

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL REVISION APPLICATION NO. 135 OF 2006
WITH
CIVIL APPLICATION NO. 447 OF 2013
IN
CIVIL REVISION APPLICATION NO. 135 OF 2006**

Shri Narendra Jayantilal Desai	]	
adult, age : 60 years, Occ. Business,	]	
Residing at Room No.5, Ground floor,	]	
Seth Bhagwandas Narottamdas Kapol	]	
Nivas (Riddhi Siddhi Apartment), R.A.,	]	Applicant
Kidwai Road, Matunga, Mumbai-19	]	(Orig. Deft. No.2)

Versus

- | | | |
|--|---|--|
| 1. Smt. Nirmala Maganlal Doshi, |] | |
| Adult, Age : 65 years, Occ : Housewife, |] | |
| Residing at A/701, Shatrunjay, behind |] | |
| Patel Nagar, M.G. Cross Road No.4, |] | |
| Kandivali (W), Mumbai-400 067 |] | |
| | | |
| 2. Smt. Shobhana Narendra Parekh |] | |
| Adult, Age : 44 years, Occ. : Housewife, |] | |
| Residing at C/601, Hilton Tower, |] | |
| Sher-E-Punjab, Pump House Road, |] | |
| Andheri (W), Mumbai |] | |
| | | |
| 3. Smt. Deepika Niteshkumar Bhuta, |] | |
| Adult, Age : 42 years, Occ.: Housewife, |] | |
| Residing at Gopipura, Near Railway |] | |
| Station, Dahanu (East) Dahanu Road, |] | |
| Dist.: Valsad, Gujarat |] | |
| | | |
| 4. Shri Vijay Maganlal Doshi |] | |
| Adult, Age : 40 years, Occ. : Business, |] | |

- | | | |
|--|----|------------------------|
| Residing at 602 Vraj Castle, |] | |
| Datta Mandir Road, Dahanukar Wadi, |] | |
| Kandivali (W), Mumbai-67. |] | |
| 5. Shri Manoj Maganlal Doshi |] | |
| Residing at A/701, Shatrunjay, behind |] | |
| Patel Nagar, M.G. Cross Road No.4, |] | |
| Kandivali (W),Mumbai-400 067 |] | |
| |] | |
| 6. Shri Jayesh Maganlal Doshi |] | |
| Adult, Age : 36 years, Occ: Business, |] | |
| Residing at C/2, Vasant Aradhana, |] | |
| Gr. floor, Mahavir Nagar, |] | |
| Dahanukar Wadi, |] | |
| Kandivali (W), Mumbai-67 |] | |
| |] | |
| 7. Shri Mahendra Atmaram Vora, |] | |
| Adult, Age and Occ. : not known |] | |
| |] | |
| 8. Shri Ghanshyam Atmaram Vora, |] | |
| Adult, Age and Occ.: not known |] | |
| |] | |
| 9. Shri Janardan Atmaram Vora, |] | |
| Adult, Age and Occ. : not known |] | |
| Respondent nos. 7 to 9 residing at Astik |] | |
| Sheri, Mukhatno Dhal, Sihor City, |] | |
| Gujarat-364 244. |] | |
| |] | |
| 10. Doshi Sanghavi Builders, |] | Respondents |
| a partnership firm, registered under |] | (Respondent nos.1 to 6 |
| the Indian Partnership Act and |] | Orig. Plaintiff Nos. |
| carrying on business as Builders and |] | 1(a) to 1(f); |
| having its office at 2/2, Rekha, Ridge |] | Respondent Nos.7 to 9 |
| Road, Mumbai-6. |] | Orig. Defendant |
| |] | Nos.1(a), 1(c) and |
| |]. | Respondent No.10, |
| |] | Orig. Plaintiff No.2) |

Mr. Narendra Jayantilal Desai-applicant in person.

Mr.H.P.Vyas, Advocate for respondent nos.1 to 6.

Mr.Rahul D.Motkari Advocate for respondent no.10

CORAM : K.R.SHRIRAM, J.

DATE : 7th APRIL 2015

JUDGMENT :

1 This revision application is filed against the judgment dated 18.04.2006/19.04.2006 passed by the appellate bench of the Small Causes Court at Mumbai whereby the appeal filed by the landlord was allowed with costs. By the said judgment, the judgment of the trial court passed on 12.07.1999 in R.A.E.Suit No.2989/1977 was set aside and in its place, the suit was decreed and the possession of the suit premises, as described in the plaint, was directed to be handed over to the plaintiff-landlord.

2 This matter has had a long journey. The RAE Suit No.2989 of 1997 was filed on 3.12.1996. It came to be dismissed on 12.7.1999. The Appeal bearing No.175 of 2000 was filed by the plaintiffs on 4.11.1999 and came to be allowed on 18.4.2006-19.4.2006. This CRA was filed on 11.8.2006 and was admitted and stay was granted in favour of the applicant on 11.9.2006. This CRA was heard on 4.1.2013, 7.1.2013 & 10.1.2013 but then the

hearing remained inconclusive. Thereafter this court heard the applicant on 15.1.2015 and 16.1.2015 and stood over for further hearing of the applicant on 22.1.2015. The applicant requested an adjournment for four weeks by writing a letter to the registry which placed the letter before this court. This court granted 4 weeks adjournment as sought and placed the matter for further hearing on 20.2.2015. On 20.2.2015 the applicant stated that he did not want to argue any further and expressed desire to file written submission. This was permitted and the applicant filed written submissions running into about 60 pages and a compilation of judgments running into about 584 pages. The respondents wanted to consider the written submissions and the judgments and the matter therefore was stood over. The respondents' counsels argued the matter on 27.2.2015, 5.3.2015 and 12.3.2015 and the matter was stood over to 13.3.2015 for applicant's rejoinder. On 13.3.2015 the applicant stated he wanted to put in written submission in rejoinder and the court permitted the same. The written submissions were filed on 20.3.2015. The journey has been a long 38 to 39 years from the time the RAE Suit was filed and 8 ½ years from the time this court granted a stay while admitting the CRA.

3 The applicant in this civil revision application is the original defendant no.2 in the suit. Respondent nos.1 to 6 are the legal heirs of

original plaintiff no.1. Respondent nos.7 to 9 are the legal heirs of original defendant no.1. Respondent no.10 was the original plaintiff no.2.

4 The facts giving rise to the present matter are as under :

For the sake of convenience, the description of the parties are as described in the original R.A.E.Suit.

