

Hon'ble Supreme Court has held as under :-

"Second appeals would lie in cases which involve substantial questions of law. The word 'substantial' prefixed to 'question of law' does not refer to the stakes involved in the case, nor intended to refer only to questions of law of general importance, but refers to impact or effect of the question of law on the decision in the lis between the parties. 'Substantial questions of law' means not only substantial questions of law of general importance, but also substantial question of law arising in a case as between the parties. In the context of section 100 CPC, any question of law which affects the final decision in a case is a substantial question of law as between the parties. A question of law which arises incidentally or collaterally, having no bearing in the final outcome, will not be a substantial question of law. Where there is a clear and settled enunciation on a question of law, by this Court or by the High Court concerned, it cannot be said that the case involves a substantial question of law."

31. In view of above, this Court is of the view that the impugned judgment and decrees have been passed in accordance with law after considering the pleadings, evidence and material on record and it cannot be said that the findings recorded by the courts below regarding parentage of plaintiff-respondent and also regarding fraud in execution of Will are against the evidence on record and perverse, whereas they are based on evidence and material on record and does not suffer from any illegality, error or perversity, which may call for any interference by this Court. The substantial question of law formulated in this appeal is decided accordingly. The appeal has been

filed on misconceived and baseless grounds, which is liable to be dismissed.

32. The appeal is, accordingly, **dismissed**. No order as to costs.

(2025) 2 ILRA 61
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 13.02.2025

BEFORE

THE HON'BLE AJIT KUMAR, J.

Matters Under Article 227 No. 1401 of 2025

Shreeram Yadav	...Petitioner
	Versus
Sanjay Mall & Ors.	...Respondents

Counsel for the Petitioner:
 Shiv Om Vikram Singh Chauhan

Counsel for the Respondents:
 Sushil Kumar Mishra

Civil Law — U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 — Constitution of India, Article 227— Release application — Co-owner's maintainability to seek release — Tenant's objection that purchaser of undivided property has no possessory right rejected — Held, tenant cannot object to release application on ground that landlord is only a co-owner — Notional possession of co-owner sufficient to maintain release application — Proceedings under Rent Act summary in nature — Issue of exclusive title or partition not germane — Petition under Article 227 against rejection of amendment in objection found devoid of merit — Petition dismissed. (Paras 5 and 6) **HELD:**

Having heard learned counsel for the respective parties and having perused the records, I find merit in the submissions advanced by Sri O.P. Singh, learned Senior Advocate appearing for the respondents. A tenant cannot take an

objection to a co-owner for maintaining a release application as it has been held in a catena of decisions by this Court as well as Supreme Court that one of the co-owners can maintain a release application. *M/s. India Umbrella Manufacturing Company & ors. v. Bhagabandei Agarwalla (Dead)* by LRs *Smt. Savitri Agarwalla & ors.*, (2004) 3 SCC 178, *Sri Ram Pasricha v. Jagannath & ors.* (1976) 4 SCC 184. (Para 5)

The plea that is sought to be taken that a co-owner cannot have a possessory right unless there is a partition in metes and bounds of a property, is something like a plea by a co-owner to be taken against other co-owners. This plea according to me is not available to a tenant. One must keep in mind that a vendee may not have an exclusive right of transferring possession of a specific part of joint property but on principle of joint ownership, he is in notional possession of the undivided property with all his co-sharers. This theory of possessory title, however, cannot help the tenant to question maintainability of release application. Once the property is released by a tenant, it would vest in all co-owners and will come in valid exclusive possession of one only after partition. So upon release, if a co-owner gets possession of property, he cannot sell it out with transfer of exclusive possession thereof but tenant does not get any legal right to question maintainability of release application. Thus, maintainability of release application cannot be questioned on the basis that co-owner filed a release application. The observations that have come to be made in the judgment of Supreme Court in *Gajara Vishnu Gosavi (supra)*, do not come in the conflict with what view I have taken above. That was a case in which a purchaser of the property from a co-parcener was trying to have a possessory rights in respect of undivided property. It is a settled law that in respect of a property of co-sharers, possession of one is taken to be possession of all other co-sharers. This is the principle that has been followed till date. However, in respect of release application upon being filed which is a summary proceeding in which even the title issue cannot be gone into except incidentally and that too where the petitioner raises plea of inherent lack of title but this is not the case in hand. The facts of that case are absolutely distinguishable and the

principle enunciated in the said judgment does not attract to the present case. (para 6)

Petition dismissed. (E-14)

List of Cases cited:

1. *Gajara Vishnu Gosavi Vs Prakash Nanasahab Kamble & ors.*, (2009) 10 SCC 654
2. *Ramdas Vs Sitabai & ors.*, JT 2009 (8) SC 224
3. *Sri Ram Pasricha Vs Jagannath & ors.*, (1976) 4 SCC 184
4. *M/S. India Umbrella Manufacturing Co. Vs Bhagabandei Agarwalla (dead)*, (2004) 3 SCC 178

(Delivered by Hon'ble Ajit Kumar, J.)

1. Heard Sri Vishnu Gupta, learned Senior Advocate assisted by Sri Shiv Om Vikram Singh Chauhan, learned counsel for the petitioner and Sri O.P. Singh, learned Senior Advocate assisted by Sri Sushil Kumar Mishra, learned counsel for the respondents.

2. By means of this petition filed under Article 227 of the Constitution, petitioner has assailed the order passed by the Prescribed Authority dated 29.11.2024 by means of which his amendment application in the written statement/objection filed by him against the release application has come to be rejected.

