

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.258 of 2011

Shri Francisco Joaquim Mesquita
(since deceased)
Through his heirs and legal
representatives,
1(b) Mrs. Maria Misquita e George
(since deceased)
Through her heirs and legal representatives,
2(a) Shri Francis Peter George,
2(b) Mrs. Jasmine George, and
2(c) Shri Hillary George,
All residents of House No.820,
Alto Betim, Bardez-Goa .. Petitioners.

Vs.

Smt. Laxmibai Pandurang Kamat
Haldonkar alias Laxmibai Kamat
(since deceased)
Through her heirs and legal
representatives,
1(a) Shri Ramesh P. Kamat Haldonkar,
(since deceased)
through L.R's:-
1(a)(a) Dr. Mrs. Ketan Suraj Sukhtankar
married to,
1(a)(b) Mr. Suraj Arun Sukhtankar,
Both, Major of age, Indian National
r/o H.No.363, Bazarwadda,
Marcel Ponda Goa.
1(b) Dr. (Mrs.) Daliya R. Kamat Haldonkar,
1(c) Shri Anil P. Kamat Haldonkar,
1(d) Mrs. Chitra A. Kamat Haldonkar,
1(e) Dr. Rajan P. Kamat Haldonkar,
1(f) Dr. (Mrs.) Alka R. Kamat Haldonkar,
1(g) Shri Suresh S. Khatkhate,
1(h) Mrs. Shilpa S. Khatkhate (since deceased)
Through her heirs and legal representatives,
Miss. Shonil S. Khatkhate,
1(i) Shri Ravindra Bhandari,
1(j) Smt. Milan R. Bhandari,

- 1(k) Shri Govind Moye, (since deceased)
Through L.R.s
- 1(k)(a). Mr. Sagun Govind Prabhu Moye,
1(k)(a). Mr. Nilesh Govind Prabhu Moye,
both residents of 206,
Vasant Arcade,
Near Popular High School,
Salcete, Margao, Goa
- 1(l) Smt. Nilima G. Moye,
1(m) Shri Jayant G. Bhat,
1(n) Smt. Shamala J. Bhat,
All represented by their duly
constituted Power of Attorney,
Dr. Rajan Pandurang Kamat Haldonkar,
resident of David House, 1st Floor,
Margao, Salcete, Goa.
2. Shri Joaquim Alex Misquita,
c/o Mrs. Hayley Colaco,
resident of Everad Nagar Housing
Colony, H-8, First Floor, Eastern
Express Highway, Sion (East), Mumbai.
3. The Addl. Dy. Collector and Rent Controller,
Mapusa Sub-Division, Mapusa, Bardez-Goa
Through the Chief Secretary,
Secretariat, Panaji-Tiswadi-Goa .. Respondents.

Shri J. Godinho and Ms. Sainy Gracias, Advocates for the
Petitioners.

Shri V. A. Lawande, Advocate for the Respondent Nos.1(c) to 1(n).

CORAM :- C. V. BHADANG, J.

Heard/Reserved on : 07.11.2017/ 07.06.2018

Pronounced on : 12.06.2018

JUDGMENT :

The challenge in this petition is to the concurrent

finding of the Courts below directing eviction under the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 (the Act, for short).

2. The brief facts necessary for the disposal of the petition may be stated thus :

That now deceased Laxmibai Kamat Haldonkar filed an application against now deceased Francisco Joaquim Mesquita for eviction under the provisions of the Act on various grounds. That application was filed in the year 1984. The subject matter of dispute happens to be two ground floor flats in the applicant's residential building at Alto de Betim, Bardez, Goa, which were let out to Francisco on a monthly rate of Rs.600/-. The suit premises were let out for manufacturing of pickles, etc.

3. For the sake of convenience, the parties are referred to in their original capacity as applicant and respondent before the Rent Controller. The case made out in the application was that the respondent has illegally changed the user of the suit premises by starting manufacture of beef and pork products to the annoyance of the applicant. It was contended that the respondent used to throw the bones and skins in the compound, causing nuisance on account of unbearable smell and dirt. It was also

contended that the respondent has failed to maintain the suit premises properly and on account of his negligence, the condition of the premises has deteriorated. It was also contended that the respondent has sublet the premises or a part thereof to a person carrying on remoulding and vulcanizing business and the subtenant has stacked his tyres on the rear of the suit premises. It was next contended that the respondent has closed down the business and started using it for residential purposes which also amounts to change of user. Lastly, it was contended that the applicant *bonafide* requires the suit premises for personal occupation of the members of the family.