The original plaintiff no.1 (Now through legal heirs respondent no.1 to respondent no.6 to this application) and original plaintiff no.2 (respondent no.10) filed R.A.E.Suit No.2989 of 1977 (RAE suit) against the original defendant nos.1(a) to 1(c) (respondent nos.7 to 9 herein) and defendant no.2 (applicant herein) for ejectment in respect of a tenement bearing No.5 on the ground floor of a building known as 'Seth Bhagwandas Narottamdas Kapol Nivas (Riddhi Siddhi Apartment), R.A.Kidwai Road, Matunga, Mumbai-400 019 (suit premises). The suit was filed on three grounds : (i) for reasonable and bona-fide use and occupation; (ii) the original tenant namely defendant no.1/ defendant no.1(a) to 1(c) had unlawfully sublet the suit premises to defendant no.2; and (iii) the legal heirs of original defendant no.1, i.e., defendant nos.1(a) to 1(c) (respondent nos. 7 to 9 herein) have obtained alternate accommodation at Sihor City, Gujarat State.

5 The original plaintiff no.1, Maganlal Chakubhai Doshi had purchased the suit premises from plaintiff no.2. Plaintiff no.2 had derived a title from the trustees of Seth Bhagwandas Narottamdas Kapol Nivas Trust (the said trust) in respect of the building in which the suit premises was situated. One Ratilal Narangji Sanghavi (grand father of respondent no.1 to respondent no.9) who died on 9.04.1977 was the tenant (referred hereinafter as ‘the original tenant’) in respect of the suit premises. Defendant nos.1(a) to 1(c) the grand children of the original tenant had unlawfully inducted defendant no.2 in the suit premises. It appears that during the pendency of the suit, original plaintiff no.1 died and therefore, respondent nos.1 to 6 were added as original plaintiff nos.1(a) to 1(f) and they prosecuted the suit further along with plaintiff no.2, i.e., respondent no.10 herein.

6 The original plaintiff nos.1 and 2 had initially filed the RAE suit. During the pendency of this RAE suit, defendant nos.1(a) to 1(c) claimed as legal heirs and representatives of the original tenant and they were brought on record as defendant nos.1(a) to 1(c). Defendant nos.1(a) to 1(c) filed their written statements and resisted the suit. They admitted that the original tenant was the tenant in respect of the suit premises and he died on 9th April 1977 at Sihor City, State of Gujarat. Defendant nos.1(a) to 1(c), however, pleaded ignorance as to whether the original plaintiff no.1 had purchased the

suit premises from the plaintiff no.2. They also pleaded ignorance by saying that they do not know whether plaintiff no.2 had derived title in respect of the suit premises by purchasing the same from the trustees of said trust. They, however, denied that the plaintiffs require the suit premises reasonably and bona-fide for their use and occupation. They also denied that they unlawfully sublet the suit premises to defendant no.2 (the applicant herein). It was, their specific case that they were the legal heirs and representatives of the original tenant and by virtue of section 5(ii)(c) of the Bombay Rent Act, they have inherited the tenancy right in respect of the suit premises. According to defendant nos.1(a) to 1(c), they inducted defendant no.2 in the suit premises on 4.03.1977 as a care-taker after the deceased original tenant had gone to his native place in the State of Gujarat. It was also their case that defendant no.2 did not vacate the suit premises and hence they have instituted a suit bearing L.E. & C No.183/259/1980 (the said suit) against defendant no.2. The said suit was pending when they filed their written statement. According to defendant nos.1(a) to 1(c), defendant no.2 had no right, title or interest over the suit premises. At this stage, it is necessary to note that the defence filed/stand taken by defendant no.2 in the said suit filed by defendant nos.1(a) to 1(c) bearing L.E. & C No.183/259/1980 will be important material and will make a huge impact on the merits of this civil revision application.

7 Defendant no.2, who is the applicant herein, also filed his written statement and contested the RAE suit. He has also pleaded ignorance saying as to whether the original plaintiff no.1 purchased the suit premises from plaintiff no.2. He also pleaded ignorance by saying that he does not know whether the original plaintiff no.2 derived any title in respect of the suit premises by purchasing the same from the said trust. He also admits that the original tenant was the tenant in respect of the suit premises. He also admits that the original tenant died at Sihor, Gujarat on 9th April 1977. However, he denies that the original tenant was staying alone without any legal heirs and representatives. According to defendant no.2, he and his wife were residing in the suit premises with the deceased original tenant at the time of his death as his family members and, therefore, he has inherited the tenancy rights in respect of the suit premises. He also has denied that the plaintiffs require the suit premises reasonably and bona-fide for their use and occupation and therefore, the suit to be dismissed with costs.

8 The trial court, on the basis of pleadings of both the parties framed in all 8 issues and dismissed the suit. While dismissing the suit, the trial court held that the plaintiffs do not prove (a) their right as successor of the original landlord the trustees of the said trust, to be able to sue defendant

no.2 as tenant of the suit premises and (b) that they reasonably and bona-fide required the suit premises. The trial court also held that defendant nos.1(a) to 1(c) did not prove their right as legal heirs and/or successors/statutory tenants entitled to transmission of tenancy right of the original tenant but held that defendant no.2 proved his right as successor of the original tenant under section 5(11)(c)(i) of the Bombay Rent Act.

9 In the appellate court, plaintiff no.1(a) to plaintiff no.1(f) who were the appellants, filed written arguments. The plaintiff no.2 and original defendant nos.1(a) to 1(c), though served with notice, remained absent and failed to contest the appeal. Only the advocates for original plaintiff nos.1(a) to 1(f) and defendant no.2-in-person appeared and argued.

The appellate court held that the original plaintiff no.2 was the landlord of the suit premises who purchased the same from the said trust and in turn, plaintiff no.1 purchased the suit premises from the plaintiff no.2 and therefore, became the landlord of the suit premises. The appellate court also held that the defendant nos.1(a) to 1(c) had unlawfully sublet the suit premises to defendant no.2 and therefore, the question of the plaintiffs having to prove the fact that the suit premises was required reasonably and bona-fide for their own use and occupation did not survive.

10 Against this judgment, the applicant namely defendant no.2 has filed the present civil revision application. The applicant appeared in person.

11 Before proceeding further, it is necessary to note that the High Court has a very limited jurisdiction under Section 115 of the Code of Civil Procedure. The High Court while exercising the revisional jurisdiction can interfere with the order passed on appeal by the appellate authority only on three grounds, i.e.,

(i) Where the original or appellate authority exercised a jurisdiction not vested in it by law ;

(ii) Where the original or appellate authority failed to exercise a jurisdiction so vested, or

(iii) Where in following the procedure or passing the order, the original or appellate authority acted illegally or with material irregularity.

