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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.345 OF 2014

Urmi Developers Pvt. Ltd.
through its Director Mr.Vinod T.
Gowani having address at 501,
Commerce House, 140, N.M.
Road, Mumbai-23. ..Applicant.

V/s.

1. M/s. Kanoria Brothers,
A partnership firm carrying on
business at Ghat road, Nagpur.

2. Parasaria Properties Pvt. Ltd.,
A registered Private Limited
Company, having its registered
office at 46/A, Peddar Road,
Mumbai-26.

3. Viswanath Gopaldas Sharma,
by its duly constituted attorney
Gopaldas H. Pandit @ Gopaldas
H. Sharma, residing at 46/A,
Peddar Road, Hari Kunj,
1st Floor, Mumbai-26.

4. Manojkumar Jagatrai Virani of
Mumbai Indian Inhabitant,
residing at J.B. Building., 100,
Warden Road, Opp. Nathani
Petrol Pump, Mumbai-26.

5. Anantrao P.Virani (since deceased)
through his L.R.s

5A. Smt. Indirani Anantrai Virani,

5B. Nilesh Anantrai Virani,

5C. Bindu Anantrai Virani,

All adults, Indian Inhabitants,
residing at ground floor, Hari Kunj,
46-A, Peddar Road, Mumbai-26. ..Respondents.

WITH
CIVIL REVISION APPLICATION NO.716 OF 2014

1. Manojkumar Jagatrai Virani of
Mumbai Indian Inhabitant,
residing at J.B. Building., 100,
Warden Road, Opp. Nathani
Petrol Pump, Mumbai-26.

2 Anantrao P.Virani (since deceased)
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46-A, Peddar Road, Mumbai-26. ..Applicants.

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4. M/s. Urmi Developers Pvt. Ltd.
   through its Director Mr.Vinod T.
   Gowani, having address at 501,
   Commerce House, 140, N.M.
   Road, Mumbai-23. ..Respondents.

Mr.V.A.Thorat, Senior Advocate i/b. Mr.T.D.Deshmukh for the Applicant in Civil Revision Application No.345 of 2014.

Mr.P.S.Dani, Senior Advocate with Mr.Vaibhav A.Sugdare i/b. Mr.Samrat K.Shinde for the Applicants in Civil Revision Application No.716 of 2014.

Mr.Girish Godbole with Ameya Gokhale, Ms.Jai Kanade, Akash Menon,Umang Singh, Ms.Sukrti Jaiswal for Respondent No.2 in both Civil Revision Applications.

Mr.Ravi Kadam, Senior Advocate with Mr.Jaydeep Deo for Respondent No.3 in both Civil Revision Applications.

Coram : N.M.Jamdar, J.

Reserved on : 17 February, 2017

Pronounced on : 30 March, 2017

JUDGMENT

These two Revision Applications arise from the same suit and relate to the same property. They have been argued together and are disposed of by this common judgement.

2. The Revisions arise from the orders passed by the Small Causes Court, Mumbai under the provisions of the Bombay Rents Hotel Lodging House Rates (Control) Act, 1947. The subject matter of the dispute is the ground floor of a bungalow with a garage, servant quarters and an open courtyard on the rear side. This bungalow, named "Hari Kunj', is situated at 46A, Peddar Road, Mumbai. Hari Kunj has ground floor plus two upper floors.

3. One Matadin Khetan was the owner of this Hari Kunj Bungalow. Sometime in the year 1954, Matadin let out the ground floor and the first floor of the Bungalow along with garage to one Popatlal Prabhudas on tenancy basis. Jagatrai and Anantrai Virani were sons of Popatlal. Popatlal had two brothers, Jamnadas and Kakudas. Ajitkumar was the son of Jamnadas. Manojkumar is the

son of Jagatrai. Indira, Nilesh and Bindu are the children of Anantrai. When the ground floor and first floor were let out the rent receipt was in the name of Ajitkumar. Matadin had executed a mortgage in respect of the Bungalow in favour of Empire Insurance Company. Subsequently, Empire Insurance Company was taken over by the Life Insurance Corporation of India. Life Insurance Corporation of India filed a suit bearing No.140 of 1956 against Matadin and others, to enforce the mortgage. A preliminary decree was passed on 27 November 1956 in favour of the Life Insurance Corporation of India. Final decree of absolute sale was passed on 10 January 1958. The Bungalow was put up for sale in a Court auction pursuant to the execution of the decree. M/s.Kanoria Brothers, a partnership firm, purchased the Bungalow on 28 October 1967. In the meanwhile, sometime in the year 1960, the Tenant surrendered the first-floor premises and the rent receipt was transferred in the name of Manojkumar Virani. M/s.Kanoria Brothers issued a notice to Manojkumar Virani on 19 June 1970, terminating the tenancy. On 16 July 1970, Manojkumar Virani replied to the notice of termination and refuted the contentions.

4. On 30 August 1971, M/s.Kanoria Brothers filed R.A.E. & R Suit No.715/4190 of 1971 under the provisions of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 in the Small Cause Court, Mumbai against Manojkumar Virani and Anantrai Virani for their eviction and seeking possession from them.

Manojkumar Virani was joined as 'Defendant No.1', and Anantrai Virani was joined as 'Defendant No.2'. The part of the Bungalow let out to Manojkumar was described as the Suit Property. M/s.Kanoria Brothers asserted that the tenancy of Manojkumar and Anantrai was determined in respect of ground floor of the building with garage, servant quarters and the open courtyard. It was stated that the Suit Premises were let out to Manojkumar but Anantrai-Defendant No.2 was in illegal occupation and he was joined in the suit as an occupant. It was averred that Manojkumar-Defendant No.1 a monthly tenant, had illegally sublet the Suit Premises to Anantrai-Defendant No.2. It was also contended that the Defendants had altered the suit premises and carried out permanent constructions and alterations, such as water closet of brick masonry, concrete water storage, wall preventing access from the front lawns to the rear open courtyard, had erected water storage tank, drainage (mori) and W.C. These were permanent constructions for which permission was required. It was also asserted that Manojkumar-Defendant No.1 had acquired suitable alternate residence nearby at Warden Road, Mumbai. It was also alleged that the Defendants caused nuisance and annoyance to the Plaintiffs. The ground of default in payment of rent was also put forth. Accordingly, M/s.Kanoria Brothers sought eviction of Manojkumar and Anantrai from the Suit Premises.

5. On 31 December 1971, M/s.Kanoria Brothers sold half

property to Giridhar Gopal Sharma and half the property was conveyed in favour of Vishwanath Gopaldas Sharma. Further assignment of rights took place and consequently, the plaint was amended and Plaintiff Nos.2 and 3 being owners and landlords came on record.

6. On 14 January 1974, the Defendants Manojkumar and Anantrai filed their written statement which was affirmed by Anantrai-Defendant No.2 on behalf of both the Defendants. The gist of the written statement was as follows : around the year 1954, Popatlal, grandfather of Defendant No.1 and father of Anantrai, approached Matadin to let out the ground floor and first floor, along with garage, servant quarters for residence of himself and members of their family. The family of Popatlal having thirty members along with ten servants, domestic workers and drivers was living as one unit. Matadin let out the ground and first floor in the name of Ajitkumar and all members of the family constituting a unit. They resided together having a common mess. On or about the year 1958-1959, some members of the family started residing elsewhere. Popatlal surrendered the first floor to Matadin on 30 June 1960 and the family continued to stay in the ground floor and garage and servant quarters. The rent receipt was issued in the name of Manojkumar, the grandson of Popatlal, who was a minor at that time. Since the tenancy was for the family, family continued in occupation of the Suit Premises. Therefore, the allegations made

against the Defendants of sub-letting the suit premise were unwarranted. Attornment of tenancy took place on 18 January 1968, when the Plaintiffs purchased the property. There were no permanent alterations. No nuisance was caused. Rent in respect of the suit premises was not collected by the Plaintiffs and when sought to be tendered, it was refused, therefore, there was no question of the Defendants being in default of payment of rent. This was the gist of the written statement. The Defendants relied upon the rent receipts, correspondence and the earlier Court proceedings.

