

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 887 OF 2015

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| <p>1. Mr. Sudil R. S. Kakodkar
alias Sudhir R. S. Kakodkar,
age 57 years, service,
r/o Hoskote House,
Near Dr. Parulekar Nursing Home,
Patrong, Baina,
Vasco-da-Gama, Goa 403 802.</p> | |
| <p>2. Mr. Nitin R. S. Kakodkar,
age 54 years, service,
r/o Hoskote House,
Near Dr. Parulekar Nursing Home,
Patrong, Baina,
Vasco-da-Gama, Goa 403 802.</p> | <p>Expired
His Legal
Representative is
Petitioner no.1 who is
already on record.
..... Petitioners</p> |

V e r s u s

1. Mr. Arun Annaji Hoskote
(since deceased)
Through his legal representatives
(a) Mrs. Neela Arun Hoskote,
wife of late Arun A. Hoskote,
Residing at B-10, Sudharma,
98-99, A. K. Swaminagar,
1st Street, Kilpauk,
Chennai 600 010.
- (b) Mr. Ajay Arun Hoskote,
Son of late Arun A. Hoskote
Residing at B-10, Sudharma,
98-99, A. K. Swaminagar,
1st Street, Kilpauk,
Chennai - 600 010.
- (c) Mr. Trupti Ajay Hoskote,
wife of Mr. Ajay Arun Hoskote
Residing at B-10, Sudharma,
98-99, A. K. Swaminagar,
1st Street, Kilpauk,
Chennai 600 010,
- (d) Mrs. Leena Sanjay Mudbidri,
daughter of late Arun A. Hoskote,
wife of Mr. Sanjay Mudbidri,

Aged 45 years,
567, 16th Main Road,
3rd Block, Koramangala,
Bengaluru 560 034.

(e) Mr. Sanjay Mudbidri,
Aged 45 years,
567, 16th Main Road,
3rd Block, Koramangala,
Bengaluru -560 034

(f) Mrs. Smriti Prabhakar,
daughter of late Arun A. Hoskote,
wife of Mr. Prabhakar,
Aged 43 years,
B-F-1, Varalaxmi Villa,
217-219, Konnur High Road,
Alnavarm,
Chennai - 600 023

(g) Mr. Prabhakar,
Major in age,
B-F-1, Varalaxmi Villa,
217-219, Konnur High Road,
Alnavarm,
Chennai - 600 023.

2. Ms. Bharati R. S. Kakodkar,
Age 59 years,
R/o Flat No.10, Second Floor,
Block No.1,
Shri Damodar Omkar Apartments
Co-operative Housing Society Ltd.,
Mestawada, Bhute Bhat,
Vasco-da-Gama, Goa 403 802

3. Ms. Kiran R. S. Kakodkar,
Age 56 years,
R/o Flat No.10, Second Floor,
Block No.1,
Shri Damodar Omkar Apartments
Co-operative Housing Society Ltd.,
Mestawada, Bhute Bhat,
Vasco-da-Gama, Goa 403 802.

.... Respondents

Shri T. Pereira, Advocate for the petitioner.

Shri Sudin Usgaonkar, Senior Advocate with Ms. T. Ghanekar,
Advocate for the respondent nos.1(a) to 2(g).

Shri R. Pednekar, Advocate for the respondent nos.2 and 3.

WITH

WRIT PETITION NO. 156 OF 2016

1. Ms. Bharati R. S. Kakodkar,
Age 59 years,
R/o Flat No.10, Second Floor,
Block No.1,
Shri Damodar Omkar Apartments
Co-operative Housing Society Ltd.,
Mestawada, Bhute Bhat,
Vasco-da-Gama, Goa. 403 802
 2. Ms. Kiran R. S. Kakodkar,
Age 56 years,
R/o Flat No.10, Second Floor,
Block No.1,
Shri Damodar Omkar Apartments
Co-operative Housing Society Ltd.,
Mestawada, Bhute Bhat,
Vasco-da-Gama, Goa 403 802
- Petitioners

V e r s u s

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(since deceased)
Through his legal representatives
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Residing at B-10, Sudharma,
98-99, A. K. Swaminagar,
1st Street, Kilpauk,
Chennai 600 010.

(b) Mr. Ajay Arun Hoskote,
Son of late Arun A. Hoskote
Residing at B-10, Sudharma,
98-99, A. K. Swaminagar,
1st Street, Kilpauk,
Chennai - 600 010.