12 The present case does not fall under any of the aforesaid situations as the appellate court has decided the matters in due exercise of jurisdiction so vested in it. The appellate court also did not act with material irregularity or illegally. At the same time, the High Court is not bound to interfere merely because the conditions in the Section are satisfied. Notwithstanding that the

High Court cannot say that it will not interfere merely because the conditions are not satisfied. General equities of the case are matters to be taken into account in considering whether the High Court, even in cases where the conditions which attract jurisdiction exist or not, should exercise its jurisdiction.

13 The applicant's (defendant no.2) case primarily is that the plaintiffs have no title over the suit premises and cannot maintain this action. According to defendant no.2, there is collusion and concealment by the plaintiffs and the trustees of the said trust, non-joinder of necessary party, mis-joinder of necessary parties, creation and production of fabricated and unregistered property documents, defrauding and deceiving the said trust, Charity Commissioner, Government, High Court and lower courts. In the alternative, the defendant's case is that defendant no.2 was member of the family of the said original tenant as defined under Section 5(11)(c)(i) of The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bombay Rent Act).

14 As it will be seen later, it is the applicant/defendant no.2, who has been self serving, whose conduct has been far from being honest. He has been holding on to the suit premises without paying a farthing as rent or

compensation; and has illegally taken possession of the suit premises even to the detriment of defendant nos.1(a) to 1(c), the legal heirs of the original tenant. This is evident from the huge compilation of documents in the record and proceedings.

15 In the written statement filed by defendant nos.1(a) to 1(c), who were the legal heirs/representatives of the original tenant, the allegation was that defendant no.2 was inducted in the suit premises as a care-taker when the deceased original tenant had gone to his native place in Sihor, in Gujarat State. Defendant nos.1(a) to 1(c) had filed a suit against defendant no.2, namely the said suit, in which defendant no.2 filed his written statement which is exhibited at Exh.“G” colly. In the said written statement, defendant no.2 has disowned the legal heirs of the said original tenant, namely defendant nos.1(a) to 1(c), and had set up a case of sub-tenancy with the permission of the landlords with Rs.1,500/- being deposit and also that he paid rent to the original tenant. In the said written statement in paragraph 4, defendant no.2 has alleged that he was not aware as to what was the relationship between defendant nos.1(a), 1(b) and 1(c) with the original tenant and also that the statement at paragraph (e) of the said written statement was not correct. Though he had taken a stand of sub-tenancy in that said suit, during the cross-examination in the present RAE suit, he tried

to get out of it by saying that the reference to sub-tenancy was not as per his instructions and that was not correct. Though he has in that written statement denied that he knew about any relationship, there are other contradictions also inasmuch as, defendant no.2, in his cross-examination on 30th June 1998, at one point, states that he knew defendant nos.1(a), 1(b) and 1(c) from 1974 and he knew their father from 1974, on the same date later he says he met father of defendant nos.1(a) to 1(c) and also defendant no.1(a) for the first time somewhere in May/June 1977 and he met defendant nos.1(b) and 1(c) for the first time in November/December 1976 at Sihor. If defendant no.2 is claiming to be the family member of the original tenant, certainly he would have known and met all other family members particularly the grand children of the original tenant who are defendant nos.1(a) to 1(c). This is because, the defendant no.2 stated that he has been living with the original tenant from January 1976 and he went to Sihor with the original tenant to drop him in 1976. In that said suit filed by defendant nos.1(a) to 1(c), to keep them out of the suit premises, defendant no.2 took a stand that he was a sub-tenant and that he paid Rs.1,500/- as deposit and was paying rent to the original tenant whereas in the present suit, defendant no.2 is trying to hold on to the suit premises claiming to be a member of the same family. It is therefore quite obvious that defendant no.2 namely, the applicant herein, is playing a fraud not only on the original

plaintiffs but also on defendant nos.1(a) to 1(c) and the Courts by making false and contradictory statements on oath. On this ground alone, the civil revision application requires be dismissed with costs.

16 As mentioned earlier, the pleadings in the said suit bearing no.L.E. & C No. 185/259/1980 filed by defendant nos.1(a) to 1(c) against defendant no.2 are very material to the present action. These pleadings were received in the RAE suit as Exh.G.colly. In the plaint of the said suit, defendant nos.1(a) to 1(c) have alleged in paragraph nos.2, 3 and 4 as under :

2 That during the sickness of deceased Ratilal, his son Kantilal and plaintiff no.1 were staying with him in the above rented suit room no.5 in the above stated Kapole Nivas. That Kantilal the son of Ratilal expired on 20.10.1976 at Bombay. Ratilal was ill during the sickness of his son Kantilal and so Ratilal was removed in Lok Manya Tilak M.G. Hospital at Sion on 9.9.76 and he was treated there for enlarge prostate retention of urine upto 6.11.1976 and was discharged on that day.

3 Ratilal Narangji was aged 85 years at that time. That after his discharge from the hospital, he was continuously suffering from retention of urine and general debility due to his old age, hence plaintiff no.1 and his father though fit to remove deceased Ratilal to Sihor for further treatment and change of air. That deceased Ratilal's health appeared to be precarious and he was constantly apprehending that, he will loose his health unless he goes temporarily in a comparative

dry area and therefore, plaintiff no.1 and his father with Ratilal Narangji left Bombay on 6th November 1976 for Sihor and since that time deceased Ratilal Narangji stayed at the resident of plaintiffs with them in Sihor.

4 Under the above circumstances, deceased-Ratilal Narangji had to stay at Sihor at the residence of plaintiffs for some time and so he requested the plaintiff's father Atmaram to go to Bombay for making temporary arrangement for due preservation and care of the suit premises and the furniture fixtures lying therein and so plaintiff's father thereupon went to Bombay in last week of February, 1977.

(emphasis supplied)

17 In the written statement, in response, defendant no.2 has replied as under :

4 Without prejudice to the aforesaid contentions dealing with paragraph 1 of the plaint, these defendants are not aware that the plaintiffs are the heirs and legal representatives of the late Ratilal Narangji or that the plaintiffs are the sons of the daughter of the said deceased Ratilal Narangji. The plaintiffs have no right to file the suit against the defendants. The defendants put the plaintiffs to strict proof that they are the heirs and legal representatives of the deceased Ratilal Narangji and they are entitled to file the above suit and prosecute the same.

5 Without prejudice to the aforesaid contentions dealing with paragraph 2 of the plaint, these defendants are not aware that the Kantilal and the plaintiff no.1 were staying with the deceased Ratilal and that the said Ratilal was removed to hospital and was discharged on 9.9.1976.

6 With reference to paragraph 3 of the plaint, the defendants put the plaintiffs to strict proof with regard to the contents of the said paragraph.

7 With reference to paragraph 4 of the plaint, these defendants also put the plaintiffs to strict proof as regards the contents of the said paragraph.

