

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 60 OF 2015

Mangilal Mishrimal Bafna
Died, through his legal heirs

- 1A Smt. Shantidevi Mangilal Bafna
age 72 years, occ. household
- 1B Chhagan Mangilal Bafna
age 54 years, occ. business
r/o Nandurbar, Hat Darwaja
Near Shanimandir, Nandurbar
Dist. Nandurbar.
- 1C Smt. Manjudevi Madan Bafna
age 50 years, occ. household
- 1D Miss Manali Madan Bafna
age 27 years, occ. household
- 1E Master Mayank Madan Bafna
age 24 years, occ. household

r/o Khandwala bungalow,
opp. Smruti Mandir
Dharamnagar, Near Sabarmati Post office
Ahmednagar (Gujrath)
Pin Code 380 005.
- 2 Rajendra (Raju) Mangilal Bafna
age 50 years, occ. business
r/o Dombivali (East)
Dist. Thane 421 204
r/o 6, Venkatesh Chaaya, 1st Floor
Dr. Rajendra Prasad Road,
Ramnagar
Dombivli (East)
Dist. Thane 421 204.
3. Ramesh Mangilal Bafna
age 48 years, occ. business

r/o Ahmedabad (Gujrath)
7, Navdeep apartment, 2nd floor
Girdhar Nagar Road,
Opp. Chandramani hospital
Sahi Baug,
Ahmedabad.

Applicants

Versus

1. Nemichand Khetmal Jain
Died through his legal heirs
- 1A. Smt. Bhikibai Nemichand Jain
age major, occ. household
- 1B Mr. Naresh Nemichand Jain
age 40 years, occ. business
- both r/o Opp. Dr. Kane hospital,
Nandurbar Tq. & Dist. Nandurbar
- 1C Smt. Manjuben Nemichand Jain
@ Manjuben Kishorkumar Sancheti
age 40 years, occ. household
r/o Samata Medical, Shahada
Tq. Shahada, Dist. Nandurbar
- 2 Mahendra Khetmal Jain
age 60 years, occ. business
- 3 Babulal Khetmal Jain
age major, occ. business
- both r/o Khetiya Road, Shahada
Tq. Shahada Dist. Nandurbar
4. Smt. Supibai w/o Khetmal Jain
Died through legal heirs
- 4A Smt. Mangibai Nenmalji Bafna
age 55 years, occ. household
r/o near Tax Stand Shahada
Tq. Shahada, Dist. Nandurbar

4B Smt. Vimalbai Amrutlalji Chopda
c/o M/s Amrutlalji Gorakhchandji
age 50 years, occ. household
r/o Sudantti (Belgavi) Karnatak
Pin Code 591 126
c/o M/s Vandana Traders
APMC yard, Saundatti,
Belgaon

Respondents

Mr. R.R. Mantri and Mr. R.R. Sancheti, advocates for applicants.
Mr. A.S. Abhyankar, advocate for respondents.

CORAM : M.S. SONAK, J.
RESERVED ON : 23rd JANUARY, 2018
PRONOUNCED ON : 5th FEBRUARY, 2018

PER COURT:

1. On 23rd January, 2018, the following order was made :-
 1. At the request of the learned counsel for the parties, this Revision Application was heard finally at the stage of admission.
 2. Learned counsel pointed out that on two previous occasions as well the matter was finally argued, however, on account of change in assignments, no Judgment could be delivered. Besides learned counsel pointed out that the original Eviction Suit has instituted in 1984 and litigation has been pending since last 32 years.
 3. The arguments have been concluded and the matter is reserved for orders.
2. This revision application challenges the judgment and order dated 08.12.2014 made by the District Judge, Nandurbar (Appeal Court) allowing Civil Appeal no. 15/2008 instituted by respondent

nos. 1A, 1B and 1C (tenants), thereby setting aside the judgment and order dated 17.04.2008 made by the Civil Judge, Senior Division, Nandurbar (Trial Court), which had ordered eviction of tenants from the suit premises on the ground that the suit premises were reasonably and bonafidely required by the applicants-landlords; on the ground that tenants had acquired alternate premises; and, on the ground that tenants had carried out permanent alterations to the suit tenanted property.