7. On 27 July, 1988, Anantrai-Defendant No.2 Virani affirmed and filed an additional written statement on behalf of both the Defendants. It was stated that Defendants were not aware that Plaintiff Nos.2 and 3 are successors-in-title and assuming Plaintiffs had become owners, Plaintiffs had ceased to have any right in the suit property due to some penal action taken against them by the government. Without prejudice to the contentions raised in the earlier written statement, it was contended that the ground of subletting against Defendant No.2 Anantrai Virani did not survive in view of the Amending Act of 1986, which amended the Act of 1947, containing statutory protection on certain class of sub-tenants. It was contended that by virtue of the amending Act of 1986, Anantrai-Defendant No.2 was a protected tenant and he could not be evicted from the suit premises.

8. On 13 October 1988, Anantrai-Defendant No.2 expired. On 4 September 1990, his heirs; wife-Indira, son-Nilesh and daughter-Bindu were brought on record as Defendant Nos.2A, 2B and 2C respectively. Plaint was accordingly amended by the Plaintiffs.

9. Defendant No.1 Manojkumar filed an additional written statement on 16 January, 1992. In this written statement, it was denied that any private road was created by the Defendants or that any wall was put up. It was also denied that any water tap and mori was constructed. It was denied that any permanent construction has been put up or that iron gate has been uprooted. In respect of the allegation regarding parking of the car, it was denied that the parking was causing any nuisance or annoyance.

10. After the heirs of Anantrai were brought on record as Defendant Nos.2A, 2B and 2C, they filed an additional written statement. They reiterated the stand taken by the Defendants earlier and annexed a letter allegedly written on 1 July 1960 by Matadin Khaitain to Popatlal Prabhudas and also rent receipt of the first floor and second floor in the name of Ajitkumar. As further narration, would show this letter dated 1 July 1960 became the centre of controversy between the parties. This document is referred to as 'the Letter'.

11. On 2 October 1992, the Plaintiffs filed an Interim Notice No.4175/1992 to restrain Defendant Nos.2A to 2C, heirs of Anantrai, from creating any third-party rights or from parting with the possession of the suit property since Plaintiffs apprehended that the Defendants would do so. In this interim notice, Defendant Nos. 2A to 2C filed an affidavit on 26 October 1993 stating that they have no intention to part with the possession of the suit premises or create any third-party rights. On 13 December 1993, an affidavit was filed by Matadin in the suit stating that he had issued the letter dated 1 July 1960 to Popatlal giving him permission to sublet the suit premises and to provide amenities. On 20 July 1994, Bindu-Defendant No.2C filed an affidavit placing on record to state that the suit premises were sub-let to M/s.Urmi Developers Pvt. Ltd. On 25 July 1994, an Interim Notice No.3224/1994 was taken out by the Plaintiffs in the Small Cause Court, Mumbai to restore the *status quo ante*. The learned Small Cause Court Judge directed that the Interim Notice be heard along with the Suit.

12. In view of the stand of Defendants No.2A, 2B and 2C that they have assigned all rights and have put M/s.Urmi Developers Pvt. Ltd. in control of the suit premises, the Plaint was amended and M/s.Urmi Developers Pvt. Ltd. were joined as Defendant No.3. Written statement was filed by Defendant No.3 M/s.Urmi Developers Pvt. Ltd. on 14 October 1999. Additional written statement was filed by Defendant No.3 on 28 November 2002.

13. The learned Small Cause Court Judge, the Trial Judge, framed the issues as regards: the constructions of permanent nature without consent; waste and damage; nuisance; acquisition of alternate premises by Defendant No.1 Manojkumar; sub-tenancy in respect of Defendant No.2 and Defendant No.3. The parties led their oral evidence. On behalf of the Plaintiffs, Girdhar Gopal Sharma filed his affidavit of evidence on 2 December 2002. His cross-examination was concluded sometime in February 2003.

14. On behalf of the Defendants, Bindu, Defendant No.2C filed her affidavit of evidence on 27 February 2003. The Letter dated 1 July 1960, alleged to be issued by Matadin to Popatlal, was sought to be tendered in the evidence. The Plaintiffs took a serious objection to the same. The matter was heard by the Trial Judge on the admissibility of document and an order was passed in respect of stamping of the document. Objections were raised regarding the documents on the aspect of proper custody, delay and stamping. The case of Bindu, Defendant No.2C regarding the document was that, one year after the death of her father Anantrai, when she had gone to his office, she found the said letter. She took the letter to her advocate Mr.H.C.Tunara who told her to keep the said document in safe custody. The Trial Judge observed by order dated 11 March 2003 that it appears that the document had come from the proper custody and subject to payment of stamp, it needs to be admitted in

evidence. The Trial Judge observed that the question whether the document was duly executed and / or has come in existence in the year 1992 and the contents thereof, were matters of appreciation of evidence. The cross-examination of Bindu-Defendant No.2C was completed in September 2003.

15. The Trial Judge delivered the judgment on 12 / 15 March 2004. The Trial Judge observed that the debate on the Letter was no longer open as his predecessor had overruled the objections by order dated 11 March 2003 and there was no challenge to that order. The Trial Judge relied on the Letter and held that sub-tenancy was expressly permitted by Matadin and so also construction of amenities. The Trial Judge held that, when these two things were permitted by the original landlord Matadin in writing, there is no question of construction being carried out without permission. So also, it has not come on record as to who has carried out the construction. The Trial Judge placed the burden of proving that Letter was fabricated on the Plaintiffs and held that the Plaintiffs failed to discharge the burden. It was held that the Plaintiffs placed no evidence in respect of the nature of construction on record. The Trial Judge relied on the Letter and held that sub-tenancy was expressly permitted by Matadin, and accordingly answered the issue regarding the construction of permanent nature in the negative. The learned Judge also negated the grounds of nuisance and waste and damages. The Trial Judge held the issue as to whether the Plaintiffs

proved that Defendants had acquired possession of alternate suitable premises in favour of the Plaintiffs. The case of subletting against Defendant Nos.2 and Defendant No.3 was dismissed by the Trial Judge. The Suit was decreed as against Defendant Nos.1, 2A, 2B and 2C and they were directed to hand over the vacant and peaceful possession of the suit premises. The Suit was dismissed against Defendant No.3 Urmi Developers Pvt. Ltd. The Trial Judge accordingly disposed of the suit by his judgment and decree dated 12 / 15 March 2004.

16. On 28 April 2004, the Plaintiffs filed an Appeal No. 454/2004 before the Appellate Bench of the Small Cause Court, Mumbai i.e. the Appellate Court. Approximately after 9 months, on 3 January 2005, Defendant No.1 Manojkumar Virani and Defendants Nos.2A to 2C filed their Appeal No.454/2004 before the Appellate Court. The Plaintiffs were aggrieved by the dismissal of the suit against Defendant No.3. The Defendant No.1 and Nos.2A to 2C challenged the judgment and decree of the Trial Judge directing them to hand over the possession of the suit premises on the ground of acquisition of suitable alternate premises.

17. The Appellate Court framed issues as regards the sub-tenancy, additions and alterations of permanent nature, nuisance and acquisition of suitable residential accommodation by Defendant No.1. The Appellate Court came to the conclusion that reliance on

the letter dated 1 July 1960 by the Trial Judge was not warranted and the Letter did not inspire confidence. The Appellate Court held that the Letter cannot be relied upon, therefore, creation of rights in favour of the Defendant No.3 M/s.Urmi Developers Pvt. Ltd. was illegal and a clear case of sub-tenancy was made out as the Defendant No.3 was in possession and control of the suit premises. The Appellate Court held that Defendant No.1 had acquired suitable alternate premises. As regards constructions of permanent nature, the Appellate Court took note of the evidence of Defendant No.2C-Bindu and Defendant No.3 and the fact of erection of construction of permanent nature by the Defendants was without the permission, held that a decree on the ground of permanent construction had to be passed against all the Defendants. Accordingly, the Appellate Court allowed the Appeal No.454/2004 filed by the Plaintiffs and decreed the suit against the Defendants, and dismissed the Appeal No.44/2011 filed by the Defendant Nos.1, 2A to 2C, by common a Judgement and Order dated 7 January 2014.

