

## An Article on “Right of lessor’s Transferee”

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In This Article I have dealt with the Right of Lessor’s Transferee, which is mentioned under Section 109, Transfer of Property Act, 1872. This section deals with the case of an assignment of the reversion, i.e., the lessor’s interest. An assignment of the reversion may be:

- (i) an assignment of the whole reversion, or
- (ii) an assignment of the reversion in part of the property, or
- (iii) Part of an assignment of the reversion.

This section tries to protect the interest of two parties they are the Transferee and the Lessee. In case of lessee it tries to protect his interest from being doubly liable to the Transferor and Transferee and in case of Transferee it tries to protect his interest from diversing him all the Rights of the original Transferor. Supposedly, “sub-tenant, who is in possession, is a tenant only of his lessor; and he will have neither a privity of contract nor privity of estate so far as the superior lessor (in the present case the landlord) is concerned. An order of eviction obtained against the chief tenant can be executed by evicting the sub-tenant who was not made party in the application for the eviction. Since the rights of a sub-tenant who has not been the party, are sufficiently protected by the general provisions contained in Order 91, Rules 98 to 103, the obstructor’s rights in the present case are sufficiently protected and the order passed to remove the obstruction put forward by the obstructor would be correct.

In this Article i have also dealt with the English law provision in this regard and the scope and applicability of Indian provision.

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## Principle:-

This section is an illustration of the equitable principle that a man may renounce a right, but not one coupled with a duty. There can be no renunciation of rights and consequent destruction of duties prescribed by an absolute law.<sup>2</sup> The principle underlying Sec. 109 of the Act is that the rights attached to property which arises out of possession and control of property will pass with the property. “Qui in jus deminiumve alterius succedit jure ejus uti debet”. When A ceased to have any right, title or interest in the suit property he ceased to have any right, title or interest in the suit property he ceased to be the tenant’s landlord and it is B who became the landlord, and the right to recover rent vested in B with effect from the date of relinquishment.

There is nothing in Sec. 109 of the Transfer of Property Act which makes it dependant on the election of the lessee to continue to be the lessee of the transferor and not become the lessee of the transferee. This view was also taken in *Pyarelalsa v. Garanchandsa*<sup>3</sup> and is supported by the decision in *Jagannath v. Ramzan*.<sup>4</sup> If this was not the law the position would be anomalous. On the one hand the transferor would continue to exercise the rights of the landlord against the tenant so as to entitle him to sue for ejection and arrears of rent even after the transfer; and on the other hand the transferee will also have the same rights.<sup>5</sup>

Whenever there is an assignment of the interest of a lessor or the interest of a lessee in a lease a new relationship comes into existence between the two sets of persons, one of whom was not party to the original agreement. In England, at common law, an assignment was not complete without attornment by the lessee to the assignee of the original lessor except when the assignment was by will. Later, it was realized that his necessity of an attornment by the lessee was a restriction on the right of a lessor to transfer and assign his interest in a lease, and so this necessity of attornment was done away by legislative interference. This Law of Property Act, 1925, which replaced the earlier statute, has also made it clear that in such a situation, attornment by the lessee was not necessary. In India, in view of sec. 109 of the Act which says that if the lessor transfers the property leased, the transferee in absence of a contract to contrary shall possess all the rights, and if the lessee so elects, be subject to all liabilities of the lessor as to property so transferred, there is no requirement of attornment by the lessee. In view of the provisions, the assignee of the lessor has against the lessee all the rights that the lessor had and can enforce not only covenants but even conditions. The right to receive rent from the lessee in terms of the lease is one of such right which passes to the assignee and a lease cannot say that he is not bound to pay the same as he has to pay merely because there is no privity of contract between him and the assignee who is now landlord. The matter will be different if subsequent to the assignment, any fresh contract is entered into

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<sup>2</sup> *Cherukomar v. Govinder*, 6 M.H.C.R.. 145.

<sup>3</sup> 1964 M.P.L.J. 334 : 1964 J.L.J 436.

<sup>4</sup> 1963 M.P.L.J. 129 : 1962 J.L.J. 331.

