

~~PC~~  
~~GM4.6.2~~

Judgment  
①, 1965

No. 29 of 1963

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL  
ON APPEAL FROM  
THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE COURT OF APPEAL AT KUALA LUMPUR

---

B E T W E E N :

GIAN SINGH & CO (Plaintiffs) Appellants

- and -

1. DEVRAJ NAHAR ALIAS DEVARAJ NAHAH  
2. LABH SINGH (Defendants) Respondents  
3. HARBANS SINGH

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RECORD OF PROCEEDINGS

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GRAHAM PAGE & CO,  
Whitehall House,  
41, Whitehall,  
London, S.W.1.

Appellants' Solicitors.

BULCRAIG & DAVIS,  
Amberley House,  
Norfolk Street,  
Strand, London, W.C.2.

Respondents' Solicitors.

P.C.  
GM4 G.2.

UNIVERSITY OF LONDON  
INSTITUTE OF ADVANCED  
STUDIES  
- FEB 1966  
25 BEDFORD SQUARE  
LONDON, W.C.1.

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IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL      No. 29 of 1963

ON APPEAL FROM THE SUPREME COURT OF THE FEDERATION  
OF MALAYA

IN THE COURT OF APPEAL AT KUALA LUMPUR

B E T W E E N :

GIAN SINGH & CO

(Plaintiffs)  
Appellants

- and -

1. DEVARAJ NAHAR alias Devaraj Nahah
2. LABH SINGH
3. HARBANS SINGH

(Defendants)  
Respondents

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RECORD OF PROCEEDINGS

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IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL      No. 29 of 1963

ON APPEAL FROM THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE COURT OF APPEAL AT KUALA LUMPUR

B E T W E E N :

GIAN SINGH & CO

(Plaintiffs)  
Appellants

- and -

- 1. DEVARAJ NAHAR alias Devaraj Nahah
- 2. LABH SINGH
- 3. HARBANS SINGH

(Defendants)  
Respondents

10

RECORD OF PROCEEDINGS

NO.1

In the High Court  
of Kuala Lumpur

STATEMENT OF CLAIM

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

No.1

IN THE HIGH COURT AT KUALA LUMPUR

Statement of  
Claim

Civil Suit No. 69 of 1959

23rd April 1959

BETWEEN:

Gian Singh & Co.

Plaintiffs

- and -

- 1. Devaraj Nahar alias Devaraj Nahan
- 2. Labh Singh
- 3. Harbans Singh

Defendants

20

STATEMENT OF CLAIM

1. The Plaintiffs are a firm of Textile Merchants carrying on business at No. 13, Mountbatten Road, Kuala Lumpur. They are the Chief

In the  
High Court  
of Kuala  
Lumpur

\_\_\_\_\_

No. 1

Statement  
of Claim

23rd April  
1959  
continued

Tenants of premises Nos. 11 and 13 Mountbatten Road, Kuala Lumpur which are contiguous to each other.

The 1st Defendant was at all material times the sub-tenant of the Plaintiffs in respect of \*No. 11 Mountbatten Road, Kuala Lumpur where he carried on the business of sports goods dealer under the name and style of Nahar & Co., of which he was the sole proprietor. The rent was \$200.80 per mensem payable monthly in advance.

2. The 2nd and 3rd Defendants are traders residing in Kuala Lumpur and Singapore respectively. 10

3. It was a term of the said sub-tenancy from the Plaintiffs to the 1st Defendant that the premises are not to be sublet or assigned without the written consent of the landlords, i.e. the Plaintiffs.

4. On or about the 26th day of March 1958, the Plaintiffs' proprietor having come to know that the 1st Defendant was taking stocks of his business of Nahar & Co., with a view to handing over the same to a purchaser, wrote to the 1st Defendant a letter, copy whereof is hereto attached and marked "A". 20

By the terms of the same letter the Plaintiffs also terminated the sub-tenancy of the 1st Defendant with effect from the 30th April, 1958.

5. The Plaintiffs at the same time having come to know that one Harbans Singh was the prospective purchaser of the said business of Nahar & Co., wrote to him a letter, copy whereof is hereto attached and marked "B".

6. The Plaintiffs have thereafter caused a search to be made at the Registry of Businesses and discovered that the 1st Defendant had on the 24th day of March 1958 entered into a partnership deed with the 2nd and 3rd Defendants in respect of the said business of Nahar & Co. By the terms of that Deed the 1st Defendant has purported to convey all the assets of his business to a new partnership consisting of himself and the 2nd and 3rd Defendants. 30

\* No.11 Mountbatten Road was formerly No. 18 Mountbatten Road and prior to that it was No. 18 Java Street. 40



In doing so the 1st Defendant committed a breach of this condition under which he held the sub-tenancy.

In the High  
Court of  
Kuala Lumpur

10 7. On or about the 27th day of March 1958 the 1st Defendant being already in arrears with his rent for the months of February and March, caused to be tendered to the Plaintiffs by the Manager of the new found partnership the rents for the said two months by two cheques each for the said sum of \$200.80 on condition that the Plaintiffs issued receipts in favour of Nahar & Co. The Plaintiffs have already notified the 1st Defendant and the 3rd Defendant as stated in paras: 4 and 5 hereof that they will not recognise or accept any assignee of the tenancy, declined to accept the rents tendered by and on behalf of the partnership.

\_\_\_\_\_  
No. 1

Statement of  
Claim

23rd April 1959  
continued

20 8. Thereafter the 1st Defendant has failed to tender any rent in respect of the said premises and is therefore in default.

9. The Plaintiffs therefore claim that they are entitled to immediate possession of the said premises against the 1st Defendant as tenant in possession and against the 2nd and 3rd Defendants as trespassers.

The Plaintiffs therefore pray judgment

As against the 1st Defendant:

- 30 (1) possession of premises at Mountbatten Road known as No. 11 Mountbatten Road in the town of Kuala Lumpur.
- (2) arrears of rent at the rate of \$200.80 per mensem from the 1st February 1958 to the 30th April 1958.
- (3) mesne profits from the 1st day of May 1958 until possession.

As against the 2nd and 3rd Defendants:

- (1) possession of premises at Mountbatten Road known as No. 11 Mountbatten Road in the town of Kuala Lumpur.

In the  
High Court  
of Kuala  
Lumpur

No. 1

Statement  
of Claim

23rd April  
1959  
continued

(2) damages for such unlawful occupation.

As against all the Defendants:

(1) further and other relief.

(2) Costs of Suit.

Dated and delivered this 23rd day of April  
1959 by

Sgd. Braddell & Ramani

Solicitors for the Plaintiffs

We agree to time being extended till 23.4.59.

Sgd. Lovelace & Hastings.

10

No. 2

Defence and  
Counterclaim

21st May  
1959

NO.2

DEFENCE AND COUNTERCLAIM

DEFENCE OF ALL DEFENDANTS

1. Except for the allegation that the rent was \$200.80 per mensem which is denied paragraphs 1 and 2 of the Statement of Claim are admitted.

2. Paragraph 3 of the Statement of Claim is denied.

3. Paragraph 4 and 5 of the Statement of Claim are admitted.

20

4. In regard to paragraph 6 it is admitted that the 2nd and 3rd Defendants entered into a partnership deed with the 1st Defendant which is dated 24th day of March 1958. It is denied that such deed in fact operated in any way as a sub-letting or assignment by the 1st Defendant of any part of his interest in the said premises. It is further denied that the 1st Defendant has committed a breach of the terms of his sub-tenancy by executing such deed or at all.

30

5. In reply to paragraph 7 of the Statement of Claim the 1st Defendant says that the tender of rent

by him on the 27th day of March 1958 was a good tender in law and the Plaintiffs had no lawful grounds for refusing the same.

In the High  
Court of  
Kuala Lumpur

6. Paragraphs 8 and 9 of the Statement of Claim are denied.

\_\_\_\_\_  
No. 2

10 7. It is denied that the 1st Defendant has assigned or sub-let to the 2nd and 3rd Defendants as alleged or at all. Alternatively, it is denied that the 1st Defendant was under any covenant to the Plaintiffs not to assign or sub-let and therefore should any assignment or sub-letting have taken place it is lawful and not in breach of covenant.

Defence and  
Counterclaim

21st May, 1959  
continued

8. Save as in so far as is expressly admitted herein all allegations in the Statement of Claim are denied as though specifically set out and separately traversed.

COUNTERCLAIM OF FIRST DEFENDANT

20 The 1st Defendant repeats the Defence and says that:-

9. He became a sub-tenant of the Plaintiffs in respect of No. 11, Mountbatten Road, Kuala Lumpur on the 1st day of January 1956.

30 10. At that time the standard rent of the premises was \$140.00 and not \$200.80 as alleged for the reason that prior to increasing the rent from \$140.00 to \$175.00 and from \$175.00 to \$200.80 the Plaintiffs had not at any time complied with the provisions of Section 6 (2) of the Control of Rent of 1948 which was then in force and determined the sub-tenancy prior to increasing the rent.

11. The 1st Defendant has paid the sum of ~~\$60.80~~ \$35.00 in excess of the standard rent for the period of twenty five months commencing from the 1st January 1956.

The first Defendant counterclaims:

In the  
High Court  
of Kuala Lumpur

- (i) For the sum of ~~₹4,520.00~~ ₹875.00.
- (ii) For the costs of the counterclaim.

Sgd. LOVELACE & HASTINGS

No. 2

Solicitors for the Defendants.

Defence and  
Counterclaim

Delivered this                    day of May, 1959 by Messrs.  
Lovellace & Hastings, Solicitors for the Defendants.

21st May  
1959  
continued

No. 3

NO.3

Reply and  
Defence to  
Counterclaim

REPLY AND DEFENCE TO COUNTERCLAIM

25th May,  
1959

1. The Plaintiffs join issue with the Defendants in their defence save in so far as the same consists of admissions.

10

2. In answer to paras: 9 to 11 inclusive of the Counterclaim the Plaintiffs say:-

(a) that prior to the 1st day of March 1948 the rent of the premises was ₹140/- per month.

(b) that from the 1st day of March 1948 the then sub-tenant had agreed to pay and continued to pay ₹175/- per month being the rent with the increase permitted by the Control of Rent Ordinance, No.6 of 1948

20

(c) that after the 1st day of January 1958 the said rent of ₹175/- per month was increased by ₹25.80, the said sum being an increase permitted by the Control of Rent Ordinance No.2 of 1956 by reason of the rates payable to the Kuala Lumpur Municipality in respect of the premises having been increased, which total sum of ₹200.80 the 1st Defendant agreed to pay and continued to pay at all material times.

30

(d) that prior to the two successive increases hereinbefore pleaded the said sub-tenant and the 1st Defendant respectively waived expressly the right to have the sub-tenancy then existing formally determined according to law:

In the High Court of Kuala Lumpur

\_\_\_\_\_

No. 3

(e) that alternatively by paying rent with the successive increases over a long period of years the said sub-tenant and the 1st Defendant impliedly waived the right to have his sub-tenancy formally determined according to Law; and

Reply and Defence to Counterclaim

25th May 1959 continued

(f) that therefore the claim to a refund of the excess alleged to have been paid in the sum of \$1,520/- or at all is wrong in law and is misconceived.

10

20

3. Save as admitted above the Plaintiffs deny each and every the allegations in the Counterclaim.

Dated this 25th day of May, 1959.

Sgd. Braddell & Ramani

Solicitors for the Plaintiffs.