18. Defendant No.3 M/s.Urmi Developers Pvt. Ltd. has filed Civil Revision Application No.345 of 2014 challenging the judgment and order passed by the Appellate Court. Manojkumar, Defendant No.1 and Defendant No.2A to 2C have filed Civil Revision Application No.716 of 2014 challenging the same order.

19. On 20 August 2015, the learned Single Judge (M.S.

Sonak, J.) issued Rule in both the Revision Applications and granted an ad-interim order in respect of execution of the decree. The learned Single Judge fixed an ad-hoc amount of Rs.1,00,000/- per month from January, 2014 towards compensation and placed the matter on board for further hearing for confirmation of ad-interim relief. On 21 April, 2016, the learned Single Judge (R.D.Dhanuka, J.) confirmed the ad-interim relief by fixing the compensation at the rate of Rs.5,00,000/- per month. This order was challenged by the Respondents-Plaintiffs in the Apex Court. The Apex Court disposed of the S.L.P. (C) No. 16620-16621 of 2016 on 2 September, 2016 and requested expeditious hearing of the Revision Applications considering the fact that the suit was filed in the year 1971. The revision applications were thus taken on board for final hearing on priority basis.

20. In Civil Revision Application No.345 of 2014 on behalf of Urmi Developers Pvt. Ltd., Applicant-Defendant No.3 arguments were advanced by Mr.V.A.Thorat, learned Senior Advocate and in Civil Revision Application No.716 of 2014 on behalf of Applicants-Defendant No.1and No.2A to 2C by Mr.P.S.Dani, learned Senior Advocate. Mr.G.S. Godbole, learned Advocate appeared on behalf of Plaintiff-Respondent No.2 Parasaria Properties Pvt. Ltd. in both the Revision Applications and Mr.Ravi Kadam, learned Senior Advocate appeared on behalf of other Respondents-Plaintiffs in the Revision Applications.

21. Mr.Thorat, on behalf of Applicants-Urmi Developers in brief contended :-

(a) There cannot be any decree against Defendant No.2 on the ground of acquisition of alternate accommodation by Defendant No.1, if Defendant No.2 is alleged to be a sub-tenant. It has always been the case of the joint family of Popatlal was tenant of the suit. Both Defendant Nos.1 and 2 were part of the family of Popatlal. Since the property was taken on rent on behalf of the entire family, Defendant No.2 could not have been evicted only on the ground of acquisition of premises by Defendant No.1. The ground of acquisition of suitable alternate accommodation thus cannot be sustained.

(b) In the plaint, it is clearly admitted that Ajitkumar was paying the rent in respect of the ground plus first floor, yet Ajitkumar was not joined as a Defendant. There is no explanation given by the Plaintiffs in the plaint as to how the premises came to be surrendered and tenancy was created in favour of Defendant No.1. The explanation as to how the suit premises came to Defendants was given by the Defendants in the written statement.

(c) In view of the Amending Act of 1986, all sub-tenancy prior to 1 February, 1973 are legalised. The suit itself being filed in the year 1971, there cannot be a decree on the ground of sub-letting against Defendant No.2, even assuming that he was a sub-tenant. Therefore, the decree against Defendant No.2 on the ground of sub-

letting, cannot be sustained.

(d) The most crucial document, the letter dated 1 July 1960 issued by Matadin to Popatlal, has been casually brushed aside by the Appellate Court, when the Trial Judge, after considering the evidence on record and examining the signature, had held it to be genuine and admitted it in the evidence. The Appellate Court, which is a final fact finding Court, committed a perversity in brushing aside the Letter simplicitor stating that it does not inspire confidence. Not only this approach is illegal and perverse, but considering the material produced on record and appreciated by the Trial Judge, it is not even a possible view. The letter dated 1 July 1960 was found by Bindu, Defendant No.2C in the office of her father Anatrai. Anantrai was the son of Popatlal. After the death of Popatlal, the heirs would be in possession of the letter. The Letter, therefore, has come from the proper custody. The Letter was thirty years old and as a thirty-year-old document, it has its special evidentiary value. The Letter was admitted in evidence after payment of stamp duty and penalty and was treated as an admissible document. The Letter on which stamp is paid, is a contract of tenancy.

(e) The order dated 11 March 2003, by which the Letter was taken on record, was never challenged by the Plaintiffs, also when they filed their appeal, neither this order has been set aside. Though the Letter was referred for the first time on 10 August 1992, there was no occasion for the Defendants to refer to it earlier as their stand was that there was no creation of sub-tenancy between the

members of the joint family and that in any case, the Amending Act of 1986 had protected all sub-tenancies created prior to 1 February, 1973. In view of this stand, Defendant Nos.1 and 2 did not also find it necessary to rely on the Letter earlier.

(f) The signature of Matadin was examined by the learned Trial Judge and the signature was found to be of Matadin. Matadin himself had filed an affidavit in the proceedings, stating that he had issued the Letter. There was no cross examination of Matadin. The Letter was issued to Popatlal, even though the rent receipts were in the name of Ajitkumar, which clearly shows that tenancy was for the joint family.

(g) The Letter will have to be looked into keeping in mind the factum of surrender of the first-floor premises. The privileges by way of the Letter were given because of the surrender of the first floor. No other explanation for the surrender has been given by the Plaintiffs. Even in the agreement executed in favour of Defendant No.3, permission of sub-letting was referred and there is no afterthought. The Letter, which is admitted in evidence contains conditions of tenancy and it having been proved, there is no question of illegal sub-tenancy of Defendant No.3. A clear permission to that effect was given by Matadin in the Letter pursuant to which an agreement was executed in favour of Defendant No.3 on 7 July 1994 between Manojkumar, on one part, heirs of Anantrai on the second part and Defendant No.3 on the other part.

(h) The Letter itself refers to the amenities and all the so

called permanent structures. Apart from this position, whether the constructions caused wastage or damage ought to have been proved by the Plaintiffs, but there is no such evidence at all. The Appellate Court has simply reversed the findings of the Trial Judge on the ground of permanent constructions, without considering that no cogent material was placed on record by the Plaintiffs and without discussing various parameters required by law. Mere existence of alterations is not enough. No protest was made to any Municipal or Planning authority by the Plaintiffs. The judgment and decree passed by the Appellate Court being perverse cannot be sustained.

22. In Civil Revision Application No.716 of 2014 filed by Defendant Nos.1 and 2A to 2C, Mr.Dani, learned Senior Advocate adopted the arguments of Mr.Thorat and in addition submitted:

(a) The Plaintiffs acquired title of the suit premises in the year 1971. The case of the Plaintiffs is that the construction is without the permission of the Plaintiffs which cannot be as the structures themselves were constructed in the year 1969. There is, therefore, no question of seeking any permission from the Plaintiffs.

(b) Even otherwise, the construction of water closet, pump line and water tank was for beneficial use, since there is open space and lawns. No particulars regarding the degree of annexation and as to by whom the construction was carried out were given. Plaintiffs cannot rely only on the photographs. The ingredients of section 13(1) of the Act of 1947 and section 108 of the Transfer of Property

Act, 1882 were not proved and unless the landlord proves the ingredients in respect of permanent construction, no decree on this count could have been passed.

(c) The approach of the Appellate Court in allowing the appeal and decreeing the suit on the ground of alternate accommodation, is perverse. The tenancy was taken on behalf of the entire family, with rent receipts in the name of the Defendant No.1. There is no finding that acquisition of alternate accommodation was for the entire family. Even assuming that the tenancy was only in the name of Defendant No.1 and he had acquired suitable accommodation, there is no question of passing a decree against Defendant No.2A to 2C on the ground of acquisition of suitable alternate accommodation.

(d) The Appellate Court, in one paragraph, has held that the Letter was not trustworthy, only on the ground that it was not pleaded in the earlier written statements. It was not necessary for the Defendants to produce the Letter earlier in view of the stand taken by them regarding the subletting. The Letter came from the proper custody. It is a thirty-year-old document and has been duly stamped and proved.

(e) There is no question of any subletting between Defendant No.1 and Defendant No.2, firstly, as they were members of the family for whose benefit the tenancy was taken. Secondly, in view of the Amending Act of 1986, which amended the provisions of the Bombay Rent Act of 1947, decree on the ground of subletting

cannot be passed as sub-tenancies created prior to 1 February 1973, are protected.