3. By the impugned judgment and order dated 08.12.2014, the Appeal Court, has infact held that the order of eviction made by the Trial Court is required to be upheld on all the aforesaid three grounds. However, the appeal was allowed and the judgment and order dated 17.04.2008 made by the Trial Court was set aside mainly on the ground that the applicants, in paragraph no. 9 of the application seeking eviction, had averred that the tenants, who were originally granted only half portion of the garage, which is one of the components of the suit tenanted property, removed the partition and encroached upon the balance half portion as well. Appeal Court, on the basis of such averments in paragraph no. 9 of the plaint has held that the suit as instituted, was a composite suit seeking eviction of the defendants from tenanted as well as encroached property and, therefore, such a suit, which was, not maintainable before the Civil Court exercising powers under the Bombay Rent Hotels and Lodging Houses Rates Control Act, 1947 (Bombay Rent Control Act), which is a special legislation, which deals with the issue of eviction by landlords of tenants from tenanted property only. On this sole ground, the appeal of tenants came to be allowed and eviction order made by the Trial Court

came to be reversed. Hence, present revision application by the landlords.

4. Mr. Mantri, learned counsel for applicants submits that the pleadings in the plaint have been misconstrued by the Appeal Court. He submits that the pleadings in paragraph no. 9 of the plaint were in the context of permanent alterations undertaken by the tenants. In any case, he submits that the Appeal Court, has clearly erred in holding that this was the case of mis-joinder of causes of action or that this was a composite suit and therefore, not maintainable. He submits that even assuming that the portion of the garage was not a part of the suit tenanted property, eviction decree could have always been made in respect of the suit tenanted property by excluding the portion of the garage which was encroached upon by the tenants. He submits that for last 30 years, the landlords have been agitating the issue of eviction and now, despite both the Courts concurrently holding that the grounds of eviction as contemplated under the Bombay Rent Control Act have been made out, the Appeal Court, exceeded jurisdiction in denying the relief to the applicants-landlords on the basis of technical plea of mis-joinder of causes of action, which technical plea was not even made good by or on behalf of the tenants.

5. Mr. Mantri submits that there are concurrent findings of fact recorded by the Trial Court and the Appeal Court to the effect that the need of applicants is both reasonable and bonafide; that hardship will ensue to the landlords if decree of eviction is denied to them; that the tenants have carried permanent alterations and

changes in the suit tenanted property and further, the tenants have acquired suitable alternate premises. He submits that respondents tenants have not even bothered to challenge the findings recorded by the two Courts. He therefore submits that the hyper technical plea accepted by the Appeal Court is liable to be reversed and, the order of eviction is liable to be made against respondents-tenants in this matter. Mr. Mantri has placed reliance on certain decisions, which shall be referred to in the course of this judgment.

6. Mr. Abhyankar, learned counsel for respondents-tenants at the outset submits that the revision application is not maintainable because the provisions of the Bombay Rent Control Act neither provide for an appeal nor a revision against the order made by the Appeal Court under section 29 of the Bombay Rent Control Act. He relies upon the decision of the Supreme Court in **Laxmikant Revchand Bhojwani and another Vs. Prataping Mohansingh Pardshi**, 1996(1) Mh.L.J. 507 to submit that revision is not maintainable under the Bombay Rent Control Act. He submits that the decisions relied upon by Mr. Mantri on the issue of maintainability of revision application have not considered the decision of this Supreme Court therefore, said decisions may be taken as *per incuriam*. On this ground, Mr. Abhyankar submits that the revision application may not be entertained.

7. Mr. Abhyankar further submits that even though respondents-tenants may not have challenged the impugned order insofar as it confirms the findings of the Trial Court made against them, that does not preclude respondents-tenants from attacking

such findings in order to defend the ultimate conclusion recorded in the impugned order. He submits that finding as regards the suit being composite and therefore, not maintainable is absolutely correct and infact, supported by the decision of this Court in **Rafiuddin Nuruddin Musalman Vs. Abdul Karim Abdul Reheman and others**, 2005(4) Mh.L.J. 646.

8. Mr. Abhyankar further submits that from the plaint it is clear that the suit premises on the ground floor were let out for commercial purpose and the suit premises on the first floor were let out for residential purpose. He submits that in terms of section 25 of the Bombay Rent Control Act, there is a bar for conversion of user of rented premises. He submits that in the present case, the so called bonafide requirement was pleaded by the landlords as being the requirement to use the entire tenanted premises for commercial purpose. He submits that this implies that the applicants-landlords desire to make use of the tenanted premises for the purposes which are prohibited under the Bombay Rent Act. He elaborates to submit that the user of the first floor of the tenanted premises for commercial purpose stands prohibited under section 25 of the Bombay Rent Control Act. He relies upon decision of the Hon'ble Supreme Court in the case of **Bapubhai Mohanbhai vs. Mahila Sahakari Udyog Mandir**, AIR 1975 Supreme Court, 2128 to submit that in such circumstances, the plea of reasonable and bonafide requirement under section 13(1)(g) of the Bombay Rent Control Act can never be upheld. He submits that the findings to the contrary recorded by the Trial Court and the Appeal Court are therefore, erroneous and deserve to be set aside.