NO.4

No. 4

PARTICULARS OF PARA: 2(d) OF REPLY

Particulars of Para: 2 (d) of Reply

30

(1) On or about the 6th of February 1948, the then Manager of Nahar & Co., \*a Mr. ~~Ajit~~ Pritipal Singh was informed by the Plaintiffs that in accordance with the new provision of law the rent of the premises will be increased and that a formal notice terminating the tenancy was being sent to the Firm; but that the notice could be ignored if the Firm would agree to pay the increased rent as permitted by law.

5th June 1959

The said manager then informed the Plaintiffs that such a Notice need not be sent to

\* As amended by Document No. 5.

In the  
High Court  
of Kuala  
Lumpur

\_\_\_\_\_

No. 4

Particulars  
of Para. 2  
(d) of Reply

5th June,  
1959  
continued

to them as it was a mere formality, and that they would be willing to pay the increased rent from the 1st of March, 1948.

(2) On or about the 1st day of March, 1958 the Plaintiffs upon receipt of a notification from their landlords of the Assessment for the year of 1958 having been increased calculated the proportionate increase in respect of the first defendant as \$25.80 per mensem.

On the same day the Plaintiffs informed the first defendant's then manager that the rent would be increased to \$200.80 because of the increase in the assessment and, that a Notice terminating their tenancy could be ignored by him if the first defendant was willing to pay the excess. 10

The said manager then stated to the Plaintiffs that the 1st defendant would be willing to pay the increased rent as from the 1st of January 1958 and that no Notice terminating the tenancy need be sent.

Dated this 5th day of June, 1959. 20

Sgd. Braddell & Ramani

Solicitors for the Plaintiffs.

\_\_\_\_\_

NO.5

LETTER AMENDING PARTICULARS

In the High  
Court of  
Kuala Lumpur

BRADDELL & RAMANI,  
Advocates & Solicitors.

\_\_\_\_\_  
No. 5

HONGKONG BANK CHAMBERS,  
P.O.Box 372,  
Kuala Lumpur.

Letter amending  
Particulars

16th July 1962

Our Ref: 2690/62/RR/SK

16th July, 1962.

10 Messrs. Lovelace & Hastings,  
Advocates & Solicitors,  
KUALA LUMPUR.

Dear Sirs,

Civil Suit No. 69 of 1959

20

We observe we have omitted to notify you of an error in the Particulars delivered by us on the 5th day of June, 1959. We have intended to do so on the last occasion before the action came on for hearing and as it was postponed, we overlooked notifying you.

Para. 1 in line 2 thereof mentions the name of "a Mr. Ajit Singh". The name should read "a Mr. Pritipal Singh".

We apologise for not having informed you earlier.

Yours faithfully,

Sgd. Braddell & Ramani.

\_\_\_\_\_

In the  
High Court  
of Kuala  
Lumpur

NO.6

NOTES OF PLAINTIFFS' COUNSEL'S OPENING SUBMISSION

Cor: Hashim J.

In Open Court  
19th July, 1962.

No.6

NOTES OF EVIDENCE

Notes of  
Plaintiffs'  
Counsel's  
Opening  
Submission

Ramani with Menon for plaintiffs.

Marjoribanks with Lall Singh for defendants.

19th July,  
1962

Ramani opens. Ejectment. Reads S/C. Refers to S/D. Rent increase 25%. Second increase in 1958. Refers to reply to counterclaim. Particulars of para: 2 (d) reply. 2 parts to this case. First part. In law the present occupants are in unlawful occupation therefore there should be an order of ejectment against them. Second part is the counterclaim and on the counterclaim. Whether on those respective dates as stated in the particulars the right to receive a notice terminating the tenancy was waived by the tenants. First part of claim onus on plaintiffs. With regard to the counterclaim having continuously paid the rent for a period of 10 years from 1948 - 1958 and a period of 2 years in accordance with the increase onus on defendants. Refers to the claim. Puts in bundle of agreed documents A - \*p.23, p.24, p.25 agreement p.33, p.34, p.35 reply to letter at p.23, pp. 15 - 17, reply to p.34 at p.37, p.39, p.41.

10

20

Ex.P"A"

2 questions. First what is the legal effect of the stipulation vis-a-vis condition printed on the receipts.

Second question - if premises which are in occupation of 'A' as a tenant are subsequently found to be in the possession of 'B' and 'C' as partners in a business does it or does it not amount to an assignment of the right of occupation from 'A' to 'B' and 'C'.

30

\* These page numbers are the page numbers of Exhibit P."A", not of the page numbers of this Record.



Refers to the Coliseum Cafe case 1962 M.L.J. p. 111 at p.113 and 114 - at p. 116. Refers to Loke Yung Hong v Shanghai Furniture Co & Another 1948 M.L.J. at p. 138, at p. 139 at p. 142. Shows Court stub of receipt book. Question of law on admitted facts. 1953 M.L.J. at p. 100, 2 Malayan Cases 238, 1949 M.L.J. 271.

Plaintiff's case closed except for counterclaim.

In the High Court of Kuala Lumpur

\_\_\_\_\_  
No.6

Notes of Plaintiffs' Counsel's Opening Submission

19th July 1962 continued

\_\_\_\_\_  
No.7

Notes of Defendants' Counsel's Opening Submission

19th July 1962

Ex. D1 to 6

10

\_\_\_\_\_  
NO.7

NOTES OF DEFENDANTS' COUNSEL'S OPENING SUBMISSION

Marjoribanks addresses Court. Gives history of sub-tenancy. Plaintiff must prove that when sub-tenancy given to No. 1's father there was a condition vis-a-vis assignment. Refers to Loke Yung Hong's case. Facts different from this case. Refers to receipts. One receipt without any condition, Tenders 3 receipts (D1, D2 and D3 respectively). 3 more receipts (D4, D5 and D6). Admits No. 1 took Nos. 2 and 3 as partners. Refers to para: 3 of S/C. No. 1 assigns only a portion of the premises and a portion of his business to Nos. 2 and 3. If No. 1 had assigned the whole of the sub-tenancy or the whole of his business his name would not have been mentioned at all. Refers to Cook v Shoemith 1951, 1 K.B.D. at p. 753, at p. 756. Esdaille and Others v. Lewis 1956, 2 A.E.R. at p. 357. Father of No. 1 died quite recently.

20

30

Refers to the counterclaim. Only evidence in A at p.22. No valid termination of tenancy. (Ramani concedes).

P."A" p.22

Marjoribanks asks leave to amend the counterclaim at para: 11 of counterclaim \$60.80 to \$35 - \$875 for \$1520.

## NO.8

In the  
High Court  
of Kuala  
Lumpur

EVIDENCE OF DEVARAJ NAHAR

Marjoribanks calls:-

D.W.1 Devaraj Nahar a/s in English. No. 11  
Cuscaden Road, Singapore.

Defendants'  
Evidence

No.8

Evidence  
of Devaraj  
Nahar

19th July  
1962  
Examination  
Ex. P"A"  
pp.15, 16,  
17.

I am the managing partner of Nahar & Co. Singapore and I am a partner in the same firm in K.L. The firm started in 1934 in Kuala Lumpur. My father was the sole proprietor of the business. In January 1956 he handed the business to me. At the time the business was handed to me there was no discussion with the plaintiffs. I was not told by the plaintiffs any prohibition from the landlord. I have been working in Nahar & Co. Singapore since 1949. I was in charge of the correspondence in the Singapore firm. I do not know who was the Manager of the K.L. firm in 1949. In 1953 I received a letter from Benjamin & Sen (on p. 15 of A). On receipt of that letter I wrote back for details (at p.16 of A). I received a further letter from Benjamin & Sen (on p.17 of A). I did not send any reply. I was not aware at that time of any prohibitions. I have not seen the receipts.

10

20

Cross-  
Examination

Cross-Examined  
XXN. I received the letter (on p. 17 of A). My father received the letter, opened it and handed it to me. I read it. With regard to the latter part of the letter which reads "but our clients' receipts leave no doubt about the terms" I paid no attention to it. In 1956 I became the proprietor of the K.L. firm. I paid rent to Gian Singh & Co. and they gave me receipts for every payment I made. I did not at any time see the receipts because my manager was paying the rent. I never saw a single receipt in 1956 and 1957 of the K.L. firm. The manager in 1956 was not the same person prior to 1956. The 1956 manager was Devaraj Jain. I have never seen the K.L. receipts up to this moment. I never saw Mr. Ajit Singh when I was negotiating with the other 2 partners. I did not know he would object to my taking these 2 partners at any time. I entered into the agreement in March, 1958. In 1958 before the agreement was executed I know the K.L. premises were a valuable asset to my business.

30

40

When I took the partners I did not retain a portion of the premises for myself and all the partners enjoyed the use of the entire premises. According to the terms of the agreement any partner can retire from the partnership after 2 years. I have not retired from the partnership. I have not received any capital return from the K.L. business. I have retained the entire capital in the K.L. business. I have not been paid out any share of my capital in K.L. business. I have received \$20,000 instalments from Nos. 2 and 3. Each of them paid \$10,000. I sold 2/3rds of my interest in the K.L. firm to Nos. 2 and 3. I received the sum in 1958.\* I have not received any payment from my own capital.

In the High Court of Kuala Lumpur

Defendants' Evidence

No.8

Evidence of Devaraj Nahar 19th July 1962 Cross-examination continued

Re-Examined

ReXN. I am receiving income from the K.L. business, a share of the profit.

Re-Examination

20

NO.9

No.9

EVIDENCE OF LABH SINGH

Evidence of Labh Singh

A.W.2. Labh Singh a/s in Punjabi.

19th July 1962 Examination

I am a partner of the firm of Nahar & Co. K.L. I live at No. 3 Thambusamy Road, K.L. In 1934 I was manager of Rose & Co. Ltd. Singapore. I came to K.L. in 1934 on 2 or 3 occasions. In 1934 the premises at No. 11 Mountbatten Road (then No. 18) were occupied by Carr & Co. Carr & Co. left the premises in 1934. Sardar Pritam Singh approached with regard to the taking over of the tenancy of these premises. S.P. Singh was a partner of Gian Singh & Co. The terms of the tenancy were discussed. In 1934 there were many premises available for letting in K.L. I saw many notices to let in K.L. The question of assignment did not arise at all. I did not take the premises on behalf of Rose & Co.

30

Cross-Examined

XXN. I am managing Nahar & Co. K.L. I am not paying rent since this case started. Before the case started rent was paid through our Solicitors. I used to hand the rent to my lawyer

40

Cross-Examination

\* They bought the stock-in-trade for \$20,000.

In the  
High Court  
of Kuala  
Lumpur

Defendants'  
Evidence

No. 9

Evidence of  
Labh Singh  
19th July  
1962  
Cross-  
Examination  
continued

who would forward it. I did not receive any rent receipts from the landlord. In 1934 I went round the town and saw several premises with signs to let. Rose & Co., are also sports dealers. In 1958 I did not see two let signs in K.L., not even one. These premises in the corner are valuable premises. I was not doing any business in K.L. in 1958. I was then in Singapore. I did not ascertain before being a partner whether these premises were available. No. 3 and I were not associated in business in Singapore. We are cousins. On 29th or 30th March 1958 No. 3 told me that he had received a letter from the plaintiffs (at p.24 of A) and that letter contained a copy of plaintiff's letter to Nahar & Co. On 30th March 1958 I became aware of the controversy over the premises. We consulted Mallal & Namazie. They wrote to plaintiffs. We proceeded out of business on 8.4.58. I also came to K.L. in 1935. I used to visit K.L. once and twice a year. In one of my visits to K.L. in 1934 or 1935 I saw the sign-board Nahar & Co. in the premises. I knew the people at that time. I knew Amin Chan Nahar. He was living in India. A Mr. Suri was carrying the business in K.L. in 1935. A Mr. Anand was manager in the Singapore business.

10

20

No Re-Xn.

