

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Revision Application NO. 343 OF 2007

Miss. Geeta Sadhuran Batra
And Ors.

..Applicants

Versus

1. Sundardas Sadhuran Batra(since deceased)
2. Smt. Hansa Sunder Batra
and others.

..Respondents

....

Ms. Geeta S. Batra, Applicant No.1 present in person.

Mr. S.P. Kanuga a/w. S.N. Nath, Advocate for Respondents No.1 to 3.

....

WITH

First Appeal NO. 489 OF 1998

Sunderdas Sadhuran Batra
(since deceased) through L.Rs.
Smt. Hansa Sunderdas Batra
and others.

..Appellants

Versus

Ms.Geeta Sadhuran Batra
and others

...Respondents

....

Mr. S.P. Kanuga a/w. S.N. Nath, Advocate for the Appellants.

Ms. Geeta S. Batra, Respondent No.1 present in person.

....

CORAM : R. G. KETKAR, J.

DATE : 11th & 18th JANUARY, 2019

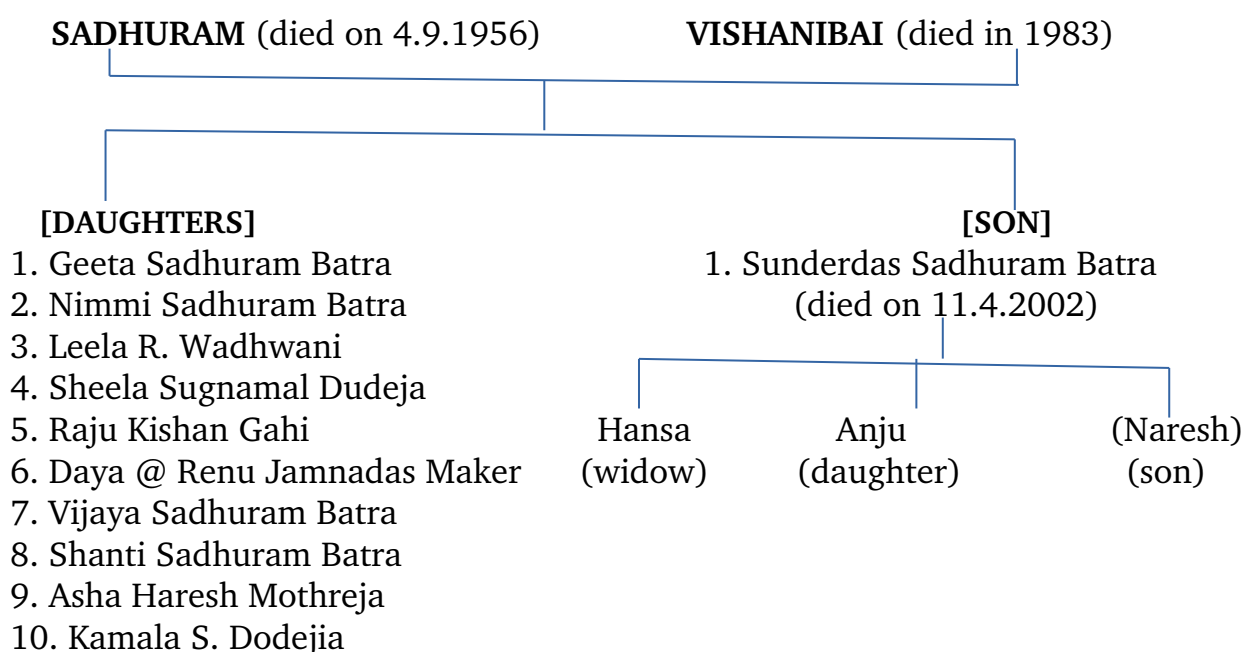
JUDGMENT :

1. Heard Ms.Geeta Batra, appearing in person as applicant No.1 in C.R.A. No.343/2007 and respondent No.1 in F.A. No.489/1998 and Mr. S.P. Kanuga, learned Counsel for respondents No.1 to 3 in C.R.A.

No.343/2007 and for the appellants in F.A. No.489/1998, at length.

These proceedings arise in the following circumstances.

2. The controversy between the parties is in respect of tenancy rights of the property and structures (ground + 1st floor) standing at 42, Sheriff Devji Street, Bombay – 400 003 (for short, 'suit property'). It is admitted position that Sadhuran Ghanshamdas Batra (for short 'Sadhuran') was the tenant in respect of the suit property. He died living behind his widow, daughters and son Sunderdas. Genealogy of Sadhuran is as under:



3. R.A.D. Suit No.3572/1986 was instituted by (1) Miss. Geeta Sadhuran Batra, (2) Miss. Nimmi Sadhuran Batra, (3) Mrs. Leela R. Wadhwani, (4) Mrs. Sheela Sugnamal Dudeja, (5) Mrs. Raju Kishan

Gahi, (6) Mrs. Daya @ Renu Jamnadas Maker, (7) Miss. Vijaya Sadharam Batra, (8) Miss. Shanti Sadharam Batra, and (9) Mrs. Asha Haresh Mothreja against defendant No.1 Sunderdas Sadharam Batra, defendant No.2 Mrs. Kamala S. Dodejia (sister of the plaintiffs & defendant No.1), defendants No.3 Haji Joosab Haji Siddik Charitable Trust, defendants No.3A to 3G, being the Trustees of the Trust and defendant No.4 Court Receiver, High Court.