(c) Mr. Trupti Ajay Hoskote,
wife of Mr. Ajay Arun Hoskote
Residing at B-10, Sudharma,
98-99, A. K. Swaminagar,
1st Street, Kilpauk,
Chennai 600 010,

(d) Mrs. Leena Sanjay Mudbidri,
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Aged 45 years,
567, 16th Main Road,
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(e) Mr. Sanjay Mudbidri,
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567, 16th Main Road,
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Bengaluru -560 034

(f) Mrs. Smriti Prabhakar,
daughter of late Arun A. Hoskote,
wife of Mr. Prabhakar,
Aged 43 years,
B-F-1, Varalaxmi Villa,
217-219, Konnur High Road,
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Major in age,
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age 54 years, service,
r/o Hoskote House,
Near Dr. Parulekar Nursing Home,
Patrong, Baina,
Vasco-da-Gama, Goa 403 802.

Expired
His LR is Respondent
No.2.

.... Respondents

Shri R. Pednekar, Advocate for the petitioner.

Shri Sudin Usgoankar, Senior Advocate with Ms. T. Ghanekar, Advocate for the respondent nos. 1(a) to 1(g).

Shri T. Pereira, Advocate for the respondent no.2.

Coram:- F. M. REIS, J.

Date: 21st December, 2016.

ORAL JUDGMENT :

Heard Shri R. Pednekar, learned counsel appearing for the petitioner, Shri Sudin Usgoankar, learned Senior Counsel appearing for the respondent nos. 1(a) to 1(g) and Shri T. Pereira, learned counsel appearing for the respondent no.2 in Writ Petition No.156 of 2016 and Shri T. Pereira, learned counsel appearing for the petitioner, Shri Sudin Usgaonkar, learned Senior Counsel appearing for the respondent nos.1(a) to 2(g) and Shri R. Pednekar, learned counsel appearing for the respondent nos.2 and 3 in Writ Petition No. 887 of 2016.

2. Rule. Heard forthwith with the consent of the learned counsel.

3. The learned counsel appearing for the respective respondents waive service.

4. The respondents/original applicants who were

landlords of the subject premises initiated the Eviction Proceedings against the petitioner/original respondents.

5. The parties shall be referred in the manner they so appeared in the proceedings before the learned Trial Court.

6. An application was filed by the applicants before the Rent Controller being case No.10/2005 against the respondents for eviction on the ground of non-payment of rent as well as under Section 22(2)(e) of the Goa Daman and Diu Buildings (Lease Rent and Eviction) Control Act, 1968 and Rules, 1969 (hereinafter referred to as "the Act"). The Eviction Proceedings were initiated to evict the respondents from two rooms on the ground floor and one room on the upper floor. The Written statement was filed by the original respondents disputing the said contention as well as the grounds raised by the applicants. Thereafter an additional written statement was filed. In the meanwhile, the said Eviction Proceedings initiated under Section 22(1)(a) read with Section 23, 23(1)(a) and 23A of the Act alleging that the applicant had retired from Government Service in Madras and the family of the applicant wanted to reside in the suit premises and further that the respondents had defaulted in the payment of rent and also on the ground that the respondents were in lawful possession of a residential flat bearing no.10 in Block No.1 of Damodar Apartment at Vasco-da-Gama which was owned by the deceased brother of

the respondents. Thereafter an amendment application was filed by the applicants inter alia to invoke the ground for eviction in terms of Section 22(2)(e) of the Act. The respondents disputed the said plea and the unmarried sisters who were respondent nos.4 and 5 had inter alia contended that the subject flat belongs to them. The learned Rent Controller after recording of evidence by an Judgment dated 11.1.2012 came to the conclusion that the applicants were entitled for eviction of the respondents of the subject premises as they had established the ground for eviction under Section 22(2)(e) of the Act.

7. Being aggrieved by the said judgment, the respondents preferred an appeal before the learned Tribunal which was thereafter transferred to the learned District Judge in view of the amendment to the Act. By judgment dated 23.9.2015 passed in Rent Appeal No.32/2013 and Rent Appeal No.36/2013 preferred by the respondent nos.4 and 5 both the appeals were dismissed the appeals preferred by the respective respondents.