<sup>5</sup> *Shankar Sahai v. Kanmal*, 1971 M.P.L.J. 436.

between the new assignee and the lessee to alter the terms of the lease, including the date of the commencement of the monthly tenancy and rate of rent which will be payable. The plaintiffs as assignees in absence of any fresh agreement between them and original lessor, the vendor of the plaintiffs, possessed. If it is held that since the date of assignment a new tenancy commenced, it will lead to an anomalous position, because then it will have to be held that after assignment a new tenancy or lease has come into existence, the terms of which are not known because there has been no agreement between the assignee and the old lessee or the tenant. In such a situation, it is difficult to hold that since the date of the assignment a new monthly tenancy is created in eye of law without there being any agreement to that affect between the parties.<sup>6</sup>

### **Scope and Applicability:-**

Sec. 109 clearly and obviously deals with the cases where a lessor while there is a subsisting lease in his favour transfers his interest in the land to a third party, and in that case the third party or the transferee takes it subject to certain liabilities if the lessor's tenant or lessees so elect. But where at date of so called transfer the lessor had no interest left in the property leased, it is difficult to understand how any question can arise of the lessor transferring the property to the transferee.<sup>7</sup>

Section 109 applies when the lessor transfers the property leased, or any part thereof, or any part of his interest therein. When the transfer is of the entire property leased, there is no difficulty and the transferee get all the rights of the lessor including the right to terminate the tenancy by issuing a quit notice. In such a case, there is no severance of tenancy and the transferee like the lessor can terminate the tenancy. There is no difficulty when the lessor transfers a part of his interest in the property leased. By "any part of his interest" is meant not a fractional share but something less than the entire interest of the lessor. If the lessor sells the property, the transferee gets whole of the lessor's interest; but if the lessor, instead of selling the property, mortgages or leases the property, the interest so transferred is a part of his interest in the property leased. In such a case also the mortgagee of the lessor or the lessee of the lessor can terminate the lease in the same manner in which the lessor could have terminated the lease. The difficulty arises only when the lessor transfers part of the property leased or any part of his interest in a part of the property leased. The question that then arises is whether the transfer can by a quit notice terminate the lease in respect of the part of the property transferred to him. Section 109 has the effect of severing the tenancy in respect of the part of property transferred by the lessor and the transferee can terminate the tenancy of the part transferred to him. An indication of this is found in the last clause of Sec. 109 which provides for apportionment of rent in respect of the transferred even without the consent of the lessee. As enacted therein, the lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part transferred, and, in case they disagree, such determination may be made by any court having jurisdiction to entertain a suit for the possession of the property leased. The effect of this clause is to

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<sup>6</sup> *Brij Bihari Prasad v. Deoki Devi Smt.*, AIR 1978 Pat 117.

<sup>7</sup> *Ram Bhagwandas v. Municipal Corporation of the City of Bombay*, AIR 1956 Bom. 364.

enable apportionment of rent with respect to the part transferred even without the consent of the lessee by order of the court. The provision for appointment of rent without the consent of the lessee is an indication that Sec.109 intends to affect a severance of the lease. A right to terminate the lease by a quit notice is a lessor by virtue of the transfer “as to the property or part transferred”. The section thus enables the transferee to exercise all the rights of the lessor including the right to terminate the lease. The provisions in sec. 109 to continue the liabilities of the lessor imposed upon him by the lease unless the lessee elects otherwise is on the principle that a person can only transfer rights and not liabilities unless the person for whose benefit the liabilities exist consents. The provision so made in sec. 109 applies even when the transfer is of the whole of the leased and when the transferee admittedly can terminate the tenancy by a quit notice. Therefore, the continuance by sec. 109 of the liabilities of the lessor does not show that there is no severance of the lease when a part of a property leased is transferred and that the transferee of the part cannot terminate the lease of the part transferred to him. The words “any part of his interest therein” as used in sec. 109 do not refer to any fractional share but only to an interest which is not the entire interest of the lessor but something less than that; for example, where the lessor, instead of selling the property leased or a part thereof, mortgages, or leases the same it would be said that he had transferred a part of his interest therein. Cases where there is only a transfer of a fractional share in the property leased or in a part thereof would be governed by sec. 37, and not by sec. 109. A transferee of a share in the property leased or in any part thereof will become a co-owner with the lessor and will stand in the same position as a co-lessor.<sup>8</sup>

