

2. Writ Petition No.7506 of 2015 is instituted by petitioners, hereinafter referred to as 'applicants', challenging the judgment and order dated 04.02.2015 passed by the Appellate Bench of the Small Causes Court, Mumbai in Revision Application No.373 of 2014. By that order, the appellate Court allowed the Revision Application filed by the respondent No.1, hereinafter referred to as 'plaintiff', and quashed and set aside the judgment and order dated 23.08.2014 passed by the learned Judge presiding over Court Room No.9 of the Court of Small Causes at Mumbai below exhibit-55 in R.A.E.Suit No.205/335 of 2001. The learned trial Judge allowed the application made by the applicants and directed them to be joined as plaintiffs No.2 to 5 in the Suit. The appellate Court dismissed the application filed by the applicants adding them as party.

3. Writ Petitions No. 10968 of 2014, 2888 of 2015 and 10967 of 2014 are instituted by the original plaintiff challenging-

a. judgment and order dated 05.11.2014 passed by the learned Judge, presiding over Court Room No.25 of the Court of Small Causes at Mumbai below exhibit-28 in R.A.E.&R. Suit No.124/210 of 2008;

b. judgment and order dated 05.01.2015 passed by the learned Judge presiding over Court Room No.12 of the Court of Small Causes at Mumbai below exhibit-70 in R.A.E.&R. Suit No.166/290 of 2004; and

c. judgment and order dated 05.11.2014 passed by the learned Judge presiding over Court Room No.25 of the Court of Small Causes at Mumbai below exhibit-31 in R.A.E.&R. Suit No.123/209 of 2008, respectively.

4. By these orders, the learned trial Judge allowed the applications made by the respondents (for short 'applicants') in Writ Petitions No. 10968 of 2014, 2888 of 2015 and 10967 of 2014 under Order 1, Rule 10

of C.P.C. and directed the plaintiff to implead the respondents as party defendants in the respective Suits. Since the common questions of law and fact between the same parties arise in these Petitions, the same can conveniently be disposed of by this common judgment.

5. In support of Writ Petition No.7506 of 2015, Mr. Harit submitted that applicants have purchased half undivided share in the suit property by a registered conveyance dated 11.12.2012 from the legal representatives of the erstwhile owners. Applicants approached the plaintiff for amicable partition of the property. As the plaintiff did not accept the suggestion, applicants were constrained to institute Suit No.947 of 2013 on the Original Side of this Court. He submitted that during the pendency of that Suit, applicants took out Notice of Motion No.23 of 2014 for appointment of Court Receiver and injunction restraining the defendant (plaintiff herein) from creating third party rights or handing over possession of the suit property. On 15.01.2014, the learned Single Judge recorded the statement made on behalf of the plaintiff herein that until further orders, he will not create any third party rights or handover possession in respect of the suit property. By order dated 27.02.2014, the learned Single Judge granted interim order in terms of prayer clause (c) of the Motion and declined to appoint Court Receiver in respect of the suit property. The learned Single Judge also directed the plaintiff herein to maintain accounts in respect of the suit property and shall file such accounts every six months in the Court with a copy thereof to be furnished to the applicants' Advocate.

6. Mr. Harit submitted that aggrieved by this decision, applicants and plaintiff preferred appeals before the Division Bench of this Court. By order dated 10.04.2014, the appeals were dismissed reserving liberty to the applicants to take out appropriate proceedings before the learned

Single Judge in the event of making out a case that a plaintiff herein is not properly maintaining the accounts.

7. Mr. Harit submitted that plaintiff has instituted frivolous criminal cases against the applicants. Some of these cases are withdrawn and some are pending. He submitted that plaintiff has instituted as many as 11 Suits against the different tenants. The main object of the plaintiff in instituting the Suit is to knock out money from these tenants. He submitted that one of the tenants has lodged N.C. complaint against the plaintiff herein raising that grievance. He submitted that the Suits instituted by the plaintiff are with oblique motive and are not bonafide proceedings. Plaintiff intends to enter into settlement with the tenants for recovering the money from them.

8. Mr. Harit submitted that as the applicants have purchased half undivided share in the suit property, they are necessary party. The outcome of the Suits is bound to affect them adversely. He submitted that as the outcome of the Suits is likely to affect the applicants, they are required to be impleaded in the Suit. In support of this submission, he relied upon the following decisions:

- a. ***Sumita Pradipkumar Dixit Vs. Pushpadevi G. Makharia, 2002 (4) Bom.C.R. 249***, and in particular paragraphs 11, 13, 14 and 17;
- b. ***Ratan Lal Vs. Gopal*** passed by the learned Single Judge of Rajasthan High Court - Jodhpur in **Second Appeal No.237 of 2012 decided on 17.01.2014**, and in particular paragraph 44 thereof;
- c. ***B. Valsala Vs. Sundaram Nadar Bhaskaran, 1994 AIR (Ker) 164***, and in particular paragraph 13 thereof; &
- d. ***Ranjitsingh Linga Vs. Municipal Corporation of Greater Mumbai, 2010 (4) Bom.C.R.363***, and in particular paragraph 7 thereof.