8. Being aggrieved by the said judgment, the respondents have preferred the above Writ Petitions.

9. Shri T. Pereira, learned Counsel appearing for the respondents has pointed out that the Authorities below have come to the conclusion that the applicants have made out a case for

eviction under Section 22(2)(e) of the Act, when according to him, there is no foundation land in the pleadings with regard to such ground. The learned Counsel further points out that initial petition filed by the applicants was essentially that the applicants required the premises for their bonafide occupation and that the respondents were in arrears of payment of rent, but however, only thereafter without any amendment to the petition to incorporate facts to make the ground under Section 22(2)(e) of the Act, the authorities below proceeded to examine the case on such ground when there was no foundation to that effect. The learned Counsel further submits that the requirement of the respondents' eviction is that the respondents must be in possession of an alternate premises, but however, according to the learned Counsel, the applicants have failed to establish that the alternate flat was in possession of the respondent nos.1 to 3. The learned Counsel further points out that the flat was in possession of the respondent nos.4 and 5 based on the allotment in the Inventory Proceedings dated 6.10.2006 initiated upon the death of the brother of the respondent no.1 who was admittedly owner of the said flat. The learned Counsel further points out that without examining whether the subject alternate flat was in possession of the respondent nos.1 to 3, the concerned Authorities were not justified to direct the eviction of the respondents. The learned Counsel further points out that upon the death of the brother of the respondent no.1 who was occupant of the subject flat, his

assets devolved upon the mother of the respondents. It is further pointed out that only upon the death of the mother in the year 2005, the rights to the flat devolved upon the respondents, though according to him, the possession was with the respondent nos. 4 and 5. The learned Counsel has further pointed out that as there is no foundation in the pleadings nor any evidence produced to substantiate the claim that the respondents had alternate premises in their possession, the Authorities below were not justified to pass the impugned Judgment. The learned Counsel further points out that even in terms of the relevant Article 2011 of the Portuguese Civil Code though the right and ownership of the deceased gets transmitted unto his legal successors that by itself would not establish that the respondents were in possession of the subject premises. The learned Counsel further points out that the joint possession, if any, in favour of the respondent nos.1 to 5 would not mean that the respondent nos.1 to 3 were in actual possession of the flat which belonged to the deceased mother of the respondents upon the death of her son. The learned Counsel has thereafter taken me through the judgment of the learned Rent Controller as well as the District Judge to point out that the learned Judge has misconstrued the provisions and failed to consider that the ground under Section 22(2) (e) of the Act has not being satisfied by the applicants to be entitled for eviction of the respondents from the subject premises. The learned Counsel further points out that the original applicants had accepted the

respondent nos.1 to 3 as their tenants and, as such, it was not open to the applicants to now contend that the respondent nos.1 to 5 are joint tenants of the subject premises.

10. The Petitioners in the second Writ Petition has pointed out that the respondent nos.4 and 5/petitioners herein were impleaded only during the pendency of the proceedings on 24.3.2009, and according to them, as on that date the subject flat belonged to the respondent nos.4 and 5. The learned Counsel further points out that in terms of the provisions of CPC such proceedings are deemed to be filed on the date when the impleaded parties have received the summons from the Court, and according to him, merely because the subject flat is in occupation of the respondent nos.4 and 5 by itself would not defeat the right of the respondent nos.1 to 3 to occupy the subject premises. Shri R. Pednekar, the learned Counsel for the petitioners in Writ Petition No.156 of 2016 further adopted the contention of the learned Counsel appearing for the respondent nos.1 to 3.

11. On the other hand, Shri Sudin Usgaonkar, learned Senior Counsel appearing for the applicants has pointed out that both the Authorities below upon appreciating the evidence on record have concurrently come to the conclusion that the applicants have made out a case for eviction under Section 22(2) (e) of the Act. The learned Senior Counsel further points out that

the applicants had amended the main application to incorporate the ground of Section 22(2)(e) of the Act. The learned Senior Counsel further points out that infact there were already pleadings in the application to the effect that the respondents had possession of the subject flat. The learned Senior Counsel further points out that merely getting an allotment after the proceedings were initiated would not itself defeat the right of the applicants in getting the eviction of the respondents from the tenanted premises. The learned Senior Counsel further submits that in the deposition of AW1 there was a specific statement to the effect that the subject flat was allowed to remain vacant by the respondents. The learned Senior Counsel further submits that this statement of the AW1 has not been challenged in the cross examination of AW1. It is further submitted that as this fact has been clearly stated in the deposition and not disputed by the respondents would itself suffice that the respondents were in possession of the subject flat. The learned Senior Counsel further submitted that even in the original application, there were specific averments to the effect that the respondents were in possession of the subject flat and as such, the contention of lack of pleadings would not at all be justified. The learned Senior Counsel further submitted that in any event lack of pleadings if any are not fatal in proceedings before the Rent Controller and as such, merely because there is any defect in the pleadings of the applicants would not by itself disentitles the applicants to establish the facts required to meet