(emphasis supplied)

18 In response to paragraph 5 of the plaint, where it is alleged that the father of defendant nos.1(a) to 1(c) gave the suit premises to defendant no.2 as a care-taker, the defendant no.2 has alleged in reply that the suit premises was lawfully sublet to him with the consent and permission of the landlord. No evidence in the present suit is given that the landlord had given any permission/consent. It was not even the case of defendant no.2 in the RAE suit that he was a sub-tenant with the permission of the landlord. Therefore, it is quite obvious that defendant no.2 had made false statement on oath in the written statement which was affirmed on 13th February 1981. In the written statement, defendant no.2 has also stated that the suit premises did not contain any infrastructure or furniture or household goods whereas on 30th June 1998 in his cross-examination in the present suit, defendant no.2 has stated that the infrastructure and furniture of the deceased original tenant was lying in the suit premises when he died at Sihor. Moreover, if defendant no.2 was residing at the suit premises, as alleged by him, since January 1976, then certainly his reply in paragraph nos.5, 6 and 7 of the

written statement in the said suit would not be that he was not aware or that the plaintiffs should be put to strict proof thereof. Defendant no.2 would have denied that the father of defendant nos.1(a) to 1(c) and defendant no.1(a) had admitted the original tenant to hospital or took him to the native place at Sihor. If defendant no.2's stand that he was residing with the original tenant as a family member has to be believed, then his defence would not have been what he has raised as reproduced above. In the written statement to the said suit, defendant no.2 and his wife have stated that they were lawful sub-tenant in respect of the suit premises and that they paid an amount of Rs.1,500/- as security deposit.

19 All this show that defendant no.2, namely the applicant herein, has been making false statements on oath. It is settled law that if any person makes false and incorrect statements on oath to the court, he or she should be dealt with firmly. It is the defendant no.2, namely the applicant herein, who has been playing a fraud on everybody. The applicant, in his attempt to prove fraud against plaintiff nos.1 and 2 has relied on a number of judgments. All these judgments show that anyone trying to play fraud on the court should be shown the door and tough action should be taken. In fact, these judgments go against the defendant no.2 and it is defendant no.2 who deserves to be treated firmly with an iron hand.

20 On the ownership of the suit premises, defendant no.2 had complained to the Charity Commissioner that the said trust sold the suit premises without permission, illegally etc. The said trust in its written statement filed before the Charity Commissioner in respect to the complaint filed by defendant no.2, stated as under :

6 With reference to contents in para 4 of the application the trustees emphatically deny the allegation that the applicant Shri Narendra Jayantilal Desai is the tenant of the trust in respect of room no.5 situated at ground floor of the said property. These opponents further deny that Shri Narendra Jayantilal Desai has acquired right, title and interest in the said tenement by virtue of being declared as family member of the Late Shri Ratilal Narangji Sanghavi, the original tenant as the trustees have no information in respect of his alleged status as the trust is no longer the owner of the said property. It at all there is any relationship of the landlord and tenant, it may be with the purchaser viz., Shri A.D. Doshi, the opponent no.2 and the applicant.

.....

9 With reference to contents in para 7 of the application the opponent trustees admit that as per the said order the transaction of sale was to be completed within 6 months from the date of the order and state that so far as the trustees are concerned the transaction of sale has been completed within the period of 6 months from the date of the said order as the trustees have received full payment of the sale price and handed over the possession of the said property to Shri A.D. Doshi.

....

11 The opponents further deny the allegation that the trustees did not comply with the order of the Charity Commissioner and/or did not show any interest to comply with the same for any further extension of time in the matter and state that the trustees had moved the Court for specific performance of the order passed by the Charity Commissioner. Therefore, there was no question of seeking extension for completion of the transaction particularly when the trustees had received full payment and handed over the possession of the said property.

....

13 With reference to contents in para 8 of the application the opponent trustees emphatically state that they are not aware and do not admit that the applicant is the tenant of the trust as alleged and in view of the fact that the trust is not the owner of the said property the question of accepting any payment towards rent from the applicant in respect of room no.5 in the said building by the trustees does not at all arise. Since the trust is not the owner of the property which is very well known to the applicant, there is no question of responding to the letter of the applicant by the trust.

14 With reference to the contents in para 9 of the application the trustees emphatically deny the allegation that they have not complied with the terms and conditions of the tender document as well as the sanction order as alleged and that the trustees have lost every right about sale of the said property. At the cost of repetition the trustees submit that the transaction of the sale of property is completed within 6 months from the date of sanction except the execution of the assignment which has already been done through the High Court under the orders of the High Court in suit no. 1481 of 1982 filed against the purchaser.

21 The Charity Commissioner after hearing the parties, passed an order on 30th January 2002 in which the Charity Commissioner has accepted that the title of the building including Riddhi Siddhi apartments in which the suit premises is situated/stood vested in the plaintiff nos.1 and plaintiff no.2.

The Charity Commissioner has held as under :

9 The question is whether the tenant, who is occupying one of the room in the building, which was then owned and possessed by the trust, has any right to question the transfer of the trust property by the trust to any third person. I have already mentioned earlier that the applicant, being a tenant, cannot enjoy more rights than that of a tenant. It is the settled law that on the transfer of immovable property, the tenancy gets attorned and the purchaser becomes the landlord of the tenants. Therefore, on the transfer of the immovable property by the previous landlord to anybody else, the tenancy rights remain unaffected and on completion of the transfer of such immovable property, the tenancy gets attorned and the purchaser becomes the landlord of the persons, who are staying in such immovable property, in the capacity of tenant. This is what the position of law in respect of attornment of tenancy.

10 The applicant, who is staying in room no.5 of Riddhi Siddhi Apartments as a tenant has no right to interfere into the administration of the trust. Therefore, by no stretch of imagination, he can be said to be an interested person or a person having the interest in the affairs of the trust, merely because he is the tenant in the property, which is owned and possessed by the trust.

11 Apart from this, the applicant has no case for seeking the relief of revocation of the sanction granted by this authority, way back in 1974. Sub-section (2) of Section 36 of the Bombay Public Trusts Act, 1950 speaks of revocation of sanction granted by this Authority to any trustee for the disposition of immovable property by way of sale, exchange,

gift or lease. Only three grounds have been contemplated in sub-section (2) of Section 36 of the Bombay Public Trusts Act, 1950, on which the revocation of the sanction can be ordered. These grounds are – (1) that the sanction has been obtained by fraud, (2) that the sanction has been obtained by misrepresenting and (3) concealment of the material facts required for the purpose of giving sanction.