Case for Defendant

Ex.P"A"p.22

Marjoribanks states he does not wish to call evidence on the counterclaim, refers to p.22 of A.

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Adjourned to 2.30 p.m.

No. 10

NO.10

Evidence of  
Devaraj Nahar  
(re-called)  
19th July  
1962  
Examination

EVIDENCE OF DEVARAJ NAHAR (RE-CALLED)

Court resumes. Parties as before.

Marjoribanks recalls D.W.1 on the counterclaim.

D.W.1 recalled. Devaraj Nahar (on former oath) states in English:-

Rent for these premises was originally \$140 monthly. As from 1.3.48 my father as sole

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proprietor paid \$175 monthly. After 1.1.58 rent was increased to \$200.80. No one from plaintiff's firm came to see me with regard to giving a notice to quit prior to increasing the rent. I have paid excess rent from 1.1.56 and that amounts to \$875. In 1958 I had a manager in the K.L. firm. He was Devaraj Jain. He is now in Singapore. He had no authority to deal with plaintiffs in respect of increase of rent.

In the High Court of Kuala Lumpur

Defendants' Evidence

No.10

Evidence of Devaraj Nahar (re-called) 19th July 1962 Examination continued

10

Cross-examined

XN Periodic accounts were sent to me. Rents for the first month in 1958 were tendered through Mallal & Namazie. I knew the rent was \$200.80 per month. I did not endeavour to find out what the correct rent was at that time. D. Jain was actually managing the business and carrying on the business. I instructed Mallal & Namazie to write the letter (at p.34 of A). I was always resident in Singapore. In matters of this nature the landlords would be dealing with the manager.

Cross-examination

Ex. P"A" p.34

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Re-Examined

Re-Xn. A K.L. manager would refer anything of importance to me.

Re-examination

NO.11

No. 11

EVIDENCE OF PRITHIPAL SINGH GILL

D.W.3 Prithipal Singh Gill a/s in English:-

Evidence of Prithipal Singh Gill

19th July 1962 Examination

30

In February 1948 I was the manager of Nahar & Co., K.L. On or about 6.2.48 no one from plaintiff's firm came and spoke to me about the law in respect of rent. I received a letter from plaintiffs (at p.13 of A). I told Pritam Singh I had no authority to accept the increase of rent and had to consult Singapore. As a result of instructions I eventually paid \$175.

Ex. P"A" p.13

In the High Court of Kuala Lumpur

Cross-Examined

XXN The letter is dated 20.2.48. It looks like Pritam Singh's signature. (Counter of receipt for Jan. 1948 shown to witness, admitted P.7 (sic)).

Defendants' Evidence

XXN continues

No. 11

Evidence of Prithipal Singh Gill

I was manager from Jan. 1947 to July 1948. I attended to the payment of rent from time to time. I used to go round from my shop to Gian Singh to pay the rent. I went to pay the rent on 6.2.48 to pay the Jan. 1948 rent. I would see either Pritham Singh or the late Surjit Singh. I cannot remember whom I saw on 6.2.48. Something was said to me with regard to terminating the tenancy prior to the increase of rent. I said I had to consult Singapore. With regard to the notice prior to terminating the tenancy I said "Don't send us any notice - I will consult Singapore". I reported that to Singapore and after that I got the authority to pay rent \$175/-.

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Cross-examination 19th July 1962

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Re-examination Ex. D.8

Re-Examined

Re-Xn They did say either pay or quit. (Letter dated 20.2.48 admitted D.8).

Evidence on counterclaim closed

Plaintiffs' Evidence

NO.12

EVIDENCE OF ARJIT SINGH

No.12

Ramani calls a witness on the counterclaim.

Evidence of Arjit Singh

\*Arjit Singh a/s in English. Proprietor of Gian Singh & Co., K.L.

19th July, 1962

Examination

Nahar & Co., are my sub-tenants. I am chief tenant under the estate of Chua Cheng Bok. I became the proprietor in 1952. Nahar & Co., were paying rent \$175 monthly from 1952. In 1958 I received a letter from the estate of Chua Cheng Bok decd. (Admitted P.9 (sic)). There is an endorsement on P.9 in my handwriting (reads). I calculated the proportion to be paid by Nahar & Co., as \$25.80 monthly. I fully discharged the liability by payment to the estate of Chua Cheng

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Ex. D.9

\* Elsewhere in the Record named Ajit Singh.

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10 Bok decd. I was aware that in law I had to give notice terminating the tenancy prior to the increase of rent. I called Devaraj Jain to my shop. He was the manager of Nahar & Co., I told him I had to give him a notice terminating the tenancy prior to the increase of rent. I gave him a notice to quit verbally. He was our next door neighbour and I thought a verbal notice would be good enough. On 6.3.58 I formally wrote to Nahar & Co., raising the rent (p.22 of A). I omitted to say in the letter about the notice to quit but I had already spoken to him about notice to quit. There was no objection to the increase of rent. I said to D. Jain he would have to pay the increased rent from Jan. 1958 onwards. I paid the assessment to Cheng Bok estate from Jan. 1958.

In the High Court of Kuala Lumpur

Plaintiffs' Evidence

No.12

Evidence of Arjit Singh

19th July 1962  
Examination continued

20 Cross-Examined  
XXN. More convenient to talk with D. Jain than to write to him. I maintain I did have a conversation with D. Jain.

Cross-examination

No. Re-Xn.

Plaintiff's case on counterclaim closed

NO.13

No.13

NOTES OF DEFENDANTS' COUNSEL'S CLOSING SUBMISSION

30 Marjoribanks addresses Court. Finding of fact. Was there a prohibition against sub-letting and assignment at the beginning of the sub-tenancy in 1934. Refers to p.17 of A. Plaintiffs rely entirely on the printed wording on the rent receipts. No pre-war rent receipt produced by plaintiff showing the prohibition clause. Person who gave instructions on p.17 not called by plaintiffs. Loke Yung Hong's case based expressly on the original tenancy. Reads p. 139, 1948 M.L.J.

Notes of Defendants' Counsel's Closing Submission

19th July 1962

40 Counterclaim - landlord must terminate the existing tenancy before he increases the rent. Notice to quit whether in writing or verbal must specify the date to quit. No evidence on this point.

In the High Court of Kuala Lumpur

Refers to sect. 6 (2) of the Control of Rent Ordinance 1956. Refers to 1921, 2 K.B. p. 451, Glossop and Another v. Ashley at p. 456 and p. 460. Selle v Butcher 1950, 1 K.B. 671 at p.673. Standard rent of \$140 remains today. Deals with the claim.

No.13

Refers to para. 10 S/C.

Notes of Defendants' Counsel's Closing Submission

(2) rent should be \$140 a month.

(3) no rent for mesne profits.

19th July 1962 continued

As against Nos. 2 and 3 - they were never in unlawful occupation - invited by No. 1.

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No.14

NO.14

Notes of Plaintiffs' Counsel's Closing Submission

NOTES OF PLAINTIFFS' COUNSEL'S CLOSING SUBMISSION

Ramani replies. Counterclaim. Notice to quit given to manager - proprietor living outside jurisdiction. Woodfall's 26th Edition Vol. 1 para: 2157. Form and contents para: 2149. Refers to the distinction in the language. Kerr v Bryde 1923 A.C. p. 16 at p.17 Newell v Crayford Cottage Society 1922, 1 K.B. 656 at p.662. Refers to section 6 (2) 1948 Ordinance - word for word the same in 1956 Ordinance - sect. 6 (2). Refers to p. 12 of A.

19th July 1962

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Ex.P"A"p.12

Claim - not claiming damages against Nos. 2 and 3. Question of ejectment. Refers to Esdaille and Others v. Lewis 1956, 2 A.E.R. 357. Amounted to an assignment. Refers to p.17 of A.

Ex.P"A"p.17

C.A.V.

Sgd. M.M. Hashim

19.7.62.

30



NO.15

J U D G M E N TIn the  
High Court of  
Kuala Lumpur

This is an action for ejection and a counterclaim for \$875 being excess of rent paid.

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 No.15

The following facts are not disputed:-

 Judgment of  
Hashim J.

14th August 1962

- (a) The plaintiffs are the chief tenants of premises No. 11 Mountbatten Road, Kuala Lumpur.
- (b) In 1934 the plaintiffs sub-let the premises to Amin Chand Nahar who was carrying on business under the name of Nahar & Co.
- (c) The tenancy was and is a monthly tenancy.
- (d) Mr. Amin Chand closed down his business on 31.12.55 as he was old and sickly and wished to retire from business. He died recently.
- (e) When Mr. Amin Chand retired in December 1955 the business of Nahar & Co. Kuala Lumpur was carried on by his son the 1st defendant through a manager. The 1st defendant is a resident of Singapore and it would appear that he has never at any time personally managed Nahar & Co., Kuala Lumpur.
- (f) On 24.3.58, 1st defendant entered into an agreement with 2nd and 3rd defendants whereby 2nd and 3rd defendants became partners of Nahar & Co. Kuala Lumpur, (at p. 25 of bundle of agreed documents hereinafter referred to as "A"). Clause 2 of this agreement would appear to be significant and relevant. By clause 2 any partner may at the end of 2 years retire from the partnership.
- (g) On 26.3.58 plaintiffs wrote to 1st defendant informing him that they would not accept any new tenant and gave notice to quit and deliver vacant possession of the premises on or before 30th April 1958 (at p.23 in "A").

Ex. P"A" p.25Ex. P"A" p.23

In the  
High Court  
of Kuala  
Lumpur

(h) Plaintiffs also wrote to 3rd Defendant informing him that they would not agree to 3rd defendant becoming a tenant of the premises (at p.24 in "A").

No. 15

Judgment of  
Hashim J.

14th August  
1962  
continued

The first question for the Court to decide is whether there has been an assignment by 1st defendant by taking in 2nd and 3rd defendants as partners in the business of Nahar & Co., Kuala Lumpur of which 1st defendant was the sole proprietor before he entered into an agreement with 2nd and 3rd defendants on 24.3.58. Mr. Ramani for the plaintiff cited numerous cases in support of his contention that there was an assignment. He also referred to the printed words on the receipt which read as follows:-

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"(1) No tenancy will be recognised by the Landlord unless taken direct from him.

(2) This house is not to be sublet or assigned without the written consent of the Landlord".

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Mr. Ramani contended that the tenant could not assign the tenancy when the receipts had these printed words and he supported his contention by referring to Eusof Ali & Anor. v. Nyonya Lee Gaik Hooi 1953, 19. M.L.J. 98. In his judgment Briggs, J. quoted the words of Evans, J. as follows:-

"The wording on the receipt is clearly a term imposed by the landlord, and I think that the evidence and findings show that the parties themselves understood the tenancy to be subject to a condition that it continued only while direct from the landlord, and that consequently an assignment would determine it".

30

It is also a fact as pointed out by Mr. Marjoribanks Counsel for the defendants, that earlier receipts did not have these printed words. I think the printed words came into existence as a result of the Control of Rent Ordinance 1948 which came into force on 31.1.48. Mr. Marjoribanks for the defendants contended that there was no assignment and even if there was it was a part assignment as 1st defendant was

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a partner of Nahar & Co, Kuala Lumpur and still a sub-tenant of plaintiffs. It was his contention that by the agreement of 24.3.58, 1st defendant only took in two partners, 2nd and 3rd defendants and did not assign his sub-tenancy to the other 2 partners. However, I hold that clause 2 of the said agreement did result in 1st defendant assigning the sub-tenancy to the other 2 partners. Under clause 2 any partner could retire from the partnership at the end of two years from the date of the execution of the agreement. 1st defendant has admitted in his evidence he has received \$20,000 from the other partners. 1st defendant is a resident of Singapore. Under the agreement 1st defendant can retire from the partnership at the end of 2 years from 24.3.58 and if he does retire the result will in fact be that the premises will be under the new sub-tenants, 2nd and 3rd defendants.