There can be no doubt that under sec. 109 of the Transfer of Property Act if a landlord transfers the property leased or any part of it, the transferee, in the absence of any contract to the contrary, shall possess all the rights of the landlord. But the transferee cannot acquire any greater or different right than the transferor had.<sup>9</sup>

### **Transfer of Lease Property:-**

Section 109 enacts the law laid down in **Wordsley Brewery Co v Halford**<sup>10</sup> that on the lessor assigning the reversion wholly or in part, the assignee shall possess all his rights, and be also subject to all the liabilities of the lessor provided the lessee agrees thereto. By a mere assignment, the lessor is not discharged from liabilities unless the lessee agrees to exonerate him, and hold the assignee as the person liable. The transfer may be of the whole property or a part of it, or it may be a part of the lessor’s interest therein. The grant of a lease passes the reversion so that where a person has let his lands for 30 years, and he lets to another for 40 years, this passes the reversionary interest.

### **English Law an overview:**

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<sup>8</sup>. *Sardarilal v. Narayanlal*, AIR 1980 MP 8.

<sup>9</sup>. *Ram Charan v. State of U.P* 1969 AWR 590

<sup>10</sup> (1903) 90 LT 89.

On the assignment of the reversion, the assignee succeeds to the rights and liabilities of the lessor in respect of covenants which run with the land. The assignee takes the benefits of the lessor's covenants, example:- to pay rent,<sup>11</sup> or to repair,<sup>12</sup> and the burden of lessor's covenants, ex for quiet enjoyment<sup>13</sup>.

The assignor cannot, after the assignment, maintain an action for the breach of any covenant by the lessee.<sup>14</sup> The lessee was held to be assignee for rent even though he had, after the assignment, made an invalid surrender of the lease to the original lessor.<sup>15</sup> The word 'as to the property' in this section no doubt refer to covenants running with the land.<sup>16</sup> The assignee of the reversion, accordingly, is not liable in respect of the lessor's covenants which do not run with the land. Thus, a covenant by the lessor to pay a sum to the lessee on the expiration or some determination of the lease, does not touch and concern the demised property, and so does not bind the assignee of the reversion, even if the lease also provides that, should the lessor be unwilling to pay the sum, the lessee may hold over the demand a new lease on the same terms including the term as to payment.<sup>17</sup> On the other hand, where in a lease there was a covenant by the lessee that a particular individual should not be concerned in the conduct of the business to be carried on the demised premises, it has been held that the covenant was one running with the land as touching and concerning the thing demised, and could be enforced by the assignee of the reversion against the assignee of the lessee by terminating the lease on the ground of forfeiture for breach of the covenant.<sup>18</sup>

### **Indian Law an Overview:**

An assignment of the reversion is the assignment of the lessor's interest. The case of an assignment of the term, i.e, the lessee's interest, has been dealt with under s 108(j). An assignment of the reversion may be as the section indicates-(1) an assignment of the whole reversion or an absolute assignment; or (2) an assignment of the reversion in part of the property;(3) an assignment of part of the reversion in the property. In the first case, there is no severance of the reversion. In the second and third cases, there is a severance of the reversion. The arrears do not pass the new properties along with the patta.<sup>19</sup>It has been held that the section applies to a partition among the lessors: but that even if it does not, the section would be applied as embodying a rule of justice and equity.<sup>20</sup>

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<sup>11</sup> *Stevenson v Lombard* (1802) 2 East 575.

<sup>12</sup> *Narayan Das v Parasram* (1891) 4 CPLR 61

<sup>13</sup> *Iswara v Ramappa* 152 IC 201, AIR 1934 Mad 658; *Campbell v Lawis* (1890) 3 B & Ajd 392.

<sup>14</sup> *Re King* (1963) Ch 459, [1963] 1 All ER 789 (CA)

<sup>15</sup> *Ramachandra v Sheikh Hussain* (1901) 3 Bom LR 679.

<sup>16</sup> See instances cited under note 'Covenants running with the land' under s 108(j).