4. The respondent Francisco resisted the application. It was contended that the suit premises have been leased to him under the Agreement dated 23/01/1978 and 01/09/1995 and it was not a residential building and no part of the building was ever intended to be used as a residence and the suit premises have always been used for commercial purposes. All other adverse allegations about carrying out structural alterations, nuisance, subletting and about closure of the business as also about the *bonafide* personal requirement of the applicant and her family, have been denied. It was contended that it was agreed between the parties that the respondent may make structural modifications

or alterations with prior written consent of the applicant. The applicant, by letter dated 01/12/1975, had permitted the respondent to construct two tanks behind the kitchen. Similarly, by a letter dated 26/02/1978, the applicant had permitted the respondent to break parapet of the southern block for entrance to the office of the respondent and to put glazed tiles in the kitchen, etc. It was contended that the respondent has been granted licence by Meat Food Products Order No.94 in category 'C', which allows the respondent to buy meat from local market cleared of skin and bones and as such, the allegation that the respondent was throwing bones and skin in the compound, were false.

5. It appears that the respondent Francisco expired on 03/09/1986 as a bachelor. As the applicant was unable to find out whether the respondent has left any legal representatives, a notice was published in the local news paper, calling upon any person having interest in the estate of the deceased respondent, requiring them to appear before the Rent Controller to defend the proceedings.

6. In reply to the public notice, Shri Joaquim Alex Mesquita and Smt. Maria Mesquita e George appeared and sought their impleadment, to which the applicant gave no objection.

Accordingly, Shri Joaquim and Smt. Maria were brought on record as legal representatives of Francisco, being respondent nos.1(a) and 1(b) respectively.

7. The original applicant Laxmibai expired on 16/06/1991 and is survived by the present respondents as Lrs.

8. It so happened that the original respondent no.1(b) Mrs. Maria Mesquita e George expired in the last week of April, 2002 on account of which the present petitioners nos.2(a) to 2(c) namely Francis Peter George and his wife, Smt. Jasmine George and Shri Hilary George sought their impleadment as LRs of Smt. Maria Mesquita. The learned Rent Controller refused to allow the impleadment by order dated 04/12/2002 as the same was opposed by the present respondent no.1(a), on the ground that the petitioners are not the tenants within the meaning of Section 2(p) [which now corresponds to Section 2(o)] of the Act.

9. The matter proceeded further. On behalf of the applicant, her son Dr. Rajan Haldonkar was examined.

10. On 11/08/2000, the original respondent no.1(a) filed an application stating that he has entered into a Partnership with

George Peter Francis for the purposes of running of business of M/s. Miski Foods and Miski Industries and claiming that George Peter Francis was running the said business in the part of the premises and was residing in the remaining part and accordingly, he was arrayed as the respondent no.2. No evidence was led by the original respondents.

11. The learned Rent Controller came to the conclusion that the respondents were not tenants, within the meaning of Section 2(p) of the Rent Act and thus, found that there is no landlord tenant relationship between the applicant and the LR's of the respondent. Nonetheless the Rent Controller examined the merits of the various grounds and found that the applicant has made out a case for eviction. The learned Rent Controller on 25/03/2003, allowed the application in the following terms :

"The eviction application dated 16/02/1984 filed by the applicant for eviction of the respondent from the suit building, is allowed.

The legal representatives of the respondent who have been brought on record, should hand over the vacant possession of the suit building to the applicants within a period of 30 days."

12. Feeling aggrieved, the petitioner nos.2(a) to 2(c) Francis Peter George, Mrs. Jasmine George and Shri Hilary

George filed Eviction Appeal No.769/2003 before the Administrative Tribunal. A preliminary objection was raised on behalf of the present respondents before the Administrative Tribunal about the maintainability of the appeal in as much as the petitioners were not allowed to be impleaded as party respondents by the Rent Controller on death of Mrs. Maria George. The Tribunal accepted the contention and held that the appeal was not maintainable. Nonetheless the Administrative Tribunal also examined the merits of the impugned order and found that the Rent Controller had rightly directed eviction. The Administrative Tribunal found that the appellants have changed their stand from time to time, which is indicative of the fact that they have no right to the suit premises as tenants. In that view of the matter, the appeal came to be dismissed by a judgment and order dated 22/10/2010. Feeling aggrieved, the petitioners are before this Court.