9. Mr. Abhyankar submits that there were no permanent changes made by the tenants to the suit tenanted premises. He submits that some tiles were changed and *ota* was put in the kitchen. He submits that on such basis, no decree of eviction could have ever been made against respondents-tenants.

10. Insofar as the ground of acquisition of alternate premises in terms of section 13(1)(c) of the Bombay Rent Control Act is concerned, the same applies only where the tenanted premises were for residential purpose. In this case, since the tenanted premises were for residential and commercial purposes, such ground, is not at all attracted and, the Trial Court and the Appeal Court have clearly exceeded their jurisdiction in ordering eviction on the said ground.

11. Mr. Abhyankar submits that, in this case, the original tenant expired during the pendency of proceeding before the Trial Court. The applicants-landlords brought on record his wife, son and daughters as legal heirs. Neither the Trial Court nor the Appeal Court however, bothered to determine whether the heirs who were brought on record were actually the tenants as defined under section 5(11)(c) of the Bombay Rent Control Act. He submits that this was absolutely necessary because unless this was determined, it was not open for the Trial Court to exercise jurisdiction over the defendants who may not even have answered the definition of tenants under the Bombay Rent Control Act. He submits that the decrees and orders made under the Bombay Rent Control Act provide not only for eviction but also payment of arrears of rent and other liabilities. Therefore, if the defendant, is not at all a

tenant, then, no decree, either of eviction or more particularly, for payment of arrears of rent or other liabilities can be made against such tenant. Such a decree is a clear nullity. He submits that in the present case, since no such exercise was undertaken by the Trial Court or the Appeal Court for determining whether all the legal heirs were actually the tenants of the suit tenanted premises, the finding that grounds for eviction were made out, are in excess of jurisdiction and are liable to be set aside. Mr. Abhyankar relies upon **Babubhai and others Vs. Shah Bharatkuma Ratilal and others**, AIR 1980 Guj. 89 and **Karedla Parthasradhi V. Gngula Ramanamma (D) Through LRs and others**, AIR 2015 SC 891.

12. Finally, Mr. Abhyankar submits that the suit for eviction in the present case was instituted in the year 1984 when the Civil Judge, Junior Division had jurisdiction to entertain such suit. From the year 1990, said jurisdiction came to be vested in the Court of Civil Judge, Senior Division. Mr. Abhyankar submits that in the absence of any order of transfer under section 24 of the Code of Civil Procedure, the matter, could not have been transferred from the Court of Civil Judge Junior Division to the Court of Civil Judge Senior Division. He submits that in this case, part of the matter was heard before the Civil Judge, Junior Division and, part before the Civil Judge, Senior Division. Since, very taking up of this matter before the Civil Judge Senior Division was without authority of law, the impugned judgment and order made by the Trial Court was a nullity and, by allowing this revision application, this Court, ought not to restore such nullity.

13. Mr. Abhyankar, on the basis of aforesaid, submits that this

revision application is liable to be dismissed and may be therefore dismissed.

14. The rival contentions now fall for determination.

15. The issue of maintainability of revision application stands answered against respondents in the Division Bench decision in the case of **Gajanan s/o Devidas Wankhare Vs. Mohd. Jamil Mohd. Amad**, 2017(1) Mh.L.J. 660. The issue as to whether revision is entertainable or not did not fall for consideration in *Laxmikant Bhojwani* (supra) rather, such issue, squarely fell for consideration in the case of *Gajanan* (supra), which was infact, a reference made to the Division Bench, in view of certain conflicting decisions on this issue. In *Gajanan* (supra), the Division Bench, has made reference to several decisions of the Supreme Court in the context of maintainability of revision application under section 115 of the Code of Civil Procedure, even where the decision of the appellate authority is accorded a statutory finality. In the present case, all that is stated in section 29(2) of the Bombay Rent Control Act is that no further appeal would lie against any decision in appeal under section 29(1) of the Bombay Rent Control Act. This means that as against the decision of the appeal Court, no further appeal will lie. That by itself, does not mean that the revisional jurisdiction is barred as held by the Division Bench relying upon several decisions of the Hon'ble Supreme Court.

16. In **Wamanrao s/o Vyankatrao Shinde Vs. Mrs. Munnibai wd/o Parmanand Jain**, 2015(5) Mh.L.J. 891 a learned Single Judge of this Court has held that the revision is maintainable to

question the order made by the appellate authority under Bombay Rent Control Act. The learned Single Judge, in turn, has relied upon the ruling of the Division Bench in the case of **Prabhulal Chhogalal Mandore vs. Bastiram Himatram Bhutada and another**, 1990(1) B.C.R. 529.