<sup>17</sup> *Re Hunters Lease Giles v Hutchings* (1942) 1 Ch 124, [1942] 1 All ER 27

<sup>18</sup> *Lewin v American and Colonial Distribution Ltd* (1945) 1 Ch 225, [1945] 2 All ER 271

<sup>19</sup> *Shrikrishnadas v Gangla* AIR 1951 Mys 292.

<sup>20</sup> *Banarsilal v Bhagwan* AIR 1955 Raj 167; *Sattar Singh v Rawela* AIR 1952 J & K 18.

The section has, of course, no application where the transfer is affected after the lessor has ceased to have an interest in the property.<sup>21</sup> The section only governs a case where lessor transfers his existing interest. In such a case a new lease does not come into existence, and an eviction order obtained by the transferor may be executed by the assignee of the reversion.<sup>22</sup>

The general law under s 109 is that the assignee of the lessor against the lessee all the rights that the lessors had, and enforce not only covenants, but also conditions.<sup>23</sup> However, the liability of the lessor continues after the assignment, and the lessee is given the option of holding either the lessor, or the assignment liable. A lessee paid off a mortgage for which his lessor was liable and then sued to recover the amount from the assignee of the lessor in enforcement of the liability under s 108 (g). Having exercised his election against the assignee, he could not also make the lessor liable.<sup>24</sup> This has been said to be an illustration of the equitable principle that a man cannot assign obligations, ie, cannot substitute someone else as the performer of his duties, without the consent or the authority of those whom the duty owes.<sup>25</sup> The lessor remains under a contractual liability under his express covenants.<sup>26</sup>

### **Rights of The Transferee:-**

The assignee of the lessor has against the lessee all the rights that the lessor had, and can enforce not only covenants, but also conditions.<sup>27</sup> The TP Act does not distinguish conditions from covenants. He can recover rent due subsequent to the assignment, and he can give notice to quit under s 106.<sup>28</sup>

In views of 109, the assign of the lessor has , as against the lessee , all the rights that the lessor had , including the right to receive the rent in terms of lease and the lessee cannot that he is bound to pay the same to the assignee merely because there is no privity of contract. Attornment is not required.<sup>29</sup>

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<sup>21</sup> *Ram Bhagwandas v Bombay Municipal Corpn* AIR 1956 Bom 364.

<sup>22</sup> *Manavar Basha v Narayan* AIR 1961 Mad 200.

<sup>23</sup> See note 'Right of the Assignee'

<sup>24</sup> *Iswara v Ramappa* 153 IC 201, p 658.

<sup>25</sup> *Cherukomen v Ismala* (1872) 6 Mad HC 145.

<sup>26</sup> *Stuart v Joy* (1904) 1 KB 362.

<sup>27</sup> *Kannyan Baduvan v Alikutti* (1919) ILR 42 Mad 603

<sup>28</sup> *Manickam Pillai v Ratnasmi Nadar* (1917) 33 Mad LJ 684; *Parbhu Ram v Tek Chand* (1919) ILR 1Lakh 24

<sup>29</sup> *Brij Bihari Prasad v Deoki Devi* AIR 1978 Pat 117; *Hajeek Assainar Co v Chacko Joesph* AIR 1984 Ker 113, p 115. For meaning of the word 'attornment', see *Mohd Ilyas and ors v Mohd Adil and ors* AIR 1994 Del 212.

After the transfer of lessor's right in favour of the transferee, all the rights and liabilities of the lessor in respect of the subsisting tenancy develop upon him. A fresh attornment by the lessee to the landlord's assignee is not necessary.<sup>30</sup>

The Supreme Court has observed that where indeed by which right, title and interests in the property in dispute was released in favour of one of the co-owners, and nowhere was any assignment of rent made, the assign was not entitled to rent before assignment, and the amount due prior to the deed could not constitute arrears of rent as it was merely an actionable claim. Consequently, notice demanding rent certain before relinquishment deed by the co-owners was not valid.<sup>31</sup>