12 So far as the present case is concerned, none of the grounds, which I have mentioned above, is existed, nor has been established by the applicant, in order to call back the order of sanction. Sub-section (2) of Section 36 of the Bombay Public Trusts Act, 1950 clearly speaks that the sanction can be revoked only when the fraud or misrepresentation has been played by the trustees in the matter of according the sanction or certain material facts required for according the sanction, have been concealed from the Charity Commissioner. Unless the case of playing fraud, misrepresentation and the concealment of material facts, has been pleaded and proved, the sanction granted by this Authority under Section 36(1)(a) for the disposition of the property belonging to the trust, cannot be revoked. In view of this position of law, so far as the present case is concerned, no case of fraud, misrepresentation or concealment of material facts has been pleaded and proved by the applicant. Therefore, the applicant is not entitled to the relief of revocation as prayed for.

(emphasis supplied)

14The applicant has argued that the registration of the instrument effecting transfer of the rights in the immovable property is necessary. In this connection, he has relied upon A.I.R. 1996 Supreme Court at page 196, **Bhoop Singh Vs. Ram Singh Major and Others**, in which the Apex Court has held that :-

“If the compromise decree were to create for the first time, right, title or interest in

immovable property of the value of Rs.100/- or upwards in favour of any party to the suit, the decree or order would require registration, and the compromise decree, in the sense that compromise is not a device to obviate payment of stamp duty and frustrate the law relating to registration, would not require registration.”

15 As far as the present case concerned, the Honourable High Court while disposing of the suit bearing No.1481/82, which was for specific performance of agreement of sale, has held that the consent decree shall operate as assignment and the transfer of rights and the interest of each of plaintiff in immovable property in favour of the tenants as the tenants in common without any further act, deed or document. This consent decree has attained the finality and therefore, the title of the building including the Riddhi Siddhi Apartments, in which the applicant is staying as a tenant, stood vested in the Respondent No.2 or in the Partnership Firm of which the respondent no.2 is the partner.

(emphasis supplied)

22 This order has attained finality because defendant no.2 has not challenged this order anywhere and admittedly so. This Court cannot in this civil revision application, go into those issues. It does appear that plaintiff no.2 was put in possession of the suit property on 31st December 1974 much before the defendant no.2 moved in the suit premises.

23 Moreover, the appellate court has, after considering the evidence of PW1 and PW3, whose evidence went unchallenged has come to the conclusion that the plaintiff no.2 has purchased the suit building including the suit premises from the said trust and plaintiff no.2 in turn sold the suit premises to the original plaintiff no.1 and by virtue of the said sale, the original plaintiff no.1 had become the landlord and owner of the suit premises. After all challenge to this finding cannot be made under Section 115 of the Code of Civil Procedure, 1908 because the Court had acted within the jurisdiction vested in it by law and there is no irregularity or material illegality.

24 On the issue of non-joinder/mis-joinder of necessary parties, the appellate court has come to the conclusion that the trust having sold the premises to plaintiff no.2, there is no need to join the trust as a party to the present suit.

25 Moreover the plaint in RAE suit was amended to include para 6A. Paragraph 6A of the plaint mentions that the heirs and legal representatives of the deceased Ratilal Narangji Sanghavi, i.e., the original tenant have unlawfully sublet, assigned or transferred or given on leave and licence basis the suit premises after 1.2.1973 and therefore, the defendant nos.1(a)

to 1(c) are not liable to be protected under the provision of the Bombay Rent Act. The defendant no.2 filed his written statement on 17.1.1985. Paragraphs 6A was incorporated in the plaint by way of amendment by the appellants after the defendant no.2 filed his written statement on 17.1.1985. Though the plaintiffs had amended the plaint incorporating the ground of unlawfully subletting the suit premises by the defendant nos.1(a) to 1(c), defendant no.2 did not file additional written statement challenging the averments made by the plaintiffs in paragraph 6A of the plaint about the ground of wrongful subletting. Therefore, the contention of plaintiffs that they are seeking possession of the suit premises on the ground of unlawful subletting as per averments made in paragraph 6A of the plaint went uncontroverted as no written statement was filed. Therefore, no issue was framed to that effect. The plaintiffs knowing well that they are seeking the possession of the suit premises on the ground of unlawful subletting adduced evidence to that effect. Vijay Maganlal Doshi (PW 1) has stated categorically in his evidence that the father of defendant nos.1(a) to 1(c) has given possession of the suit premises to the defendant no.2 within one year after the death of deceased original tenant. His evidence does not disclose that the father of defendant no.1(a) to 1(c) had taken any permission from the plaintiffs for handing over the possession of the suit premises to defendant no.2. Therefore, the possession of the suit premises was handed

over to the defendant no.2 by the father of the defendant nos.1(a) to 1(c) without the consent of the plaintiffs. The unchallenged averments made in paragraph-6A of the plaint by not filing the additional written statement and the uncontroverted evidence of Vijay Maganlal Doshi (PW.1) regarding subletting the suit premises to defendant no.2 by the father of the defendant nos.1(a) to 1(c) without their consent go against defendant no.2. In fact, as mentioned above, defendant no.2 in his written statement to the said suit had taken a stand that he was a sub-tenant with the permission of the landlord. The onus, therefore, was on defendant no.2 to show he had permission. But it was not even his stand in this present action that he was a sub-tenant. Therefore, it is obvious that defendant no.2 had no permission to be lawfully occupying the suit premises and has been making false statements on oath.

26 The defendant no.2 admits that he is in possession of the suit premises. The plaintiffs proved, as mentioned above, that the defendant no.2 is in unlawful possession of the suit premises. Therefore, it is for the defendant no.2 to establish in what capacity he is in possession of the suit premises. The defendant no.2 while claiming his possession over the suit premises contends that his wife is related to deceased original tenant. According to defendant no.2 he and his wife were staying with the deceased original tenant from January-1976 in the suit premises and as they stayed