13. I have heard Shri Godinho, the learned Counsel for the petitioners and Shri Lawande, the learned Counsel for the respondent nos.1(c) to 1(n). With the assistance of the learned Counsel for the parties, I have gone through the record and the impugned orders passed.

14. It is submitted by Shri Godinho, the learned Counsel for the petitioner that the Courts below were in error in holding that the petitioners were not tenants in respect of the suit premises, within the meaning of Section 2(p) of the Act. It is contended that the Rent Controller was also in error in holding that the applicant has proved the various grounds in support of her claim for eviction. Shri Godinho, the learned Counsel for the petitioners strenuously urged that once the Rent Controller had come to the conclusion, that there was no landlord tenant relationship between the parties, it was not open for the Rent Controller to have entertained the application and directed eviction. It is submitted that the existence of landlord and tenant relationship is *sine qua non* for the Rent Controller to entertain an application and direct eviction. Reliance in this regard is placed on the decision of the Supreme Court in the case of **Venkatesh Thimmaiah Gurjalkar Vs. S. S. Hawaldar**; (1997)11 SCC 628, **Laxmidas Morarji Vs. Behrose Darab Madan**; (2009)10 SCC 425, **Tribhuvanshankar Vs. Amrut Lal**; (2014)2 SCC 788 and **Rajendra Tiwary Vs. Basudev Prasad and another**; (2002) SCC 90. It is thus, submitted that the order of the Rent Controller lacks jurisdiction and which being an error, which goes to the root of the matter, interference by this Court is called for.

15. It is next submitted that the learned Administrative Tribunal was in error in holding that the appeal was not maintainable. It is submitted that any person, who is aggrieved by a judgment or an order, although not a party, can stake a challenge to the same. It is submitted that once the present respondents are seeking eviction of the petitioners on the strength of the impugned order passed by the Rent Controller, it cannot be said that the petitioners are not aggrieved by the impugned order. It is, thus, submitted that the appeal before the Administrative Tribunal was maintainable. It is submitted that the Tribunal, once having come to the conclusion that the appeal was not maintainable, was precluded from examining the merits of the order. It is submitted that even otherwise the Tribunal was in error in confirming the finding of the Rent Controller as to the grounds of eviction. It is submitted that exercise of the jurisdiction by the Tribunal is tainted with material irregularity. He, therefore, submits that the order of eviction is liable to be set aside.

16. On the contrary, Shri Lawande, the learned Counsel for the respondent nos.1(c) to 1(n) has supported the impugned order. It is submitted that the impleadment sought by the petitioners on the death of Maria George was disallowed by the

Rent Controller on 04/12/2002, which was not challenged by the petitioners. It is, thus, submitted that the petitioners have no *locus standi* to challenge the order passed by the Rent Controller and the Administrative Tribunal has rightly held, the appeal to be not maintainable. The learned Counsel has pointed out that the legal representatives, against whom the order is passed, have not challenged the order. It is submitted that under the Rules framed under the Act, the LRs can be directed to hand over possession by the Rent Controller. It is submitted that the Administrative Tribunal has rightly found that the petitioners were coming with contradictory pleas about there being a partnership and they being subtenants. It is submitted that the petitioners did not seek any leave from the Administrative Tribunal for filing the appeal. It is submitted that the Rent Controller and the Administrative Tribunal have rightly come to the conclusion that various grounds for eviction are established and the said finding of fact properly recorded, does not call for any interference. On behalf of the respondent nos.1(c) to 1(n), reliance is placed on the decision of the Supreme Court in the case of ***Ganpat Ladha Vs. Sashikant Vishnu Shinde***; (1978)2 SCC 573, ***Bal Kishan Vs. Om Parkash and another***; (1986)4 SCC 155 and ***Anand Nivas Pvt Ltd Vs/ Anandji Kalyanji's Pedhi and others***; (1964)4 SCR 892 and two decisions of Delhi High Court in the case of ***Kishori Lal and***

Mukat Behari Lal Vs. Siri Krishan, S. N. Nigam and Anr; 63(1996)DLT 577 and ***Kerar Nath Vs. Mohani Devi ETC;*** 1974 0 AIR(Del) 171. It is submitted that where a party was brought on record as legal representative of the deceased tenant, who died during the pendency of the landlord's eviction petition, the Rent Controller cannot be said to be incompetent to pass a decree for possession against such a person. He, therefore, submits that the petition be dismissed.

