out subtle distinctions with the present case.

51. The learned Single Judge of this Court, in *Vithalbhai Pvt. Ltd. (supra)*[9], had, in Paragraph Nos. 7 and 17 of the report, specifically mentioned that the defendant is not entitled to enquire about the "original" title of the admitted landlord and a claim for possession cannot be resisted on such ground. The use of the expression "original" is in consonance with the language of Section 116 of the Evidence Act, which is set out below:

> *"**116. Estoppel of tenant; and of licensee of person in possession.**—No tenant of immovable property, or person claiming through such tenant, shall, **during the continuance of the tenancy**, be permitted to deny that the landlord of such tenant had, **at the beginning of the tenancy**, a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given."*

52. The said judgment was reversed by a Division Bench of this Court and the matter went up to the Hon'ble Supreme Court. In its judgment in *Vithalbhai (P) Ltd. (supra)*[10], the Hon'ble Supreme Court, however, formulated the sole question which had arisen for decision in the appeal before it in Paragraph No. 6 of its judgment as *"whether the suit was premature on the date of its institution and hence no relief could have been allowed to the plaintiff in such a suit"*. The Hon'ble Supreme Court, in proceeding to adjudicate the said

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[10] ***Vithalbhai (P) Ltd. v. Union Bank of India*, reported at *(2005) 4 SCC 315***

question, observed in Paragraph No. 21 of its judgment that where the right to sue has not matured on the date of the institution of the suit an objection in that regard must be promptly taken by the defendant and the Court may reject the plaint if it does not disclose a cause of action. In Paragraph No. 23 of the same, the Hon'ble Supreme Court proceeded further to observe that the defendant in the said case had filed its written statement much after the date of institution of the suit and the objection as to maintainability of the suit was taken in the written statement. In such context, it was held that if only it would have been pressed for decision and the Court would have formed that opinion at the preliminary stage then the plaintiff could have withdrawn the suit or the Court could have dismissed the suit as premature. In either case, the plaintiff would have filed a fresh suit based on the same cause of action soon after June 25, 1984, that is, the date of the expiry of the lease. But, by the time the suit came to be decided on February 12, 1992, the dismissal of the suit on the ground of its being premature would have been a travesty of justice when the plaintiff was found entitled to a decree otherwise.

53. Hence, the factual matrix on which the Hon'ble Supreme Court adjudicated the matter was completely different than the present case. In principle, the Hon'ble Supreme Court recognized the proposition that if a point of maintainability of the suit was taken at the outset on the ground that it was premature since the tenancy of the defendant was subsisting, the plaint might have been rejected by the Court. Merely because such issue was raised much later, denuding the plaintiff therein of an opportunity to file a fresh suit, and the suit had been adjudicated on merits, the Hon'ble

Supreme Court refused to interfere. Hence, the proposition laid down by the learned Single Judge was not, as such, affirmed by the Hon'ble Supreme Court in its judgment in the *Vithalbhai*-series of judgments.

54. The respondents also rely on *Ganesh Trading (supra)*[11], where a co-ordinate Bench of the this Court held that to overcome the bar of the rule of estoppel, it is always necessary for the lessee (in the said case, the sub-lessee) to establish as a fact that its relationship with its immediate landlord stood disrupted not only *de jure* but *de facto*. In the facts of the said case, it was found that the Hon'ble Supreme Court, in upholding the order of eviction, granted the lessee time till September 30, 1983 to vacate. On such premise, the Court held that obviously the lessee's possession, either by himself or through his sub-lessee, could not have been affected by the order of eviction before the expiry of the time so granted. In the light of such facts, the aforementioned proposition was laid down.

55. It would be evident from Paragraph No. 5 of the said report that the short point that arose for consideration therein was whether the order of eviction as passed against the lessee by itself determines the lessee's title to realise rent from the sub-lessee and whether such an order even before its execution can constitute eviction by the title paramount. In the context of a claim of rent, the co-ordinate Bench relied on previous judgments of this Court and came to the conclusion that until actual eviction by virtue of the order of possession happens, the question of estoppel loses its importance and the lessors' right to realise the rent continues.