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I therefore find that an assignment has in fact taken place on the execution of the agreement dated 24.3.58 and I give judgment in favour of the plaintiffs.

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I shall now deal with the counterclaim. It is admitted that no formal notice to quit was given by the plaintiffs to 1st defendant before the rent was raised on the 2 occasions. It is also admitted that all the plaintiffs did was to tell 1st defendant's manager that they had to raise the rent because of the increased assessment and if 1st defendant objected to the increase he could quit the premises. Section 12 (1)(c) of the Control of Rent Ordinance 1956 reads:

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"where the landlord, as a step towards increasing the rent in pursuance of the provisions of section 6 of this Ordinance, has given the tenant a notice to quit, and the tenants holds over possession at the expiration of such notice without paying or agreeing to pay the increased rent".

Now in ejectment proceedings under this section the notice to quit is a material factor and has to be produced and admitted. I am therefore of the opinion that a proper and formal notice to quit

In the High  
Court of  
Kuala Lumpur

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No.15

Judgment of  
Hashim J.

14th August 1962  
continued

In the High Court of Kuala Lumpur

must be given for the purpose of section 12 (1)(c). I find that no such notice has been given in this case and the counterclaim must succeed.

No.15  
Judgment of Hashim J.  
14th August 1962  
continued

The order of the Court is:-

- (a) The defendants to vacate premises No. 11 Mountbatten Road, Kuala Lumpur, by 12 noon 31st October 1962.
- (b) The defendants to pay arrears of rent at the rate of \$140/- per mensem from 1st February 1958 to the date of vacation of premises.
- (c) Plaintiffs to pay defendants \$875/-
- (d) Each party to pay their own costs.

10

14th August, 1962. Sgd. M.M. Hashim  
J U D G E  
Federation of Malaya

Mr. R. Ramani with Mr. K.A. Menon for Plaintiffs

Mr. N.A. Marjoribanks with Mr. Lall Singh for Defendants.

No.16  
Order of High Court  
14th August 1962

NO.16

20

ORDER OF HIGH COURT

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE HIGH COURT AT KUALA LUMPUR

CIVIL SUIT NO.69 of 1959

Between

Gian Singh & Co.

Plaintiffs

- and -

- 1. Devaraj Nahar alias Devaraj Nahah
- 2. Labh Singh
- 3. Harbans Singh

Defendants

30

BEFORE THE HONOURABLE MR. JUSTICE DATO HASHIM  
JUDGE, FEDERATION OF MALAYA.

In the High  
 Court of  
 Kuala Lumpur

IN OPEN COURT

No.16

This 14th day of August, 1962

Order of  
 High Court

O R D E R

14th August 1962  
 continued

10 This suit coming on for hearing before the Honourable Mr. Justice Dato Hashim the 19th day of July 1962 in the presence of Mr. R. Ramani and Mr. K. A. Menon of Counsel for the Plaintiffs and Mr. N. A. Marjoribanks and Mr. Lall Singh of Counsel for all the Defendants And this Court having taken time to consider its judgment.

And upon this Suit coming on for delivery of judgment before Court on this 14th day of August 1962 in the presence of Mr. R. Ramani for the Plaintiffs and Mr. Lall Singh for the Defendants.

20 IT IS ORDERED that the Defendants do quit and deliver vacant possession of premises known as No. 11 Mountbatten Road, Kuala Lumpur by 12 noon on the 31st day of October 1962.

AND IT IS ORDERED that the Defendants do pay to the Plaintiffs all arrears of rent at the rate of \$140.00 per mensem from the 1st of February 1958.

AND IT IS ORDERED that the Defendants do pay double rent from the 1st day of November 1962 until vacant possession is given.

30 AND IT IS ORDERED ON THE COUNTERCLAIM that the Plaintiffs do pay to the Defendants the sum of \$875.00

AND IT IS ORDERED that each party pay their own costs of the Suit.

GIVEN under my hand and seal of the Court this 14th day of August, 1962.

Sgd. Senior Assistant Registrar,  
 Supreme Court,  
 Kuala Lumpur.

In the Court  
of Appeal at  
Kuala Lumpur

NO.17

MEMORANDUM OF APPEAL

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

IN THE COURT OF APPEAL AT KUALA LUMPUR

CIVIL APPEAL NO. 48 OF 1962.

                      
No.17

Memorandum  
of Appeal

20th October  
1962

Between

- 1. Devraj Nahar alias Devaraj Nahah
- 2. Labh Singh
- 3. Harbans Singh Appellants

10

- and -

Gian Singh & Co. Respondents

(In the matter of Kuala Lumpur High Court

Civil Suit No. 69 of 1959

Between

Gian Singh & Co. Plaintiffs

- and -

- 1. Devraj Nahar alias Devaraj Nahah
- 2. Labh Singh
- 3. Harbans Singh Defendants

20

Devraj Nahar alias Devaraj Nahah (2) Labh Singh and (3) Harbans Singh the Appellants above-named appeal to the Court of Appeal against the whole decision of the Honourable Mr. Justice Dato Hashim given at Kuala Lumpur on the 14th day of August, 1962 on the following grounds:

(1) The learned trial Judge was wrong in law in finding that an assignment of the tenancy has in fact taken place on the execution of the agreement dated 24th March, 1958.

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(2) The learned trial Judge was wrong in holding that by clause 2 of the said agreement dated 24th March 1958 in the event of the first defendant retiring from the partnership at the end of 2 years from 24th March 1958, the premises will be under the 2nd and 3rd defendants which finding was on a mere assumption that it has been or will be transferred. The learned trial Judge should have held that clause 2 cannot be construed as words of assignment.

In the Court  
of Appeal at  
Kuala Lumpur

\_\_\_\_\_  
No. 17

Memorandum  
of Appeal

20th October 1962  
continued

(3) The learned trial Judge failed to appreciate that in law, in the absence of a lease, when the 1st Defendant retired or the firm dissolved, the Plaintiffs could eject his late partners without notice to quit.

(4) The learned trial Judge should have held that the deed of partnership ipso facto does not transfer the premises to the partnership except that it gives the partners a licence while the partnership endures, to enter the premises upon which the partnership business is carried on.

(5) The learned trial Judge should have held that if the 1st Defendant did assign the property such assignment would have been in favour of all three partners and not only the other two, and that the agreement to transfer is no breach of the covenant, if any.

(6) The learned trial Judge should have held that there was no effective prohibition.

(7) The learned trial Judge failed to make a finding that when the premises were let out by the Plaintiffs in 1935 there was no prohibition as to sub-letting and the interpolation, in the absence of any evidence that the sub-tenant accepted the proposal, is not binding on the sub-tenant or his successors.

(8) The Plaintiffs' proposal was wholly to the disadvantage of the sub-tenant in that it took away a valuable right from him and in the absence of any evidence by the Plaintiffs that the sub-tenant consented to the words newly inserted and on the evidence of the 1st Defendant

In the Court  
of Appeal at  
Kuala Lumpur

—————  
No.17

and other documentary evidence that the sub-tenant protested to the new proposal, the learned trial Judge should have found that the Plaintiffs had no power to insert the words on a receipt without any assent by the sub-tenant and therefore the prohibition was not binding.

Memorandum  
of Appeal

20th October  
1962  
continued

(9) The learned trial Judge should have held that the action was misconceived as the Statement of Claim should have been framed as a case in forfeiture, and should have pleaded (inter alia) the forfeiture clause, if any, as a breach of the covenant or agreement or breach of a condition.

10

Dated this 20th day of October, 1962.

Sgd. Lovelace & Hastings

Solicitors for the Appellants.

To:

The Senior Assistant Registrar,  
Supreme Court,  
Kuala Lumpur.

And to:

The Appellants abovenamed and/or their  
Solicitors, Messrs. Braddell & Ramani,  
Chan Wing Building,  
Kuala Lumpur.

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The address for service of the Appellants is care of Messrs. Lovelace & Hastings, No. 56, Klyne Street, Kuala Lumpur.

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NO.18

JUDGMENT OF HILL J.A.In the Court  
of Appeal at  
Kuala Lumpur

Coram: Thomson C.J.  
Hill J.A.  
Barakbah J.A.

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 No.18
Judgment of  
Hill, J.A.28th February  
1963

This is an appeal against the decision of Hashim J. in Civil Suit No. 69 of 1959 given at Kuala Lumpur on 14th August 1962 in which the following Order was made:-

- 10 (a) The defendants to vacate premises No. 11 Mountbatten Road, Kuala Lumpur, by 12 noon 31st October, 1962.
- (b) The defendants to pay arrears of rent at the rate of \$140/- per mensem from 1st February, 1958 to the date of vacation of premises.
- (c) Plaintiffs to pay defendants \$875/-.
- (d) Each party to pay their own costs.

20 The Respondents were the chief tenant of premises at No. 11 Mountbatten Road, Kuala Lumpur. The first Appellant was their sub-tenant.

30 The Respondents discovered that on 24th March 1958 the first Appellant had entered into a partnership deed with the second and third Appellants in respect of a business by the name of Nahar & Co., which was conducted at the above premises. The Respondents considered that by this agreement, which was an exhibit and is to be found at page 46 of the record, the first Appellant had assigned the sub-tenancy to the other two Appellants. They further considered that it was a term of the sub-tenancy that the premises were not to be sub-let or assigned without their written permission.

Ex.P"A" pp.25-32

As a result they sued for possession and for arrears of rent.

The learned trial Judge held that clause 2 of the agreement of the 24th March 1958

In the Court of Appeal at Kuala Lumpur did result in the first Appellant assigning the sub-tenancy to the other two Appellants. He reasoned as follows and I quote from his judgment:

-----  
No.18

Judgment of Hill, J.A.

28th February 1963  
continued

"Under clause 2 any partner could retire from the partnership at the end of two years from the date of the execution of the agreement. 1st Defendant has admitted in his evidence he has received \$20,000/- from the other partners. 1st defendant is a resident of Singapore. Under the agreement 1st defendant can retire from the partnership at the end of 2 years from 24.3.58 and if he does retire the result will in fact be that the premises will be under the new sub-tenants, 2nd and 3rd defendants".

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Clause 2 was as follows:-

"Any partner may at the end of two years or any subsequent year of the partnership retire from the partnership on giving not less than four calendar months previous notice in writing to the other partners or partner or leaving the same at the place of business of the partnership and at the expiration of such year the partnership shall determine accordingly as to the partner leaving or giving such notice and thereupon the provisions of clauses 17 and 18 of these present shall (with the substitution of the continuing partner or partners for the surviving partner or partners and of the retiring partner for the representative of the deceased partner and other consequential modifications) apply as if the retiring partner had died at the expiration of such year".

20

30

Was there in fact or in law an assignment? With great respect to the learned trial Judge in my view the agreement does not expressly or impliedly assign the tenancy or any part thereof by the first Appellant to either or both of the other Appellants. It is an agreement to carry on the business of Nahar & Co., at 11 Mountbatten Road or at such other place or places as the partners may from time to time

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agree upon. The capital of the partnership was to consist of the net value of the stock-in-trade, book debts and other assets of Nahar & Co. The monthly tenancy of the premises was not an asset of Nahar & Co. The first Appellant alone was the sub-tenant and what might happen at the end of two years is mere conjecture.

In the Court  
of Appeal at  
Kuala Lumpur

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No.18

Judgment of  
Hill, J.A.