17. There are several decisions rendered by the Hon'ble Supreme Court, from which, it is apparent that the Hon'ble Supreme Court has dealt with the scope of revisional jurisdiction under section 115 of the Code of Civil Procedure in matters arising under the Bombay Rent Control Act. In **Ramniklal Pitambardas Mehta Vs. Indradaman Amratlal Sheth**, AIR 1964 Supreme Court 1676, the Hon'ble Supreme Court has considered the scope of revisional jurisdiction under section 115 of the Code of Civil Procedure and held that such jurisdiction must ordinarily not be exercised to interfere with the findings of fact. Similarly, in **Bai Hiragauri Vs. Abdul Kadar Mamadji and another**, (1973) 1 Supreme Court Cases 799, the Hon'ble Supreme Court has held that when the appellate decree became final under unamended section 29(2) of the Bombay Rent Control Act, the High Court, can deal with the case only in its revisional powers under section 115 of the Code of Civil Procedure. Again, recently, in a case arising under the Bombay Rent Control Act, the Hon'ble Supreme Court in **Kalidas Chunilal Patel (Dead) by Legal Representatives Vs. Savitaben And others**, (2016) 12 Supreme Court Cases 544, has considered the scope of revisional jurisdiction under section 115 of the Code of Civil Procedure against the order made by the appeal court. As noted earlier, the issue of maintainability or otherwise of revision

application under section 115 of the Code of Civil Procedure did not arise directly for consideration in the case of *Laxmikant* (supra). Therefore, on the basis of reading the statement from out of context, it cannot be said that the revision application under section 115 of the Code of Civil Procedure is not maintainable against an order made by the appellate authority under Bombay Rent Control Act. As noted earlier, the Division Bench in the case of *Gajanan* (supra) has, upon a detailed consideration of several rulings of the Hon'ble Supreme Court, held that such a revision application is maintainable. Accordingly, it is not possible to accept the contention of Mr. Abhyankar that the revision application in the present case is not maintainable.

18. In this case, the Civil Judge, Senior Division, Nandurbar, decreed Regular Civil Suit No. 5/84 instituted by the appellants and, ordered eviction of the respondents-tenants on the following three grounds :-

(a) That the respondents carried out substantive changes and made construction work in the suit premises without permission of the appellants-landlords. This is a ground as contemplated by sections 13(1)(a) and 13(1)(b) of the Bombay Rent Control Act.

(b) That the respondents have acquired suitable alternate accommodation for their business as well as residence. This, according to the Trial Court, constitutes a ground for eviction under section 13(1)(l) of the Bombay Rent Control Act.

(c) That the appellants reasonably and bonafidely require the suit

premises for the business purpose and further, greater hardship would be caused to the appellants if decree of eviction is refused. This is a ground of eviction under section 13(1)(h) of the Bombay Rent Control Act.

19. The Appeal Court, by the impugned judgment and order dated 08.12.2014, has held that the respondents-tenants have indeed carried out alterations and permanent construction in the suit premises without consent of the appellants-landlords, thereby, confirming, the findings of fact recorded by the trial Court as regards this issue. The Appeal Court, has also confirmed the finding recorded by the trial Court that respondents-tenants have acquired suitable accommodation for their business and residence purposes. The Appeal Court, has also confirmed the finding recorded by the trial Court on the issue of reasonable and bonafide requirement as well as comparative hardship. Thus, on the factual aspects, the appeal Court, has concurred with the finding of fact recorded by the trial Court. However, the appeal Court has non suited the appellants-landlords by raising and answering the following issue against appellants-landlords.

"10	Whether the suit is entertainable in view of composite demand in respect of entire C.S. No.632 ?	No.
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20. The appeal Court has reasoned that the suit property in the present case is spread over C.S. Nos.632 and 633 as described in the application for eviction at Exhibit-78. The suit premises

comprises of building which is situated in C.S. No.633 and half the garage portion located in C.S. No.632. In paragraph no.9 of the application at Exhibit-78, appellants had stated that only half portion of the garage in C.S. No.632 was, in fact, leased out to respondents-tenants. However, respondents-tenants demolished the partition and encroached upon balance half portion of the garage in C.S. No.632. Since, the suit demanded restoration of possession of C.S. No.633 as well as C.S. No.632, the appeal Court had held that the suit suffers from misjoinder of causes of actions and such a composite suit demanding possession of leased and encroached property was not maintainable and on such ground has non-suited the appellants-landlords.

