

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**APPEAL FROM ORDER NO.30 OF 2019
WITH
CIVIL APPLICATION NO.12127 OF 2018
IN AO/30/2019**

- 1) Rikhabdas Uttamchand Ajmere,
age 65 years, Occupation Pensioner,
R/o Teli Lane, Digambar Jain Mandir,
Kopargaon.
- 2) Babandas Uttamchand Ajmere,
age 67 years, Occupation Business,
R/o Ashanagar Near Vyapuri Bank,
Nashik Road, Nashik.
- 3) Vardhaman Uttamchand Ajmere,
age 59 years, Occupation ..
R/o Purva Traders Ranapratap
Chowk, Bajajnagar Pandharpur,
Aurangabad.
- 4) Vilas Manikchand Ajmere,
age 55 years, Occupation ..
R/o Ashwini Co-op-Hsg.Society,
Near Bombay Dyeing Labour
Office, Pune Mumbai Road,
Shivajinagar, Pune 5.
- 5) Sau. Kamalabai Tarachand Gangwal,
age 72 years, Occupation Household
work, R/o Shivaji Road, Chanbhar
Galli, Kopargaon, Dist.Ahmednagar.
- 6) Sau. Rekha Madanlal Kasliwal,
age 62 years, Occupation Household
work, R/o E2, Chetana Bazar,
Aurangabad Dist. Aurangabad.

- 7) Sau. Nirmala Omprakashji Sethi,
age 54 years, Occupation Household,
R/o Gandhi Chowk,
M/s. Bachraj Chaganlal Sethi,
Shahaganj, Aurangabad,
Dist. Aurangabad.

**...Appellants
(Orig.Appellants)**

VERSUS

- 1) Gorakh alias Gorakshnath Asaram
Chavre, age 47 years, Occupation
Business,

2) Sahebrao Asaram Chavre,
age 49 years, Occupation Business,

Both R/o Bajar Tal, Kopargaon,
Dist. Ahmednagar.

**...Respondents
(Orig.Respondents)**

.....
Advocate for Appellants : Mr. S. S. Kulkarni
Advocate for Respondents : Mr. S. S. Chapalgaonkar
.....

CORAM : ARUN R. PEDNEKER, J.

**Date of Reserving the Judgment :
01/08/2023**

**Date of Pronouncing the Judgment:
18/08/2023**

JUDGMENT :

1. In this Appeal From Order, the appellants are challenging the order dated 16/06/2017, passed by the learned District Judge, Kopargaon in Civil Appeal No.78 of 2011, whereby the Appellate

Court was pleased to set aside the Judgment and decree dated 31/01/2009, in Regular Civil Suit No.97 of 2007 and remitted the matter back to the Civil Judge, Junior Division, Kopargaon with further direction to re-register the suit afresh with fresh number of suit and to decide the suit as per the provisions of Civil Procedure Code in exercise of the ordinary civil jurisdiction.

2. Brief facts as stated in the Judgment of Appellate court can be summarized as under :-

The plaintiffs filed a suit before the Civil Judge, Junior Division, for possession and recovery of arrears of rent under the provisions of Maharashtra Rent Control Act. It is the case of the plaintiffs that Karbhari Asaram Chaware, brother of the defendants No.1 and 2 was in occupation as a tenant of the suit premises admeasuring 9.29 sq.mtrs at CTS No.1885, situated within the limit of Kopargaon Municipal Council.

3. The monthly rent of the suit premises was Rs.7/-, however after the death of Karbhari, defendants No.1 and 2 started residing in the suit premises unauthorizedly since year 2002. Thereafter, the defendants No.1 and 2 even committed encroachment on the

western portion of CTS No.1885 and made unauthorized construction thereon. The defendants No.1 and 2 even pulled down the entire old construction of the suit premises and made new construction.

4. The defendants No.1 and 2 were not residing along with deceased Karbhari Chaware, and therefore, defendants No.1 and 2 are not the tenants of the suit premises but defendants No.1 and 2 unauthorizedly started residing in the suit premises and even made unauthorized construction thereon without permission of the plaintiffs. The plaintiffs never accepted defendants to be the tenants. The defendants raised permanent structure on the suit premises and they have committed the breach of provisions of the Maharashtra Rent Control Act, 1999.