28th February  
1963 continued

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At page 365 of the 12th Edition of Lindley on Partnership under the heading "Property used for partnership purposes not necessarily partnership property" it is stated:-

'Again, it by no means follows that property used by all the partners for partnership purposes is partnership property. For example, the house and land in and upon which the partnership business is carried on often belongs to one of the partners only, either subject to a lease to the firm, or without any lease at all'.

20

The Corporation of Bristol v Westcott (1)  
is a case in point. The headnote is as follows:-

30

"A lease was granted to two partners, B. and H., as joint tenants. The lessees covenanted that they, their executors, administrators, or assigns, or any or either of them, would not, during the term, assign, underlet, or part with the possession of the demised property to any person or persons without the written consent of the lessor; and there was a proviso for re-entry on the breach of any of the covenants. The partners dissolved partnership and agreed that the partnership property should be made over to B., and that the leasehold property should be assigned to him with the consent of the lessor, if such consent could be obtained, and recited, as the fact was, that A had given up sole possession of the leaseholds to B. Consent was not obtained, and no assignment of the leasehold was executed, but B., from the time of the dissolution, remained in sole possession:-

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(1) (1879) 12 Ch. Div. 461.

In the Court  
of Appeal at  
Kuala Lumpur

Held (affirming the decision of Bacon, V.C) that there had been no breach of the covenant, and that the proviso for re-entry had not come into operation".

No.18  
Judgment of  
Hill, J.A.  
28th February  
1963  
continued

Somewhat similar situations with regard to partners were considered in Peebles v Crosthwaite (2) and in Chaplin v. Smith (3) and these cases decided in clear terms that "a lessee who retains possession does not commit a breach of the covenant against parting with possession by allowing other people to use the premises".

10

I am therefore of the opinion that there was no assignment of the sub-tenancy by the 1st Appellant and that the Appellants should not have been ordered to vacate the property. In so far as that part of the judgment appealed against is concerned, I would allow the appeal and set aside the order for possession.

There remains the question of the arrears of rent claimed by the Respondent and the counterclaim by the first Appellant for \$875/- for excess rent paid.

20

In his counterclaim the first Appellant pleaded that "the Plaintiffs had not at any time complied with the provisions of Section 6 (2) of the Control of Rent (sic) of 1948 which was then in force and determined the sub-tenancy prior to increasing the rent".

It was admitted that no prior notice to quit was given, but the sub-tenant through his manager or agent paid, apparently without protest, the twice increased rent. Once from \$140/- to \$175/- a month and secondly from \$175/- to \$200.80. He can, therefore only be taken to have agreed to the increase and so relieved his landlord of the necessity of giving him notice to quit.

30

There appears to be some misconception with regard to section 6 (2) of the Control of Rent Ordinance. This sub-section is intended to prevent a landlord from arbitrarily imposing the

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increased rent permitted by sub-section (1) without first obtaining the tenant's agreement. Where the tenant does not agree notice of termination of the tenancy must be given. The sub-section merely indicates that the normal procedure under the common law with regard to the variation of contracts must prevail in spite of the provisions of sub-section (1).

In the Court  
of Appeal at  
Kuala Lumpur

—————  
No. 18

Judgment of  
Hill, J.A.

28th February  
1963 continued

10 In my view therefore, the counterclaim for excess rent should have failed and the Respondents should have obtained judgment as prayed for ar-rears of rent at the rate of ₹200.80 per mensem from 1st February, 1958, to the date of the judgment and I would vary the judgment of the lower Court accordingly.

I think the Respondents should pay the costs of this appeal.

Sgd. R.D.R. Hill  
JUDGE OF APPEAL  
FEDERATION OF MALAYA.

20

28th Feb. 1963.

Kuala Lumpur.

Marjoribanks for Appellants.

Ramani for Respondents.

NO.19

No. 19

ORDER OF COURT OF APPEAL

Order of Court  
of Appeal

30 Coram: The Honourable Dato Sir James Thomson P.M.N  
P.J.K., Chief Justice, Federation of  
Malaya.  
The Honourable Mr. Justice Hill, B.D.L.,  
Judge of Appeal, Federation of Malaya.  
The Honourable Tuan Syed Sheh Barakbah,  
B.D.L., Judge of Appeal, Federation of  
Malaya.

28th February  
1963

IN OPEN COURT

In the Court  
of Appeal at  
Kuala Lumpur

This 28th day of February, 1963

No. 19

Order of  
Court of  
Appeal

28th February  
1963  
continued

THIS APPEAL from the decision of the Honourable Dato Justice Hashim given at Kuala Lumpur on the 14th day of August, 1962, coming on for hearing on the 8th day of January, 1963 in the presence of Mr. N.A. Marjoribanks of Counsel for the Appellants and Mr. R. Ramani, (Mr. K.A. Menon with him) of Counsel for the Respondents AND UPON READING the Record of Appeal filed herein AND UPON HEARING Counsel as aforesaid for the parties this Court did order that this Appeal do stand adjourned for judgment AND UPON the same coming on for judgment this day in the presence of Mr. Lam Khuan Kit of Counsel for the Appellants and Mr. K. A. Menon of Counsel for the Respondents IT IS ORDERED that the Appeal be allowed and the order for possession be and is hereby set aside AND IT IS ORDERED that the Counterclaim be and is hereby dismissed and that the order dated the 14th day of August, 1962 be varied accordingly and that the Respondents do recover from the Appellants arrears of rent at the rate of \$200.80 per mensem from 1st day of February 1958 to the date of the judgment AND IT IS ORDERED that the Respondents do pay the Appellants the costs of this Appeal AND IT IS LASTLY ORDERED that the sum of \$500.00 (Dollars Five hundred only) lodged in Court as security for the costs of this Appeal be paid out to the Appellants.

10

20

Given under my hand and the seal of the  
Court this 28th day of February, 1963.

30

SEAL

Sgd. Raja Azlan Shah,

REGISTRAR,  
COURT OF APPEAL,  
FEDERATION OF MALAYA.

NO.20

ORDER GRANTING FINAL LEAVE TO APPEAL TO H.M. THE  
YANG DI-PERTUAN AGONG

In the Court  
of Appeal at  
Kuala Lumpur

IN THE SUPREME COURT OF THE FEDERATION OF MALAYA

No. 20

IN THE COURT OF APPEAL AT KUALA LUMPUR  
FEDERATION OF MALAYA CIVIL APPEAL NO.48 OF 1962

Order granting  
Final Leave to  
Appeal to H.M.  
the Yang di-  
Pertuan Agong

Between

28th August 1963

10

- 1. Devraj Nahar alias Devaraj Nahah
- 2. Labh Singh
- 3. Harbans Singh Appellants

- and -

Gian Singh & Co. Respondents

(In the Matter of Kuala Lumpur High  
Court - Civil Suit No. 69 of 1959

Between

Gian Singh & Co. Plaintiffs

- and -

20

- 1. Devraj Nahar alias Devaraj Nahah
- 2. Labh Singh
- 3. Harbans Singh Defendants)

CORAM: THE HONOURABLE DATO SIR JAMES THOMSON,  
P.M.N., P.J.K., CHIEF JUSTICE:  
FEDERATION OF MALAYA:

THE HONOURABLE MR. JUSTICE SYED SHEH  
BARAKBAH, B.D.L., JUDGE OF APPEAL  
FEDERATION OF MALAYA: and

THE HONOURABLE MR. JUSTICE HILL, JUDGE,  
FEDERATION OF MALAYA

IN OPEN COURT

In the Court  
of Appeal at  
Kuala Lumpur

This 28th day of August 1963

No.20

Order granting  
Final Leave to  
Appeal to H.M.  
the Yang di-  
Pertuan Agong

28th August  
1963  
continued

UPON MOTION made unto this Court this day by Mr. K.A. Menon of Counsel for the Respondents abovenamed in the presence of Mr. K.K. Lam of Counsel for the Appellants abovenamed AND UPON READING the Notice of Motion dated the 20th day of August 1963 and the Affidavit of Ajit Singh affirmed on the 19th day of August 1963 and filed herein in support of the Motion AND UPON HEARING Counsel as aforesaid for the parties:

10

IT IS ORDERED that the Respondents abovenamed be and are hereby granted final leave to appeal to His Majesty the Yang di-Pertuan Agong from that part of the Judgment and Order of the Court of Appeal dated the 28th day of February 1963 pursuant thereto refusing to the Respondents vacant possession of premises No. 11 Mountbatten Road, Kuala Lumpur:

AND IT IS FURTHER ORDERED that the costs of this Motion be costs in the Appeal.

20

Given under my hand and the Seal of the Court this 28th day of August, 1963.

(L.S) Sgd. RAJA AZLAN SHAH,  
REGISTRAR,  
COURT OF APPEAL,  
FEDERATION OF MALAYA.

---



P "A" pp. 1 to 11. Lease: Chua Cheng Bok to  
Surjut Singh and Pritam Singh. 12th April 1938.

(This Exhibit being referable only to the  
Plaintiffs title to the property, is not printed).

Exhibits

P"A" pp. 1 to 11

Lease: Chua Cheng  
Bok to Surjut  
Singh and  
Pritam Singh

12th April 1938

D.5 Receipt: Gian Singh & Co. to Nahar & Co.  
21st October, 1946.

D.5

Receipt: Gian  
Singh & Co. to  
Nahar & Co.

N No. 3060

21.10.46.

GIAN SINGH & CO.,

21st October,  
1946.

Silk and General Merchants, Drapers,  
Tailors, Outfitters and House  
Furnishers.

10

20, Java Street,  
Kuala Lumpur.

Received from M/S Nahar & Co

the sum of Dollars Two hundred and eighty only  
in payment of Account to Rent No. 18, Java  
Street.

With thanks

for Gian Singh & Co.

20

Sgd. ?

₹280/-

Exhibits

D.4 Receipt: Gian Singh & Co. to Nahar &Co. 3rd April, 1947

D.4

N No. 2019

3.4.1947.

Receipt: Gian  
Singh & Co.  
to Nahar & Co

GIAN SINGH &amp; CO.

3rd April  
1947Silk and General Merchants, Drapers,  
Tailors, Outfitters and House  
Furnishers.

20, Java Street, Kuala Lumpur.

Received from M/S Nahar &amp; Co.

the sum of Dollars One hundred and forty only 10  
in payment of Account to Rent No. 18 Java Street.

With thanks

for Gian Singh &amp; Co.

Sgd. ?

\$140/-

D.7

D.7 Receipt: Gian Singh & Co. to Nahar & Co.6th February, 1948Receipt:  
Gian Singh  
& Co. to  
Nahar & Co

No. 12

6.2.48.

6th February  
1948

GIAN SINGH &amp; CO.

20, Mountbatten Road, Kuala Lumpur.

20

HOUSE RENT RECEIPT

Received from M/S Nahar &amp; Co.

the sum of Dollars One hundred and forty only  
being payment of Rent No. 18 Mountbatten Road  
for January 1948.

With thanks

For Gian Singh &amp; Co.

Sgd. ?

\$140/-

P "A" p. 12. Letter: Estate of Chua Cheng Bok  
to Gian Singh & Co. 19th February, 1948

(This Exhibit being a letter to the Appellants from their Head Landlords, is not printed).

Exhibits

P "A" p. 12

Letter: Estate of Chua Cheng Bok to Gian Singh & Co.

19th February 1948

\* D.8 Letter: Gian Singh & Co., to Nahar & Co. 20th February, 1948

D.8

Letter: Gian Singh & Co., to Nahar & Co.

20th February 1948

10

GIAN SINGH & CO.,  
20, Java Street,  
Kuala Lumpur.

20th February, 1948.

Messrs. Nahar & Co.,  
Occupier House No. 18 Java Street,  
KUALA LUMPUR.