21. The approach of the appeal court warrants interference. There is absolutely no dispute that building in C.S.No.633 was leased out to respondents-tenants. There is also no dispute that half portion of the garage in C.S. No.632 was also leased to respondents-tenants. In fact, it is the case of respondents-tenants that the entire garage in C.S.No.632 was in fact leased to them. However, since, the issue of jurisdiction of Court is required to be determined in the light of the pleadings made in the plaint, at least it is clear that, the trial Court has jurisdiction to entertain a suit and order eviction of respondents-tenants from the portion of the suit property, which was admittedly leased out to the respondents-tenants, particularly since, both the trial Court and appeal court have concurrently held that no less than three grounds of eviction were in fact made out. On the basis that any alleged composite demand was made, the appeal court was entirely unjustified in non suiting the appellants-landlords and dismissing the suit in its

entirety. At the highest, the appeal court, could have ordered, eviction of respondents-tenants from building in C.S. No.633 and half portion of the garage in C.S. No.632. To that extent, there was clearly, jurisdiction vested in the Courts and since the grounds of eviction were concurrently made out, it was the duty of the Courts to order eviction of respondents-tenants from out of the admittedly leased out portion of the suit property.

22. The ruling in **Rafiuddin Musalman** (*supra*), upon which reliance was placed by Mr.Abhyankar, in support of his contention, that composite suit is not maintainable, is clearly distinguishable. In the said case, the plaintiff instituted suit against two defendants. The plaintiff, in the suit, admitted that defendant no.1 was the tenant in respect of the suit premises, but possession of suit premises was with defendant no.2, who was nothing but a trespasser in the suit premises. This means that plaintiff, in the said case, instituted the suit against two different defendants alleging that one of the defendants was the tenant of the suit premises, but, was not in possession of the suit premises and, the other defendant, who was in possession of the suit premises, was not a tenant of the suit premise, but only a trespasser therein. It is in these peculiar facts, that this Court held that a suit of such a nature was not maintainable on the ground of misjoinder of causes of actions i.e. multifariousness. This Court reasoned that under Section 28 of the Bombay Rent Control Act, the Civil Court cannot issue a decree against a person whom the plaintiff styles as a trespasser in the suit premises. This ruling turns on its peculiar facts and is, therefore, distinguishable.

23. In the present case, the suit has been instituted against same set of defendants. Admittedly, the defendants, were leased out building in C.S. No.633 and half portion of the garage in C.S.No.632. In fact, as noted earlier, it is the case of defendants-tenants that they were leased out the entire garage premises in C.S.No.632. However, since the respondents-tenants now insist that the issue of jurisdiction has to be determined on the basis of pleadings in the plaint, we will have to proceed on the basis that the rented premises comprises of entire building in C.S.No.633 and half garage portion in C.S.No.632. No doubt, there is an averment that defendants-tenants encroached upon the balance half portion of the garage by demolishing the partition which existed between the two properties. However, this averment is in the context of the ground that permanent alternations were made by the tenants to the suit premises without the consent of the appellants-landlords.

24. This is not a case of misjoinder of causes of actions or misjoinder of parties. At the highest, the appeal court, could have restricted the order of eviction to the portion of suit property, which was admittedly leased out to the respondents-tenants i.e. building in C.S.No.633 and half portion of the garage in C.S. No.632. The Court, may not have jurisdiction to order eviction of respondents-tenants from the encroached portion. The suit could have been dismissed to that extent but there was no reason to dismiss the suit in its entirety. The appeal court, clearly exceeded jurisdiction in non suiting the appellants-landlords on the basis that there was misjoinder of causes of actions or that the suit, as instituted, was bad for multifariousness.

25. If the averments in paragraph no. 9 of the application for eviction Exh. 78 are read in the context in which the same appear, then, it is clear that the averments were made in the context of the grounds regards permanent alterations without consent of appellant-landlords. The averments in paragraph no. 9 of the application, as per translation produced on record read as follows :-

9. The Eastern half garage having length of 8'.5" and Width of 37.1" in possession of plaintiff and the Western half portion only was given to the Defendants on rent. in between these two parts there was partition of bamboo and mud. Def. has broken the said partition and illegally taken possession of the entire garage.

