

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

WRIT PETITION NO. 3689 OF 1995

Rajbali S. Yadav & Ors. ...Petitioners
Versus
Rambhor Samai Yadav - (deceased) ...Respondent

**WITH
CIVIL APPLICATION NO.1642 OF 2007
IN
WRIT PETITION NO.3689 OF 1995**

Durbali Shankar Yadav ...Petitioner
Versus
Rajbali S. Yadav & Ors. ...Respondent

**WITH
CIVIL APPLICATION NO.3090 OF 2007
IN
WRIT PETITION NO.3689 OF 1995**

Rambhor Sami Yadav (Deceased)
Through Lrs. Shivashankar Rambhor
Yadav & Ors. ...Petitioners
Versus
Rajbali S. Yadav & Ors. ...Respondent

**WITH
WRIT PETITION NO. 3684 OF 1995**

Rajbali S. Yadav & Ors. ...Petitioners
Versus
Rambhor Sami Yadav (Deceased)
Through Lrs. Shivashankar Rambhor
Yadav & Ors. ...Respondent

Mr.Eashan Limaye a/w Mr.Miheer Jayakar h/f Mr.Sunil I. Jayakar
for the Petitioner.

Mr.Pradeep R.Kadam for the Respondent.

Mr.Rajbali S. Yavad present in person.

Mr.Omprakash Yadav S/o Mr.Durbali Yadav present in person.

Mr.Manojkumar Yadav S/o Mr.Shivshankar Yadav i.e. Respondent No.1A present in Court.

CORAM : M. S. SONAK, J.

DATE : 21st AUGUST 2017

P.C.

1. These petitions have been heard for considerable length and time on 10th August 2017. Taking into consideration the material on record, the learned counsel for the parties applied for a short adjournment to explore the possibility of settlement. Accordingly, the matter was stood over to 21st August 2017.

2. Today, when the matter was called out, the learned counsel for the parties are pleased to report that the settlement has been arrived at between the parties and that these two petitions can be disposed of on the basis of such settlement. In effect, the legal representatives of Mr.Rambhor Yadav and Mr.Shankar Yadav have agreed to the position that they be declared as co-tenants in respect of the suit premises, having equal tenancy rights in respect of the suit premises. By way of clarification it is stated that this means that

the legal representatives of Mr.Shankar Yadav will have rights to the extent of 50% and the legal representatives of the Mr.Rambhor Yadav will have rights to the extent of 50% as tenants in respect of the suit premises.

3. The suit premises in the present case constitutes Room No.67 in Nagji Chawal No.9, Tulsi Pipe Road, Mumbai-400013. There is no dispute that as of now both the said legal representatives are in possession of the suit premises.

4. Mr.Shankar Yadav instituted ejectment proceedings i.e. EA No.128/E/1972 against Mr.Rambhor Yadav, alleging therein that it is Mr.Shankar Yadav who was the sole tenant of the suit premises and therefore Mr.Rambhor Yadav had no rights in the suit premises. Similarly, Mr.Rambhor Yadav, instituted RAD Suit No.5108 of 1972 against Mr.Shanker Yadav and M/s.Khimji Nagji Company (Landlord) seeking a declaration that it is Mr.Rambhor who was the exclusive tenant in respect of the suit premises.

5. The Trial Court vide common judgment and decree dated 13-03-1992 rejected EA No.128/E/1972 but decreed the RAD Suit No.5108 of 1972 declaring Mr.Rambhor as the tenant in respect

of the suit premises.

6. Aggrieved, Mr.Shankar Yadav/legal representatives of Mr.Shankar Yadav instituted an appeal No.219 of 1992 and 220 of 1992 before the Appellate Bench of the Small Causes Court.

7. The Appellate Bench of the Small Causes Court vide common judgment and decree dated 19-04-1995 has dismissed both the appeals. However, the Appellate Bench, has held that Mr.Rambhor was the sub-tenant in respect of the suit premises.

8. It is sufficient to note that the landlord had not filed any written statement in the proceedings taken out by Mr.Shankar Yadav or Mr.Rambhor Yadav. The representative of the landlord was however examined and his deposition, appears to support the case of either parties to some extent. This means that on the basis of the deposition on behalf of the landlord, it is not possible to set with certainty the status of either Mr.Shankar Yadav or Mr.Rambhor Yadav, who had claimed exclusive tenancy rights in respect of the suit premises.

9. However, what is sufficient is that the landlord neither

filed any written statement in the proceedings nor did the landlord institute any appeal to question the judgment and decree made by the Trial Court or for that matter the Appellate Bench. The real dispute therefore, is between the legal representatives of Mr.Shankar Yadav and Mr.Rambhor Yadav as to the status of the tenancy qua the suit premises.

10. The learned counsel for the parties i.e. the legal representatives of Mr.Shankar Yadav and Mr.Rambhor Yadav, as noted earlier, on the basis of the instructions from their representative clients have stated that the legal representatives are agreeable to be declared as co-tenants in respect of the suit premises i.e. the legal representative of Mr.Shankar Yadav will have 50% rights and the legal representatives of the Mr.Rambhor Yadav will have 50% rights as tenants qua the suit premises. These petitions can accordingly be disposed of by making declaration to the aforesaid effect.

11. Today, in the Court, Mr.Rajbali Shankar Yadav and Mr.Omprakash Durbali Yadav are present. Mr.Rajbali Shankar Yadav is the petitioner No.1 and Mr.Omprakash Durbali Yadav is the son of Mr.Durbali Yadav the petitioner No.3. Similarly,

Mr. Manojkumar Shivshankar Yadav is also present in the Court. The said Manojkumar Yadav is son of Mr. Shivshankar Yadav i.e. Respondent No.1A. The parties present in the Court state that the rest of the parties as reflected in the cause title are old and stay in Uttar Pradesh. They however, confirmed that instructions have been imparted to their respective advocates signifying consent for disposal of this petition by declaring the legal representatives of Mr. Shankar Yadav and Mr. Rambhor Yadav as tenants in respect of the suit premises having rights to the extent of 50% each in the suit premises. Considering the material on record as well as the facts and circumstances as unfolded in the course of arguments as also upon reading the deposition, in my judgment, such settlement, is fair to the interest of both the set of legal representatives.

12. Accordingly, both these petitions are disposed of. The impugned judgments and decrees made by the learned Trial Judge as well as Appellate Bench are modified and it is declared that the legal representatives of Mr. Shankar Yadav and the legal representatives of Mr. Rambhor Yadav are the tenants in respect of the suit premises having 50% as aforesaid rights each as tenants in respect of the suit premises.

13. Again, at the request of the learned counsel for the parties it is clarified that the legal representatives of Mr.Rambhor Yadav shall be tenants of the suit premises to the extent of 50% and the legal representatives of the Mr.Shankar Yadav shall also be tenants of the suit premises of balance 50%.

14. Further, at the request of Mr.P.R. Kadam writing signed by Mr.Shivshanker Yadav-respondent No.1A indicating his written consent to the aforesaid settlement is placed on record and marked as 'X' for the purposes of identification.

15. The petitions are disposed of in the aforesaid terms.

(M. S. SONAK, J.)