17. On hearing the learned Counsel for the parties, the following points arise for my determination in this petition :

- (1) *Whether the Courts below are right in holding that there was no landlord-tenant relationship between the original applicant Laxmibai and the original respondent nos.2(a) and 2(b) ?*
- (2) *If yes, whether the Courts below could have and were justified in passing the order for eviction ?*
- (3) *Whether the Courts below are justified in holding that various grounds for eviction, stand established ?*
- (4) *What order ?*

18. POINT NO.1 :

It is undisputed that Francisco died as a bachelor. He was tenant in respect of the suit premises. Section 2(o) of the Act (old Section 2(p)) defines a tenant as under :

“(o) “tenant” means any person by whom or on whose account or behalf the rent of any building is, or but for special contract would be, payable and includes [in the event of his death the surviving spouse, or any son, or unmarried daughter or father or mother who had been living with him as a member of his family upto the date of his death and] a sub-tenant and also any person continuing in possession after the termination of his tenancy, but shall not include any person against whom any order, or decree for eviction has been made.”

[Emphasis supplied]

It can, thus, be seen that the section confers limited heritability of tenancy after the death of the original tenant. After the death of the tenant only the near relatives, namely the surviving spouse, any son or unmarried daughter or the parents, can inherit the tenancy, provided they are living with the tenant as member/s of his family upto the death of the tenant. In the present case, Francisco did not leave behind any of the family members as named in Section 2(o) of the Act in as much as he died as a bachelor. It was also not disputed that at the time of his death, his parents were not alive, muchless were residing with him as members of his family. It is, thus, clear that none of the petitioners and for the matter of that, even Joaquim Mesquita or Maria Mesquita can claim to be the tenants of the suit premises.

Thus, no exception can be taken to the finding recorded by the Courts below about the absence of the landlord tenant relationship between the original applicant Laxmibai or her successors and Joaquim and Maria Mesquita, who sought their impleadment and were brought on record as LR's of Francisco, the original tenant. In so far as the present petitioner nos.2(a) to 2(c) are concerned, they did not even succeed in getting themselves impleaded, after the death of Maria Mesquita. In such circumstances, the point no.1 has to be answered in the affirmative.

19. POINT NO.2 :

This is the main issue, on which the learned Counsel for the parties have extensively argued the matter. The contention on behalf of the petitioners is that the Authorities under the Act being constituted for adjudicating the disputes between the landlord and tenant and having regard to the nature of the jurisdiction exercised by these authorities, once it is found that there is no landlord tenant relationship, existing between the parties, such authorities would lack jurisdiction to pass an order for eviction. In other words, it is submitted by the learned Counsel for the petitioners that once the authorities under the Act come to a conclusion about absence of landlord tenant relationship between the parties, the parties have to be relegated to the

ordinary remedy of filing a civil suit. In support of the said submission, reliance is placed on behalf of the petitioners on the various decisions as set out above.

On the contrary, the learned Counsel for the respondents has placed strong reliance on the decision of the Hon'ble Supreme Court in the case of **Bal Kishan** (supra), in order to submit that the Controller could have directed eviction even in a case, where after the death of tenant, certain LRs, who may not come within the ambit of the definition of the tenant, were brought on record. He submits that the original respondent nos.2(a) and 2(b), who sought their impleadment in pursuance of the public notice issued, were only joined as there were certain movables belonging to Francisco lying in the suit premises, which could be removed. It is submitted that the present petitioner Nos.2(a) and 2(b) were unsuccessful in seeking their impleadment on the death of Maria Mesquita and they have absolutely no *locus standi* to challenge the order of eviction. It is pointed out that these petitioners also did not seek formal leave of the Administrative Tribunal for challenging the order of the Rent Controller, in as much as they were not parties before the Controller. It is submitted that thus, the Administrative Tribunal was right in holding that the appeal was not maintainable.