Dear Sirs,

Re: Premises No. 18, Java Street

20

We wish to inform you that the rent for the above premises, of which you are the tenant, is hereby increased to \$175.00 per mensem as on and from the 1st day of March 1948, in accordance with the provisions of the Control of Rent Ordinance 1948.

We further wish to inform you that the monthly rent should be paid in our Office, before the last day of every month.

Yours faithfully,

GIAN SINGH & CO.

Sgd: ?  
Partner

30

\* This is the same Exhibit as P "A". p. 13.

Exhibits P "A" p. 14. Letter: Gian Singh & Co. to Estate of Chua Cheng Bok. 26th February, 1948

P "A" p.14

Letter: Gian Singh & Co. to Estate of Chua Cheng Bok  
(This Exhibit being a letter from the Appellants to their Head Landlords, is not printed).

26th February 1948

D.1

D.1 Receipt: Gian Singh & Co. to Nahar & Co.

Receipt: Gian Singh & Co. to Nahar & Co.

6th December, 1948

Tenancy rights are not transferable without the authority of the Landlord.

6th December 1948

No. 273

6.12.1948.

10

GIAN SINGH & CO.

20, Mountbatten Road, Kuala Lumpur.

HOUSE RENT RECEIPT

Received from M/S Nahar & Co.

the sum of Dollars One Hundred and seventy five only

being payment of rent No. 18 Java Street

With thanks

for Gian Singh & Co.

Sgd. ?

₹175/-

20

D.2 Receipt: Gian Singh & Co., to Nahar & Co.

7th March, 1949

No. 1677

7.3.1949.

GIAN SINGH & CO,  
20, Mountbatten Road,  
P.O.Box 34,  
Kuala Lumpur.

Exhibits

D.2

Receipt: Gian  
Singh & Co.  
to Nahar & Co.

7th March 1949

OFFICIAL RECEIPT

Received from M/S Nahar & Co.

10 the sum of Dollars One hundred and seventy five  
only  
being payment Rent No. 18 M.B. Road for February  
1949

With thanks

For Gian Singh & Co.

Sgd. ?

₹175/-

D.3 Receipt: Gian Singh & Co. to Nahar & Co.

7th October 1949

20 (1) No tenancy will be recognized by the Landlord  
unless taken direct from him.  
(2) This house is not to be sublet or assigned  
without the written consent of the Landlord.  
N. 624 7.10.1949

D.3

Receipt: Gian  
Singh & Co. to  
Nahar & Co.

7th October  
1949

GIAN SINGH & CO.  
20 Mountbatten Road, Kuala Lumpur.

HOUSE RENT RECEIPT

Received from M/S Nahar & Co.

30 the sum of Dollars One hundred & seventy five only  
being payment of rent No. 18 Mt.Batt: Rd., for  
September 1949.

With thanks

for Gian Singh & Co.

Sgd. ?

₹175/-

Exhibits

P "A" p. 15. Letter: Benjamin & Sen to Nahar & Co. 24th July, 1953

P "A" p.15

Letter:  
Benjamin &  
Sen to  
Nahar & Co

BENJAMIN & SEN,  
ADVOCATES & SOLICITORS

No. 45, Mountbatten Road,  
Kuala Lumpur.

24th July  
1953

A.R.REGISTERED

24th July, 1953.

Messrs. Nahar & Co,  
113, North Bridge Road,  
SINGAPORE.

10

Dear Sirs,

Re: Premises No. 18 Mountbatten  
Road, Kuala Lumpur

We are instructed by Messrs. Gian Singh & Co, Kuala Lumpur that you occupy the ground floor of premises No. 18 Mountbatten Road, Kuala Lumpur, as our clients' sub-tenant.

Our clients instruct us that the ground floor was sublet to you on condition that you carry on therein business in sports goods and that you do not sublet or assign the whole or any part of the premises let to you without the written consent of our clients and that you covenanted not to sublet or assign the tenancy granted to you by our clients and to do business in sports goods only. 20

Our clients understand that you intend to sublet or assign the ground floor of the above premises to some third party.

TAKE NOTICE that if you assign or sublet the whole or any portion of the ground floor of the above premises let to you our clients will take immediate proceedings to eject you and also any other person or persons who may be in occupation as your assignees or sub-tenants. 30

Yours faithfully,  
c.c Sgd. Benjamin & Sen.

Messrs. Nahar & Co,  
18, Mountbatten Road, Kuala Lumpur.

P "A" p. 16. Letter: Nahar & Co., to Benjamin  
& Sen. 27th July, 1953.

Exhibits

P "A" p. 16

NAHAR & COMPANY,  
113, North Bridge Road,  
Singapore.

Letter: Nahar  
& Co., to  
Benjamin & Sen

27th July 1953

27th July, 1953.

REGISTERED

10 Messrs. Benjamin & Sen,  
45, Mountbatten Road,  
Kuala Lumpur.

Dear Sirs,

Re: Premises 18, Mountbatten Road,  
Kuala Lumpur

Your registered letter with regard to the above premises has been received by us and we have noted what you have written with the instructions of Messrs. Gian Singh & Co, K.L.

20 Before we write you anything in detail we would like to request you to please let us have a copy of the letter of conditions on which this shop was sublet to us and the name of the person who signed such letter and when.

Yours faithfully,

For Nahar & Company.

Manager.

Exhibits P "A" p. 17. Letter: Benjamin & Sen to Nahar

P "A" p. 17

Letter:  
Benjamin &  
Sen to Nahar  
& Co.

10th August  
1953

& Co. 10th August, 1953

BENJAMIN & SEN,  
ADVOCATES & SOLICITORS.

45, Mountbatten Road,  
Kuala Lumpur.

10th August, 1953.

Dear Sirs,

We regret the delay in replying to your letter dated 27th July. It was partly due to our client being out of town.

10

We are instructed it was a verbal arrangement at the time of letting but our client's receipts leave no doubt about the terms.

Yours faithfully,

Sgd. Benjamin & Sen.

Messrs. Nahar & Company,  
113, North Bridge Road,  
SINGAPORE.



D.6 Receipt: Gian Singh & Co. to Nahar & Co.

28th February, 1958

Exhibits

D.6

- (1) No tenancy will be recognized by the Landlord unless taken direct from him.
- (2) This house is not to be sublet or assigned without the written consent of the Landlord.

Receipt: Gian Singh & Co. to Nahar & Co.

28th February 1958

No. 2279

28/2/58.

GIAN SINGH & CO,

20, Mountbatten Road,  
Kuala Lumpur.

10

HOUSE RENT RECEIPT

Received from M/S Nahar & Co

the sum of Dollars One hundred seventy five and cents nil

being payment of rent No. 11, Mountbatten Road for January 1958

With thanks

For Gian Singh & Co.

Sgd. ?

20

₹175/-

Exhibits

\* D.9 Letter: Estate of Chua Cheng Bok to  
Gian Singh & Co. 28th February, 1958

D.9

Letter:  
Estate of  
Chua Cheng  
Bok to Gian  
Singh & Co.

ESTATE OF CHUA CHENG BOK (deceased)  
87, HIGH STREET (TOP FLOOR),  
KUALA LUMPUR.

28th February, 1958

28th February  
1958

Our Ref: No. A. 7974

M/s Gian Singh & Co.,  
11 & 13, Mountbatten Road,  
Kuala Lumpur.

10

Dear Sirs,

Nos. 11 & 13, Mountbatten Road, K.Lumpur

We shall be glad if you will send us your  
cheque for \$1,868.06, to refund us for the fol-  
lowing which we have already paid:-

Quit Rents for 1959	\$ 55.60
Assessment for 1st half 1958	<u>1812.46</u>
	<u>\$1868.06</u>

Yours faithfully,

ESTATE OF CHUA CHENG BOK (DECD),

20

Sgd. Illegible.

Executor &amp; Trustee

Has this been increased. If so Nahar & Co.,  
rent must be increased also.

Paid.

6/8

\* This is the same as P "A" p.18.

P "A" p. 22 Letter: Gian Singh & Co. to Nahar  
& Co. 6th March, 1958

6th March, 1958

Messrs. Nahar & Co.,  
11, Mountbatten Road,  
Kuala Lumpur.

Dear Sirs,

Premises No. 11 Mountbatten Road, K.L  
Revision of KLM Assessment 1958

Exhibits

P "A" p.22

Letter: Gian  
Singh & Co.  
to Nahar & Co.

6th March 1958

10

As you are probably aware that the K.L. Municipality has increased the Assessment with effect from 1st January 1958, which resulted the rent being increased on our building 11/13 Mountbatten Road.

Please note your rent payable to us as from January 1958 onwards will be \$200.80 (Dollars Two hundred only and Cents Eighty).

20

Kindly confirm this is agreeable to you, and be good enough to pay us your rent at this increased rate viz: \$200.80 as from January 1958 onwards.

Thanking you,

Yours faithfully,

\*

\* Exhibit unsigned. Original believed to have been signed by Arjit (or Ajit) Singh for Gian Singh & Co. See Notes of Arjit Singh's evidence.

Exhibits

P "A" pp. 25 - 32. Agreement between theRespondents. 24th March, 1958P "A" pp.  
25 - 32Agreement  
between  
the  
Respondents24th March  
1958

THIS INDENTURE is made the 24th day of MARCH one thousand nine hundred and fifty eight (1958) Between DEVRAJ NAHAR (son of Amichand) of No. 11 Mountbatten Road, Kuala Lumpur, Merchant (hereinafter referred to as "Devraj") of the first part, LABH SINGH (son of Sardar Dhian Singh) of No. 138 Race Course Road, Singapore, Merchant (hereinafter referred to as "Labh Singh") of the second part and HARBANS SINGH (son of Sardar Hazur Singh) of No.43 Bras Basah Road, Singapore, Merchant, (Hereinafter referred to as "Harbans Singh") of the third part

10

WITNESSETH that Devraj, Labh Singh and Harbans Singh hereby mutually agree to become partners in the business of "Nahar & Co" now carried on by Devraj alone, at No. 11 Mountbatten Road, Kuala Lumpur for the period and on the terms hereinafter expressed that is to say:

1. The partnership shall be deemed to have commenced on the 24th day of March 1958 and shall continue for the term of two years from that date.

20

2. Any partner may at the end of two years or any subsequent year of the partnership retire from the partnership on giving not less than four calendar months previous notice in writing to the other partners or partner or leaving the same at the place of business of the partnership and at the expiration of such year the partnership shall determine accordingly as to the partner leaving or giving such notice and thereupon the provisions of clauses 17 and 18 of these presents shall (with the substitution of the continuing partner or partners for the surviving partner or partners and of the retiring partner for the representative of the deceased partner and other consequential modifications) apply as if the retiring partner had died at the expiration of such year.

30

3. The death or retirement of any partner shall not dissolve the partnership as to the other partners.

4. The partnership business shall be that of dealers in sports goods and other connected businesses, general merchants commission agents under the style

40

or firm name of "Nahar & Co" and shall be carried on at No. 11 Mountbatten Road, Kuala Lumpur or at such other place or places as the partners may from time to time agree upon.

Exhibits

P "A" pp.25-32

5. Subject to the provisions of these presents the partners shall be entitled to the capital and property for the time being of the partnership and to the goodwill of the business in equal shares.

Agreement  
between the  
Respondents

24th March 1958  
continued

10 6. The capital of the partnership shall consist of the net value of the stock-in-trade book debts and other assets of the business of "Nahar & Co" heretofore carried on by Devraj at No. 11 Mountbatten Road, Kuala Lumpur less the outstanding liabilities of that business and for purposes of computation the said assets shall be taken to be of the net value of  $\text{RM}30,000/-$  which shall be credited to the three partners equally as their share of capital.