(f) The decision of the Appellate Court, without dealing with the grounds taken by the Trial Court, is perverse. The power of attorney of the Plaintiffs was not authorised to pursue the suit. The judgement and decree passed against Defendant Nos.1 and 2 by the Appellate Court, therefore, requires to be quashed and set aside.

23. Mr.Girish Godbole, learned Advocate on behalf of Respondent No.2 i.e. Plaintiff No.2 submitted :-

(a) The crux of the defence of the Defendants revolves around the alleged Letter which according to them answers the charge of subletting as well as construction of permanent nature without permission. The Appellate Court has correctly seen the totality of the circumstances and the stage at which the Letter was sought to be introduced. The Letter finds no reference in the written statement dated 14 January 1974, 27 July 1988, 16 January 1992 and 10 August 1992. This Letter, as sought to be done now, would have been the first defence for the case under sections 13(1)(b) and 13(1)(e). It is, therefore, impossible to believe the spacious pleas that it was not necessary to rely upon the Letter earlier.

(b) Defendant No.2C and 3 who were brought on record as heirs could not have varied the case pleaded earlier. The Letter was never executed by Matadin as alleged. A bogus Letter created during the pendency of this suit to take up a defence. The story that Defendant 2C Bindu came across the Letter after the death of her

father Anatrai, is not believable. Further, by her own case, Bindu had knowledge of the Letter sometime in the year 1991, yet in the written statement filed on 16 January 1992 by Defendant No.1, the document was never referred to. According to Bindu, Mr. Tunara, advocate had instructed her to keep the document in safe custody, yet the same advocate Mr.Tunara, who represented Defendant No.1 did not mention the Letter in the written statement of 16 January 1992 filed by Defendant No.1. It is clear that the Letter is prepared during the hearing of the suit by the Defendants to save themselves from the decree of eviction. The Appellate Court has, therefore, rightly held that the Letter is suspicious.

(c) Defendant No.3 has been inducted on 7 July 1994 as a sub-tenant. Defendant No.3 has no statutory protection and is in unauthorized possession. The subletting in favour of Defendant No.3 is clearly without the permission of the Plaintiffs. Even assuming that Matadin had granted permission for subletting in favour of Defendant No.3 by Defendant Nos.1and 2 it is after the termination of contractual tenancy and, therefore, is hit by bar under section 15 read with section 13(1)(c) of the Act of 1947. Such contract can only continue till the termination of the contractual tenancy. Contractual tenancy was terminated on 19 June 1970 and the suit came to be filed on 30 August 1971 and, therefore, there was no question of Defendant Nos.1 and 2 creating any sub-tenancy in favour of Defendant No.3.

(d) The decree of the Appellate Court on the ground of

erection of permanent construction without the written consent of the Plaintiff, is correct and requires no interference. In the plaint, the suit premises have been described as bungalow consisting of ground floor and two upper floors with terrace. It was specifically pleaded that the structures mentioned in paragraphs 4(a) and 4(d) of the plaint were made in 1960-1970, 4(e) to 4(f) in 1979, 4(f) n 1981-82 and 4(j) around 1994. There is no denial of the description of the Suit Premises. If the permanent structures as described were allegedly covered by permission under the Letter, the Defendants would have produced the Letter at the inception itself.

(e) The written statements filed by the Defendants while dealing with the charge of permanent constructions are general and evasive. The Court Commissioner's report, which was admitted in evidence, shows the exact nature of the structure, including the materials used. The pleadings in the plaint, to which there was no specific denial, the evidence of the Plaintiff and Commissioner's report, are sufficient to sustain the ground of permanent construction. Defendant No.3 has admitted that the bathroom was constructed without the consent of the Plaintiffs. The construction of a bathroom is clearly a permanent construction.

(f) Tenancy was created in favour of Defendant No.1 alone, who has acquired suitable alternate residential premises. Defendant No.1 did not enter in witness box to substantiate the Defendants' case as to why, even though rent receipts were issued in his name alone, the tenancy was created in favour of the joint family.

(g) The fact that Defendant Nos.1 and 2A to 2C filed an appeal nine months after the appeal was filed by the Plaintiffs shows a clear lack of interest on their part, having illegally handed over the control of the Suit Premises in favour of Defendant No.3. The judgment and decree passed by the Appellate Court requires no interference

24. Mr.Ravi Kadam, learned Senior Advocate on behalf of the Plaintiffs endorsed the arguments of Mr. Godbole and addition contended : The scope of the revisional jurisdiction to set aside the findings of fact rendered by the Appellate Court is extremely limited. The conclusions of the Appellate Court that the Letter is not believable and that permanent constructions have been carried out, are based on assessment of evidence. Unless there is any perversity, such findings of fact cannot be interfered with in the revisional jurisdiction. The Letter is clearly a got-up document created during the hearing of the suit. This document seeks to cover all eventualities in the present suit on which the decree can be sought and such document introduced after thirty years, in the middle of the Trial, on the face of it, is bogus and been rightly been discarded by the Appellate Court.

25. There is no appeal provided from the order of the Appellate Court under the Act of 1947. The Applicants have invoked the revisional power of this Court. Under section 115 of the

Code of Civil Procedure, the High Court may call the record of any case which has been decided by the Court subordinate to the High Court from which no appeal lies. Interference in revisional jurisdiction is permissible when the subordinate Court does not exercise the jurisdiction vested in it by law or acts in exercise of its jurisdiction illegally and material irregularity. The law regarding the revisional jurisdiction, in the context of Rent laws has been enunciated by the Apex Court in the case of [1]*Hindustan Petroleum Corporation Limited V/s. Dilbahar Singh.* Suffice it to say that appreciation of evidence like an appeal is not permissible while entertaining a revision. Keeping this position of law in mind, the challenge to the decision of the Appellate Court will have to be examined. The main question being whether the Appellate Court was right in holding that the letter of 1 July 1960 was suspicious and could not be relied upon.

26. Before proceeding to consider the main controversy, there are some lesser issues which can be conveniently dealt with at the outset. First, the ground of sub-letting by Defendant No.1 Manojkumar in favour of Defendant No.2 Anantrai. When the suit was filed on 30 August 1971 subletting was alleged contending that Defendant No.2 is presently in occupation of the Suit Premises when the tenancy was of Defendant No.1 alone. Defence was that the tenancy was of the joint family of Popatlal, Defendant No.2 was a member of the family, therefore, there was no sub-letting.

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Thereafter, an additional written statement was filed on 27 July 1988 by Defendant Nos.1 and 2. In this written statement a stand is taken that, assuming that there is a sub-tenancy in favour of Defendant No.2, it is protected by the amending Act of 1987 in view of the amendment to the Act of 1947. As far as this statutory position is concerned, it was not seriously controverted by Mr. Godbole and Mr.Kadam, and rightly so. Section 13(1)(e) of the Act of 1947 contains an embargo against the subletting by the tenant without the permission of the landlord. By the Amending Act of 1986, Act of 1947 was amended. By the Amending Act of 1986, the Section 15(2) and section 15A were introduced. By the amendment the sub-tenancies created prior to 1 February 1973 were protected. The present suit itself was filed in the year 1971. The creation of sub-tenancy in favour of Defendant No.2 was prior to 1971. Irrespective of the controversy as to whether the sub-tenancy was permitted by Matadin by the Letter, or whether the tenancy was for the joint family or in the name of Defendant No.1 alone, there cannot be any decree against Defendant Nos.1 and 2 on the ground of sub-tenancy, in view of the statutory protection.

27. The next issue is about acquisition of suitable alternate premises by the Defendant No.1. The Trial Judge decreed the suit filed by Respondents-Plaintiffs on the ground of acquisition of suitable residence by Defendant No.1 as contemplated under Section 13(1)(l) of the Act of 1947. The Trial Judge held that

Defendants had acquired a suitable alternate residence and passed a decree against them. The Plaintiffs asserted in the plaint that Defendant No.1 has acquired suitable residential premises nearby at Warden Road, Mumbai. In the written statement, this position was denied. The Trial Judge framed an issue as to whether Defendants had acquired vacant possession of suitable residence at Warden Road, Mumbai. The Trial Judge answered this issue against the Defendants and proceeded to pass a decree on that count. The Appellate Court also framed an issue as to whether, the Plaintiffs proved that Defendant No.1 acquired suitable alternate accommodation. The Appellate Court held that the Defendant No.1, being tenant of the suit premises, had acquired suitable alternate accommodation.