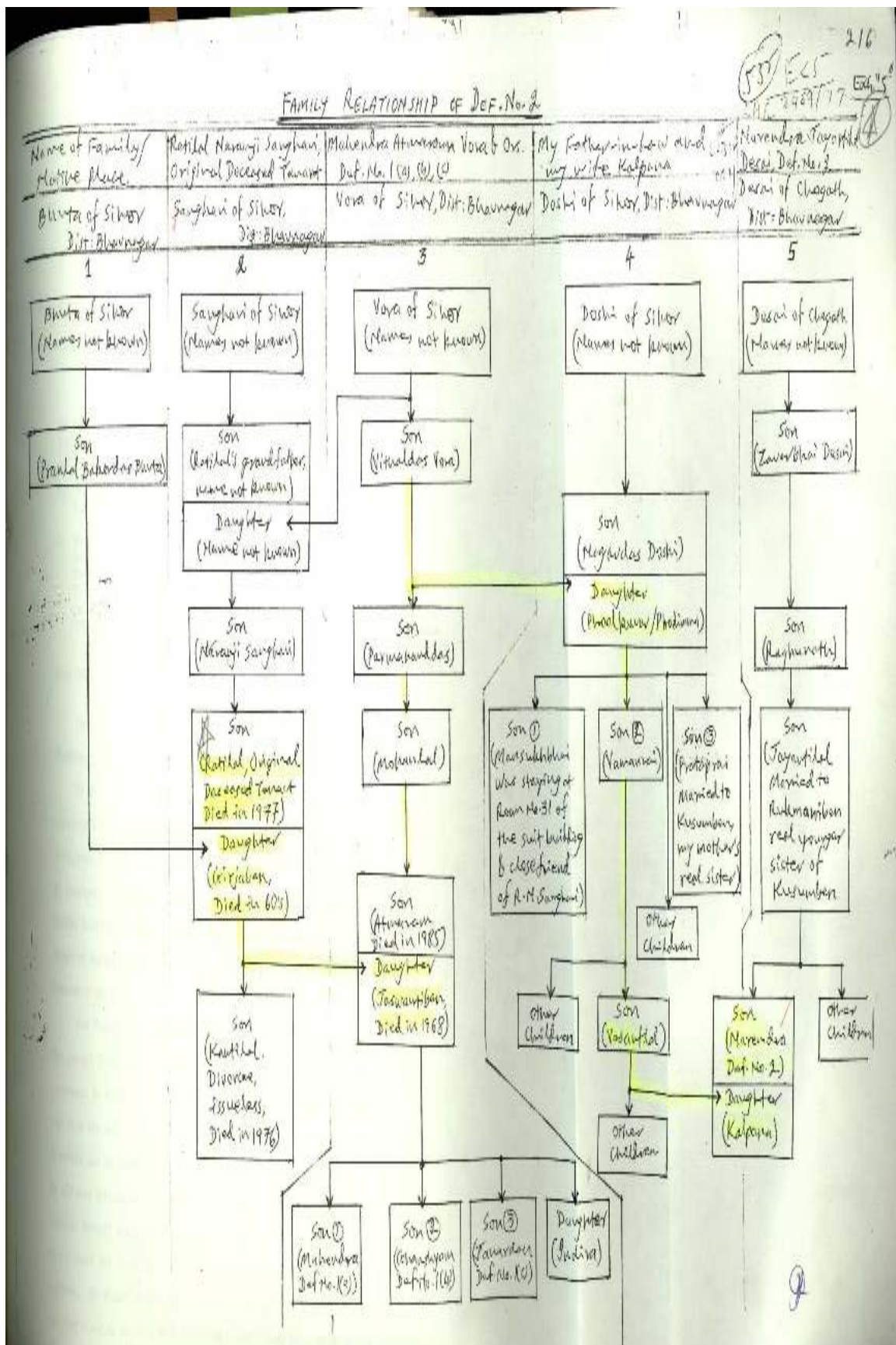
with the deceased original tenant on the date of his death as his family member, he is entitled to claim benefit under Section 5(11)(c) of the Bombay Rent Act. In other words the defendant no.2 is claiming protection under Section 5(11)(c) of the Bombay Rent Act as the lawful tenant alleging that he was residing along with his wife with the deceased original tenant and on the date of his death as family member and therefore, he has inherited the tenancy right under Section 5(11)(c) of the Bombay Rent Act in respect of the suit premises. Defendant no.2 had produced the notice dated 29.4.1977 (Exh.7), Voters' list dated 1.1.1977 (Exh.10) and 11 electricity bills (Exh.6 colly.) to show that he was residing in the suit premises on the date of death of the deceased original tenant as his family member. The original tenant Ratilal Narangji Sanghavi died on 9.4.1977. Therefore, it is expected from the defendant no.2 to show that on the date of death of Ratilal Narangji Sanghavi, he was residing with him as family member to claim the benefit under Section 5(11)(c) of the Bombay Rent Act. The defendant no.2 (D.W.No.1) in his examination-in-chief has stated that only he and his wife were residing with the deceased original tenant at the time of his death. He has, however, not produced any ration card to indicate that he and his wife were staying on the date of death of the deceased original tenant along with him. The notice dated 29.4.1997 (Exh.7) and the Voters' list (Exh.10) dated 1.1.1977 does not show he stayed

in the suit premises with his wife since January 1976. The electricity bills (Ex.6 colly.) produced by him for the period from 1975 to 1979 are in the name of deceased original tenant Ratilal Narangji Sanghavi. They are not in the name of defendant no.2. Merely because he is in possession of the electricity bills, it cannot be said that defendant no.2 was in possession of the suit premises on the date of death of deceased original tenant Ratilal Narangji Sanghavi. Therefore, defendant no.2 has not produced any satisfactory material on record to indicate and prove that he and his wife were residing in the suit premises since January 1976 and on the date of death of the deceased original tenant. Even the milk bills relied upon by defendant no.2 at (Exh.'Y' colly.) do not help defendant no.2.

27 DW-4 Bikubhai Shah whose evidence was relied upon by defendant no.2 in his examination-in-chief states that he had not issued the said bills and receipts. The hospital bills at Exh.Y-3 colly. stand in the name of the said original tenant and that does not in any event connect the defendant no.2 to the suit premises. The defendant no.2 relied upon the ration card which is at Exh.Y-5 colly. DW-3 Mohan Keluskar does not admit and prove the contents of the said ration card. It, in any event, does not prove that defendant no.2 was residing with the deceased original tenant at the time of his death. Moreover, if defendant no.2 was living with his

wife since January 1976 with the deceased original tenant as a family member, his defence to the said suit filed by defendant nos.1(a) to 1(c) would not be what has been said as reproduced earlier. Therefore, defendant no.2 and his witnesses have failed to prove that defendant no.2 was residing with the deceased original tenant at the time of his death and, that too, as a family member.