4. Defendant No.2 Mrs. Kamala S. Dodejia is supporting the plaintiffs. The plaintiffs and defendant No.2, shall hereinafter collectively be referred as “Geeta and others”. Defendant No.1 Sunderdas Sadharam Batra, shall hereinafter be referred as “Sunderdas”. Defendant No.3 Haji Joosab Haji Siddik Charitable Trust, shall hereinafter be referred as the “Trust” and defendants No.3A to 3G, shall hereinafter collectively be referred as the “Trustees”.

5. Geeta and others contended that they and Sunderdas are linear descendants of Sadharam. Their mother died in the year 1983. During his lifetime, Sadharam was in possession of the suit property as a tenant of defendant No.3 Trust. The owners and landlords transferred the tenancy of the suit property in favour of Sunderdas clandestinely, illegally and surreptitiously to their exclusion without their consent and knowledge.

6. It is the case of Geeta and others that at the time of demise of Sadharam, his daughters and Sunderdas constituted Hindu Undivided Family (for short, 'HUF'). They were residing together as members of the deceased family and the business was carried on by Sunderdas as Karta of HUF. In view of Sections 5(11)(c)(ii) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, 'Act') the tenancy in respect of the suit property devolved upon Geeta and others and thus they became tenants of the Trust. The Trustees had no right to transfer the tenancy in favour of Sunderdas to their exclusion without their consent. The act of the trustees smacks malafides and also amounts to challenging their tenancy rights and interests in respect of the suit property. It amounts to illegal deprivation of their rights and consequently the actions of the trustees are illegal, null and void. Geeta and others are accordingly entitled to declaration that the acts of the trustees of the Trust in transferring the tenancy of the suit property in favour of Sunderdas to their exclusion is illegal.

7. It is further asserted that as a result of sale of the property by trustees in favour of Sunderdas, he became landlord of the plaintiffs i.e. Geeta and others. Sunderdas was carrying on business as Karta with their implicit consent. Geeta and others are therefore deemed to be carrying on business in the suit property and as such are entitled to the

tenancy in respect of the suit property under Section 5(11)(c)(ii) of the Act.

8. Geeta and others further contended that subsequent to sell of the premises to Sunderdas, he attempted to dispose of the suit property to third party. Geeta and others, therefore, sought injunction restraining Sunderdas from parting with the possession and or dealing with the suit property and or inducting any third party in the suit property. Geeta and others instituted suit on or before 8.7.1986.

9. The suit was instituted *inter alia* praying (a) for declaration that the Trust/Trustees in transferring the tenancy in respect of the property in favour of Sunderdas is illegal, null and void; (b) that Geeta and others be declared to be tenants of Sunderdas of the suit property; and (c) for perpetual injunction restraining Sunderdas from parting with the possession and/or dealing with the suit property and/or from inducting any third party into the suit property.

10. Sunderdas filed written statement dated 25.9.1989 resisting the suit. He contended that Geeta and others are his real sisters. Plaintiff No.3 and defendant No.2 are his elder sisters and were married in or about in the year 1952 and since then they are residing separately. Plaintiffs No.4, 5, 6 and 9 are also married sisters and staying separately. Plaintiffs No.1, 2, 7 and 8 are unmarried sisters. Their father late

Sadhuram was the tenant of the suit property consisting of ground and first floor. He was carrying on hosiery business from the suit property. He expired on 4.9.1956. He further contended that in the month of September, 1982, the landlord of the property 42, Sheriff Devji Street, Bombay – 400 003 i.e. the Trust invited offers for sale of the suit property by giving Public Notice in the local newspapers. Sunderdas gave offer to the Trust. Said offer was accepted. On 26.10.1982, agreement of sale was executed between the Trust and Sunderdas for a total consideration of Rs.48,000/-. Since the landlords were the Charitable Trust, they were required to obtain permission from the Charity Commissioner as well as Bombay High Court. Said permissions were obtained by the landlords in Trust Petition No.4/1983 from this Court.

11. Sunderdas further contended that though Public Notice was issued by him through Advocate in Indian Express dated 25.6.1983 inviting claims of whatsoever nature, nobody including Geeta and others, filed any objection to purchase the suit property. By a Conveyance Deed dated 16.7.1983, the suit property was conveyed to Sunderdas on his paying balance consideration. No amount was contributed by Geeta and others for purchasing the suit property. The suit property was thereafter transferred to Sunderdas in all records of

the Government and B.M.C. Since then Sunderdas is the absolute owner of the suit property and no other person or persons have any right, title or interest of whatsoever nature in the suit property including Geeta and others.