28. The conclusion on the issue of acquisition of suitable alternate premises by Defendant No.1 does not require any interference. Defendant No.1 has not bothered to step in the witness box to explain in what circumstances the tenancy has to be construed as the tenancy of the entire family when the rent receipt was in his name alone. There was no need to resort to inferences when the best evidence in the form of evidence of Defendant No.1 was withheld. There is absolutely no error in the conclusion that the tenancy was created in favour of Defendant No.1 and he had acquired suitable alternate accommodation. It was urged by Mr. Thorat and Mr.Dani that if the Defendant No.1 is to be held as a

tenant and that he has acquired independent suitable premises then, there is no question of any decree against Defendant No.2A to 2C on the ground that they have also acquired suitable alternate accommodation. Though the Appellate Court has not categorically expounded this position, from the manner in which the issue is framed and answered, it is clear that the Appellate Court passed the decree under section 13(1)(l) of the Act against the Defendant No.1 alone.

29. Thirdly, it was contended by Mr.Dani that the power of attorney holder of the Plaintiffs did not have any authority to file a suit on behalf of the Plaintiffs. Mr.Dani made this one line statement and left it at that. He made no efforts whatsoever to demonstrate as to how this ground could be held in favour of the Defendants. It is not possible to entertain such one line assertion. A ground should be put forth with seriousness or not at all. Had this ground been argued, the Respondents would have responded to the same.

30. Moving now to the main controversy which centres around two heads of eviction. First, the sub-letting in favour of Defendant No.3. Second, the permanent constructions carried out by the Defendants. For charge of sub-letting, Section 13(1)(e) of the Act of 1947 is invoked. For charge of permanent construction, section 13(1)(b) is invoked.

31. The narration of events and the arguments of the learned

counsel will that show that the controversy revolves around the alleged letter of 1 July 1960. The learned counsel for the parties are *ad-idem* that the Letter is the fulcrum of the controversy. This Letter has been pressed into service by the Defendants to contend that Matadin gave permission to sublet, pursuant to which an agreement executed in favour of Defendant No.3, therefore, there is no sub-letting. It is also pressed in service, apart from other evidence by the Defendants, as a defence to the charge of permanent constructions, that Matadin himself had accepted that the permanent construction was carried out by him. If the Letter is kept out of consideration, then there is absolutely no defence to the ground of illegal sub-letting in favour of Defendant No.3, as it is without the permission of the Plaintiffs. If the Letter is relied upon, it will have a substantial bearing on the aspect of sub-letting as well as permanent construction.

32. Therefore, a brief recapitulation of the factual position is necessary to understand how, what point of time and what stage of the Suit, the Letter came on record. Matadin Khaitan, who was the owner of the Bungalow, had mortgaged it to the Empire Insurance Company, which subsequently became Life Insurance Corporation. The Life Insurance Corporation of India enforced the mortgage by filing a suit, which was decreed. A preliminary decree was passed on 21 November 1956 and the final decree in January 1958. Thereafter, the Bungalow was sold in auction in the year 1967 to

Kanoria Brothers. Preliminary decree was passed against Matadin in the year 1956. Matadin ceased to have any rights in the suit property in the year 1967. The suit was filed by M/s.Kanoria Brothers in the year 1971 and taken further by the present Respondents-Plaintiffs. Defendant Nos.1 and Defendant No.2 were the parties. Written statement came to be filed on 14 January 1974, which was affirmed by Defendant No.2 Anantrai. The Letter did not admittedly figure in the same. Then, on 27 July 1988, Anantrai affirmed additional written statement on behalf of the Defendants, still there was no reference of the Letter. Defendant No.1, neither affirmed the written statement nor stepped in the witness box. On 16 January 1992, Defendant No.1 filed an additional written statement, still there was no mention of the Letter. Defendant Nos.2A to 2C were brought on record after the death of Defendant No.2 on 4 September 1990. After they were brought on record, Defendant No.1 filed additional written statement on 16 January 1992. Defendant Nos.2A to 2C filed their written statement through advocate Mr.Tunara on 10 August, 1992. It is informed that advocate Mr.Tunara subsequently passed away. It is in this written statement of 18 August 1992, for the first time, the Letter was sought to be brought on record. On 13 December 1993, Matadin Khaitan filed an affidavit confirming issuance of the alleged document. Matadin Khaitan at this stage had no connection left with the property as final decree was in the mortgage suit was passed as far back as 1958. Thereafter, the Letter was sought to be tendered in evidence. An objection was taken by

the Respondents-Plaintiffs regarding the admissibility. The Trial Judge passed an order of admissibility of the Letter on 11 March 2003. This is how the Letter came to be introduced in the dispute.

33. On 11 March 2003, while taking the Letter on record, the Trial Judge held that the document is more than 30 years old and having come from proper custody will have to be admitted in evidence subject to payment of stamp duty. The Trial Judge however held that whether the Letter was really executed on 1 July 1960 or has come in existence in 1992, is a matter that will have to be considered at the time of Trial. Thus, the main issue whether the contents of the Letter are proved or whether it was really executed on 1 July 1960 or in the year 1992, was to be considered at the time of Trial. This issue was not closed by the Trial Judge in the order dated 11 March 2003.

34. At the time of trial, the successor learned Judge was confronted with the question regarding the veracity and genuineness of this document. The learned Judge held that all the objections such as the document is fabricated, its contents were not proved and it has not come from the proper custody, were raised and rejected by his predecessor. The learned Judge held that there was no challenge to the order passed on 11 March 2003. He took note of the affidavit filed by Matadin Khaitan wherein he had affirmed the fact of writing the letter. Matadin thereafter expired in the year 1994. The learned

Judge observed that nothing prevented the Plaintiffs from taking cross-examination of Matadin. The learned Judge thereafter proceeded to examine and compare the signature of Matadin and held that the letter was signed by Matadin. The learned Judge opined that the Letter was a genuine document executed in the year 1960. When the appeals were filed, it was open for the Appellate Court to look at the genuineness of the document. The Appellate Court could consider whether to rely on this Letter. The power of the Appellate Court to decide whether to rely on this document cannot be disputed.

35. It was sought to be contended by Mr.Thorat and Mr. Dani that since the Respondents-Plaintiffs never put this document into question by challenging the order dated 11 March 2003, there was no necessity for the Appellate Court to upset the finding of the Trial Judge. It was contended that in the appeal memo, there is no ground challenging the order dated 11 March 2003. This submission cannot be accepted. Section 105 of the Code of Civil Procedure permits a party to challenge an interlocutory order passed in the suit in an appeal. By order dated 11 March 2003, inquiry regarding the contents and the time when the document was sought to have been created, was kept open at the time of Trial. Consequently, the Plaintiffs could always challenge the conclusion reached by the Trial Judge based on the Letter. The Respondents-Plaintiffs could always contend that reliance on the Letter by the

Trial Judge was not correct and proper. If the memo of appeal filed by the Respondents-Plaintiffs is examined, there are adequate grounds raised in respect of this Letter. If the grounds in the appeal memo are looked at cumulatively and the tenor of the arguments before the Appellate Court is seen, it is more than clear that the Respondents-Plaintiffs were putting the factum of genuineness of the Letter into issue. The submission of the Applicants that the Respondents were precluded from challenging the factum of Letter in appeal for lack of challenge in the appeal memo, cannot be accepted.