28 Now coming to the issue as to whether defendant no.2 can be considered to fall within the definition of the 'family member', defendant no.2 relied on a family tree/pedigree (Exh.5) to show that he is a member of the family of the original tenant. The family tree clearly shows that there is no relationship between the original tenant and defendant no.2. From the family tree on which defendant no.2 has relied upon shows that defendant no.2 is the husband of one Kalpana who was the daughter of one Vasantlal. Vasantlal's father was one Wamanrai whose mother was Phool Kuvar/Pholimma. The said Pholimma was the daughter of one Vithaldas Vora whose son was one Parmananddas. Parmananddas's son was Mohanlal and Mohanlal's son was Atmaram. Atmaram's wife was Jaswantiben who was the daughter of the original tenant. The family relationship tree as shown by defendant no.2 is required to be reproduced and the same is as under :



29 This statement shows that the wife of the defendant no.2 is distantly related by marriage to the deceased original tenant. However, defendant no.2 does not seem to be a close relative of deceased original tenant. The documents produced by the defendant no.2 referred above also are not sufficient to hold that defendant no.2 and his wife were residing in the suit premises along with the deceased original tenant on the date of his death as a family member. Since defendant no.2 claimed protection under Section 5(11)(c) of the Bombay Rent Act, to bring his case within the purview of section 5(11)(c) of the Bombay Rent Act, he has to fulfill two conditions : (i) that he was concerned as a member of the deceased original tenant's family and (ii) he was residing with the deceased original tenant at the time of his death. As discussed above, defendant no.2 has not been able to prove both. This court is of the view that the documents produced by defendant no.2 to show his possession over the suit premises on the date of death of deceased original tenant Ratilal Narangji Sanghavi are not sufficient and as such has failed to establish that he was residing with the deceased original tenant on the date of his death. Even assuming for the sake of arguments that defendant no.2 was residing along with the deceased original tenant on the date of his death in the suit premises, now we have to consider whether he resided with him as his family member on the date of his death.

30 As to whether, defendant no.2 will fall under the definition of 'family member' as per the Bombay Rent Act is to be now considered. There are many authorities of various courts including the apex court and our court on the point as to who can be considered a family member.

31 In the matter of *Jaysen Jayant Rele & Others V. Shantaram Ganpat Gujar & Others*¹ the court held that Act only protects blood relations. The Hon'ble High Court has held in the said judgment as under :

“A Bombay Rents, Hotels and Lodging House Rates Control Act, 1947, Section 5 (11)(c)” “Tenant's family” Meaning of Suit for injunction and vacation of suit premises occupied by erstwhile servant and his wife who looked after the original tenant as to all his requirement while alive, treated them as member of his family and even bequeathed some of his property and tenancy right of premises by a “will” held, legislature has not chosen to alter the word “family and members of tenant's family” even though Act has undergone various other changes. Word family is restricted to the father, mother, sons, daughters and all such blood relations arising from lawful marriages and did not contemplate to include strangers howsoever close they might have been. Act protects only blood relations and not others whom he may create “like” or as “members of his family”.

32 In the case of *Mohd. Azeem V. District Judge, Aligarh & Others*², Hon'ble Supreme Court has defined a family as under :

“Family in a relation to a landlord or tenant of a building

1 2002(6) Bom.R.C.415

2 1985 (2) SCC 550

means,.. “his or her (i) spouse, (ii) male lineal descendants, (iii) such parents, grandparents and any unmarried or widowed or divorced or judicially separated daughter or daughter of male lineal descendant, as may have been normally residing with him or her, and includes, in relation to a landlord, any female having a legal right of residence in that building”.

33 The Hon'ble Supreme Court in the case of **Baldev Sahai Bangia Vs.**

R.C.Bhasin³, (supra) has summarised what would consists a family as under :

“A conspectus of the connotation of the term “family” which emerges from a reference to the aforesaid dictionaries clearly shows that the word “family” has to be given not a restricted but a wider meaning so as to include not only the head of the family but all members or descendants from the common ancestors who are actually living with the same head. More particularly, in our country, blood relations do not evaporate merely because a member of the family the father, the brother or the son leaves his household and goes out for some time. Furthermore, in our opinion, the legislature has advisedly used the term that any member of the family residing therein for a period of six months immediately before the date of the filing of the action would be treated as a tenant. The stress is not so much on the actual presence of the tenant as on the fact that the members of the family actually live and reside in the tenanted premises. In fact, it seems to us that Close (d) of the proviso to Section 14(1) of the Act is a special concession given tot he landlord to obtain possession only where the tenanted premises have been completely vacated by the tenant if he ceased to exercise any control over the property either through himself or through his blood relations.”

3 1982(2) Supreme Court Cases 210

34 The Apex Court in case of ***State of Gujarat V. Jai Laxmanji Talasin***⁴

has observed as under :

“This reasoning is obviously fallacious. The expression “family” has not been defined in the Act. One has therefore to go by the concept of family as it is commonly understood, taking into account the dictionary meaning of the expression.

“a primary social group consisting of parents and their offspring, the principal function of which is provision for its members.”

“a group of persons related by blood, a group descended from a common ancestors.”

“all the persons living together in one household”.

35 Courts have also held that where a person residing with the deceased original tenant at the time of his death and out of close relationship, affinity and affection and as a member of his family frequently helped the tenant, he is entitled to retain the possession of the premises after the death of tenant under Bombay Rent Act as held in the matter of ***Chhotulal Pandurang Khandwilkar Vs. Smt. Mathurabai Keshav Davne***⁵.

It is also held by the Apex Court in the matter of ***S.N. Sudalaimuthu Chettiar Vs. Palaniyandavan***⁶ that the word 'family' is not to be construed in a narrow sense or meaning only a member of a Hindu joint family. It could also mean a group of people related by blood or marriage which include being the member of his wife's family and not

4 AIR 1988 SC 825

5 All India Rent Control Journal 1985 Bom. 529, Bom HC

6 AIR 1966 SC 469

merely of his father's family.

The Apex Court in the matter of **Baldev Sahai Bangia Vs. R.C. Bhasin** ⁷ has held that the term 'family' should always be liberally and broadly construed so as to include near relations of the head of the family.

A beneficial provision must be meaningfully construed so as to advance the object of the Act and curing any lacuna or defect appearing in the same.

In the matter of **Babarrao Shankarrao Chavan Vs. Chandrashekhar Ramchandra** ⁸, the court, on the facts of the case, held that even though the person was not heir of the deceased, but as he was living with the deceased original tenant as a family member, based on the documentary evidence, held that he would be considered as a family.

In the judgment of **K.V. Muthu Vs. Angamuthu Ammal** ⁹, the Apex Court held as under :

14 *In its ordinary and primary sense, the term "Family" signifies the collective body of persons living in one house or under one head or manager or one domestic government.....”*

15 *There is a consensus among the High Courts in India that the word "Family" is a word of great flexibility and is capable of different*

7 AIR 1982 SC 1091

8 1984(2) BOM. C.R. 671

9 AIR 1977 SC 628

meanings.

....

17 *This Court in Corporation of the City of Nagpur V. The Nagpur Handloom Cloth Market Co. Ltd., AIR (1963) SC 1192 while interpreting the word "Family" observed as under :*

"But the expression 'family' has according to the contest in which it occurs, a variable connotation. It does not in the setting of the rules postulate the existence of relationship either of blood or by marriage between the persons residing in the tenement Even a single person may be regarded as a family, and a master and servant would also be so regarded."