the ground under Section 22(2)(e) of the Act. The learned Senior Counsel further submits that considering the factual findings by the Authorities below that the respondents have premises in their possession, there is no reason to interfere with the impugned judgment passed by the Authorities below. In support of his submissions, the learned Senior Counsel relied upon judgments of the Apex Court reported in **AIR 1995 SC 10** in the case of **Dewa Chand Bhalla Vs. Ashok Kumar Bhoil**, **AIR 1995 SC 676** in the case of **Harish Tandon Vs. Addl. District Magistrate, Allahabad**, **AIR 1989 SC 1492**, in the case of **Mohini Vs Raghunandan** and Judgment of this Court reported in **2006(1) Bom. C.R. 458** in the case of **Manorama Gopal Landge Vs Somnath Dagdue Rane**. The learned Senior Counsel, as such, submits that the petition be rejected.

12. The first contention of Shri Pereira, learned Counsel appearing for the petitioners is that there are no pleadings to the effect that the applicants are seeking eviction of the respondents in terms of Section 22(2) (e) of the Act. In this connection Shri S. Usgaonkar, learned Senior Counsel appearing for the respondents herein/applicants has brought to my notice an application filed by the applicants for amendment of the main application wherein the grounds for eviction under Section 22(2)(e) of the Act was also incorporated. As such, the fact that the respondents had knowledge that the applicants were seeking eviction also on the

said ground cannot be disputed. Shri Pereira, learned Counsel however, points out that there is no specific averment in the main application to the effect that the respondents have alternate premises. But however, there is specific averment in the main petition that upon the death of the younger brother of the respondents named Prashant Kakodkar, the respondents are in lawful possession of a flat bearing No.10 in Damodar Apartment at Vasco-da-Gama. It is averred that as the respondents have sufficient possession of an alternative accommodation and lawful owner as a successors of the said Prashant Kakodkar whereby the premises have been inherited by the respondents. It was also submitted that the respondents will not be put to loss, if the possession of the premises are delivered to the applicants. Whilst dealing with the said paragraph in the written statement it was disputed by the respondents that the said premises were inherited by the respondents or that it has come into the possession of the respondents. It was further stated that as per the last wish the flat was for the benefit of his two sisters. The two sisters who were also made parties to the said proceedings have also filed their separate written statement. It is their case that flat no.10 is in their possession and that the other respondents/petitioners herein in the other petition have no right to the said flat. The fact remains that said Prashant Kakodkar had died interstate and without any Will and being a bachelor his rights devolved upon the mother and upon her death in the year 2005 before the filing

of the Eviction Proceedings upon all the respondents/petitioners in both the petitions. It is undisputed that the suit premises consist of one room, one kitchen and one hall whereas the flat consists of one room, one dinning cum hall and one kitchen. In such circumstances, it is not in dispute that there is no hardship to the petitioners herein. The only aspect to be examined in such circumstances is whether the respondents/tenants had possession of the flat on the date of the filing of the Eviction Proceedings. It is the contention of Shri Pereira, learned Counsel appearing for the respondents that as the premises were allotted to the sisters in the year 2006 it cannot be said that such flat was available to the petitioners at the time of filing of the Eviction Proceedings. Devolution of rights to the inheritance takes place simultaneous upon the death of estate leaver. In the the present case, the rights have devolved upon the Respondents upon the death of the mother which occurred before the filing of the Eviction proceedings. As on the date of the filing of the Eviction Proceedings, it is not disputed that the rights to the subject flat bearing no.10 in Damodar Building devolved upon all the Respondents in terms of Article 2011 of the Portuguese Civil Code which reads thus:-

“The transmission of the ownership and possession of the inheritance to the heirs whether instituted or legal take place fro the moment of the death of the estate-leaver.”

13. On plain reading of the said provision, the ownership and possession of the inheritance devolves from the moment of the death of the estate leaver.