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[11] ***In Re: Ganesh Trading Co. Pvt. Ltd.,*** **reported at** ***AIR 1985 Cal 37***

56. With utmost respect, the said proposition was overruled in principle in the much later judgment of the Hon'ble Supreme Court in *Vashu Deo (supra)*[12]. In the facts of the said case, the Hon'ble Supreme Court held that plea of eviction by paramount title was not available therein for three reasons. Firstly, it could not be said that the trust was armed with a legal process for eviction which could not be lawfully resisted by the respondents-tenants or to which he had no defence. Secondly, the attornment by the appellant therein in favour of the trust was voluntary and not under any compulsion. Thirdly, it could not be said that the trust had such good and present title against the respondents/tenants so as to hold the appellant liable to the evicted against his will.

57. Thus, in the said case, three independent components were discussed by the Hon'ble Supreme Court and turned down. The said three components, however, were unrelated to each other. As to the first component, the present plaintiffs/respondents have argued that the legal process for eviction available to the KoPT, the paramount title holder, could be lawfully resisted, which was exemplified by the resistance put up by the appellant themselves. However, such contention cannot be accepted. In *Vashu Deo (supra)*[12], the Hon'ble Supreme Court categorically observed that the paramount title holder has to be armed with a legal process of eviction which cannot be lawfully resisted by the "respondents-tenants" or to which "he" has no defence, thereby referring to the immediate lessee of the paramount title holder (in the present case, Lalita). Thus, the lack of right to lawfully resist the eviction decree obtained by the paramount title holder

[12] ***Vashu Deo v. Balkishan, reported at (2002) 2 SCC 50***

is referable not to a third party (the present appellants) but the immediate lessee of the paramount title holder itself. In the present case, Lalita has not made a whisper of resistance to the eviction decree obtained against her, nor have the plaintiffs/respondents made any such effort. Thus, fact remains that KoPT, the paramount title holder, was armed with an eviction decree and had taken steps for execution of the same, which is definitely a "legal process for eviction" which cannot be "lawfully resisted by the tenant" (Lalita as well as her immediate lessees, the present plaintiffs).

58. No case of attornment has been made out by the appellants in the present case. Although the appellants had made attempts to get an attornment from the paramount title holder, the KoPT, there is nothing on record to show that any such attornment actually happened. Thus, the present case is not based on attornment at all; hence, the question as to whether attornment was against the will or by the will of the appellants is immaterial.

59. As to the third condition laid down in *Vashu Deo (supra)*[13], the KoPT is admittedly the paramount title holder and there cannot be any question in that regard.

60. Hence, the proposition laid down in the aforesaid judgment does not aid the plaintiffs/respondents in any manner. Rather, in Paragraph No. 10 of the report, the Hon'ble Supreme Court recognized the principle that even if not actually evicted, if a judgment of eviction has been passed against the tenant, he can repudiate the title of his immediate landlord, but the mere

[13] ***Vashu Deo v. Balkishan, reported at (2002) 2 SCC 50***

fact of an apprehension that a suit for eviction might be brought by the paramount landlord does not justify denial of title of the landlord and the attornment to paramount landlord.

61. Applying the said principle in the present case, not only was the paramount title holder (KoPT) armed with an eviction decree, it had also levied execution in respect thereof and attempted to obtain possession by initiating a proceeding under Order XXI Rule 97 of the Code, although the same was subsequently dismissed for default. By such assertion on the part of the paramount title holder, it categorically repudiated the title of its immediate lessee, Lalita, and, by necessary implication, all the sub-lessees under Lalita, including both the present defendants/appellants as well as the plaintiffs/respondents. However, whereas the plaintiffs did not retain possession of the suit property, the appellants were in possession of the same at the relevant juncture.

62. Again, in *Kewal Chand Mimani (D) (supra)*[14], the Hon'ble Supreme Court categorically observed that once the possessory right is transferred or shifted from the lessee and the lease deed stands terminated during the temporary interregnum when the lessee was deprived of its possession, the question of putting back the lessee on to the possession after the expiry of the lease in accordance with the provisions of law, does not and cannot arise.

63. Hence, in the present case, by application of such principle, the appellants are on an even better footing, since even before filing the present suit, the plaintiffs/immediate lessors of the appellants had lost their right, title and

[14] ***Kewal Chand Mimani (D) v. S.K.Sen and Others*, reported at, *(2001) 6 SCC 512***

interest in the suit property by dint of the expiry of their lease by efflux of time as on February 8, 1975. It is to be noted that on December 16, 1965, the predecessor-in-interest of the plaintiffs/respondents, namely Panchkari, had granted the sub-lease in favour of the appellants for a period commencing from February 9, 1965 and ending on February 8, 1975. The same was coextensive with the lease of Panchkari himself. Thus, the lease in favour of the plaintiffs/respondents had expired simultaneously with the sub-lease to the appellants on February 8, 1975, at a juncture when the plaintiffs had admittedly parted with possession by granting lease to the present appellants and, hence, the plaintiffs were admittedly not in possession of the property, necessitating the institution of the eviction suit in the first place.