When a lessor of a leased property creates an usufructuary mortgage in respect of such property, what he transfers under s 109 of the TP Acts as a mortgagor in favour of the usufructuary mortgagee includes his rights to possession of such property, and the right to receive the rents and profits accruing from it. From this it follows that the tenanted premises, if mortgaged by the landlord by way of usufructuary mortgage, the usufructuary mortgagee there under would become entitled to receive the rents and profits accruing there from in his own right and on his own account. A mortgagee in possession would be entitled, as much as the owner himself, to seek recovery of possession of the leased premises from a tenant for his own bonafide requirements of use in absence of any negation of such rights under the rent act.<sup>32</sup>

The assignee's rights, like his liabilities, commence with the assignment. The section expressly enacts that he cannot sue for arrears of rent before his assignment, and he cannot sue on breaches of covenant committed before the assignment.<sup>33</sup> In a Bombay case, the assignee of a lessor was allowed to forfeit a lease for a breach committed three years before the assignment.<sup>34</sup> This seems altogether indefensible.

### **Transfer of any Part of Leasehold Property Based on Interest Therein (Splitting of Tenancy):-**

It is a trite proposition that a landlord cannot split the unity and integrity of the tenancy, and recover possession of a part of the demised premises from the tenant. However, s 109 provides a statutory exception to this rule and enables an assignee of a part of the reversion to exercise all the rights of the landlord in respect of the portion respecting which the reversion is so assigned subject, of course, to the other covenants running with the land. This is the true effect of the word 'shall possess all the rights... of the lessor as to the property or part transferred...' occurring in Sec 109. There is no need of consensual

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<sup>30</sup> *Kalawati Tripathi & ors v Damayanti Devi & anor* AIR 1993 Pat 1.

<sup>31</sup> *NM Engineer v Narendra Singh Viridi* AIR 1995 SC 448

<sup>32</sup> *Narpatchand A Bhandari v Shantilal Moolshankar Jani & anor* AIR 1993 SC 1712; *SB Abdul Azeez v M Maniyappa settee* AIR 1989 SC 553, (1988) 4 SCC 727.

<sup>33</sup> *Martyn v Williams* (1867) 1 H & N; *Johnson v St Peters-Hereford Churchwardens* (1836) 4 Ad & El 520.

<sup>34</sup> *Vishveshwar v. Mahableshwar* (1919) ILR 4 Bom 28, 47 IC 198.

attornment. The attornment is brought about by operation of law. The limitation on the right of landlord against splitting up the integrity of the tenancy, inhering in the inhibitions of his own contract, does not visit the assignee of the part of reversion, and the assignment of the part so severed.<sup>35</sup>

### **Illustrations:**

A lease a house and stable to B who covenants to keep the premises in good repair. During the term A sells the stable to C. C can enforce the covenant to repair as regards the stable.

At the expiry of the term, the lessor's assignee can sue to evict the lessee from that part.<sup>36</sup> A co-sharer cannot initiate action for eviction of the tenant from the portion of the tenanted accommodation, nor can he sue for his part of the rent. The tenancy cannot be split up either in estate, or in rent or any other obligation by a unilateral act of one of the co-owners or the co-lessor's agree among themselves and split by partition the demised property by metes and bounds and come to have definite, positive and identifiable shares in that property, they become separate individual owners of each severed portion, and can deal with that portion as also the tenant therefore as individual owner/lessor. The right of the joint lessor contemplated by s 109 comes to be possessed by each of them separately and individually.<sup>37</sup>

A usufructuary mortgagee is an assignee of part of the reversion, but as the right of enjoyment and the right of possession have been transferred to him, he can sue to recover all the rents. He can also give notice to quit determining a periodical lease.<sup>38</sup> After the transfer of the reversion by usufructuary mortgage, the lessor-mortgagor cannot accept surrender to the lease.<sup>39</sup>

A lessee for a term is assignee of part of the reversion, and can give notice to quit to a monthly tenant of the original lessor.<sup>40</sup> According to the Madhya Pradesh High Court, a transferee of a part of the leased property acquires all the rights of the lessor in respect of that part as if that part alone had compromised the lease, and a new relationship is created between the transferee and the lessee. Section 109 creates a statutory attornment that the title of the assignee is complete on execution of the deed of assignment, and is not postponed till the notice of assignment is given. It cannot be contended that since the lessor had no right to terminate a tenancy by notice to quit in respect of a part of the demised premises, the transferee could not, therefore, have such a right. The transferee is entitled to evict the tenant from that part which is transferred to him, not only when the

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<sup>35</sup> *Mohar Singh v. Devi Charan* AIR 1988 SC 1365; *Kannyan v. Alikutty* AIR 1920 Mad 838.