20. I have given my anxious consideration to the rival circumstances and the submissions made on behalf of the parties.

21. Now, there may not be any manner of dispute with the proposition that the authorities under the Act are constituted to adjudicate the disputes between the landlord and tenant. However, the present case, in my considered view, is more close to the facts as obtaining in the case of **Bal Kishan** (supra) and in fact stands on a better footing. It would, therefore, be necessary to dwell on the decision of the Hon'ble Supreme Court in the case of **Bal Kishan** (supra) at some length. That was a case where the eviction of the tenant was sought on the ground of subletting. Appellant Bal Kishan was brought on record as LR of the deceased tenant, who died during the pendency of the eviction petition. After his impleadment, Bal Kishan raised an additional contention that he, as a legal heir of the tenant, was not 'tenant' under Section 2(h) of the Haryana Urban (Control of Rent and Eviction) Act, 1973 (Haryana Act, for short) and that his position was of a trespasser. A similar contention, as is sought to be raised in the present petition, was also raised in that case, namely that the Rent Controller in such circumstances, was incompetent to pass a decree for possession against the trespasser.

22. The specific question involved in the said case was similar to the question involved in the present petition. In order to appreciate this, it would be apposite to reproduce para 2 of the judgment, which reads thus :

“In this appeal also it is contended that the proceedings before the Rent Controller were without jurisdiction since the appellant was not a tenant as defined in section 2(h) of the Act because the building in question was a non-residential building. That Musadi Lal was a tenant under Respondent No. 1 is not disputed. We shall assume for purposes of this case but without deciding, that the appellant Bal Kishan was not entitled to be treated as a tenant of the building in question under the Act on the death of Musadi Lal. The question for consideration is whether in the circumstances of this case the Rent Controller had lost his jurisdiction to try the case before him.”

23. Coming to the present case, the original respondent nos.2(a) and 2(b), who sought their impleadment and were impleaded by the Controller, could not be said to be tenants within the meaning of Section 2(o) of the Act nor the present petitioners can claim to be tenants in as much as Francisco died without leaving any of the relatives as mentioned in Section 2(o) of the Act. The present petitioners sought their impleadment on the death of Maria Mesquita, original respondent no.2(b), which was not allowed. It is, thus, difficult to accept that the petitioners could

challenge or resist the order passed by the Controller as confirmed by the Appellate Authority on the ground of absence of landlord and tenant relationship. It is significant to note that the petitioners also did not seek a formal leave from the Administrative Tribunal to file an appeal in as much as they were not parties to the eviction proceedings before the Controller. Thus, no exception can be taken to the finding of the Administrative Tribunal that the appeal was not maintainable. It is true that normally after holding that the appeal is not maintainable, there was nothing to examine on the merits of the appeal. However, the Tribunal has also examined the merits of the challenge and has found that various grounds, on which eviction was sought, were proved.

24. The Hon'ble Supreme Court has held that the contention was untenable in view of Order XXII, Rule 4 of the Code of Civil Procedure (CPC, for short). It has been *inter alia* held that Rule 4(2) of Order XXII of CPC authorises a legal representative of a deceased defendant or the respondent to file an additional Written Statement or statement of objections raising pleas which the deceased tenant had or could have raised except those, which were personal to the deceased defendant or the respondent as the case may be. Although the Court held that it is

possible, in an appropriate case, to implead heirs of deceased defendant in their personal capacity in addition to bringing them on record as LR of the deceased defendant, it was noted that in the case before the Supreme Court, the appellant Bal Kishan was not brought on record in his personal capacity, but had been brought on record only as a LR of the deceased tenant. It was found that even if a prayer had been made to bring Bal Kishan on record in his personal capacity, the Rent Controller could not have allowed the application and permitted him to raise the plea of independent title, because such a plea would oust the jurisdiction of the Rent Controller to try the case itself. The Court found that the observations in the case of ***Jagdish Chandar Chatterjee and others vs. Shri Sri Kishan and another***; 1972(2) SCC 461 have to be confined to only those cases where the Court hearing the case has jurisdiction to try the issues relating to independent title also. The Hon'ble Supreme Court further found that the plea of the appellant that he was holding the property as a trespasser, was also not tenable because the possession of the deceased tenant being permissive, the possession of the appellant, who had succeeded to the estate of the deceased as his heir, could not be that of a trespasser and, therefore, the appellant could not have resisted the passing of the decree for eviction on the principles of the ground of subletting (paragraphs 3 and 4 of the judgment).