9. Mr. Harit further submitted that the Courts below committed serious error in entertaining the revision application. In fact, the order passed by the learned trial Judge was purely a procedural order, not affecting the substantive rights of the parties. Though the said contention was advanced as also reliance was placed upon the Full Bench decision of this Court in the case of ***Bhartiben Shah Vs. Gracy Thomas*, 2013(2) Mh.L.J. 25**, and though the appellate Court also observed in paragraph 9 of the impugned order that the order passed by the trial Court is a procedural order under C.P.C., still, it directly affects the substantial rights of the plaintiff as dominus litis. He, therefore, submitted that the impugned order is liable to be set aside thereby restoring the trial Court's order. Mr. Harit supported the orders impugned in Writ Petitions No.10968 of 2014, 2888 of 2015 and 10967 of 2014.

10. On the other hand, Mr. Mooman supported the order impugned in Writ Petition No.7605 of 2015 and submitted that the orders impugned in Writ Petitions No.10968 of 2014, 2888 of 2015 and 10967 of 2014 are liable to be set aside. He submitted that basically, plaintiff has instituted Suit against the tenant. The Suit is essentially between a landlord and tenant. It is settled principle of law that one of the co-owners can maintain the Suit. He submitted that respondents are neither a necessary nor a proper party. In support of his submissions, he relied upon the following decisions:

- a. ***Foolchand Vs. Shabbir Hussain*, 1998 (1) Mh.L.J.429; &**
- b. ***Ramesh Hirachand Kundanmal Vs. Mun. Corp. of Gr. Bombay*, 1992 (3) Bom.C.R.110.**

11. He further submitted that the apprehension of the applicants that plaintiff will enter into settlement can be taken care of by putting plaintiff to terms. In other words, he submitted that plaintiff will not

enter into settlement without obtaining leave from this Hon'ble Court in Suit No.947 of 2000 pending on the Original Side of this Court. Mr. Mooman submitted that if this Court is inclined to hold that the revision filed by the plaintiff before the appellate Court is not maintainable, plaintiff will file substantive Writ Petition challenging the order of the trial Court. He submitted that in any case, the order of the trial Court impleading applicants as plaintiffs is not sustainable. He submitted that two sets of plaintiffs cannot prosecute the Suit through two different lawyers.

12. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Prima facie, it is not in dispute at this stage that plaintiff is the owner to the extent of 25% share, applicants are owners to the extent of 50% share and one more party is owner to the extent of 25% share. Thus, plaintiff is one of the co-owners who has instituted Suits against the tenants for eviction. In a Suit between landlord and tenant, whether other co-owner is a necessary or a property party is the moot question. Whether the presence of other co-owner is necessary for passing effective decree so as to hold that the other co-owner is a necessary party or whether it enables the Court to effectively adjudicate upon and settle the controversy between the parties so as to hold that the other co-owner is a proper party.

13. In my opinion, in a Suit for eviction between landlord and tenant, other co-owners presence is not necessary. Having regard to the fact that the jurisdiction of the Small Causes Court is regulated by the provisions of Section 33 of the Maharashtra Rent Control Act, 1999 (for short 'Act'), and in particular Section 35 lays down that nothing contained in Sections 33 and 34 shall be deemed to bar a party to a suit,

proceeding or appeal mentioned therein in which a question of title to premises arises and is determined, from suing in a competent court to establish his title to such premises. Thus, even if issue of title is determined in a Suit between landlord and tenant, a party therein is not precluded from approaching a competent Court to establish its title. The findings recorded by the Small Causes Court in a limited jurisdiction will not operate as res judicata against that party.