<sup>36</sup> *Kannyan Baduvan v. Alikutty* (1919) ILR 42 Mad 603.

<sup>37</sup> *SK Sattar SK Mohd Choudhari v. Goundappa Amabadas Bukate* AIR 1997 SC 998.

<sup>38</sup> *Barjorji v. Shripatprasadji* AIR 1927 Bom 145.

<sup>39</sup> *Havu v. Ganpati* AIR 1930 Bom 329.

<sup>40</sup> *Manickam Pillai v. Ramasami Nadar* (1917) 33 Mad LJ 684.



lease has been determined before the transfer, but also where it had been determined after the transfer.<sup>41</sup>

Section 109 enables the transferee to exercise all rights of the lessor, including the right to terminate the lease by giving notice to quit. When a part of the property leased is transferred, the transferee of the part can terminate the lease of that part by notice. The provision in s 109 for the appointment of rent, irrespective of the content of the lessee in an indication that s109 intends to effect a severance of the lease.<sup>42</sup>

Where out of the tenanted premises, only the residential room was sold and the bathroom and the latrine was retained by the landlord, it was held that under s 109 of the TP Act, the original tenancy had been split on account of the transfer, so that the purchaser became the landlord on receipt of the residential room, while the vendor continued to be a landlord in respect of the portion retained by him.<sup>43</sup>

It is open to the transferor and the transferee to agree that notwithstanding the transfer, the rights to terminate the lease and to enforce the right of reversion shall continue to vest in the lessor.<sup>44</sup> In an Allahabad case, the lessor transferred the premises to two brothers jointly. One of them died, leaving a son. It was held that the surviving brother being a joint transferee was alone to be treated as the lessor, and the son could not be regarded as a transferee of the former lessor.<sup>45</sup>

### **Partition:-**

The Supreme Court in **Mohar Singh v Devi Charan**<sup>46</sup> left the law undisturbed to the effect that s 109 is applicable in case of partition even though it is not a 'transfer' within s 5 of the TP Act. It was held that the partition was not actually a transfer of property, but would only signify the surrender of a portion of a right in exchange for a similar right from the other co-sharer or co-sharers. It also observed that though a few high courts<sup>47</sup> have taken the view that s 109 is attracted to the case of partition, several other high courts have been content to rest the conclusion on the general principle underlying s109 as a rule of justice, equity and good conscience. If two joint lessors effect partition, one of them can enforce forfeiture for non-payment of the rent of his moiety.<sup>48</sup>

### **Proviso-Rents:-**

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<sup>41</sup> *BP Pathak v. Dr Riyazuddin* AIR 1976 MP 55.

<sup>42</sup> *Sardarila v. Narayanlal* AIR 1980 MP 8; *Hafiz Mohd. V. Masoodbi* AIR 1991 MP 23.

<sup>43</sup> *Krishna Gopal v. Laxminarayan & ors.* AIR 1990 MP 37.

<sup>44</sup> *Hafiz Mohd. V. Masoodbi* AIR 1991 MP 23

<sup>45</sup> *Mahboob Ullah v. Jwala Prasad Kajriwal* AIR 1974 All 413.

<sup>46</sup> (1988) 3 SCC 63.

<sup>47</sup> *Ram Chandra Singh v. Ram Saran* AIR 1978 All 173; *Banarsidas v. Bhagwan* AIR 1955 Raj 167.

<sup>48</sup> *Korapalu v. Narayana* (1914) ILR 38 Mad 445.