20 7. If any further capital shall at any time or times be considered by the partners to be necessary or expedient for efficiently carrying on the business the same shall be contributed by the partners in the shares in which they are for the time being entitled in the existing capital of the partnership.

8. The banker of the partnership shall be United Commercial Bank Ltd., or such other bank as the partners shall from time to time agree upon.

30 9. The net profits of the partnership shall belong to the partners in equal shares.

10. Each partner shall:-

(a) Be just and faithful to the others or other in all transactions relating to the partnership.

40 (b) At all times give to the others or other a just and faithful account of the same and also upon every reasonable request furnish a full and correct explanation thereof to the others or other.

Exhibits

11. No partner shall without the written consent of the other partners or partner:-

P"A"pp.25-32

Agreement  
between the  
Respondents

24th March  
1958  
continued

(a) Engage or (except for gross misconduct) dismiss any clerk traveller servant or other employee of the partnership or take in apprentice;

(b) Employ any of the money goods or effects of the partnership or pledge the credit thereof except in the ordinary course of business and upon the account or for the benefit of the partnership;

(c) Lend money or give credit on behalf of the partnership to or have any dealing with any person company or firm to whom the other partners or partner shall previously in writing have forbidden him to trust or deal with and any loss incurred through the breach of this provision shall be made to the partnership by the partner incurring the same; 10

(d) Enter into any bond or become bail or surety or security with or for any person or do or knowingly cause or suffer to be done anything whereby the partnership property or any part thereof be seized attached extended or taken in execution; 20

(e) Assign or mortgage or charge his share in the partnership or any part of such share or make any other person a partner with him therein;

(f) Compromise or compound or (except upon payment thereof in full) release or discharge any debt due to the partnership.

12. Labh Singh shall be the managing partner and will sign all cheques on behalf of the partnership but in his absence from Kuala Lumpur or in the event of his illness or incapacity any other partner may sign cheques on behalf of the firm and Labh Singh shall also be empowered to sign endorse accept any bond bill note or other security, on behalf of the firm. 30

13. Each partner shall at all times duly and punctually pay and discharge his separate and private debts and engagements whether present or future and keep indemnified therefrom and from all actions proceedings costs claims and demands in respect thereof the partnership property and the other partners or partner and their or his representative estate and effects. 40

14. Proper books of account shall be kept wherein shall be entered particulars of all monies goods or effects belonging to or owing to or by the partnership or paid received sold or purchased in the course of the partnership business and all such other transactions matters and things relating to the said business as are usually entered in books of account kept by persons engaged in a business of the like character.

Exhibits

P"A" pp.25-32Agreement  
Between the  
Respondents24th March 1958  
continued

10 15. As soon as practicable after the 31st day of December in every year during the continuance of the partnership a general account and valuation shall be taken and made up to such 31st day of December of the stock-in-trade credits property effects debts and liabilities of the partnership and of all transactions matters and things usually comprehended in a general account of the like nature. Every such account and valuation shall be balanced according to and signed by all the  
20 partners and when so signed shall be binding on all the partners except that if any manifest error therein be detected and pointed out by any partner to the others or other of them within three calendar months after such signature thereof such error shall be forthwith rectified. Im-  
30 mediately after the signing and settling of any such annual account and valuation each partner shall be entitled to draw out and receive his share of the net profits of the business for the then past year on bringing into account any monthly sums previously drawn out by him.

40 16. Upon the determination of the partnership a full and general account shall be taken of the assets credits debts and liabilities of the partnership and of the transactions and dealings thereof and with all convenient speed such assets and credits shall be sold realised and got in and the profits applied in paying and discharging such debts and liabilities and the expenses of and incidental to the premises and the winding up of the partnership affairs and subject thereto in paying to each partner any unpaid profits which may be due to him and his share of the capital and the balance if any of such profits shall be divided between the partners in equal shares and the partners respectively shall execute do or concur in all necessary or proper instruments acts matters and things for effecting or facilitating

## Exhibits

P"A"pp.25-32Agreement  
between the  
Respondents24th March  
1958  
continued

the sale realisation and getting in of the partnership assets and credits and the due application and division of the proceeds thereof and for their mutual release or indemnity or otherwise.

17. If any partner shall die during the continuance of the partnership the surviving partners or partner shall as from the date of such death and if more than one in proportion in which they were at such date entitled to share in the net profits of the partnership businesses succeed to the share of the deceased partner in the partnership business and the property and goodwill thereof and shall undertake all the debts liabilities and obligations of the partnership and pay to the representatives of the deceased partner as the price of such share.

10

(a) His share in the capital and property of the partnership such share if he die before the date hereinbefore appointed for taking the first annual account to be the amount of capital brought in by him and if he die on or after that day to be his share in such capital and property as ascertained by the account taken on the annual account day on or next after which he shall have died (hereinafter called "the last annual account date") or as the same shall be ascertained on the taking of such account by the parties interested.

20

(b) In lieu of current profits an allowance at 6% per annum on his share share in the capital and property of the partnership from the last annual account date or from the commencement of the partnership as the case may be to the date of such death less any sums drawn out by him during that period on account of current profits. PROVIDED ALWAYS that it shall be lawful for the surviving partner or partners to elect not to purchase the share of the deceased partner on giving notice in writing of such election to the representative of such deceased partner of (if there be none) on leaving such notice at the place of business of the partnership within three calendar months after his death and in that case the partnership shall be deemed to have been determined at the date of the giving or leaving such notice as aforesaid and thereupon the affairs of the partnership shall be wound up as provided in clause 16 hereof and in the meantime

30

40



the business shall be deemed to have been carried on by the surviving partners or partner on the joint account of themselves or himself and the representatives of the deceased partner.

Exhibits

P"A"pp.25-32

18. The amount if any payable under the last preceding clause hereof as an allowance in lieu of current profits to the representatives of the deceased partner shall be paid within six calendar months after his death and the sum payable under the same clause to the representatives of a deceased partner as his share in the capital and property of the partnership shall be paid as soon as is conveniently may be after the death and in any case within twelve calendar months thereafter and the surviving partners or partner shall by their or his bond or covenant indemnify the representatives of the estate of the deceased partner from the debts and liabilities of the partnership and upon such payment being made an indemnity given the representatives of the deceased partner shall execute and do all acts matters and things necessary or proper for vesting the share of such partner in the surviving partners or partner and enabling them or him to recover and get in the outstanding assets of the partnership.

Agreement  
between the  
Respondents

24th March 1958  
continued

19. All disputes and questions whatsoever which shall either during the partnership or afterwards arise between the partners or their respective representatives or between any partners or partner and the representatives of any other partner touching these presents or the construction or application thereof or any clause or thing herein contained or any account valuation or division of assets debts or liabilities to be made hereunder or as to any act deed or omission of any partner or as to any other matter in any way relating to the partnership business or the affairs thereof or the rights debts or liabilities of any person under these presents shall be referred to a single arbitrator in case the parties agree upon otherwise to two arbitrators one to be appointed by

Exhibits

P"A"pp.25-32

each party to the difference in accordance with and subject to the provisions of the Arbitration Ordinance or any statutory modification thereof for the time being in force.

Agreement  
between the  
Respondents

SIGNED SEALED AND DELIVERED )  
by the abovenamed DEVRAJ )  
NAHAR in the presence of:- )

Sgd.

24th March  
1958  
continued

Sgd.

Advocate & Solicitor  
Singapore.

10

SIGNED SEALED AND DELIVERED )  
by the abovenamed LABH SINGH )  
in the presence of:- )

Sgd.

Sgd.

Advocate & Solicitor,  
Singapore.

SIGNED SEALED AND DELIVERED )  
by the abovenamed HARBANS )  
SINGH in the presence of:- )

Sgd.

Sgd.

Advocate & Solicitor,  
Singapore

20

P "A" p. 23. Letter: Gian Singh & Co. to Devraj Nahar, 26th March, 1958

GIAN SINGH & CO.,  
Silk and General Merchants,  
130, Mountbatten Road,  
Kuala Lumpur.

Registered

26th March, 1958.

Devraj Nahar Esq.,  
c/o Nahar & Co.,  
113, North Bridge Road,  
SINGAPORE 6.

10

Dear Sir,

Re: Tenancy No.11 Mountbatten Rd, K.L

I understand that you are taking stock of your business with a view to handing over the same to a purchaser. I am sorry to note you are doing it in spite of my having told you a long time ago that we will not agree to the tenancy being given by you to anyone else.

20

You may remember that as long ago as the end of 1955, when your father was carrying on the business and wanted to retire, we told him that we wished to recover possession of that portion of our own business. It was because he requested us to continue the tenancy in your favour, as his son, that we agreed. Because of your father's long association with us, we have not even taken advantage of your persistent default in paying rent from month to month.

30

When you explained to me some time ago that the business was bad, and that you had no alternative but to sell the business to somebody else, I pointed out to you that I will not agree to some other person becoming a tenant. I then gave notice that if you could not carry on the business, you must return the premises to me. I am therefore surprised that you are continuing with the negotiations of the sale of the business, assuming that I will agree to a new tenant.

40

I now formally write to inform you that I will not accept any new tenant.

Please also treat this as a notice calling upon you to quit and deliver up vacant possession of the premises on or before 30th April, 1958.

Yours faithfully,

\*

\*Exhibit unsigned. Original believed to have been signed by Arjit (or Ajit) Singh for Gian Singh & Co. See Notes of Arjit Singh's evidence.

Exhibits

P"A". p.23

Letter: Gian Singh & Co. to Devraj Nahar,

26th March, 1958.

Exhibits P "A" p. 24. Letter: Gian Singh & Co. to Harbans Singh, 26th March, 1958

P"A" p.24

Letter: Gian Singh & Co to Harbans Singh

26th March, 1958

GIAN SINGH & CO.,  
Silk and General Merchants,  
130, Mountbatten Road,  
Kuala Lumpur.

Registered

26th March, 1958.

Mr. Harbans Singh,  
c/o Western Corporation,  
43, Bras Basah Road,  
SINGAPORE 7.

10

Dear Sir,

I understand that you are negotiating with Mr. Devaraj Nahar for the purchase of the business of Nahar & Co., and taking over the tenancy between Devaraj Nahar trading as Nahar & Co and myself.

I send you herewith copy of a letter I have written to him, which is self-explanatory.

Please note that I cannot agree to your becoming a tenant of these premises without my permission and I have long ago informed Devaraj Nahar that as I require the premises for myself, I cannot agree to his introducing a tenant to my premises at his own will and pleasure.

20

Yours faithfully,

\*

\* Exhibit unsigned. Original believed to have been signed Arjit (or Ajit) Singh for Gian Singh & Co. See Notes of Arjit Singh's evidence.

P "A" p. 35. Letter: Mallal & Namazie to Gian Singh Exhibits  
& Co. 3rd April, 1958

MALLAL & NAMAZIE,  
 ADVOCATES & SOLICITORS

22a, Malacca Street,  
 Singapore, 1.

Our Ref: MJN/RL.

3rd April, 1958.

P "A" p.35

Letter: Mallal  
 & Namazie to  
 Gian Singh & Co

3rd April 1958

Dear Sirs,

Re: No. 11 Mountbatten Road

10 Your letter of 26th March 1958 addressed to Mr. Devraj Nahar has been handed to us with instructions to reply thereto.

At the outset our client denies that there is any restriction in the transfer of the tenancy of the above premises or the subletting of a portion thereof. We say this notwithstanding your unilateral insertion, without any right whatsoever of the clause on the rent receipt which reads as follows:-

20 "Tenancy rights are not transferable without the authority of the Landlord"

to which was later added the following clause:-

"This house is not to be sublet or assigned without the written consent of the Landlord".

Our client or his predecessor not having agreed to either of these clauses is not bound by them.