36. It was contended by Mr.Thorat and Mr.Dani that the Appellate Court has not carried out the scrutiny of evidence which is expected to be done by the final court of fact. It was contended that the Trial Judge had considered various aspects regarding the Letter and, therefore, before reversing a well-considered decision of the Trial Judge, the Appellate Court ought to have looked into the evidence and given cogent reasons. It was submitted that in one line, the Appellate Court has held that the Letter is suspicious. I have gone through the judgment of the Appellate Court. It is not correct to say that in one line the Appellate Court has discarded the Letter stating that it is suspicious. The factum of Letter is so interlinked with the controversy the Appellate Court had to consider the effect of this Letter at every stage of the discussion. The finding of the Appellate Court that the Letter cannot be relied upon is interwoven

through the entire discussion. The Appellate Court held that looking at the time ,stage and manner in which the Letter was introduced, the Letter could not be relied upon. The testimony of Bindu, Defendant No. 2C was scrutinized by the Appellate Court. Defendant No.2C was the only witness examined in respect of the Letter. She was only four to five years old when the Letter was executed. The Appellate Court examined her evidence and the manner in which the Letter came to be introduced and found that it was not a reliable piece of evidence in favour of the Defendants. There is a discussion by the Appellate Court regarding the earlier written statements and absence of reference to this Letter in them and the totally unsatisfactory evidence of Defendant's witness as regards this Letter. The Appellate Court, therefore, concluded that this Letter cannot be relied upon. Therefore, it cannot be said that the conclusion of the Appellate Court is without discussion.

37. What is the evidentiary value of a particular document , whether it inspires confidence, whether it was created only during the course of the trial or not, is within the domain of the Trial Court and the Appellate Court to decide. In the case of *Hindustan Petroleum Corporation (supra),* the Supreme Court has reiterated that the scope of inquiry in respect of assessment of evidence in revision is extremely limited and permissible only on well settled parameters. The main inquiry in the Revisions will be, therefore, as to whether the finding of the Appellate Court that the Letter cannot

be relied upon being suspicious can be stated to be perverse.

38. The suit was instituted in the year 1971 and the alleged letter is dated 1 July 1960 that is, eleven years prior to the filing of the Suit. The Letter, which is typewritten reads thus:-

"From

Matadin H.Khaitan
Hari Kunj, 46A Peddar Road
Bombay. *1st July, 1960*

To,

Seth Shri Popatlal Prabhudas,
Hari Kunj, 46A, Peddar Road"
Bombay.

Sir,

I confirm having received from you the possession of the 1st floor premises of Hari Kunj.

As per our talk, I confirm having agreed with you to let out to you the ground floor premises including the servants quarters and garage and issue, for convenience, the rent bills in the name of Manojkumar J.Virani. Any member of your joint family can occupy the said premises. I also allow subletting of the premises. I have put up structures in the rear compound such as water storage tank with pump, masonry room and walls, water closet, washing place, sheds and other surrounding structures in the rear compound to provide amenities to you are exclusively entitled to use the same.

Yours faithfully,
Sd/-
(Matadin N.Khaitan)"

39. It was strenuously contended by Mr.Thorat and Mr.Dani that since the Letter is coming from the proper custody, it is thirty years old, it is a condition of tenancy for which stamp has been paid, the author of the document Matadin has filed an affidavit, the Letter must be accepted. It was contended that there was no necessity for placing the Letter on record earlier and the Letter explains in what circumstances surrender of the first floor took place.

40. Firstly, the basic position of law regarding subletting needs to be reiterated. The contract of tenancy is entered into between a landlord and a tenant. Unless the landlord so permits, tenancy cannot be transferred to a third party. The legislature can however protect certain sub-tenancies. Therefore, unless a statutory protection is conferred or specific permission of the landlord is obtained, if a third party is found in possession and control of the tenanted premises, then it amounts to illegal sub-letting. When a party other than the tenant is found in the control of the premises and a suit is filed by the landlord on the ground of sub-letting, it becomes a matter of defence that the permission has been granted by the landlord or there is a statutory protection.

41. The Letter gives free charter to a tenant to sublet the premises. It virtually abdicates the control of a Landlord over whom the Tenant wants to induct. It is sought to be contended by Mr. Thorat and Mr.Dani that it is because the possession of the first floor

was relinquished that this latitude was given by Matadin. They contended that therefore, the factum of relinquishment of the first floor ,creation of tenancy on the ground floor and ors, and the Letter, will fall in place. It is not possible to accept this submission. If this really was the position, it could have been explained by Defendant No.1 by stepping in the witness box. Defendant No.1, though he was a minor, rent receipts were issued in his name. He would at least know what were the circumstances in which these events occurred. There is no logical explanation why Defendant No.1 did not to step in the witness box. The Apex Court in the case of *Gopal Krishanaji Ketkar and Mohamed Haji Latif & Ors.*[1] held that when the best evidence is withheld, then the Court will have to draw an inference that it was inconvenient to produce such evidence. In the present case, both Defendant Nos.1 and 2 did not step into the witness box. If the action of surrender of the first-floor premises and issuing rent receipts in favour of Defendant No.1 were to be linked with the genuineness of the Letter, it was obligatory on the part of Defendants No.1 to step into the witness box and state so. The Defendants would have been then cross examined. No such evidence is forthcoming. Having withheld this best evidence, the Defendants cannot resort to enquiry based on conjectures. There could be various reasons why first floor was surrendered. Since this was a defence of the defendents, they ought to have proved this aspect. Therefore, the argument that the Letter derives its support from the events which led to assigning of tenancy in the favour of Defendant

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No.1 by relinquishing the first floor, cannot be accepted.

42. The arguments of Mr.Thorat and Mr.Dani that it was not necessary to refer the Letter at earlier point of time in the suit , has no merit. When the suit was filed, the Plaintiffs described the suit property in the plaint. The suit property was described as, ground floor with garage, servant quarters, open courtyard at the rear. This description of the property in paragraph 2 of the plaint was referred to as the 'Suit Premises' having been given on rent. Thereafter, in paragraph 4 of the plaint, the Plaintiffs stated the nature of alterations and additions. Paragraph 4 of the Plaint is reproduced in the subsequent part of the judgement. In the plaint, description of the suit property was given and the plaint was amended from time to time to add and include details of permanent construction. Before Defendant No.1 and 2A to 2C filed their written statements, at least twice the plaint was amended to incorporate the details of permanent construction. Mr. Godbole pointed out that paragraphs 4(a) to 4(d) are in the original plaint and subsequently amendments were carried out regarding structures erected. In para 4(e) the structures were erected in the year 1969, para 4(g) was in respect of the structures in the year 1981-82 and para 4(j) was in respect of the year 1994 constructed by Defendant No.3. In the plaint, the Defendants were thus fully put to notice that the 'Suit Premises' were differently described, and the 'additions and alterations' were differently described. If 'additions and alteration' were put up by Matadin himself as he has purportedly

stated in the Letter, then, the first reaction of the Defendants would have been that the description of the suit property is entirely incorrect and the charge of so called additions and constructions is false. Any litigant would promptly point out that the earlier owner himself while letting out the suit premises, in writing had clarified the position and that there is no illegal construction carried out by them. Defendant No.1 is still alive and No.2 was alive till the year 1990. It is not the case that of the Defendants are illiterate or do not have access to competent legal counsel.

43. Though in the written statement it was contended that there was no sub-letting as the tenancy is for the joint family and subsequently on the ground that there was an amendment to the Act of 1947, these grounds still had to be proved. It was a matter of evidence to demonstrate that the tenancy was for the joint family, as the rent receipts admittedly stood in the name of Defendant No.1 alone. Even as regards the defence of being a protected tenant by virtue of amendment, the legal position was not clear. Whether the amendment will apply retrospectively or prospectively, was unclear. The date from when the effect of the amendment would be given, was unclear. Subsequently, legislature clarified as the date as 1 February 1973. Therefore, neither of the two defences were foolproof. It would have required an effort on the part of the Defendants to prove these grounds. If the Letter was in existence at that time, which was an answer to the entire controversy, it was not necessary to go through the laborious exercise of proving the

defence. Neither Defendant No.1 nor Defendant No.2 entered into the witness box to assert that they were not aware of the Letter during their lifetime neither there is any finding to that effect. No prudent litigant assisted by the advocates will needlessly take a risk of withholding a complete answer to the suit.

44. The Letter was sought to be brought on record through the written statement filed by Defendant Nos.2A to 2C on 10 August, 1992. Defendant Nos.2A to 2C are brought on record as heirs of Defendant No.2. They filed their written statement as per the provisions of Order 22 Rule 4(2) of the Code of Civil Procedure. Having been brought on record as heirs of Defendant No.2, it was open to the heirs to raise all defences except those which were personal to deceased Defendant. Defendant No.2 had adequate opportunity to place this Letter on record. The explanation given by Defendant No.2C Bindu is that one year after the death of her father, when she went to his office, she found this letter. She was told to keep it in safe custody by her advocate Shri Tunara and to bring it later.