The substantive part of s 109 read with proviso necessarily indicates that the arrears of rent due are one of lessor's rights as to the property transferred. Right to recover the arrears of rent vested with the original owner, and on transfer of all his rights the same vests in the transferee as per the provisions of s 109. Proviso to s 109 clearly indicates that if there is an assignment of rent due, then the transferee/landlord would be entitled to recover the same from the tenant as arrears of rent. The correct position of law is that a transferee is not entitled to recover the arrears of as rent for the property on transfer, unless the right to recover the arrears is assigned, then the transferee/landlord can recover those arrear as well.<sup>49</sup>

In the case of **Satti Krishna Reddy v Nallamilli Venkata Reddy**<sup>50</sup> the Supreme Court held that the arrears of rent assigned to the transferee landlord do not lose their character and become an actionable claim, and eviction proceedings can be maintained by the successor landlord on the ground of arrears of rent. In the absence of any assignment in favors of the transferee, he is not entitled to rent before the assignment. Such rent is not part of the reversion, but is a mere debt.<sup>51</sup>

During the pendency of a suit for eviction of the tenant, the plaintiff landlord transferred the suit property to another person (the transferee), by a registered sale deed, and the trial court allowed the transferee landlord to prosecute the suit on the ground of default committed by the tenant in paying rent for the period long before the date of transfer. It was held that although the transferee acquires all the rights of his transferor, in view of s 109, proviso, the transferee, ipso facto, is not entitled to the arrears of rent accrued before the transfer. Section 8 of the TP Act provides that on transfer, the transferee is entitled to the rents and profits thereof accruing of the transfer.<sup>52</sup> Certain landlords filed suit for eviction of their tenants on ground of defaults in payments of rent under Sec 11(1) (d) of the Bihar Rent Act. The properties in suits were transferred by the original plaintiffs during the pendency of the suits to different persons, and the transferee pedentelite could not take advantage of the defaults in paying the rent alleged to have been committed by the tenants, while the owner and the landlord was the transferor who had filed the suits. During the period for which the rent was said to be in arrear, the transferees commenced with the assignment. They were neither the owners, nor landlords when the cause of action accrued. They could not continue the suits for breaches, i.e. default in payment of rent, which had become complete before the suits were filed. The landlord alone, in relation to whom the tenant had defaulted in payment of rent, may get a decree for eviction, but not his transferee.<sup>53</sup>

The right to recover such a debt is not transferred by the section, but it does not prohibit such an assignment.<sup>54</sup> There is no obligation on the assignee to give notice of the

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<sup>49</sup> AIR 2003 SC 4163.

<sup>50</sup> (1982) 3 SCC 364.

<sup>51</sup> *NM Engineers v. Narendra Singh Viridi* AIR 1995 SC 448.

<sup>52</sup> *Ram Tahal Modi v. Ratan Lal* AIR 1989 Pat 13.

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ram Prakash v. Karam Chand* AIR 1963 All 47.

assignment to the lessee, but it is desirable to do so, for if in the absence of notice the lessee pays rent to the lessor, he will not be liable to pay it again to the assignee.<sup>55</sup> In a Gauhati case, rent had been paid by the tenant to the former landlord before the landlord had transferred his rights in the land. It was held that in view of s 109, the tenant was not liable to pay the rent over again to the transferee landlord.<sup>56</sup>

### **Contract to The Contrary:-**

It is open to the transferor-lessor and his transferee to agree to terms which may be inconsistent with the provisions of s 109. And even after transfer of the entire ownership of the property leased, it is open to the transferor and transferee to agree that notwithstanding the transfer, the right to terminate the lease and to enforce the right of reversion shall continue to vest in the lessor. Such a term shall be inconsistent with the provisions of Sec 109 and, therefore, the expression 'in the absence of a contract to the contrary' appearing in that section enables a transferor and the transferee of a property leased to agree to such a term. In such an event, it shall be permissible for the lessor despite such transfer of the property leased, to enforce the right of reversion by filing a suit against the tenant.<sup>57</sup>