14. In the case of ***Jainuddin Vs. Sitaram*, 1981 Mh.L.J. 498**, the Suit was instituted under Sections 12 and 13 of the Bombay Rent Act. In that Suit, defendant no.2 was the co-owner of the plaintiff. Defendant no.2 filed his written statement contending inter alia that the notice terminating tenancy of the defendant no.1-tenant was not legal. He also opposed the plaintiff's suit for eviction on the ground of bonafide requirement. It was urged that notice of termination ought to have issued by all the owners. The learned single Judge of this Court considered the decisions of the Apex Court in (1) ***Sri Ram Pasricha Vs. Jagannath*, AIR 1976 SC 2335** and (2) ***Smt. Kanta Goyal Vs. B. P. Pathak*, AIR 1977 SC 1599**. In paragraph 12, the submissions advanced on behalf of the plaintiff were recorded. It was submitted that in a suit for eviction against the tenant by the co-owner the interest of the other co-owners cannot be affected in any way. If one of the co-owners files a suit against the tenant and obtains possession of the suit premises, the premises encumbered by induction of the tenant is removed if the plaintiff's suit succeeds. If a co-owner is not satisfied with a decree for exclusive possession in favour of one of the co-owners, his remedy is only to file a separate suit for partition and get his share demarcated. It would be dangerous proposition that in cases of this type, a co-owner as a defendant can oppose the suit of one of the co-owners for possession of the suit premises claiming a decree for eviction

of the tenant. After recording the submissions of the plaintiff, the learned Single Judge observed that there is a considerable substance in those submissions. After referring to the decision of the apex Court in **Ram Pasricha** (*supra*) and **Kanta Goel** (*supra*), it was observed that one of the co-owners can file a suit for eviction against the tenant. The landlord who had let out his premises to the tenant and heirs succeeded to his estate and one of the co-owners files a suit for eviction against the tenant on the ground of bonafide requirement for himself, his mother or married brother, such a suit shall be maintainable and decree for possession in favour of one of the co-owners shall be passed. In paragraph 13 it was observed thus:

“13. I am unable to appreciate the submission of Shri Rane that in case where the co-owners does not give his consent for institution of the suit by one of the co-owners and resists such a suit, if filed, no decree on the ground of bona fide requirement for use and occupation can be passed. In my view, having regard to the observations made by the Supreme Court in the cases referred to above, the co-owner may be added as a party but he cannot be considered a necessary party to the suit by one of the co-owners. He cannot resist the suit of the co-owner and contend that no decree can be passed in favour of the co-owner on any of the grounds given in the Rent Act. Take for instance, the tenant is damaging the suit premises, causing waste to it, sub-letting the premises or demolishing the same and without the permission of the landlord altering the structure or constructing a permanent structure and if a co-owner files a suit on the grounds mentioned above against the tenant for eviction, how the co-owner can oppose such a suit? If one of the co-owners is trying to remove the encumbrance on the tenanted premises within the ambit of the provisions of the Rent Act, then the decree for eviction in any way will not be inconsistent with, or contrary to the interest of the co-owners. In such a suit if a co-owner is added as a party, no relief can be asked against him. If the co-owner obtains possession in pursuance of the decree passed in his favour by the competent Court, his possession will be deemed to be the possession on behalf of all the co-owners. And if the co-owner is not happy with possession of the other co-owners, his remedy is only to file a separate suit for partition and possession and get his share in a proper proceedings decreed. Shri Rane has not disputed that the co-owners can file a suit for bona fide requirement for his use and occupation of the suit premises for himself or for any member of his family. However his grievance is that if a co-owner opposes

such suit, no decree for exclusive possession in favour of one of the co-owners can be passed. It is rather not possible to accept this submission of Shri Rane. Because in such a suit filed by one of the co-owners for eviction, it cannot be detrimental to the interest of the other co-owners. Take a case where the tenant does not pay arrears of rent and a suit is filed for recovery of arrears of rent making the co-owners as party defendant, can he oppose the said suit on the round that the rent should not be paid to the co-owners. Take a case, where a suit for eviction is opposed on the ground of causing damage to the building let out to a tenant, or causing waste of some kind, can the co-owners join the hands with the tenant to oppose the suit contending that the decree should not be passed in favour of co-owners. It will be dangerous proposition to allow the co-owners to oppose such a suit for a eviction by another co-owners or any grounds whatsoever, joining the hands with recalcitrant tenant and refuse to give consent for institution of the suit. In these circumstances and having regard to the observations made by the Supreme Court in the two cases referred to above, the contention of Shri Rane cannot be accepted.”