64. Accordingly, the principle laid down in *Kewal Chand Mimani (D) (supra)*[15] squarely applies to the present case and the plaintiffs had lost their title and lease-hold rights in the suit property at a juncture when they were not in possession in the said property.

65. In view of the proposition laid down in *Vashu Deo (supra)*[16] and *Kewal Chand Mimani (D) (supra)*[15], the ratio of *Ganesh Trading (supra)*[17] stood implicitly overruled. Since in *Charu Diesels LLP (supra)*[18] this Court took into consideration the aforesaid judgments of the Hon'ble Supreme Court, it

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[15] ***Kewal Chand Mimani (D) v. S.K.Sen and Others*, reported at, *(2001) 6 SCC 512***
[16] ***Vashu Deo v. Balkishan, reported at (2002) 2 SCC 50***
[17] ***In Re: Ganesh Trading Co. Pvt. Ltd.,* reported at *AIR 1985 Cal 37***
[18] ***Charu Diesels LLP v. E.L. Properties (P) Ltd., reported at 2025 SCC OnLine Cal 4255***

cannot be said that the non-consideration of *Ganesh Trading (supra)*[19] was relevant or rendered *Charu Diesels LLP (supra)*[20] *per incuriam*.

66. Thus, while summing up, we hold that in the facts and circumstances of the present case, not only did the plaintiffs/respondents have no right, title and interest in the suit property on the date of institution of the suit, but even before the impugned judgment and decree were passed in the present eviction suit, the paramount title holder had obtained an eviction decree against the immediate landlord of the plaintiffs, that is, the immediate lessee of the paramount title holder, and execution had been levied pursuant to such eviction decree, thereby coming within the paradigm of *Vashu Deo (supra)*[21]. Moreover, in the light of *Kewal Chand Mimani (D) (supra)*[22], the plaintiffs/respondents were also not in possession when their lease was terminated and, thus, could not have instituted an eviction suit for restoration of possession in their favour in the first place.

67. We must not lose sight of the fact that the question which arises here is not restricted to estoppel, whether under Section 116 of the Indian Evidence Act or otherwise, but to the very *locus standi* of the plaintiffs and the maintainability of the suit on the date of its institution, that is, on December 18, 1977, when the plaintiffs/respondents already stood denuded of their lease-hold interest as well as possession in the suit property. Thus, it is only the KoPT which, in terms of the Order dated September 24, 1992 passed by a learned Single Judge of this Court in CO (W) No. 3144 of 1992, could have

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[19] ***In Re: Ganesh Trading Co. Pvt. Ltd.,*** **reported at** ***AIR 1985 Cal 37***
[20] ***Charu Diesels LLP v. E.L. Properties (P) Ltd., reported at 2025 SCC OnLine Cal 4255***
[21] ***Vashu Deo v. Balkishan, reported at (2002) 2 SCC 50***
[22] ***Kewal Chand Mimani (D) v. S.K.Sen and Others*****, reported at,** ***(2001) 6 SCC 512***

initiate appropriate proceedings for eviction against the present defendants/appellants.

68. Accordingly, this Court comes to the conclusion that the learned Single Judge erred in law and in fact in passing the impugned judgment and decree of eviction against the appellants.

69. Accordingly, **APD No. 56 of 2015 is allowed on contest, thereby setting aside the impugned judgment and decree dated May 6, 2014, passed in CS No. 84 of 1977.**

70. Since APD No.183 of 2015 arises out of a decree of mesne profits granted in the context of the eviction decree which has been set aside in APD No.56 of 2015, the possession of the appellants cannot be termed as "unlawful". Hence, the very premise of grant of mesne profits goes**.**

71. Accordingly, APD No.183 of 2015 is also allowed on contest, thereby setting aside the component of the impugned decree whereby mesne profits were granted in favour of the plaintiffs/respondents.

72. Any steps taken in furtherance of or pursuant to the decrees impugned in both the appeals stand hereby annulled and revoked.

73. There will be no order as to costs.

74. Formal decrees be drawn up accordingly.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)