### **Attornment:**

To 'attorn' means to acknowledge the relation of a tenant to a new landlord. Attornment means acceptance of the new owner of the property as the landlord, thereby estopping the tenant to dispute the new landlord's title at a larger stage. Attornment is not necessary under the TP Act.<sup>58</sup> A fresh attornment by the lessee to the lessor's assignee is not necessary under the TP Act.<sup>59</sup> In practice, however, attornment is generally insisted upon, as it is useful as an acknowledgement of the tenancy. The Supreme Court has held that there is no need of consensual attornment. The attornment is brought about by operation of law. The limitation on the right of landlord against splitting up of the integrity of the tenancy, inhering in the inhibitions of his own contract, does not visit the assignee of the part of the reversion, and the assignment of the part so severed.<sup>60</sup> It has, however, been held that attornment would be desirable as it means the acknowledgement of the relation of a tenant to a new landlord. It also implies continuity of tenancy.<sup>61</sup> Under the Indian law, a letter of attornment is not necessary to complete the title of the assignee of the reversion.<sup>62</sup>

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<sup>55</sup> *Bhola Nath v. Supper* AIR 1923 Lah 329.

<sup>56</sup> *Provati Devi v. Bokur Chandra Nath* AIR 1981 Gauhati 52.

<sup>57</sup> *Hafiz Mohd. V. Masoodbi* AIR 1991 MP 23.

<sup>58</sup> *Hajee K Assainar & Co. v. Chacko Joseph* AIR 1984 Ker 113.

<sup>59</sup> *Daulat Ram v. Haveli Shah* AIR 1939 Lah 49.

<sup>60</sup> *Mohar Singh v. Devi Charan* AIR 1988 SC 1365.

<sup>61</sup> *Mahaendra Raghunathdas Gupta v. Vishvanath Bhikaji Mogul* (1997) 5 SCC 329.

<sup>62</sup> *Pulin Behari Shaw v. Lila Dey* ILR 2 Cal 427.

### **Apportionment:-**

Notice to tenant is, by virtue of Sec 37 sufficient to convert the single obligation to pay rent to the lessor, into a multiple obligation to pay rent to the lessor, and the assignee of part. On receipt of notice, the lessee is bound to pay to each the proportionate part of the rent.<sup>63</sup> The lessor, the assignee and the lessee may make the apportionment amicably, or failing an agreement, a suit may be filed for the purpose.

Even if there was some apportionment of rent in between co-landlords, such apportionment does not have the effect of severing the tenancy.<sup>64</sup>

### **Statutory Transfers:-**

Though Sec 109 contemplates transfer of lessor's right inter vivos, the spirit behind it is held to apply even when right; title and interest in immovable property stands transferred by operation of law, and the successor in interest would be entitled to the rights of the predecessor. Thus, terminating the tenancy issued by the predecessor Board under the state Act to the lessee under s 106 read with s 111(h) of the TP Act terminating the tenancy in terms of the covenants of the lease, would ensure to benefit of the transferee successor-in-interest Board under the central Act.<sup>65</sup>

## **Conclusion**

Finally in this Article we can see that when all the rights of lessor are transferred there vest in the transferee both the causes of action in view of Sec. 109 of the Transfer of Property Act. In effect the transferee is put in the same position as the lessor-transferor so far as the property transferred is concerned.<sup>66</sup>Section 109 created what may be called statutory attornment which substitutes, and has the same effect, as contractual attornment, so that because of a transfer of the lease property, or a part thereof, the transferee ipso facto acquires "all the rights" of the lessor, and a new relationship is created between the transferee and the lessee. Letter of attornment is not necessary to complete title to the assignee of the reversion under Sec. 109. Title of the assignee is complete on the execution of the deed of the assignment and is not postponed till the notice of the assignment. The right of ejectment is inherent in ownership. This Right is like a safeguard in the interest of the the Bonafide Transferee.

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<sup>63</sup> *Sri Raja Simhadri v. Prattipatti Ramayya* (1908) ILR 29 Mad 29.

<sup>64</sup> *Amar Gupta v. Arun Kumar Shaw* AIR 1979 Cal 367.

<sup>65</sup> *Vasant Kumar Radha Kishan Vora v. Board of Trustees of the Port of Bombay & anor* (1991) 1 SCC 761; Overruling *Gurumurthappa v. Chickmunisamappa* AIR 1953 Mys 62.

<sup>66</sup> *Champaklal Dabyabhai Natali v. saraswatiben*, AIR.1977 Guj 48