26. Upon reading the application for eviction in its entirety and in a meaningful manner, it cannot be said that this is a case where the appellant-landlords have prayed for a decree of eviction in respect of not only the tenanted portion but also, in respect of the portion encroached upon by the respondents-tenants. Admittedly, the suit tenanted premises are spread over C.S. No. 632 and 633. The tenanted premises have been very clearly described in the application for eviction at Exh. 78. Finally, in the prayer clause, the relief applied for is that the appellants (plaintiffs) may be put in actual possession of C.S. No. 633 and 632. The prayer clause has to be construed in the light of the pleadings in the application seeking eviction at Exh. 78. So construed, it is quite clear that the appellants have prayed for eviction of respondents from the suit tenanted premises. In paragraph no. 9 of the application for eviction all that was stated was that respondents-tenants broke the

partition put up between the eastern half and western half of the garage and have illegally taken possession of the eastern half portion. If the averments in this paragraph are read with the averments in the immediate following paragraph i.e. paragraph no. 10, it is quite clear that these averments were for indicating the nature of alterations undertaken by the respondents-tenants in the tenanted premises. Paragraph no. 10 of the application for eviction starts with the expression "*not only this,*". This is followed by the other alterations and permanent changes alleged to have been effected by the respondents-tenants in the garage itself. The averments in paragraphs 9 and 10 which relate to garage in C.S. No. 632 so also, the relief in the application for eviction, have to be construed in the context of the averments in the application. The application, has to be read in its entirety and not by isolating one or two stray sentences. So construed, it is quite clear that the suit instituted by the appellants was not the composite suit or that the suit did not suffer from multifariousness or misjoinder of causes of action.

27. At no stage, it appears, that respondents understood the suit as suffering from multifariousness. The point was however, raised before the appeal Court and, the appeal Court, has upheld this point. On facts as well as in law, the appeal Court, was not right in upholding such a plea and non-suiting the appellants on the ground that the suit itself was barred by multifariousness or that the suit itself was a composite suit which was not maintainable.

28. In **Sopan Sukhdeo Sable and others Vs. Assistant Charity Commissioner and others**, AIR 2004 SC 1801, the Hon'ble

Supreme Court has held that a plaint is to be read in its entirety and not in piece. Whether relief could be granted on the pleaded facts and evidence adduced is totally different from the relief claimed. All the relevant claims may not be allowed to a party on the pleadings and evidence adduced. Whether part of the relief cannot be granted by the Civil Court is a different matter from saying that because of a combined claim of reliefs the jurisdiction is ousted or no cause of action is disclosed. Where the main dispute related to the question of continuance of tenancy and the period of tenancy of the appellant with the trust and other reliefs were regarding enquiry into affairs of the trust, the application would not have been rejected on the ground that the civil court lacks jurisdiction on account of institution of composite suit or on account of any misjoinder of cause of action. In this case, the Hon'ble Supreme Court held that reliefs relatable to sections 51 and 51 of the Bombay Public Trust Act, 1950, ought to have been segregated from the other reliefs in relation to tenancy and continuance of tenancy, since, such other reliefs were well within the jurisdiction of the civil court. Accordingly, adjudication of the suit was restricted only upon question of tenancy, terms of tenancy and the period of tenancy. For rest of the reliefs, plaintiff was permitted to make such application as warranted in law for relinquishment and/or giving up claim of other reliefs. From this, it is quite clear that even assuming that the suit in the present case was a composite suit seeking eviction not only from the tenanted premises but also from the encroached premises, that by itself, was not sufficient to dismiss the entire suit as not maintainable. As noted earlier, upon reading of the plaint in its entirety and the context in which the pleadings appear, it cannot

be said that the relief was prayed for even in respect of encroached portion. In any case, the ratio of *Sopan Sable* (supra) is a clear answer to the issue that the suit could not have been dismissed in its entirety on the alleged ground that the same was a composite suit.

29. Since, the only ground on which the appeal Court has non-suited the appellants-landlords is found to be an invalid ground both, on facts as well as in law, the impugned judgment and order made by the appeal Court is required to be reversed and, the judgment and order made by the trial Court on 17.04.2008 is required to be restored, possibly, with the clarification that eviction shall relate to the suit tenanted premises as described in the application for eviction at Exh.78 i.e. the building in C.S. no. 633 and the western half portion of the garage in C.S. no. 632. However, in deference to the submissions of Mr. Abhyankar, that he should be permitted to urge that the impugned judgment and order made by the appeal Court, to the extent it has concurred with the trial Court, is wrong and in excess of jurisdiction, the submissions made by Mr. Abhyankar on this aspect are also considered hereinafter.

30. Mr. Abhyankar is obviously not right in his submission that the bonafide requirement pleaded by appellant was the requirement of four sons of the appellant for commercial purpose only. From the pleadings, it is very clear that the appellant had stated that he has four adult sons and out of them, Madan, Rajendra and Ramesh do not have any other premises for residence and business. Due to this, they are forced to go to

Ahmedabad and Mumbai to earn their livelihood. It is then stated that on account of this factor, the suit tenanted premises are required for the purpose of their residence. Again, the pleadings have to be construed liberally and in their entirety. There are clear pleadings that the bonafide requirement is not only for the purpose of commerce but also for the purpose of residence.