3. Admittedly the case was instituted in 2017 and the landlord who has applied for release becomes owner of the property by virtue of sale deed dated 30.11.2013. The question sought to be raised by the tenant/ petitioner is that a person who steps into the shoes of owner of the property by virtue of sale deed in respect of undivided property only becomes entitled to a share of the property only and

cannot have possessory rights qua such property. He has placed reliance upon a judgment of Supreme Court in the case of **Gajara Vishnu Gosavi v. Prakash Nanasaheb Kamble & Others, (2009) 10 SCC 654** in which Court has relied upon the observations made by another bench of that court in the case of **Ramdas v. Sitabai & Others, JT 2009 (8) SC 224**, wherein it was held that "a purchaser of a co-parcener's undivided interest in the joint family property is not entitled to possession of what he had purchased. He has a right only to sue for partition of the property and ask for allotment of his share in the suit property."

4. Countering the submission so advanced by learned counsel for the petitioner, learned Senior Advocate appearing for the respondents Sri O.P. Singh submits that once the property comes to be purchased by a third party and he becomes the owner of the property, may be he becomes the co-sharer of the property but that would amount to a status of co-owner and sitting tenant cannot take objection that a co-owner cannot maintain release application only for the reason that he is not having possessory rights with partition. It is further submitted that the judgment that has been relied upon was in respect of an agricultural holding where there was a dispute regarding undivided share. He, therefore, submits that the facts of that case are distinguishable and are not applicable to a rent dispute case where the title is not germane to the proceedings.

5. Having heard learned counsel for the respective parties and having perused the records, I find merit in the submissions advanced by Sri O.P. Singh, learned Senior Advocate appearing for the respondents. A tenant cannot take an objection to a co-

owner for maintaining a release application as it has been held in a catena of decisions by this Court as well as Supreme Court that one of the co-owners can maintain a release application. M/s. India Umbrella Manufacturing Company & Others v. Bhagabandei Agarwalla (Dead) by LRs Smt. Savitri Agarwalla & Others, (2004) 3 SCC 178, Sri Ram Pasricha v. Jagannath & Others (1976) 4 SCC 184.

6. The plea that is sought to be taken that a co-owner cannot have a possessory right unless there is a partition in metes and bounds of a property, is something like a plea by a co-owner to be taken against other co-owners. This plea according to me is not available to a tenant. One must keep in mind that a vendee may not have an exclusive right of transferring possession of a specific part of joint property but on principle of joint ownership, he is in notional possession of the undivided property with all his co-sharers. This theory of possessory title, however, cannot help the tenant to question maintainability of release application. Once the property is released by a tenant, it would vest in all co-owners and will come in valid exclusive possession of one only after partition. So upon release, if a co-owner gets possession of property, he cannot sell it out with transfer of exclusive possession thereof but tenant does not get any legal right to question maintainability of release application. Thus, maintainability of release application cannot be questioned on the basis that co-owner filed a release application. The observations that have come to be made in the judgment of Supreme Court in **Gajara Vishnu Gosavi (supra)**, do not come in the conflict with what view I have taken above. That was a case in which a purchaser of the property from a co-parcener was trying to

have a possessory rights in respect of undivided property. It is a settled law that in respect of a property of co-sharers, possession of one is taken to be possession of all other co-sharers. This is the principle that has been followed till date. However, in respect of release application upon being filed which is a summary proceeding in which even the title issue cannot be gone into except incidentally and that too where the petitioner raises plea of inherent lack of title but this is not the case in hand. The facts of that case are absolutely distinguishable and the principle enunciated in the said judgment does not attract to the present case.

7. In view of the above, I do not find any manifest error in the order passed by the Prescribed Authority.

8. Petition is devoid of merits and is accordingly **dismissed**.

(2025) 2 ILRA 64
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 06.02.2025

BEFORE
THE HON'BLE AJIT KUMAR, J.

Matters Under Article 227 No. 3900 of 2022

Rambabu Gupta & Ors. ...Petitioners
Versus
Shri Ganesh Maharaj Virajman
...Respondents

Counsel for the Petitioners:
Nikhil Chaturvedi, Sr. Advocate

Counsel for the Respondents:
Nitin Yasharth, Padmaker Pandey, Sunil Kumar Srivastava, Yasharth

Civil Law-The Uttar Pradesh Urban Building (Regulation of letting, Rent and

Eviction) Act, 1972-Sections- 21 (1) (a) & 2 (1) (bb)- Whether even in case of a private trust bona fide need can only be set up for the requirement of the trust and not qua family members of the trustee?---After the amending Act came into force the public charitable trusts no more are amenable to rent authority jurisdiction qua rights under the Act of 1972 but the private trusts do and the last part of provisions as have remained un-amended under Section 21(1) (a) shall not apply to a private trust.

Petition dismissed. (E-15)

List of Cases cited:

1. Nawab Sardar Meer Sultan Saheb Alim Khan Saheb Vs R.R. Gibson 1969 (71) BomLR 357 = Law Finder DocId # 31388
2. Genda Lal Vs District Judge, Kanpur Nagar & ors. Allahabad Rent Case 1999 volume 1 Page No. 3

(Delivered by Hon'ble Ajit Kumar, J.)

1. Heard Shri P.K. Jain, learned Senior Advocate assisted by Shri Nikhil Chaturvedi, learned counsel appearing for petitioners and Shri Atul Dayal, learned Senior Advocate assisted by Shri Nitin Yasharth, learned counsel appearing for respondent

2. Petitioner tenant has assailed the order of release passed by the Prescribed Authority in P.A Case No. 41 of 2011 in favour of the landlord respondent only on the ground that a personal need could not have been set up for the members of the family of Mutawalli even in the event the trust is a private trust and in support of his submission learned counsel appearing for petitioner has relied upon Section 21 1 (a) of the U.P. Urban Building (Regulation of letting, Rent and Eviction) Act, 1972. There was also a point raised before the