45. The version of Bindu is not believable. Why would the Advocate give an advice to keep the letter in safe custody when it should have been straight-away produced on record, is not explained. Mr.Godbole pointed out that this theory was convenient as Mr.Tunara has passed away soon thereafter and the facts could not

be examined. Defendant No.2, who was alive during the pendency of the suit, did not refer to the Letter. Bindu, his daughter. who was four or five years old in the year 1960, had no knowledge when the Letter was executed. Defendant No.1 filed his additional written statement on 16 January, 1992. At that time, even as per the case of Defendants, they were aware of this Letter, but there was no reference to the Letter. Interim Notice was taken out by Respondents-Plaintiffs, because, they apprehended that the third-party rights would be created by Defendant Nos.2A to 2C. Defendant Nos.2A to 2C filed an affidavit in the proceeding and made a statement that they will not create any third party right and thereafter, proceeded to execute a deed in favour of Defendant No.3. On 10 July, 1994, they filed an affidavit that they have parted with the possession in favour of Defendant No.3.

46. Therefore, the sequence of events is thus: The suit was filed in the year 1971. The Letter does find any mention till the year 1992. Between the year 1993 to 1994, that the heirs of Defendant No.2 sought to bring this letter on record, they created third party rights and Defendant No.3 entered in the picture. The emergence of the Letter and entry of Defendant No.3 were in proximity of time.

47. There is hardly any analysis of the evidence of Bindu-Defendant No.2C by the Trial Judge. The Appellate Court has considered her evidence. Defendants have sought to prove the Letter

through Bindu. She stated that she identified the signature of Matadin Khaitan. Bindu deposed that she was born sometime in the year 1952. In the year 1960, when the Letter was alleged to be prepared, she was around eight years old. The receipts of the year 1956 to 1957 which are part of the record issued in the name of Ajitkumar Virani were signed by Matadin Khaitan. Bindu was of four to five years old when the receipts were signed by Matadin. It is not possible to believe her version that she could identify the signature of Matadin since she had seen him signing the receipts. From the year 1960 onwards the receipts have been initialled by Matadin but signed by one Viren Balu. Thereafter, the receipts were signed by Kanoria Brothers and others. Mr.Godbole contended that even on these rent receipts the signature of Matadin Khaitan is not consistent. The rent receipts were all handwritten but the Letter was typed. There is no explanation as to why all correspondences earlier, even the receipts have been handwritten by Matadin, but the Letter, a most crucial document is typed. Mr.Godbole also pointed out the affidavit of Matadin of 1993 only bears endorsement of Assistant Translator and it is neither notarized nor affirmed before the judicial clerk. Therefore, the Appellate Court was entitled to consider whether the evidence of Bindu regarding identification of signature of Matadin could be accepted or not. In the cross-examination, Bindu was shown rent receipt at Exhibit 3 and she stated that she could not personally say who signed the receipt.

48 While admitting the Letter on record, the learned Trial Judge had expressly kept the question open as to whether the Letter was created in the year 1992 or it was of the date 1 July 1960. Therefore, even assuming that Matadin has signed the Letter and had admitted that he created this Letter, the question still remained whether this entire exercise was carried out in the year 1992. One of the question to be considered was whether the letter was created around the year 1992, after Matadin had long since ceased to be the owner, or it is genuinely a Letter of 1 July 1960 when he was still the owner. Perusal of the decision of the Trial Judge will show that the argument of the Plaintiffs that the Letter had come into being during the course of the Trial sometime in the year 1992 and was not a document created in 1960 and that it was created only as a tailor-made defence to the suit, was not considered by the Trial Judge. This area of adjudication was expressly kept open while taking the Letter on record. The Trial judge basically proceeded to hold that the issue regarding the Letter was closed. The Trial Judge found nothing curious about the circumstances with which the Letter, a defence to all charges, appearing thirty-one years after the institution of the suit. The litigation is bitterly fought. The property is of immense value. Any prudent person would be on his guard when confronted with such a situation. The Trial Judge found the whole episode a routine affair of merely taking a document on record. The stage at which the Letter surfaced, what was the position of Matadin when he affirmed the affidavit, what is the language of this Letter, how Defendant

No.2C Bindu could identify the signatures, were some of the crucial aspects which the Trial Judge did not bother to look at. The Appellate Court correctly examined these aspects. Matadin passed away before the trial was concluded. He was not examined as a witness by the Defendants. Matadin had long ceased to be an owner of the property. He had ceased to be an owner even before the suit was filed. When he filed his alleged affidavit, he was a complete stranger to the property. Having ceased to be the owner in the year 1967, he had nothing to lose by filing the affidavit in the year 1992 or even for that matter signing the Letter, even if it is back dated.

49. The manner in which the Letter appeared in the proceedings and the role of Matadin are the relevant considerations, which have been rightly taken note of by the Appellate Court. The Defendants led only the evidence of Bindu, Defendant No.2C. The argument that once a document is admitted in evidence, it will have to be given effect to, cannot be accepted in the facts of the present case. Mr.Kadam is right when he contends that the Letter is a *Bespoke* letter. It is an amazing coincidence that a letter of an earlier owner surfaces after thirty years, giving a tailor made answer to all charges. As the order fixing the compensation in these Revisions would show that the Bungalow is located in one of the most expensive part of an already expensive city. When an agreement was executed in favour of Defendant No.3, it must have been preceded by negotiations. The sudden birth of this Letter, which gives free

charter to create sub-tenancies, is in close proximity to the entry of Defendant No.3. That a suit must be tried as per legal principles, cannot be disputed, but the adjudication cannot be completely divorced from common sense. The letter could easily be created during the trial by roping in an earlier owner when he had nothing to lose. Therefore even assuming the letter was produced by a family member, stamp duty was paid, it cannot be held with certainty that the letter was created when Matadin was the owner. From the factors discussed above it appears that the Letter was created during the trial and was not a genuine letter of the year 1960. Therefore, the finding of the Appellate Court that the letter is not genuine, is correct.

50. The resultant outcome of keeping aside the Letter would have direct consequence on Defendant No.3. Defendant No.3 is admittedly not the tenant. It was Defendant No.1 who was the tenant of the suit premises. Defendant No.1 has already suffered a decree of eviction on the ground of acquisition of alternate premises. As far as an agreement dated 7 July, 1994 between Defendant Nos.1, 2A to 2C and Defendant No.3 is concerned, there is no consent of the Respondents-landlord, neither Defendant No.3 is protected by any statutory provision and, therefore, the ground of sub-tenancy under section 13(1) (c) squarely applies to Defendant No.3.

51. The second limb of the controversy is the permanent

construction carried out by the Defendants. The majority of permanent construction is attributed to Defendant Nos.1 and 2 in the plaint initially and by subsequent amendments. Construction of a bathroom in the year 1994 is attributed to Defendant No.3.

52. It was contended by Mr.Thorat and Mr.Dani that there is absolutely no discussion by the Appellate Court regarding the degree of annexation, material used, permanency of the structures and whether the structures are beneficial for the use of the premises. They submitted that without these findings, merely because construction is carried out, the decree cannot be passed. The learned counsel submitted that the Trial Judge had held in favour of the Defendants that there was no permanent construction carried out and the finding has been reversed by the Appellate Court without reasons. It was also contended by Mr.Dani that it is the case of the present Plaintiffs that the construction was carried out without their permission, but they themselves have stated that prior to them becoming the owners the construction was carried out.

53. The Trial Judge framed the issue of permanent construction, noted the rival contentions and went on to discuss the letter of 1 July 1960. The Trial Judge held that the Letter was genuine. It was held that the witness of the Plaintiff could not state as to when was the construction carried out and nothing was placed on record as to who carried out the construction. As far as construction of bathroom by Defendant No.3 is concerned, the Trial

Judge held that it was for beneficial enjoyment and user. The Appellate Court noted the evidence of the witnesses. The Appellate Court discarded the Letter and held that Defendant No.3 had constructed the bathroom, which was without the permission of the landlord and, therefore, the case of the Plaintiffs of permanent additions and alterations needed to be upheld. The question is whether the conclusion of the Appellate Court regarding the permanent construction, can be stated as impossible or perverse.