14. In such circumstances, the ownership and possession of the subject flat devolved upon the respondents/tenants jointly in terms of the said provisions. In the similar way the tenancy right in the subject premises developed upon the said respondents upon the death of the said mother Suniti. The situation which as such arises is that joint tenancy has devolved upon all the respondents/tenants as well as the joint ownership and possession of the subject flat. The status of all the respondents as such as far as the disputed premises are concerned is as co-tenants. On perusal of the evidence of PW1 in the affidavit, there is a specific averments in his affidavit that flat no.10 is vacant and is available for the petitioners. There is no challenge to this statement in the cross examination by the respondents.

15. In such circumstances, the findings of the authorities below to the effect that the subject flat no.10 was available for occupation of the petitioners as on the date of the filing of the present eviction proceedings cannot be faulted. It is however be contended that the ownership of the subject premises was confirmed in favour of the two sisters in the year 2006. But however, in the judgment reported in **AIR 1995 SC 10 in the**

case of Dewan Chand Bhalla Vs Ashok Kumar Bhoil. The

Apex Court has observed at para 5 thus:-

“As it is the said provision in the 1987 Act which is invoked by the respondent-landlord to get possession of the residential building from the appellant-tenant, we could examine its scope and ambit inasmuch as such examination could also facilitate a proper appreciation of the arguments advanced thereon, the landlord's right to obtain possession of a residential building in the occupation of a tenant under the said provision accrues, as becomes clear from the plain words employed therein, when the tenant either before the commencement of the Act, that is, 17.11.1971 or after the commencement of the Act, that is, 17.11.1971, has built or acquired vacant possession of or been allotted a residence, reasonably sufficient for his requirements. If that is so, can it be said that it is open to a tenant who builds, acquires vacant possession of or is allotted a residence, reasonably sufficient for his requirements, either before or after the commencement of the Act, and thereby entitles the landlord to make an application under the provision to get possession of residential building from such tenant to defeat such entitlement of the landlord, by parting with the residence got by him either before or after the landlord makes such application. Clear and unequivocal words employed in the said provision give no scope for a tenant to say that the accrued entitlement or right of the landlord to get back possession of the residential building from him under the provision is lost when

he (tenant) parts with possession of residence which had come to him in one or the other ways referred to therein. To hold that the provision enables the tenant to make his landlord lose his right to recover possession of the residential building accrued thereunder by the tenant parting with possession of residence got by him either before or after the application is made by the landlord under the provision would amount to saying that the tenant, by having recourse to certain means, could defeat the accrued right of the landlord to get possession of the residential building. But, we cannot say so since that could result in encouraging unscrupulous tenants to practice deceit against landlords by adoption of some trick or strategy which could defeat their valuable accrued rights. As the landlord's right to obtain possession of tenanted premises from the tenant when it is unauthorisedly sublet cannot be defeated by a tenant cancelling the sub-lease before or after an application for eviction is made by the landlord on that ground, so also a landlord's right to obtain possession of the residential building when the tenant gets a separate residence as indicated in the provision, cannot be permitted to be defeated by the tenant parting with possession of such residence before or after an application is made by the landlord under that provision. What we have said being under the scope and ambit of provision in Section 14(3)(a)(iv) we are impelled to take the view that a tenant of a residential building who being allotted a residence reasonably sufficient for his requirements becomes

liable for eviction from the residential building on an application made by his landlord under Section 14(3)(a)(iv) of the 1987 Act, cannot resist the grant of such application on the ground that he lost the allotted residence by surrender made either before or after the filing of such application. As the view on which the High Court has made the order dismissing the revision petition filed before it by the appellant conforms to our view, taken in the matter, the same does not call for our interference in this appeal.”

16. In the present case, it is not disputed that as on the date of the filing of the eviction proceedings all the petitioners had joint ownership and possession of the flat no.10 in Damodar building. The subsequent allotment in the year 2006 wherein all the respondents were parties would not defeat the right accrued to the applicants in terms of Section 22(2) (e) of the Act. As such, I find that the Authorities below were justified to come to the conclusion that the applicants have made out a case for eviction in terms of Section 22(2)(e) of the Act. Section 22 of the Act reads thus:-

“22. Grounds of eviction.— (1) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf.

(2) If the Controller, after giving the tenant a reasonable opportunity of showing cause against the application is satisfied —

[(a)

(b)

(i)

(ii)

(c)

(d).....