15. The decision in **Jainuddin's case** (*supra*) was subsequently followed by the learned Single Judge in **Rahimtulla Abdul Rahiman Vs. Chandrakant**, AIR 1982 BOMBAY 282, and in particular paragraph 7. The decision of the learned Single Judge in **Jainuddin's case** (*supra*) was quoted with the approval by the Division Bench in **Hiralal Vs. Namdeo**, 1983(2) Bom.C.R.71. The decision in **Jainuddin** (*supra*) was also followed in **V. Prabha & Co. Private Limited Vs. Kuljit Singh Chadha**, 2007 (2) ALL M.R. 352. Thus, the issue whether one of the co-owners can maintain the Suit inspite of other co-owners objecting to it is no longer *res integra* as far as this Court is concerned. That apart, if one of the co-owners objects to filing of the Suit by another co-owner, indirectly the rights of the co-owners who intend to institute the Suit or already instituted the Suit will be curtailed. In other words, such co-owners will not be entitled to exercise right incidental to the right of ownership of the property. In such situation, as observed by the learned Single Judge in **Jainuddin's case** (*supra*), remedy of other co-owner/s is to institute Suit for partition and separate possession. Thus, insofar as this Court is concerned, the issue is no longer *res*

integra. In the present case, Suit for partition is pending in this Court.

16. Mr. Harit relied upon decision in **Sumita Pradipkumar Dixit** (*supra*), and in particular paragraphs 11, 13, 14 and 17 thereof. In that case, respondents No.1 to 4 in their capacity as trustees of a registered public charitable trust had instituted suit against respondents No.5 to 7 (defendants No.1 to 3) for recovery of possession of the suit premises. By agreement dated 21.10.1970, the suit property was given on licence to the first defendant for running a hotel. On 06.02.1976, it was alleged that the premises were given on licence to the second defendant for conducting a hotel. The first and second defendants started running a hotel by name and style 'Satkar'. The Suit was instituted on three grounds namely, (i) the defendants have carried out unauthorised permanent alterations in the suit property; (ii) since 1998, the first and second defendants stopped running the hotel business and inducted the third defendant in the suit property "as a sub-licence tenant". Consequently, it is alleged that the first and second defendants have committed a breach of the terms and conditions of the licence agreement and of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947; (iii) the Public Charitable Trust of which the plaintiffs are trustees requires the premises bona fide for its use and occupation. The trust addressed a notice dated 21st March, 1996 to all the three defendants terminating the licence/tenancy and calling for the handing over of vacant possession. In these circumstances, a decree for possession was sought.

17. First defendant filed written statement resisting the Suit. First plaintiff Smt. Pushpadevi Makharia is a sister of the first and second defendants. According to the first and second defendant, petitioner (third defendant) used to get bookings for the hotel from Mumbai.

Subsequently, first defendant filed affidavit setting out therein that third defendant was permitted by the first and second defendants without permission of the plaintiffs to carry on business. It was thereafter stated that they have no objection if the Suit is decreed as prayed for by the plaintiffs. Plaintiffs filed Purshis for deleting defendant No.3 on the ground that first defendant had filed affidavit. Third defendant filed written statement inter alia contending that she has been inducted as a tenant in the suit property by the plaintiffs. She is a Director of the third defendant. Defendants No.1 and 2 have colluded with the plaintiffs with a view to evicting her. She is a necessary and proper party to the Suit. She filed application under Order I, Rule 10 before the trial Court. The learned trial Judge rejected the application. In paragraph 11, the learned Single Judge referred to the decision of ***Razia Begum Vs. Anwar Begum***, AIR 1958 SC 886. In paragraph 13, decision of the Apex Court in the case of ***Ramesh H. Kundanmal v. Municipal Corporation of Greater Bombay***, 1992 SCC (2) 524 was referred. In paragraph 17, it was held that the petitioner (third defendant) had vital interest in the subject matter of the suit and she would be affected by and be bound by any decision that is arrived at the trial of the suit. Perusal of this decision clearly shows that in that case, plaintiffs were landlords and defendant No.3 claimed to be a tenant. It was the case of defendant No.3 that there was collusion between plaintiffs and defendants No.1 and 2. In my opinion, the said decision is not applicable to the facts of the present case.

18. Mr. Harit relied upon the decision of ***Ratan Lal*** (*supra*), and in particular paragraph 44 thereof. In that case, the learned Single Judge of Rajasthan High Court referred to the decisions of the Apex Court in - (a) ***Dhannalal v. Kalawatibai***, (2002) 6 SCC 16; (b) ***India Umbrella Manufacturing Company v. Bhagabandei Agarwalla***, (2004) 3 SCC 178 and (c) ***FGP Ltd. V. Saleh Hooseini Doctor***, (2009) 10 SCC 223.

After referring to the decision in *Sri Ram Pasricha (supra)*, wherein it was observed in paragraph 27 that “jurisprudentially, it is not correct to say that a co-owner of a property is not its owner. He owns every part of the composite property along with others and it cannot be said that he is only a part- owner or a fractional owner of the property. The position will change only when partition takes place.” In the present case, applicants have admittedly purchased half undivided share and Suit for partition is pending. In my opinion, this decision really assists the case of the plaintiff and does not support applicants herein.