31. Mr. Abhyankar has conceded that the suit premises on the first floor in the building in C.S. no. 633 were leased for residential purpose and on the first floor for commercial purpose. Similarly, the portion of garage in C.S. no. 632 was leased for commercial purpose. In the pleadings in application seeking eviction at Exh. 78, it is quite clearly stated that the appellant requires the suit tenanted premises for the purpose of both residence as well as commerce of his three out of four adult sons. In these circumstances, there is no question of bar under section 25 of the Bombay Rent Control Act being attracted. This is not a case of any change of user and therefore, the decision in the case of *Babubhai* (Supra) is also not attracted.

32. The evidence lead by and on behalf of appellant is consistent with the pleadings that the suit tenanted premises are reasonably and bonafidely required for the purpose of residence and business to be undertaken by three out of four adult sons of the appellant. The trial court as well as appeal Court, have concurrently returned finding of fact on the aspect of reasonable and bonafide requirement. The two Courts have also concurrently returned finding on the aspect of comparative hardship. In the absence of any perversity or jurisdictional error, it is obviously impermissible

for this Court, in exercise of revisional jurisdiction, to interfere with such concurrent findings of fact, particularly, when the same are borne out from the evidence on record. Accordingly, there is no merit in the contention of Mr. Abhyankar that there is some infirmity in the findings of fact recorded by the two Courts or the relief of eviction granted by the trial court on the ground of reasonable and bonafide requirement.

33. There is also no merit in the contention of Mr. Abhyankar that there is no evidence on record to sustain finding of permanent alterations to the suit tenanted premises without the consent of the appellants-landlords. Infact, this is not a case where respondents-tenants have merely changed some tiles or put up some kitchen *ota* as was casually contended by Mr. Abhyankar. Evidence on record indicates the nature of permanent changes made by respondents-tenants with impunity and without permission or consent either from the appellant-landlord or even the concerned local authority. The findings of fact recorded by the the two Courts on this aspect suffer from no perversity and therefore, warrant no interference, particularly, in exercise of revisional jurisdiction.

34. It is well settled that when the first appellate court, on appreciation of evidence, records a finding of fact on a particular issue then, such finding is usually binding on the High Court while hearing a revision against such order. In this case, both the trial court and the appeal court have concurrently recorded finding of fact that the suit tenanted premises were reasonably and bonafidely required by appellants-landlords for residential as well

as commercial purpose. The two courts have recorded concurrent finding of fact that the issue of comparative hardship in the present case was liable to be decided in favour of the appellants-landlords. The material on record establishes that the respondents-tenants have acquired ample alternate premises suitable for both residential as well as commercial purpose. The evidence on record establishes that the landlord had four adult sons out of which, the suit tenanted premises was required for residence as well as business purpose of atleast three adult sons. Similarly, there are concurrent findings of fact on the aspect of permanent changes or alterations undertaken by respondents-tenants to the suit tenanted premises without the consent of appellants-landlords. There is no perversity in recording such findings of fact and, such findings of fact are not even contrary to the evidence on record. In these circumstances, at the behest of respondents-tenants, there is no question of interfering with such concurrent findings of fact.

35. The issue of eviction on the ground of acquisition of alternate premises in terms of section 13(l) of the Bombay Rent Control Act, to a great extent is rendered academic because, respondents-tenants are liable to suffer decree of eviction on the ground that the suit tenanted premises are reasonably and bonafidely required by appellants-landlords and further, on the ground that respondents-tenants have undertaken permanent alterations to the suit tenanted premises without the consent of the appellant-landlords. In this case, the evidence on record clearly indicates that respondents-tenants have acquired large premises not only for residential but also for commercial purpose. The concurrent

findings of fact in this regard are borne out from the material on record and Mr. Abhyankar, did not even challenge such concurrent findings of fact with any degree of seriousness, or at all. However, his only submission was that the ground under section 13(1)(l) of the Bombay Rent Control Act applies only to a situation where the tenant was let out the premises for residential purpose and such tenant has acquired vacant possession of or has been allotted a suitable residence. As noted earlier, in this particular case, this issue is only academic and therefore, there is no necessity to answer the same.

36. Upon demise of original tenant, the appellant as a matter of abundant caution, brought on record all the legal heirs. None of the legal heirs filed any response to state that they were not the tenants of the suit tenanted premises within the meaning of section 5(11)(c) of the Bombay Rent Control Act. In the absence of any such reply or response from any of the legal heirs, who were brought on record, there was no occasion for the trial Court to go into the issue as to whether any of the legal heirs were not the tenants as defined under section 5(11)(c) of the Bombay Rent Control Act. To urge at this stage that, such an alleged omission on the part of the trial Court or the appeal Court is fatal to the decree of eviction, is not a contention which can be accepted in this revision application instituted by the landlords.