54. Firstly, it has to be noted that since the Letter cannot be considered, there is no written permission for the constructions. The details of the permanent construction as given in the plaint. Para 4 of the Plaint is reproduced as under:-

"4. The Plaintiffs state that the Defendants have made various alterations and additions in and to the suit premises which are of permanent nature. The said additions and alterations are as follows:

a) The Defendants have erected water closet in the said open court yard. The structure for the said water closet is made of brick masonry with foundation and the drainage thereof has been connected to the main drainage of the building. Outside the said newly erected water closet, a mori is erected which is of cement concrete. A water tap is taken in the said mori.

(b) The Defendants have erected in the said rear court yard two brick masonry walls near the said closet mentioned in clause (a) hereof thereby preventing access from the front lawns to the rear open court yard from that side.

(c) The Defendants have erected in the said rear court yard under grounds water storage tank and pump has been fitted for pumping the water from the said storage tank to the suit premises. The said underground storage tank and pump room are near the said water closet referred to in clause (a) hereof. The structures of the said water storage and pump room are of brick masonry and permanent one.

(d) A brick masonry is erected in the rear of existing servants W.C. situated in the side open space.

(e) The Defendants has erected in the said open court yard large sheds made up of cement concrete with a roof over them. These sheds have cement concrete floorings. Roofs are supported by wooden posts embedded in the said cement concrete and the ground. The said sheds are used as washing places and storing of sundry articles.

(f) A mori and W.C. mentioned in para 4(c) of the Plaint and near to the underground water storage tank and the pump room has been erected as made of cement concrete material connecting the outlet thereof to the drains of the main building. The Defendants also put up an illegally procured water tap in the said mori. The place occupied by the mori being the back yard open to sky made of garden lawns.

(g) The suit premises being comprised of the open units in Plaint, para 2, the open court yard on the rear and northern side being of garden lawns, has been totally destroyed some time in 1981-1982 laid with cement concrete, glass and pables respectively. The said episode has caused permanent waste to the suit premises besides being a permanent alteration done without the landlord's permission and a source of nuisance caused out of indiscreet use of the said part of the suit premises.

(h) Likewise the Defendants without Plaintiff's permission uprooted out the iron gate being the rear entrance to the property from the north eastern side private road to the property. Having uprooted the flanks of the gate, the Defendants put up a wall in the place thereof of brick and cement concrete and stones without Plaintiffs permission thereby causing waste and loss to the Plaintiffs property being abutting to the suit premises.

(f) Similarly, a garage also being a part or unit of the suit premises, which was let for keeping the 1st Defendant's car, is not used for the purpose for which same was let, instead the said garage is used for the residence of persons not known to the Plaintiffs. The Defendants are therefore liable to be evicted from the garage as provided in section 13a(k) of the B.R.C. Act.

(j) The Defendant No.3 after coming in the possession of the suit premises on or about 10 July, 1994 have carried out further illegal and unauthorised work of additions, alterations and construction of bathroom in the suit premises without any consent and permission of the Plaintiffs and from the Bombay Municipal Corporation.

The Plaintiffs state that the said structures and constructions referred to above are all of permanent nature unauthorisedly made by the Defendants without permission from the Plaintiffs. The said structures and constructions mentioned in clause (a) (b) (c) and (d) are made in or about 1969-70 and the structures mentioned in clause (e) are erected some time in 1969."

55. In the plaint thus, details were given about the construction and the material used. It was stated that water closet

made out of brick masonry with foundation was constructed. It was connected to the main drainage. A water tap, open bathroom of brick masonry, walls preventing access from the front lawns to the rear open court yard were constructed. The construction of water storage tank and pump was stated to be made of brick masonry and a permanent one. A brick masonry room was stated to be erected in the rear of existing W.C. situated in the side open space. It is asserted that large sheds made up of cement concrete floor were constructed with a roof over them. It was asserted that the sheds have cement concrete floorings and roofs were supported by wooden posts embedded in the said cement concrete and the ground. It is stated that iron gates were uprooted without the consent of the Plaintiffs and the garage is destroyed. A bathroom was stated to be constructed in cement and concrete without the consent and permission of the Plaintiffs, and the Municipal Corporation. Therefore, the Plaintiffs in the plaint not only gave the nature of construction, but the details of the materials used and the nature of annexation.

56. On the face of it, none of the constructions specified in the plaint can be stated to be temporary or easily removable. It was, therefore, obligatory on the Defendants to show that the constructions were for the beneficial enjoyment or that they were not constructed by them. Four Written Statements have been filed. I have gone through the Written Statements. There are only bald denials in respect of the constructions. Once particulars were given

by the Plaintiffs, it was for the Defendants to demonstrate that the constructions were either not existing or they were not of permanent nature or that they were for beneficial use. A Court Commissioner was appointed and Court Commissioner has submitted the report. On behalf of the Plaintiffs, witness was examined who reiterated the contentions. Therefore, the existence of these constructions was proved. The material used and the manner in which construction was carried out was not specifically denied, except for general bald denials. In the Written Statement, nothing was demonstrated as to how the walls which blocked the access, construction of underground tank, toilets, etc., without the permission of the landlord, were for beneficial use. The constructions could not be said to be minor in nature.

57. Bindu-Defendant No.2C filed her affidavit of evidence. She asserted that the constructions were in pursuance to the contract with the predecessor of the Plaintiffs i.e. the Letter and no additional permanent construction was carried out. There was no explanation whatsoever in the entire affidavit of evidence as to how the constructions were of beneficial use. The only stand appeared to have been taken is that constructions form part of the premises and they existed since the beginning. She has merely denied that any structure has been erected. In her affidavit, she has sought to explain that the bathroom is for the beneficial enjoyment. Therefore, the assertions made by the Plaintiffs in the plaint in respect of the

constructions were not adequately controverted specifying as to how the constructions were for beneficial use. The tenor of the evidence of Bindu shows that she was only keen to rely on the Letter and to somehow save the sub-letting in favour of Defendant No.3. When Bindu-Defendant No.2C gave her evidence, she had already created an interest in favour of Defendant No.3. Therefore, it appears that her only endeavour was to somehow prove the Letter to protect Defendant No.3.

58. Defendant No.3 in his evidence admitted that it had constructed a bathroom inside the premises sometime in the year 1994 without permission of the Plaintiffs. It was urged that this construction is for the beneficial enjoyment. The construction of a bathroom is with concrete and bricks without the permission of the Municipal Corporation and the landlord. Nothing is placed on record that without the bathroom, the premises could not be used. Therefore, the plaint gave details of the construction and the material and annexation. The existence of the construction is not denied. The report of the Commissioner is on record. The only evidence on behalf of Defendant Nos.1 and 2 is of Bindu, Defendant No.2C who on her own admission was only of 5 to 8 years old in the year 1960. She has stated that she does not know when the constructions were carried out. Defendant Nos.1 and 2 could have thrown light on these aspects, but they have chosen not to step in witness neither given particulars in their written

statements. With this evidence, if the assertions in the plaint having almost gone unanswered by the Defendants, no perversity can be found with the conclusion of the Appellate Court that the charge of permanent construction was proved against Defendant Nos.2A to 2C. Defendant No.3 admitted the construction of the bathroom and the construction is without the permission of the landlord and the Municipal Corporation. Therefore, on the ground of permanent construction also, the judgement and decree of the Appellate Court cannot be faulted with.

59. To conclude, no case is made for interference in the revisional jurisdiction. Revision Applications are dismissed. No Costs.

60. At this stage, learned counsel for the Applicants seek continuation of the ad-interim order. The ad-interim order dated 20 August 2015 along with the order of compensation as modified by order dated 21 April 2016, will continue for period of 8 weeks from today. If no contrary order is passed by the end of eight weeks period, the Respondents will be permitted to withdraw the amount of compensation deposited by the Applicants in this Court. The undertaking that the Applicant/s will not create third party rights has already been filed and it will continue to bind the Applicants.

(N.M.Jamdar, J.)