5. The defendants are also the defaulters as they did not pay rent of the suit premises since January 1985 until 31/01/2009. The defendants have occupied the suit premises after the death of original tenant Karbhari and therefore, plaintiffs brought a suit under the provisions of the Rent Control Act. The plaintiffs further contended that they reasonably and bonafide require the suit

premises for their residence and hospital of son of plaintiff No.1. The plaintiffs issued notice to defendants on 31/01/2007, and thereafter, the suit was filed for eviction against the defendants No.1 and 2, the respondents herein.

6. The defendants No.1 and 2 resisted the suit by filing written statement. It is contention of the defendants No.1 and 2 that they are real brothers of Karbhari Asaram Chaware. Defendants No.1 and 2 along with Karbhari and their mother Tulsabai were residing jointly at the suit premises. After the death of Tulsabai and Karbhari, defendants No.1 and 2 continued to occupy the suit premises. There was flood in Godawari river in the year 2006 and the entire suit premises had sunk under the flood, and therefore, the suit premises was damaged to a great extent. The plaintiffs did not carry out repairs, and therefore, defendants themselves carried out repairs of the suit premises. The defendants No.1 and 2 are the tenants of suit premises. The plaintiff No.1 was getting rent from deceased Tulsabai, and thereafter, from the defendants but the rent receipts were not issued. Money order was also refused, and thereafter, the defendants/ respondents herein deposited the amount in the Court.

7. As regards bonafide requirement of the suit premises, the defendants contended that the plaintiffs have buildings at Teli Galli and near Amardham at Kopargaon. The plaintiffs are also holding the premises near Bajartal, and on the contrary, the defendants are in requirement of the suit premises as they do not have any other property and that comparative hardship is greater than that of plaintiffs, in the event that decree of eviction is passed.

8. The Trial Court on examination of the pleadings, framed issues and answered as under :-

	मुद्दा	निष्कर्ष
१.	प्रतिवादी दावा मिळकतीत अनाधिकारे राहतात, असे वादी शाबीत करतात काय ?	 होय.
२.	प्रतिवादीनी सिटी स.नं.१८८५ च्या पश्चिमेकडील भागात अनाधिकारे अतिक्रमण करून बांधकाम केले, असे वादी शाबीत करतात काय ?	... होय.
३.	प्रतिवादीकडे १९८५ पासून ३१.०१.२००७ पर्यंत एकूण रु.२०३०/- भाडे बाकी आहे, असे वादी शाबीत करतात काय ?	... होय.
४.	वादी थकीत भाडे रकमेवर व्याज मागण्यास पात्र आहेत काय ? असल्यास व्याजाचा दर काय ?	... होय, द.सा.द.शे. ९ टक्के दराने
५.	वादीना प्रतिवादीकडून किती रक्कम घेणे बाकी आहे ?	... रुपये २२४४/-
६.	वादीना दावा मिळकत गरजेसाठी जरुरीची आहे, असे वादी शाबीत करतात काय ?	... होय.
७.	वादीचा दावा मुदतीत आहे काय ?	... निष्प्रभ
८.	वादी दावा मिळकतीचा कब्जा मिळण्यास पात्र आहेत काय ?	... होय.
९.	आदेश व हुकूमनामा काय ?	... अंतिम आदेशाप्रमाणे दावा मंजूर करण्यात येत आहे.

9. The Trial Court after conducting the trial came to the conclusion that the defendants are unauthorizedly using the suit premises. There is no evidence that defendants No.1 and 2 paid rent of the suit premises at any point of time and that defendants No.1 and 2 cannot be treated as tenant of the suit premises.

10. The Trial Court also concluded that the defendants have erected permanent structure over the suit premises and thereby they have made material alterations in the suit premises, and this fact is very much clear from the notice issued by the Kopergaon Municipal Council.

11. The Trial Court also held that the defendants are the defaulters and are in arrears of rent amount. The Trial Court further concluded that the plaintiffs reasonably and bonafide requires the suit premises, and therefore, the plaintiffs are entitled for the relief of possession. The Trial Court, thus decreed the suit in favour of the plaintiff.