It can, thus, be seen that as held by the Hon'ble Supreme Court, the Court of limited and special jurisdiction as that of the Rent Controller could allow the impleadment of any person only as LR of the deceased tenant and not in their independent capacity.

It can, thus, be seen that even after assuming that **Bal Kishan** (supra) was not entitled to be treated as tenant, the Supreme Court upheld that order of eviction.

25. I would now propose to briefly deal with the decisions cited on behalf of the petitioners. In the case of **Venkatesh Gurjalkar** (supra), tenancy was in respect of non-residential premises, namely a shop. The shop was taken on lease by the appellant's father not as Manager of the Hindu Undivided Family (HUF). It was found that after the death of the tenant- father his son (appellant) did not inherit the tenancy of the shop and he could not have been evicted under the Rent Act, more particularly because the landlord had not mentioned any of the grounds contained in Section 21(1) of the Karnataka Rent Control Act (Karnataka Act, for short) in the suit for possession. It can, thus, be seen that on merits, it was found that there were no grounds mentioned for eviction as contained in Section 21(1) of the Karnataka Act and the eviction was sought after the death of

original tenant, unlike in the present case.

26. In the case of **Laxmidas** (supra), the subject property was owned by one Salehbhai Rangawala, which was let out to one Dosabhai, the brother of Ms. Dhanbai Batliwala, who was the deceased tenant. Ms. Dhanbai was staying with her brother in the suit premises. After the death of her brother i.e. Dosabhai, Dhanbai became the tenant of the suit premises by virtue of Section 5(11)(c)(i) of the Bombay Rent, Hotel and Lodging Houses, Rent Control Act, 1947 (Bombay Rent Act, for short). Dhanbai expired on 17/12/1963 and prior thereto, had executed a Will and had appointed the trustees and executors of her Will. Some time in the year 1965, the original owner had sent notice to the trustees and executors of Will of deceased Dhanbai, to hand over vacant possession and to pay arrears of rent, which they failed to comply. It is, in these circumstances, that a suit was filed by the owner for eviction before the Court of Small Causes against the trustees. It appears that in the suit itself, it was claimed by the plaintiff that the defendant no.5 (respondent before the Hon'ble Supreme Court) was not a tenant and had no legal and valid claim over the suit premises. In the Written Statement, the respondent also took an objection to the jurisdiction of the Small Causes Court to entertain the petition since the landlord of the premises had not

accepted Dhanbai as her tenant. It was, in these circumstances, held that the Small Causes Court lacked jurisdiction. It can, thus clearly, be seen that the suit itself was filed claiming that the defendant no.5 i.e. respondent before the Supreme Court, was not a tenant.

27. In the case of ***Tribhuwan Shankar*** (supra), appellant/plaintiff had instituted a suit for eviction in the Civil Court for eviction of the respondent /defendant from the suit premises and for mesne-profits under the MP Accommodation Control Act, 1961 (MP Act for short). The case made out in the suit was that the plaintiff had purchased the suit property under a Registered Sale Deed dated 01/04/1976 for a valuable consideration and the defendant was in possession of the property as a tenant under the earlier owner in terms of an oral tenancy. Despite the defendant having been informed about the purchase of the property and despite assurance given by him, the defendant failed to pay the rent, which led the plaintiff to terminate the tenancy with effect from 31/01/1978. In the Written Statement, the defendant, apart from denying the right, title and interest of the plaintiff over the suit property, also set up a claim of adverse possession against the original owner i.e. the predecessor of the plaintiff. It was, in these circumstances, held that the question of the plaintiff's title based

on his purchase of the suit property or the claim of adverse possession set up by the defendant, was beyond the scope of the enquiry in the eviction suit under the MP Rent Act.

28. In the case of ***Rajendra Tiwary*** (supra), the plaintiffs had filed a title suit seeking eviction of the defendant under various grounds under the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 (Bihar Act, for short). The case made out in the suit was that the plaintiff had purchased the suit premises under three registered sale deeds from one Kedar Nath Sinha and immediately thereafter, had let out the premises to the defendant, who failed to pay the rent since inception. The eviction was also sought on the ground of *bonafide* personal occupation as the three major children of the plaintiffs were unemployed and the plaintiff wanted to set up a business for them, for which the premises were required. The defendant denied that he had taken the suit premises on rent from the plaintiff and claimed that he was a tenant of Kedar Nath Sinha, the predecessor of the plaintiff since about 33 years and had also entered into an agreement for purchase of the suit premises in respect of which, there was an agreement of sale executed and he was in possession of the suit premises as a owner thereof. The defendant had also filed a title suit for specific performance of the agreement for sale. In such

circumstances, it was held that the Rent Controller lacked jurisdiction to entertain the eviction suit.