(e) that the tenant of a dwelling house has, whether before or after the commencement of this Act, built, acquired vacant possession of, or been allotted a residence [within an area of five kilometers radius for the outer limits of the city or village as the case may be, where such dwelling house is situated]; or

(f).....

(g).....

17. The contention of Mr. Pereira, learned Counsel for the petitioners that there is lack of pleadings or that the evidence beyond the pleadings cannot be considered in terms of order VI Rule 15 of CPC cannot be accepted. The procedure before the Rent Controller is governed by the procedure as laid down in the Mamlatdar Courts Act and the Civil Procedure is applicable in specific circumstances as observed in the judgment passed in Writ Petition No. 492 of 2010 dated 4.1.2013 by relying upon the judgment reported in **(1992) 1 Bom. C. R. 475** in the case of **Vinayak Poma Tarkar Vs Jacinto Santa Gorgenio and ors.** wherein it has been observed at para 10 thus:-

“10. First of all and apart from circumstance that section 13 of the Bombay Rent Act is no pari materia with section 23 of the Rent Act, the fact remains that since the Bombay Act provides for a suit to be filed before the Small Causes Court, differently from the Goa Act which prescribes only a summary inquiry in

terms of the Mamlatdar's Court Act, it is obvious that in the Rent proceedings the law does not enjoin the petitioner to present before the Rent Controller any specific pleading within the meaning of the Civil Procedure Code. Therefore, if strictly speaking only the provisions of the Mamlatdar's Court Act are applicable and the provisions of the C.P.C. Are not applicable, there is no question of any rule of pleadings to be attracted in the case, so much so there is no such rule which requires that the factual evidence should also be incorporated in the pleadings."

18. Though as pointed out herein above, there are sufficient pleadings to draw an inference that the petitioners had knowledge that the ground for eviction was also under Section 22(2)(e) of the Act, nevertheless, there were substantial averments necessary to get such grounds established in the application filed by the respondents as pointed out herein above. The respondents have pleaded that the petitioners had possession of flat no.10 which devolved upon them upon the death of the mother which occurred prior to the filing of the Eviction proceedings. The stand taken by the respondents/tenants that no right therein had accrued to the three brothers cannot be accepted as it is an admitted position that the mother died interstate and as such the rights devolved upon all the respondents jointly. The stand taken by the respondents in their written statement is that it was the wish of the deceased brother

that the flat was to be allotted to the unmarried sisters. But however, admittedly the subject flat was enlisted in the inventory proceedings upon the death of his mother Suniti which occurred in the year 2005, and as such the said contention has been rightly discarded by the Authorities below while coming to the conclusion that the petitioners had possessions and ownership of flat no.10 as on the date of the filing of the Eviction Proceedings.

19. The Apex Court in the judgment reported in **AIR 1995 SC 676** in the case of **Harish Tandon V/s Addl. District Magistrate, Allahabad U.P. and others** has observed at paras 24 and 26 thus :

“ 24. It appears to us, in the case of H. C. Pandey v. G. C. Paul (AIR 1989 SC 1470) (supra) it was rightly said by this Court that after the death of the original tenant, subject to any provision to the contrary, the tenancy rights devolve on the heirs of the deceased tenants jointly. The incidence of the tenancy are the same as those enjoyed by the original tenant. It is a single tenancy which devolves on the heirs and there is no division of the premises or of the rent payable therefor and the heirs succeed to the tenancy as joint tenants.

26. The framers of the Act have clearly expressed their intention in Sections 12, 20 and 25 while protecting the tenant from eviction except on the grounds mentioned in Section 20, that after the death of the original tenant his

heirs will be deemed to be holding the premises as joint tenants, and for any breach committed by any of such joint tenants, all the heirs of the original tenant have to suffer. They cannot take a plea that unless the grounds for eviction mentioned in sub-section (2) of Section 20 are established individually against each one of them, they cannot be evicted from the premises in question. ”

20. The Apex Court in the judgment reported in **1989 SC 1492** in the case of **Smt. Mohini Badhwar V/s Raghunandan Saran Ashok Saran** has observed at para 4 thus :