12. The defendants filed an appeal before the Appellate Court. The Appellate Court framed followings points for determination and

findings thereon :-

	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether Ld.Civil Judge has rightly entertained this suit under the provisions of Sec. 33 of Mah. Rent Control Act, 1999 ?	...No.
2.	Whether Judgment and decree dt.31.1.2009 delivered by 2 nd Jt.Civil Judge J.D.Kopargaon, in RCS No.97/2007, require interference ?	...Yes.

13. The Appellate Court on going through the plaint and the evidence held that it is specific stand of the plaintiffs that the defendants are not the tenants of the suit premises and defendants No.1 and 2 have unauthorizedly started residing on the suit premises after the demise of Karbhari Chaware in the year 2002. The Appellate Court further observed that the plaintiffs irrespective of the facts that defendants are not the tenants of the suit property, have brought the suit under the provisions of Rent Act, and thereafter, the plaintiffs raised contention that the defendants had not paid rent of the suit premises since 1985 and the plaintiffs reasonably and bonafide requires the suit premises for their own use and occupation and the defendants erected permanent construction on the suit premises.

14. The Appellate Court thus held that the plaintiffs on one hand are coming with the story that the defendants are not tenants of the suit premises and on the other hand seeking relief of possession from the defendants under the provisions of Section 15 and 16 (1) (g) of the Maharashtra Rent Control Act. The Appellate Court finally held that the Civil Judge while answering the issue No.1 came to the conclusion that the defendants No.1 and 2 are not tenant of suit premises, however still the learned trial Judge thereafter while answering issues No.3 to 5 entertained dispute raised by the plaintiffs under the provision of Section 15 and 16 of the Rent Control Act, and the learned Civil Judge came to the conclusion that defendants committed default in payment of the rent of suit premises since January 1985. Thereafter, the Trial Court has even answered issue No.6 in affirmative that plaintiffs reasonably and bonafide require the suit premises for their own use and occupation.

15. The Appellate Court held that when the learned Civil Judge while answering issue No.1 came to the conclusion that defendants are not the tenants of the suit premises and the defendants No.1 and 2 unauthorizedly holding possession of the suit premises, the learned Civil Judge ought not to have entertain the jurisdiction under

the provisions of Rent Control Act.

16. The Appellate Court has held that the the Civil Judge on one hand is holding that defendants are not the tenants of suit premises and at the same time it held that defendants committed default in payment of the rent amount since January 1985 and that the defendants raised permanent structure over suit premises and that plaintiffs reasonably and bonafide require the suit premises for their own use and occupation.

17. The Appellate Court thus set aside the entire Judgment and decree passed by the learned Civil Judge, and the matter was remitted to the Civil Judge with further direction to re-register the suit afresh as ordinary civil suit under Section 9 of the Civil Procedure Code, and thereafter, proceed to decide suit as per the provisions of Civil Procedure Code.

18. The order of the Appellate Court is challenged by the appellants herein. The learned Advocate for the appellants Mr. S. S. Kulkarni submits that the plaint determines the jurisdiction of the Court. The learned Advocate has taken me through paragraphs