30 Our client is not selling out his business. He will continue his business as he has done in the past but in order to raise capital he has had to take partners into his business. The firm of "Nahar & Co" will continue with our client and two others as partners.

As regards paragraph 2 of your letter the facts are that when our client's father transferred

Exhibits

P "A"p.35Letter:  
Mallal &  
Namazie  
to Gian  
Singh & Co3rd April  
1958  
continued

the business to our client you accepted him as your tenant, not because our client was his son, but because there was no restriction on transfer or subletting. There seems little doubt on this point as on 24th July 1953, when your Solicitors Messrs. Benjamin & Sen wrote stating that our client's father had covenanted not to sublet or assign the tenancy in question and you were asked to produce the agreement setting out this covenant your Solicitors replied stating that the agreement was oral only. Our client has enquired from his father as to whether there was any such oral agreement and was informed that there was none. Our client therefore denies that there was any such agreement and reiterates that he is not bound by the restrictions which you are trying to create for your convenience.

10

Paragraph 3 of your letter is also denied. No such alleged conversation took place between our client and any member or representative of your firm.

20

Our client notes the last paragraph of your letter and instructs us to inform you that he will endeavour to find suitable alternative accommodation but if he is unable to do so he will be compelled to continue the occupation of the above premises. If you take proceedings against him for possession he will claim the protection of the law.

Yours faithfully,

Sgd. Mallal &amp; Namazie

Messrs. Gian Singh & Co,  
No. 13, Mountbatten Road,  
Kuala Lumpur.

30

P "A" p. 37. Letter; Gian Singh & Co., to

Mallal & Namazie. 7th April, 1958

GIAN SINGH & CO.,  
13, MOUNTBATTEN ROAD,  
KUALA LUMPUR.

Registered

7th April, 1958

Messrs. Mallal & Namazie,  
22A, Malacca Street,  
SINGAPORE 1.

Exhibits

P"A" p. 37

Letter: Gian  
Singh & Co.  
to Mallal &  
Namazie.

7th April 1958

10 Dear Sirs,

Re: Nahar & Co.

We are in receipt of your letter of 2nd  
April, 1958, Ref: MBN/RL.

20 Para: 2 of your letter is incorrect. Upon  
receipt of the cheque, we prepared a receipt  
showing receipt from "Mr. Devraj Nahar, Proprietor  
Nahar & Co" but a gentleman who brought the cheque  
declined to accept a receipt unless it was made  
out to "Nahar & Co" simply. This, we in turn  
refused to do as we have already informed Mr.  
Devraj Nahar that we understood he was transfer-  
ring the tenancy to someone else and we shall not  
recognise any such tenant.

If your client is willing to accept re-  
ceipt in that form, we are willing to accept your  
cheque. Otherwise we shall, have no alternative  
but to treat your client as being in default and  
take proceedings against him.

30 In the meantime we retain your client's 2  
cheques.

Yours faithfully,

\*

\* Exhibit unsigned. Original believed to be  
signed by Gian Singh & Co.

Exhibits

P "A" p. 38 Letter: Gian Singh & Co. to

Mallal & Namazie. 12th April, 1958

P "A" p.38

12th April, 1958

Letter; Gian  
Singh & Co.  
to Mallal &  
Namazie

Messrs. Mallal & Namazie,  
22a, Malacca Street,  
Singapore 1.

12th April  
1958

Dear Sirs,

Re: No.11 Mountbatten Road

We are in receipt of your letter of the  
3rd April, 1958, Ref: MJN/RL.

10

As we do not have copies of letters, which  
as per your letter were sent by Messrs. Benjamin  
& Sen, nor am I able to get copies from them, I  
shall appreciate if copies of all letters exchanged  
are sent to me, before we reply to your letter  
dated 3rd April.

Thanking you,

Yours faithfully,

\*

\* Exhibit unsigned. Original believed to  
be signed by Gian Singh & Co.

20



P "A" p.39. Letter; Lovelace & Hastings to Gian  
Singh & Co. 14th April, 1958

LOVELACE & HASTINGS,  
ADVOCATES & SOLICITORS.

57, Klyne Street,  
Kuala Lumpur.

Our Ref: LS/CYC/175/58.

14th April, 1958

Messrs. Gian Singh & Co.  
13, Mountbatten Road,  
Kuala Lumpur.

Exhibits

P"A" p. 39

Letter:  
Lovelace &  
Hastings to  
Gian Singh  
& Co.

14th April  
1958

Dear Sirs,

Re Nahar & Company

Your letter dated 7th April 1958 addressed to Messrs. Mallal & Namazie, Advocates & Solicitors, Singapore, has been handed to us with instructions to reply thereto. With reference to paragraph 2 of your letter all rent receipts hithertofore have been issued in the name of Nahar & Co. We fail to see why now you think fit that the receipt is to be issued in the name of Mr. Devraj Nahar, proprietor of Nahar & Co.

Mr. Devraj Nahar is one of the partners of Nahar & Co. Rents for the months of February and March 1958 have been paid to you by two cheques which you have retained.

We are instructed by our clients to send you herewith, which we hereby do, the sum of \$401.60 in cash to cover the aforesaid two cheques. Please return the cheques to us.

You have been all along issuing receipts in the name of Nahar & Co, some of which are signed by you or by one Kirpal Singh. These receipts are in our office and you may inspect them at any time during office hours.

Will you please let us have the receipts for the rent in the name of Nahar & Co, as soon as possible.

Yours faithfully,

Sgd. Lovelace & Hastings

Encl.

Exhibits

P "A" p.41. Letter: Braddell & Ramani to Lovelace & Hastings. 19th April, 1958

19th April 1958.

P"A" p. 41

Letter:  
Braddell &  
Ramani to  
Lovelace &  
Hastings

Messrs. Lovelace & Hastings,  
Advocates & Solicitors, Kuala Lumpur.

Dear Sirs, Re: Nahar & Company

19th April  
1958

We have been consulted by Messrs. Gian Singh & Co. upon your letter to them of the 14th instant. We have also read the earlier correspondence; and wonder in view of what you state in para:1 of your letter, if you have at all seen the letter our clients wrote to Devraj Nahar on the 26th March. If you have not, will you please do so, as it states clearly our clients' attitude.

10

With all deference, it should be obvious to you that "Nahar & Co" is not an entity and has no corporate existence. As long as there was only a proprietor, it did not matter in whose name the receipts were issued. If now knowing that Nahar & Co, has become a partnership which is admitted by you, receipts continue to be issued in favour of Nahar & Co, this can only be done on the basis that our clients recognise and approve the assignment of the tenancy to three different persons, and this quite clearly our clients refuse and have refused to do.

20

It is not necessary for our clients to inspect their own receipts, but we write to invite your attention to the condition printed on each of them against assignment.

We have therefore no alternative but to return the cash and the cheques which we hereby do.

In any event, as far as our clients are concerned, Devraj Nahar has defaulted on the payment of rent for April before the due date, and our clients are entitled to their rights and remedies thereon.

30

Yours faithfully,  
Sgd. Braddell & Ramani.

Encl: \$401.60 in cash  
also 2 cheques:- F037818 dated )  
1.4.58 for \$200.80 ) United  
F037817 dated 27.3.58 for ) Commercial  
\$200.80 ) Bank.

40

No.	Name of Chinese associate characters	Other Chinese characters	Actual Sex	Date of birth	Nation-ality and race	Date of entry into business	Date of withdrawal from business	Date of registration	Particulars	Usual address	Remarks
	Amin Chand Nahar son of F. Shankar Dass		Male	1934	Indian	20.10.53	9.6.53		Sole-proprietor	Singapore	
			<p><u>FORM C DATED 9.1.1956 - CERTIFIED ON 10.1.1956</u>  The business was terminated in the following circumstances namely:-  " That I am old and sickly and wish to retire from business, and therefore I am closing down from the 31st of December 1955".</p>								
			<p><u>FORM A DATED 10.1.1956 - CERTIFIED ON 10.1.1956</u>  The principal place of business:-  11, Mountbatten Road, Kuala Lumpur.</p>								
	Devraj Nahar		Male	1.1.56	Indian Fubjabi	10.1.56	9.1.56		Sole-proprietor	Singapore	
			<p><u>RE-REGISTRATION OF BUSINESS - FORM B DATED 8.4.1958</u>  Certified on 12.4.1958  <u>PARTNERSHIP BUSINESS</u></p>								
1.	Devraj Nahar		Male	26.2.26	Citizen of U.K. & Colonies Indian Race Singapore Citizen	1.1.56	12.4.58	8.4.58	Partner	113, North Bridge Road, Singapore.	
2.	Labh Singh		Male	15.1.1909	Indian Race	24.3.58	12.4.58	8.4.58	Partner	138, Race Course Road, Singapore.	
3.	Harbans Singh		Male	15.7.26	Indian National Indian Race	24.3.58	12.4.58	8.4.58	Partner	43, Bras Basah Road, Singapore.	
			<p>The General nature of the business:  Sports Goods, General Merchants and Commission Agents.</p>								
			<p>The principal place of the business:-  11, Mountbatten Road, Kuala Lumpur.</p>								
			<p>Constitution of business:- Partnership.</p>								

## THE REGISTRATION OF BUSINESS ORDINANCE, 1956

COPY OF THE ENTRIES IN RESPECT OF THE  
CERTIFIED COPY

UNDERMENTIONED BUSINESS ISSUED UNDER THE  
PROVISION OF RULE 14 (b)

- |    |                                     |  |
|----|-------------------------------------|--|
| 1. | The Business name                   | Nahar & Company  |
| 2. | No. of certificate                  | 21487  |
| 3. | Constitution of business            | sole-proprietor  |
| 4. | The general nature of the business  | Sports Merchants   |
| 5. | The principal place of the business | (Kuala Lumpur & Singapore)<br>Nahar & Co., 18, Mountbatten<br>Road, K.L. |
| 6. | The date of commencement            | In 1934  |
| 7. | Branches of the business            | Singapore  |

CERTIFIED TRUE COPY IN RESPECT  
OF ENTRIES OF FORMS A, C, A & B  
DATE THIS 20th day of May 1958  
Sgd. Illegible

Dy. REGISTRAR OF BUSINESSES  
FEDERATION OF MALAYA

8. The terms of the partnership business and of the associates thereof are contained in a written agreement dated ..... a copy of which is annexed to this form verified by my signature(s)  
our  
or

there is no written agreement as to the terms of the partnership.

P "A" pp. 19 to 21. Letter and Receipts: Estate  
of Chua Cheng Bok to Gian Singh & Co. 5th and 6th  
August, 1958 and 20th January, 1959

(These Exhibits being letter and receipts  
to the Appellants from their Head Landlords, are  
not printed).

Exhibits

P "A" pp.19-21

Letter and  
Receipts:  
Estate of Chua  
Cheng Bok to  
Gian Singh & Co  
5th and 6th  
August, 1958 and  
20th January  
1959

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL  
ON APPEAL FROM  
THE SUPREME COURT OF THE FEDERATION OF MALAYA  
IN THE COURT OF APPEAL AT KUALA LUMPUR

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B E T W E E N :

GIAN SINGH & CO (Plaintiffs) Appellants

-- and --

1. DEVRAJ NAHAR ALIAS DEVARAJ NAHAH  
2. LABH SINGH (Defendants) Respondents  
3. HARBANS SINGH

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RECORD OF PROCEEDINGS

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GRAHAM PAGE & CO,  
Whitehall House,  
41, Whitehall,  
London, S.W.1.

Appellants' Solicitors.

BULCRAIG & DAVIS,  
Amberley House,  
Norfolk Street,  
Strand, London, W.C.2.

Respondents' Solicitors.