The cases relied upon on behalf of the petitioner, in my considered view, turned on their own facts.

29. At the cost of repetition, it is necessary to emphasis that the present case would be governed by the ratio as laid down in the case of **Bal Kishan** (supra) and would in fact rest on a better footing in as much as the petitioners were also not impleaded as parties before the Rent Controller. In that view of the matter, Point No.2 is answered in the affirmative.

30. POINT NO:3 -

On behalf of the applicant, her son and the Power of Attorney holder Dr. Rajan Haldonkar was examined, who claimed that there were major alterations carried out by Francisco without the consent of the applicant, in which, parapets from the front varandah were removed and entrance door was made there. Window panes were replaced by wire panes. A garage was built on the front side of the flat, as a result of which, the suit premises suffered damage. The original respondent had neither taken consent of the applicant nor obtained permission from the local authorities. He also claimed that although the premises were

leased for manufacturing of vegetable products such as sausages and pickles, etc., the respondent started dealing in meat products and used to slaughter pigs in the premises causing nuisance and annoyance. He also claimed that the original applicant was a heart patient and was under treatment at Goa Medical College (GMC) at Bambolim near Panajim. She was staying at Margao and it was inconvenient for her to visit GMC frequently and, therefore, was desirous of staying in the suit flat for the purpose of her convenience. He also spoke about subletting of the small portions from the suit flat in favour of one George Francis, Peter Francis and others. He also claimed that the original respondent Francisco was conducting business in the suit premises under the name and style M/s. Miski Foods and Miski Industries, which activities ceased after the death of the original tenant. He also claimed that Peter George and his wife and son were illegally residing in one part of the premises and northern part was given to one John for the purposes of executing fabrication work, etc. He produced a copy of the inspection report from the Industries Inspector, who had inspected the building on 09/03/2001. The Industries Inspector had found that the unit of manufacturing of sauces and squashes had been closed for last few years and some fabrication activities were going on and, therefore, the Inspector had recommended to treat M/s. Miski Foods and Miski Industries

as closed. Acting on the evidence as led, the Rent Controller had held various grounds to be proved, which have been confirmed by the Administrative Tribunal.

31. Before parting with the final order, it may not be out of place to mention the parameters of interference available, the scope and ambit of the interference available under Article 227 of the Constitution of India. It is now well settled that the jurisdiction under Article 227 of the Constitution is supervisory in nature, aimed at ensuring that the Subordinate Courts and Tribunals function within the limits of their authority and the judgments and orders so passed do not result into manifest injustice. It would be apposite to reproduce the observations of the Supreme Court in the case of **Babhutmal Raichand Oswal Vs. Laxmibai R. Tarte**; (1975)1 SCC 858, which has been referred to by the Supreme Court in the case of **Ganpat Ladha** (supra) :

“It is a litigation between landlord and tenant and as is usual with this type of litigation, it has been fought to a bitter end. Much-of the agony to, which the tenant has been subjected in this litigation would have been spared if only the High Court had kept itself within the limits of its supervisory jurisdiction and not ventured into fields impermissible to it under Article 226 or 227 of the Constitution.”

It has been further held in para 7 as under :

"It would, therefore, be seen that the High Court cannot, while exercising jurisdiction under Art. 227, interfere with findings of fact recorded by the subordinate court or tribunal. Its function is limited to seeing that the subordinate court or tribunal functions within the limits of its authority."

32. After carefully going through the orders passed by the Courts below, I see no reason to interfere with the concurrent findings of fact so recorded. The point is, accordingly, answered in the affirmative.

33. In the present case, the initial application for eviction has been filed by the original applicant Laxmbai as far back as in the year 1984 and the legal representatives of the original applicant still await any fruitful outcome. Be that as it may, the petition is without any merit and is, accordingly, dismissed.

C. V. BHADANG, J.

SMA