No.2 and 3 of the plaint, which reads as under :-

“२. दावा कलम १ यात दर्शविलेली ९.२९ चौ. मिटर तळमजल्यावरील पत्रा असलेली विटा मातीत बांधलेली जागा वादी यांचे आईने मयत कारभारी आसाराम चावरे यांना दरमहा रु.७/- याप्रमाणे भाड्याने दिली. भाड्याचा महीना ब्रिटीश कॅलेंडर प्रमाणे महीन्याच्या एक तारखेस सुरु होवुन महीना अखेरीस संपतो. कारभारी यांचे मृत्यूनंतर म्हणजे सन २००२ पासुन पुढे प्रतिवादी नं.१ यांनी त्या जागेत अनाधीकारे रहाण्यास सुरवात केली. प्रतिवादी नं. १ यांनी वादी यांचे जागेत आलेनंतर पुढे काही काळाने प्रतिवादी नं.२ हे पण त्या ठिकाणी राहु लागले. प्रतिवादी नं.१ व २ यांनी सि.स.नं.१८८५ चे पश्चीमेकडील भागात अतिक्रमण करुन अनाधीकारे बांधकाम केले. प्रतिवादी नं.१ व २ यांनी वादीची मुळ जागा संपुर्णपणे पाडुन तेथे पण नवीन बांधकाम केले. प्रतिवादी नं.१ व २ हे मयत कारभारी यांचे बरोबर रहात नव्हते. त्यांना भाडेकरु म्हणुन कोणताही हक्क नाही. परंतु त्यांनी कारभारीचे मृत्यूनंतर वादीचे जागेचा कब्जा करुन त्या ठिकाणी अनाधीकृत विनापरवाना बांधकाम केले. ते बांधकाम प्रतिवादी यांनी वादीचे परवानगीशिवाय कायमस्वरुपी असे कले आहे. वादी यांनी प्रतिवादींना सि.स.नं.१८८५ मध्ये कधीही भाडेकरु म्हणुन मान्यता दिली नव्हती. प्रतिवादी नं.२ यांनी वादीचे तक्रारीनंतर नगरपालीका कोपरांवा यांचेकडे अर्ज देवुन अतिक्रमण काढुन घेण्याचे मान्य केले. प्रतिवादी यांनी वादीचे जागेशी कोणताही संबंध न सतांना त्या ठिकाणी अनाधीकारे प्रवेश करुन नंतर गैर व बेकायदेशीर बांधकाम केले. प्रतिवादींनी वादीचे परवानगी शिवाय अनाधीकारे बांधकाम केले म्हणुन तसेच रेंट ॲक्टचे तरतुदीचा भंग केला म्हणुन त्यांचेकडुन जागेचा कब्जा मिळण्यासाठी वादीचा दावा आहे. याशिवाय प्रतिवादी यांनी वादींना जानेवारी १९८५ पासुन पुढे नोटीस देईपर्यंत म्हणजे ३१/१/२००७ पर्यंत २९० महीन्याचे दरमहा रु.७ प्रमाणे रु.२०३०.०० असे भाडे व त्यावरील व्याज दिले नाही. म्हणुनही वादीचा दावा आहे....”

“३. वादी नं.१ ते ७ हे मयत उत्तमचंद व माणिकचंद यांचे वारस असुन सर्वाना जरुरीचे पक्षकार म्हणुन दाव्यांत सामील केले आहे. प्रतिवादी यांनी पुर्वीचे भाडेकरु मयत कारभारी यांचे ताब्यातील जागेत प्रवेश केल्याने व तेथे वास्तव्य सुरु केल्याने वादींनी प्रस्तुतचा दावा रेंट ॲक्टचे तरतुदीनुसार प्रतिवादी यांचे विरुद्ध आणलेला आहे. प्रतिवादी

कायद्याने भाडेकरु नाहीत. ते मयताबरोबर कधीही रहात नव्हते. ही वादीची भुमीका कायम आहे. वादीना दावा मिळकत त्यांचे स्वतःचे गरजेसाठी जरूरीची आहे. वादी यांचे कुटुंब वाढल्याने कुटुंबातील घटकांचे गरजेसाठी वादीना दावा मिळकतीत रहाणे आहे.....”

(English Translation)

“2. The plaintiff's mother has given the place at the ground floor on lease denoted at the Section 1 in the plaint which is ad measured 9.29 sq meter having tins and constructed with bricks and sand to the deceased Karbhari Asaram Chaware at the rate of Rs.7 per month. A rental month starts on the first day of the month and ends at the end of the month as per the British calendar. After the death of Karbhari means on wards the year 2002 the defendant No.1 started living there . After some days defendant no. 2 has began to stay at the plaintiff's place after defendant no. 1. Defendants 1 and 2 encroached on the western area of C.S. No. 1885 and made unauthorized constructions. The defendants no. 1 and 2 completely destroyed the original site of plaintiff and built a new construction there. The defendant Nos.1 and 2 did not live with the deceased Karbhari. They do not have right as tenants. But, they occupied the place of plaintiff after the death of Karbhari and built an unauthorized construction at that place. That construction has been done by the defendant as permanent without the permission of the plaintiff. The defendants were never recognized as tenants by the plaintiffs in C. S. No. 1885. After the complaint of the

plaintiffs the defendants submitted the application to the municipality of Kopargaon and agreed to remove the encroachment. The plaintiff made a claim for possession of the premises on the defendants that they had made unauthorized constructions without permission also in violation of the provisions of Rent Act. Apart from this, the defendants did not pay rent of Rs.2023/- means Rs.7/-per month for 290 months and interest thereon from January 1985 till further notice to the plaintiffs. Hence the claim is.....”