19. Mr. Harit relied upon the decision in **B. Valsala (supra)**, and in particular paragraph 13 thereof. In that case, the question that was considered was whether plaintiff can recover possession from the defendants. It was observed that an exception to the rule above mentioned has been made where the suing co-owner claims exclusive title to the property in derogation or denial of the rights of the other co-owners. In such an event, the co-owner whose rights are denied or against whose interest the plaintiff is suing is a necessary party to the suit, and his absence will be fatal to the suit itself. In my opinion, the said decision is also not applicable to the facts of the present case. At the cost of repetition, applicants have already instituted Suit for partition in this Court and the same is pending.

20. Mr. Harit relied upon the decision in **Ranjitsingh Linga (supra)**, and in particular paragraph 7 thereof. In paragraph 7, the learned Single Judge has referred to the decision in **Ramesh Hirachand Kundanmal (supra)**. In that case, the Corporation had issued notice under Section 351 of the Mumbai Municipal Corporation Act to the petitioners. They instituted Suit challenging the notice dated 17.09.1908 issued by the Corporation. Second defendant filed Chamber Summons contending

that by a registered conveyance dated 31.10.2002, they have purchased certain properties. They being the landlords and owners, are the necessary party and as the demolition order was subject matter in the Suit that would materially affect the right, title and interest in their property. It is in that context, the learned Single Judge held that the second respondent was a necessary party. The said decision is also not applicable to the facts of the present case. As I have already held that the Suit is essentially between landlord and tenants and one of the co-owners can maintain the Suit. In view thereof, I do not find that applicants are either a necessary or a proper party.

21. As against this, Mr. Mooman relied upon the decision of this Court in the case of **Foolchand** (*supra*) wherein also the learned Single Judge also referred to the decision of **Ramesh Hirachand Kundanmal** (*supra*) and held that co-owner is neither a necessary nor a proper party. In the light of the decisions in **Jainuddin's case** (*supra*) referred hereinabove, I am clearly of the opinion that one of the co-owners is neither a necessary nor a proper party. The applicants, therefore, cannot be impleaded in the Suit.

22. Mr. Harit submitted that the Revision application filed by the plaintiff, itself, was not maintainable before the appellate Court. I find substance in this submission. The question is whether plaintiff should be relegated to institute separate Petition challenging the order passed by the learned trial Judge, more so when plaintiff has instituted petitions challenging the orders passed by the learned trial Judge impleading applicants in the Suit. As the common questions of law and fact arise between the parties, by common judgment and order, I am disposing of these Petitions.

23. In the case of *Surya Dev Rai Vs. Ram Chander Rai*, (2003) 6 SCC 675, the Apex Court has dealt with powers of High Court under Articles 226 and 227 of the Constitution of India. **It is also held that the power of superintendence so conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power under Article 227 is wider than the one conferred on the High Court by Article 226 in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction. In exercise of supervisory jurisdiction the High Court may not only quash or set aside the impugned proceedings, judgment or order but it may also make such directions as the facts and circumstances of the case may warrant, may be by way of guiding the inferior court or tribunal as to the manner in which it would now proceed further or afresh as commended to or guided by the High Court. Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned. The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion.** *(emphasis supplied)*

24. Applying the tests laid down by the Apex Court in **Surya Devi Rai** (*supra*), in my opinion, instead of relegating plaintiff to institute separate petition challenging the order passed by the learned trial Judge, this Court will exercise suo motu power for correcting the errors committed by the trial Court. In the light of the aforesaid discussion, the order passed by the learned trial Judge cannot be sustained and is liable to be set aside and is accordingly set aside. Hence, Writ Petition No.7506 of 2015 fails. Rule is discharged with no order as to costs.

25. This brings me to Writ Petitions filed by original plaintiff-Gyasuddin Kifayatulla Zariwala. For the reasons recorded earlier, the learned trial Judge was not justified in allowing the applications made by the applicants under Order 1, Rule 10 of C.P.C. Hence, Writ Petitions No. 10968 of 2014, 2888 of 2015 and 10967 of 2014 succeed. Rule is made absolute. Impugned orders in these Petitions are set aside and applications at (a) exhibit-31 in R.A.E.&R.Suit No.123/209 of 2008; (b) exhibit-28 in R.A.E.&R. Suit No.124/210 of 2008; and (c) exhibit-70 in R.A.E.&R. Suit No.166/290 of 2004 stand dismissed. It is, however, made clear that before entering into settlement with the tenants, plaintiff will obtain leave of this Court in Suit No.947 of 2013 pending on the Original Side of this Court. Order accordingly.

(R. G. KETKAR, J.)