In the matter of ***Pandurang Narayan Mantri Vs. Anant Shankarrao Samel***¹⁰ the Court held that because the defendant and his wife were residing with the aged tenant to look after her in her old age and the defendant's wife was related to the tenant being niece of the tenant-husband, the defendant and his wife and tenant were living as one family with the tenant defraying all the family expenses including rent payable by the defendant, the court held that on tenant's death, the defendants acquired tenancy rights by virtue of Section 5(11)(c) of the Bombay Rent Act.

36 Therefore, it emerges from all the judgments on this issue that to be called a 'family member', if you are not the legal heir of the tenant, facts

¹⁰ AIR 1982 BOM. 115

and evidence have to be considered to see whether defendant no.2 actually resided in the tenanted premises with the original tenant and he lived with the original tenant as a member of the family.

37 By no stretch of imagination, looking at the family tree relied upon by defendant no.2, can he be called a family member of the original tenant. Moreover, in the cross-examination held in 20th June 1998, defendant no.2, who claims to be a family member of the original tenant through Jaswantiben, the daughter of the original tenant, has stated that he had not even seen the said Jaswantiben during her lifetime because Jaswantiben died in 1960. He has also stated in the cross-examination that he came to know about the deceased original tenant for the first time in 1974. In the cross-examination, on 30th June 1998, defendant no.2 has stated that he knew the father of defendant nos.1(a) to 1(c) from 1974 and that he met him and also defendant no.1(a) of the first time somewhere in May/June 1977. At the same time, in the written statement which he had filed to the said suit filed by defendant no.1(a) to 1(c), defendant no.2 has denied that defendant nos.1(a) to 1(c) were the legal heirs of the said tenant. If defendant no.2 was a family member as he claims to be of the original tenant, certainly he would have known who the grand children were. A person to be entitled to protection of the benefits of Section 5(11)(c) of the

Bombay Rent Act, has not only to prove that he is a member of the family but he resided with the original tenant in the suit premises as a member of the family.

38 On the second part, i.e., defendant no.2 resided with the original tenant at the time of death of the original tenant as a member of the family also cannot be accepted. This is because defendant no.2 has not produced any evidence to that effect. In the said suit, defendant nos.1(a) to 1(c) have alleged that they resided with the original tenant in 1976 got him admitted in the hospital and took him to Sihor on 6th November 1976. Defendant no.2 in his written statement has stated that he was not aware that defendant no.1(a) and his father were residing with the original tenant or that the original tenant was moved to the hospital and discharged on 9th September 1976.

As to the statement that defendant nos.1(a) and his father took the original tenant to Sihor, Gujarat on 6th November 1976, defendant no.2 has simply stated that the plaintiffs are put to strict proof. In the written statement filed in the present suit, the defendant claims that he started living in the suit premises from January 1976. If that was so, then defendant no.2 would have certainly stated so in the written statement in the said suit and not what he has stated in the written statement. He would have made

positive averments. From the evidence discussed above regarding the relation of defendant no.2 with the deceased, it is clear that he is not in blood relation with the deceased original tenant Ratilal Narangji Sanghavi. Since defendant no.2 is not related by blood with the deceased original tenant, he cannot be considered and regarded as family member of the deceased original tenant makes he proves otherwise, in which he has failed. Defendant no.2 had produced the notice dated 29.4.1977 (Exh.7), Voters' list dated 1.1.1977 (Exh.10) and 11 electricity bills (Exh.6 colly.) to show that he was residing in the suit premises on the date of death of the deceased original tenant as his family member. The original tenant Ratilal Narangji Sanghavi died on 9.4.1977. Therefore, it is expected from the defendant no.2 to show that on the date of death of Ratilal Narangji Sanghavi, he was residing with him as family member to claim the benefit under Section 5(11)(c) of the Bombay Rent Act. The defendant no.2 (D.W.No.1) in his examination-in-chief has stated that only he and his wife were residing with the deceased original tenant at the time of his death. He has, however, not produced any ration card to indicate that he and his wife were staying on the date of death of the deceased original tenant along with him. The notice dated 29.4.1997 (Exh.7) and the Voters' list (Exh.10) dated 1.1.1977 does not show he stayed in the suit premises with his wife since January 1976. The electricity bills (Ex.6 colly.) produced by him for the period from 1975

to 1979 are in the name of deceased original tenant Ratilal Narangji Sanghavi. They are not in the name of defendant no.2. Merely because he is in possession of the electricity bills, it cannot be said that defendant no.2 was in possession of the suit premises on the date of death of deceased original tenant Ratilal Narangji Sanghavi. Therefore, defendant no.2 has not produced any satisfactory material on record to indicate and prove that he and his wife were residing in the suit premises since January 1976 and on the date of death of the deceased original tenant. Even the milk bills relied upon by defendant no.2 at (Exh.'Y' colly.) do not help defendant no.2.

DW-4 Bikubhai Shah whose evidence was relied upon by defendant no.2 in his examination-in-chief states that he had not issued the said bills and receipts. The hospital bills at Exh.Y-3 colly. stand in the name of the said original tenant and that does not in any event connect the defendant no.2 to the suit premises. The defendant no.2 relied upon the ration card which is at Exh.Y-5 colly. DW-3 Mohan Keluskar does not admit and prove the contents of the said ration card. It, in any event, does not prove that defendant no.2 was residing with the deceased original tenant at the time of his death.

39 Therefore, though defendant no.2 was staying, for the sake of

argument, with the deceased original tenant at the time of his death, he is not able to establish that he resided with him on the date of his death as his family member.

40 For all these reasons, this court holds that defendant no.2 has failed to establish both the requirements of section 5(11)(c) of the Bombay Rent Act and hence his possession over the suit premises, cannot be said to be lawful. Thus defendant no.2 has failed to establish that he inherited the tenancy right under section 5(11)(c) of the Bombay Rent Act in respect of the suit premises being the family member of the deceased original tenant Ratilal Narangji Saghavi.

41 Therefore, the appellate court was correct in considering that the trial court had not appreciated the evidence adduced by the plaintiffs properly and that it had come to a wrong conclusion in dismissing the suit and allowing the appeal.

42 In these circumstances, the civil revision application deserves to be dismissed and is so dismissed with costs.

43 The defendant no.2/applicant shall hand over the possession of the

suit premises as described in the plaint to the respondent nos.1 to 6 within 8 weeks from today.

44 The defendant no.2/applicant herein, shall not part with the possession of the suit premises or create any third party interest of whatsoever nature till the possession of the suit premises is handed over to the respondent nos.1 to 6.

45 In view of the disposal of the civil revision application, civil applications, if any, also do not survive and disposed accordingly.

(K.R. SHRIRAM, J.)