3. The plaintiff nos. 1 to 7 are the legal heirs of deceased Uttamchand and Manikchand and they are included as necessary party in the plaint. The present suit has been brought by the plaintiffs as per the provisions of the Rent Act that the defendants entered the premises in the possession of the erstwhile tenant, the deceased Karbhari, and started living there. The defendants are not tenants by legal way. They never lived with the deceased. This role of the plaintiff remains same. The plaintiff’s claim that the suit property is necessary for their own needs. As the plaintiff’s family has increased, the plaintiff has to maintain the claim for the property for the needs of the members of the family.”

19. The learned Advocate submits that it was the case of the plaintiffs that the suit premises were rented to the original defendant

Mr. Karbhari Chaware. The defendants No.1 and 2 came in possession of the suit property through deceased Karbhari Chaware. It is the case of the plaintiffs that although the defendants are not the legitimate heirs of Karbhari but they have occupied the premises on the basis of the lease created in favour of Karbhari Chaware and that they have made an attempt to fit into the shoes of Karbhari Chaware claiming to be the legal heirs. The learned Advocate submits that the basic issue in the case is of tenancy, when the property was parted to Karbhari, and that the defendants No.1 and 2 came in possession of the property through Karbhari Chaware who was the tenant of premises, and thus the suit under the Rent Control Act is maintainable.

20. The learned Advocate submits that when both the reliefs are simultaneous prayed that the defendants are not entitled to get possession through Karbhari Chaware and that they are in illegal occupation of the premises, even in such circumstances, the suit under the Rent Control Act is maintainable.

21. The learned Advocate referred to Section 28 (1) of the Bombay Rent Act, 1947 and also referred to Section 33 of the Maharashtra

Rent Control Act which is similar to Section 28 (1) of the Bombay Rent Act. The learned Advocate submits that Section 33 of the Maharashtra Rent Control Act, 1999 is wider than Section 28 (1) of the Bombay Rent Act. Section 28 (1) of the Bombay Rent Act, 1947 reads thus :-

"28(1) Notwithstanding anything contained in any law and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or proceeding would not, but for this provision be within its jurisdiction,-

(a) in Greater Bombay, the Court of Small Causes, Bombay,

(aa) in any area for which a court of Small Causes is established under the Provincial Small Cause Courts Act, 1887 such court and

(b) elsewhere, the Court of the Civil Judge (Junior Division) having jurisdiction in the area in which the premises are situate or, if there is no such Civil Judge the Court of the Civil Judge (Senior Division) having ordinary jurisdiction, shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of this Part apply (or between a licensor and a licensee relating to the recovery of the licence fee or charge) and to decide any application made under this Act and to deal with any

claim or question arising out of this Act or any of its provisions and (subject to the provisions of sub-section (2), no other court shall have jurisdiction to entertain any such suit, proceeding or application or to deal with such claim or question.”

Section 33 of the Maharashtra Rent control Act, 1999 reads as under :-

“33. (1) Notwithstanding anything contained in any law for the time being in force, but subject to the provisions of Chapter VIII, and notwithstanding that by reason of the amount of the claim, or for any other reason, the suit or proceeding would not, but for this provision, be within its jurisdiction, –

(a) in Brihan-Mumbai, the Court of Small Causes, Mumbai,

(b) in any area for which a Court of Small Causes is established under the Provincial Small Causes Courts Act, 1887, such court, and

(c) elsewhere, the court of the Civil Judge (Junior Division) having jurisdiction in the area in which the premises are situate or, if there is no such Civil Judge, the court of the Civil Judge (Senior Division) having ordinary jurisdiction, shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises and to decide any application made under

this Act (other than the applications which are to be decided by the State Government or an officer authorised by it or the Competent Authority) and subject to the provisions of sub-section (2), no other court shall have jurisdiction to entertain any such suit, proceeding, or application or to deal with such claim or question.”