“4. In this appeal it is urged on behalf of the appellant that before the earlier tenant of the appellant had vacated the house the appellant had already entered into an agreement to sell the house to another person, and that therefore in the presence of that obligation it was not possible to say that when the house was vacated the appellant was entitled to enter into and to continue in possession of the house. It is contended before us that before the original tenant vacated the house there was an oral agreement between the appellant and Smt. Leela Wati to sell the house to Smt. Leela Wati and that the agreement was only formalised in a

written document on 24 November, 1973. It is urged that when the original tenant vacated the house on 20 November, 1973 the appellant was under a legal obligation to sell the house to Smt. Leela Wati, and that in the circumstances, the house cannot be said to constitute alternative accommodation for the purpose of S. 14(1)(h) of the Act. The Rent Control Tribunal has found against the existence of any such oral agreement. Upon that it would seem that it was only after obtaining possession on 20 November, 1973 from the original tenant, that is, four days later, that the appellant executed an agreement for sale with Smt. Leela Wati. It is apparent that on 20 November, 1973 the appellant came into the house belonging to her and it was available to her for her occupation. The circumstances that she lost possession on the date when the eviction petition was filed does not protect the appellant against S. 14(1)(h) of the Act."

21. The learned Single Judge of this Court in **2006(1) Bom. C. R. 458** in the case of **Manorama Gopal Landge V/s Somnath Dagdue Rane** has observed at paras 16, 17, 18 and 21 thus:

“16. The next important aspect is, that even if there is an acquisition of the premises by the tenant, under the scheme of the Act whether it is suitable residence for the tenant to occupy the same. In absence of any positive evidence on the record, there is no material to justify that the premises in question is not suitable or it was not available for the occupation to the tenant.

17. The basic factor which cannot be overlooked in this case and considering the scheme of the Bombay Rent Act, that the tenant let out the acquired premises and earning profit out of it. They have not kept the premises vacant. It is not the case of additional requirement of accommodation by the tenant. In the present case, and in this background the tenant is not entitled to oppose the case of the landlady. In *Purshottam* (Supra) Bombay High Court has maintained the order of eviction on similar issue of acquisition of residential premises by the wife of the tenant and observed as under;

"Once it is found that the defendant has prior to the date of the suit acquired vacant possession of alternate suitable residence the subsequent letting of a portion cannot be bring out the defendant from the clutches of Section 13(1)(1)"

18. The Apex court in *Ganpatram* (Supra) after considering the material on the record held that there is acquisition of suitable accommodation by the tenant, that it is

sufficient ground, if case is made out by the landlord to grant a decree on this ground of acquisition of alternative accommodation by the tenant. In the present case. the landlady, has discharged her burden fully. The tenant in this case, unable to prove the case that the premises acquired in the name of wife is not suitable residence.

21. In this background, I see there is no reason to maintain the impugned judgment and order dated 31st January, 2002. The reasons of the trial Court is correct and need to be restored.”

22. Taking note of the observations in the judgments referred to herein above, the contention of the learned counsel appearing for the respondents/daughters of the deceased tenant that they acquired possession of the said flat no.10 before the receipt of the summons in the eviction proceedings is irrelevant as on the date of the filing of the eviction proceedings the rights to the subject flat no.10 had already devolved upon all the respondents/tenants who were the joint tenants and in ownership and possession of such flat. Any act done by the respondents/tenants inter se to allot the said flat to such respondents/daughters would not defeat the claim of the applicants/landlords to seek the eviction of the respondents/tenants of the subject premises under the provisions of Section 22(2)(e) of the Act. There is no contention raised by the respondents/tenants that the said flat no.10 is not suitable for

their residence and in any event, considering the size of the subject premises and the said flat, they are substantially the same. In any event, taking note of the said observations in the judgments referred to herein above, this aspect has become irrelevant for deciding the issue involved in the above Writ Petition.

23. The predicates of Section 22(2)(e) of the Act are that the tenant has acquired the vacant possession or has been allotted a residence. In the present case, as pointed out herein above, in terms of the said provisions the ownership and possession of flat no.10 devolved upon the respondents/tenants jointly and as such the authorities below have rightly come to the conclusion that the applicants were entitled for the relief sought. This Court under Article 227 of the Constitution of India cannot reappreciate the evidence on record to come to any contrary findings. Both the Authorities below upon appreciating the evidence on record have come to the conclusion that the respondents have made out a case for eviction in terms of Section 22(2)(e) of the Act, and no perversity are disclosed in such findings as they are based on the material on record and appreciation of the evidence and as such, I find that there is no reason for interference in the impugned orders passed by the Authorities below. Hence, the petitions stand rejected. Rule stands discharged with no orders as to costs.

F. M. REIS, J