37. If some of the legal heirs who were brought on record were indeed serious in their contention that they were not the tenants in respect of the suit tenanted premises, or that they were unnecessarily dragged into this litigation, it was for such legal

heirs to have stated so, so that they could have been deleted from the array of parties. Even before the appeal Court, none of the legal heirs have boldly urged that they were not the tenants in respect of the suit tenanted premises and therefore, no decree of eviction or payment of arrears of rent ought to have been made against them.

38. Incidentally, in the present case, no eviction has been ordered on the ground of default in payment of rent or on the ground of arrears of rent. If at all any of the legal heirs of deceased original tenant are now serious in the contention that either they are not at all the tenants in respect of the suit tenanted premises, then, it is apparent that any decree or order of eviction made against them will not affect them in any manner. The ruling in the case of **Babubhai and others Vs. Shah Bharatkuma Ratilal and others**, AIR 1980 Guj. 89 already stands over-ruled by the Division Bench and in any case, does not support of the proposition canvassed by Mr. Abhyankar. So also, the ruling in the case of **Karedla Parthasradhi V. Gangula Ramanamma (D) Through LRs and others**, AIR 2015 SC 891 is not at all a ruling in support of the proposition which Mr Abhyankar now canvasses.

39. In *Karedla Parthasradhi* (supra), the Hon'ble Supreme Court, in the context of provisions contained in Order 22 Rule 5 of the Code of Civil Procedure has held that where the question arises as to whether any person is or is not a legal representative of deceased plaintiff or deceased defendant, such question shall have to be determined by the court. In the present case, as noted earlier, the question as to whether the legal heirs who were brought

on record consequent upon demise of the original tenant were legal representatives or not did not really arise because, such question, was never raised by any of the legal heirs. The Hon'ble Supreme Court has referred to its earlier ruling in **Jaladi Suguna (Deceased) through LRs Vs. Satya Sai Central Trust and others**, 2008(8) SCC 521, in which, again, it is held that if there is a dispute as to who is the legal representative, the decision should be rendered on such dispute. In this case, as noted earlier, there was really no dispute raised by any of the legal heirs and therefore, there is no infirmity in the order made by the trial court. In case of *Karedla Parthasradhi* (supra), there was a serious dispute between one party who claimed to be the legal wife of the deceased and the other party, who claimed to have inherited from the deceased on the basis of a will. The observations that the court has to first determine the question of legal representative were made in the context of such a dispute. Accordingly, the decision in *Karedla Parthasradhi* (supra) does not support the proposition now advanced by Mr. Abhyankar.

40. In this case, by operation of law, the jurisdiction, which was formerly vested with the Civil Judge, Junior Division, stood vested with the Civil Judge, Senior Division. In these circumstances, there was obviously, no necessity of any order for transfer under section 24 of the Code of Civil Procedure. It is settled position in law that no party has any vested right in the forum. On basis of such a hypertechnical plea, unsupported by law or authority, the respondents cannot attempt to set at naught proceedings which have commenced in the year 1984 and in which the respondents have participated without any protest. This is not a case of lack of

jurisdiction much less, inherent lack of jurisdiction. Accordingly, it is not possible to agree with the contention of Mr. Abhyankar that the decree of the trial Court is a nullity because, there was no order of transfer under section 24 of the Code of Civil Procedure made before the Civil Judge, Senior Division, continued with the proceedings in the suit which was originally instituted in the Court of Civil Judge, Junior Division.

41. For all the aforesaid reasons, this revision application is allowed. The impugned judgment and order made by the District Judge, Nandurbar on 08.12.2014 to the extent it non suits the applicant-landlords is hereby set aside. The judgment and order dated 17.04.2008 made by the Civil Judge, Senior Division, Nandurbar is restored with the modification that respondents-tenants are directed to restore possession of the suit tenanted premises i.e. building in C.S. No. 633 and western half portion of the garage in C.S. No. 632 to the appellants-landlords.

42. Rule made absolute to the aforesaid extent. There shall be no order as to costs.

43. Pending civil applications do not survive and stand disposed of.

44. At this stage, learned counsel for respondents applies for stay on the execution of the eviction decree for a period of six weeks from today. Learned counsel for the applicant states that no execution application will be filed for a period of six weeks from today. This statement is accepted. Respondents are, however,

directed to file usual undertaking in this Court within a period of four weeks from today and furnish a copy of the same to the learned counsel appearing for the applicants.

(M.S. SONAK, J.)

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