22. The learned Advocate has relied upon the Judgment of this Court in the case of *Laxmibai Ganpati Bhingare Vs. Shivaji Dnyani Salunkhe (Writ Petition No.934 of 1994) decided on 28/11/2017*. He submits that when the suit primarily involves a proceedings under the Rent Act and whatever incidental areas may have come into picture, the authority constituted under the Rent Control Act would still have the jurisdiction to decide the suit. The learned Advocate also has relied upon the Judgment of *Shantabai Yashwant Kothare and Ors. Vs. Shankar (Second Appeal No.117 of 1988 and Cross Objection (ST.) No.11764 of 1988), decided on 04/05/2006*.

23. Per contra, the learned Advocate Mr. S. S. Chapalgaonkar appearing for the respondents submits that it is the case of the appellant that the defendants are the encroachers over the suit property and that a decree of eviction has to be passed against the

encroachers then the Court under the Rent Control Act would have no jurisdiction to decide the same and the Appellate Court has rightly held that the Court has no jurisdiction to decide the suit under the Rent Act against the trespasser.

24. The learned Advocate for the respondents further submits that the Judgments relied upon by the appellants are not applicable as the law has undergone change and the Judgments relied upon by the appellants are under the earlier provisions of Section 28 of the Bombay Rent Act and the present Section 33 of the Maharashtra Rent Control Act, 1999 is different than the earlier provision of Section 28 of the Bombay Rent Act. In view of this, the learned Advocate for appellants submits that the appeal from order be dismissed.

25. Having heard the learned Advocate for the Appellants. The point for determination in the instant case would be whether the suit filed by the plaintiff against the respondents/defendants for eviction under the Rent Control Act would be maintainable. To ascertain the jurisdiction of the Court we have to look at the plaint. It is the case of the plaintiffs that they have leased out the property to one Mr.

Karbhari. On the demise of the original tenant, the defendants have entered into the premises and the eviction is sought against the defendants being the trespassers in the property as they have no legal right over the suit property. The eviction is sought also on the ground of non payment of rent by them and also on the ground of bonafide requirement under the Rent Control Act.

26. The case of the appellants/plaintiffs is that the defendants are not the tenants of the suit property. The issue in the fact situation is whether the suit would be maintainable under the Rent Control Act. The Judgment relied upon by the learned Advocate for the appellant in the case of *Laxmibai Ganpati Bhingare Vs. Shivaji Dnyani Salunkhe (Supra)*, the facts in this case are that the civil suit was instituted against the tenants for recovery of possession of the suit property which is a open plot admeasuring 30 sq.ft x 20 sq.ft., so also for possession of encroached open land admeasuring 200 sq.ft. towards Northern side of the let out premises. The Civil Court had granted decree of possession of only for 30 sq.ft. x 20 sq.ft., but had not granted eviction of the encroached portion by the tenant. The Single Judge in the case of *Laxmibai (Supra)* relied upon the law laid down in case of *M/s Importers and Manufacturers Ltd. v Pheroze*

Framroze Taraporewala and others, reported in AIR 1953 Supreme Court 73, wherein it was held that in a case once there is a suit between a landlord and tenant relating to the recovery of rent or possession of the premises, the Small Causes Court acquires the jurisdiction not only to entertain such suit but also "to deal with any claim or question arising out of the Act or any of its provisions" which may properly be raised in such a suit."

27. The Single Judge also relied upon the Judgment of the Supreme Court in case of *Sushila Kashinath Dhonde vs. Harilal Govindji Bhogani, reported in AIR 1971 SC 1495*, wherein the Hon'ble Supreme Court has held that considering the provisions of Section 28 (1) of the Bombay Rent Act it was not necessary that there should be a relationship of landlord and tenant in respect of all the matters covered under Section 28 (1) of the Act, so as to give jurisdiction to the Court of Small Causes. Thus, in the case of *Laxmibai (Supra)* the undisputed facts are that the defendants were the tenant of the plaintiffs in regard to the open plot admeasuring 30 x 20 sq.ft. The question arose as to the eviction of the tenants from the additional encroached area, not leased to the tenant.

28. Thus, this Court in the case of *Laxmibai Bhingare (Supra)* held that once the Court was dealing with the case between the landlord and tenant for recovery of possession or rent, all other incidental matters wherein even if the Rent Act does not cover the same, and the relationship of landlord and tenant does not exist in those areas, the Court would be entitled to pass a decree of eviction and would have a jurisdiction to deal with the same.

29. Analysis of old Section 28 and the new Section 33 (1) of the Act would not make much difference to the jurisdiction of the Civil Court exercising jurisdiction under the Rent Act since the words used in Section 28 (1) (b) of the Bombay Rent Act, 1947 are "shall have jurisdiction to entertain and try in a suit or proceedings between a landlord and tenant relating to the recovery of rent or possession of any premises to which any provision of his part apply" and similarly under Section 33 of the Maharashtra Rent Control Act, 1999 and the words used are "shall have jurisdiction to entertain and try any suit or proceedings between a landlord and tenant relating to the recovery of rent or possession of any premises and to decide any application made." Thus a comparative analysis of Section 28 of the old Act and Section 33 of the new Act would indicate a jurisdiction of

the Civil Court under the Rent Act can be invoked only if there is a relation of landlord and a tenant between the parties.

30. Coming to the facts of the present case as depicted in the plaint above, the plaintiffs mother had given the premises on rent to Mr. Karbhari Asaram Chaware @ Rs.7/- per month. After the death of Karbhari in the year 2002, the defendant No.1 started living there, and after some days, the defendant No.2 started residing with defendant No.1. The defendants No.1 and 2 encroached on the Western area of CTS No.1885 and made unauthorized construction. The defendants No.1 and 2 completely destroyed the original site of plaintiffs. The defendants No.1 and 2 did not live with the deceased Karbhari. They do not have right as tenants and they occupied the place of the plaintiffs after the death of Karbhari and build an unauthorized construction at that place. That the construction is done by the defendants as a permanent without permission of the plaintiffs. The defendants were never recognized as tenants by the plaintiffs.

31. From the above averments of the plaint, it is the case of the plaintiffs that the defendants No.1 and 2 has not inherited the

tenancy but are trespassers and no right of tenancy flows in favour of the defendant No.1 and 2 on the demise of Mr. Karbhari Chaware.

32. Thus, the facts in the case of Laxmibai Bhingare (Supra) are different than the facts of present case. In the case of Laxmibai the respondent was primarily a tenant of the portion of suit property and the question was as regards the eviction of the tenant from the encroached portion. However, in the instant case the plaintiffs claimed in the plaint that the defendants are not the tenants of the suit property and they have come in possession of suit property without any right to occupy the same as tenant of the suit property after the demise of the tenant to whom the property was leased.

33. The facts in the present case are very similar to the facts in the case of *Laxmidas Morarji (dead) by LRs Vs. Behrose Darab Madan, reported in (2009) 10 SCC 425*. The facts in the Laxmidas's case (Supra) at paragraphs No.2, 3 and 4 are recorded as under : -

"2) Mr. Salehbhai Alibhai Rangwala was the owner of a building then known as Mohamedali Mansion, situated at 241, Princess Street, Bombay. The Flat No. 2-B on the second floor of the building, (hereinafter referred to as 'the suit premises') had been let out to one Dosabai, the

brother of Ms. Dhanbai Batliwala, (hereinafter referred to as the 'deceased-tenant'), on a monthly rent of Rs. 104.10 paisa.

Dhanbai was staying with her brother in the suit premises. After the death of her brother in the year 1953, Dhanbai became the tenant of the suit premises by virtue of Section 5(11)(c)(i) of the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947 ('the Act' for short). She expired on 17.12.1963. It appears that the deceased tenant in her last will dated 24th April, 1959 had appointed the trustees and executors of her will.

3) Sometime in the early part of the year 1965, the original owner had sent notice to the trustees and executors of the will of the deceased tenant to hand over the vacant possession of the suit premises and also to pay the arrears of rent alleged to be due from 01.11.1964. Since the trustees and executors of the will failed to vacate the suit premises, the original owner filed Suit No.310 of 1967 before the Court of Small Causes at Bombay, against the trustees and the respondent in this appeal, inter alia seeking recovery of possession of the suit premises and for payment of Rs.3018.90 paisa, being the arrears of rent for the period from 01.11.1964 to 31.03.1967.

4) In the suit filed, it was specifically stated, that, the defendant No. 5 (respondent) is not the tenant and has no legal and valid claim over the suit premises and therefore no notice was required to be given to her, however, she is arrayed as a party in the suit by way of

caution and to avoid any technical objection in future. It was also mentioned in the suit, that, the defendants 1 to 4 (trustees and executors of the will) have parted with the possession of the suit premises to defendant No.5, respondent in this appeal.”

The Hon’ble Supreme Court in the case of *Laxmidas Morarji (Supra)* analyzed the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1974 and has held as under : -

“21. The Court in Om Prakash Gupta case has further observed, that, therefore, there is no substance in the contention that as soon as the appellant denies the relationship of landlord and tenant, the jurisdiction of the authorities under the Act is completely ousted. A landlord must be very ill-advised to start proceedings under the Act, if there is no relationship of landlord and tenant. If a person in possession of the premises is not a tenant, the owner of the premises would be entitled to institute a suit for ejectment in the civil courts, untrammelled by the provisions of the Act. It is only when he happens to be the tenant of the premises in an urban area, the provisions of the Act are attracted. Mere denial of relationship of landlord and tenant cannot oust the jurisdiction unless it is specifically provided in the Statute. If the Rent Controller finds that the opposite party is not a tenant of the landlord, he must dismiss the landlord's application for eviction, but if he finds that such a plea by the opposite party is not true and that the

opposite party is a tenant of the landlord, then, if the ground of eviction is proved, he must order eviction of the tenant.

22. Section 28 of the Bombay Rent Act deals with the jurisdiction of the Courts, to decide on issues arising out of the Act. In a suit relating to possession of the premises where the relationship of landlord and tenant admittedly subsists between the parties, jurisdiction to entertain and try such a suit is in the courts specified in Section 28. All applications made under the Act are also to be entertained and disposed of by the courts specified in Section 28 and no other. In all such suits or proceedings the courts specified in Section 28 also have the jurisdiction to decide all claims of questions arising out of the Act or any of its provisions.

23. In the instant case, the suit premises is situate within the jurisdiction of Greater Bombay. In view of Section 28 of the Act, the Court of Small Causes, Bombay, will have jurisdiction. The appellants have filed a suit for eviction. The suit is maintainable provided that a landlord-tenant relationship is established. However, it is clear from the pleadings of the appellants that they do not consider respondent No.5 as a tenant. In furtherance of this stand, the appellants have gone on to adduce evidence to prove that respondent does not qualify the conditions to be deemed as tenant under the Bombay Rent Act. In the light of the principles stated by this Court in Om Prakash Gupta case, the inevitable conclusion is that Small Causes Court at Bombay had no jurisdiction to

entertain the suit filed by the owners of the suit premises.”

34. Thus, applying the law laid down in *Laxmidas (Supra)* in the instant case from the pleadings of the plaintiffs it is clear that they do not consider the defendants No.1 and 2 as tenant of the suit property. It is also held in the *Laxmidas's* case that if the rent Court finds that the opposite party is not a tenant of the landlord, they must dismiss the landlord's application for eviction. In the instant case the very basis of the suit is that the defendants are not the tenants of the suit property. It is the case of the plaintiffs that they had leased the property to one Mr. Karbhari and after his demise defendants have illegally entered into the premises. When the plaintiffs do not accept the defendants to be the tenants of the property and seeks an eviction of the defendants as unauthorised occupants of the premises, the jurisdiction of the Court under the Rent Act cannot be invoked.

35. However, since substantial time has passed, that the appellants are seeking eviction of the respondents, the Civil Court to decide the re-registered suit within a period of one year from the

date of the receipt of this order. All parties to co-operate in disposal of the civil suit. The Appeal From Order disposed of accordingly. Pending civil application stands disposed of.

(ARUN R. PEDNEKER, J.)

vj gawade/-.