12. By order dated 7.7.1995 in Civil Application No.3402/1995 in A.O. No.786/1993, this Court granted leave to Geeta and others to join the Court Receiver, High Court, Bombay as a defendant in the declaratory suit and accordingly the Court Receiver was impleaded as defendant No.4.

13. On the basis of the pleadings of the parties in the declaratory suit, the learned Judge of the Small Causes Court framed necessary issues. The parties adduced oral as well as documentary evidence in support of their case. By order dated 14.6.1996, the learned trial Judge dismissed R.A.D. Suit No.3572/1986 instituted by Geeta and others.

14. Aggrieved by that decision, Geeta and others instituted Appeal No.371/1996 before the Appellate Bench of the Small Causes Court. By judgment and decree dated 13.2.2004, the Appellate Court dismissed the appeal. Aggrieved by these orders, C.R.A. No.343/2007 is instituted by Geeta and others.

15. During pendency of the declaratory suit filed by Geeta and others, Sunderdas instituted S.C. Suit No.1704/1990 in the Bombay City

Civil Court at Bombay for declaration that defendants No.1 to 10 therein (Geeta and others) have no right, title or interest of any nature in the suit property and for perpetual injunction restraining them from entering upon/interfering with his business or dispossessing him from the suit property.

16. By order dated 24.1.1996, the trial Court dismissed S.C. Suit No.1704/1990. Aggrieved by that decision, Sunderdas has preferred First Appeal No.489/1998.

17. During pendency of the First Appeal, Sunderdas took out Civil Application No.896/1999 for appointment of the Court Receiver in relation to the suit property. By order dated 23.1.2002, this Court disposed of the Civil Application by observing that no case is made out for appointment of Court Receiver during pendency of the First Appeal. This Court also recorded statement made on behalf of Sunderdas through Advocate that he would not alienate the suit property or would not create third party interest including business therein during pendency of the appeal. After accepting the undertaking, this Court directed Sunderdas to submit the account in relation to the business in the suit property to this Court every month with copy thereof to Geeta and others. This Court restrained Sunderdas from creating any third party interest in the suit property and business therein as well as from

alienating same in favour of third party till disposal of the appeal.

18. During pendency of the First Appeal, Sunderdas died on 11.4.2002. (1) Hansa Sunderdas Batra, (2) Smt. Anju Sukheja Batra and (3) Shri Naresh Sunderdas Batra, shall hereinafter be referred as “L.Rs. of Sunderdas”, took out Civil Application No.194/2005 seeking permission to sell the suit property in view of the earlier order dated 23.1.2002. The L.Rs. of Sunderdas showed willingness to deposit 50% of the sale proceeds in this Court for protecting the interest of Geeta and others. The deposit to be made was without prejudice to their rights and contention that Geeta and others have no right in the property at all of whatsoever nature.

19. By order dated 2.9.2005, this Court permitted the L.Rs. of Sunderdas to sell the suit property within ten weeks from the date of the order. Aggrieved by this order, Geeta and others instituted Special Leave Petition before the Apex Court. By order dated 24.10.2005, the Apex Court issued notice and granted interim stay. By order dated 13.1.2006, the Apex Court dismissed the S.L.P. and vacated the interim order. The Apex Court also noted that L.Rs. of Sunderdas stand by the offer made before the High Court that they will deposit 50% of the sale proceeds in the High Court. Apex Court also directed the High Court to dispose of the appeal expeditiously.

20. In pursuance thereof, L.Rs. of Sunderdas executed agreement of sale on 18.11.2005 in favour of Mr.Phudinawala Mohammed Rafique Usman and Mr. Raees Aziz Qureshi (respondents No.15 and 16 in C.R.A. No.343/2007).

21. The L.Rs. of Sunderdas took out Civil Application No.4719/2005 seeking permission to complete the transaction in pursuance of the order dated 2.9.2005; and sought permission to deposit Rs. 49,35,000/- in this Court on completion of sale and receipt of purchase price within such time as this Court deems fit. Geeta and others filed say to this application and submitted that they desire to purchase the suit property for Rs.1 Crore so that the suit property remains in the family.

22. This Court noted that the order dated 2.9.2005 was challenged by Geeta and others before the Apex Court and that they did not give any offer for purchasing the suit property. For the first time after L.Rs. of Sunderdas entered into agreement and accepted the earnest money, Geeta and others came forward with this offer. This Court did not find it necessary to permit them to purchase the suit property. Accordingly by order dated 23.2.2006, this Court allowed Civil Application No.4719/2005 and permitted the L.Rs. of Sunderdas to complete the transaction in pursuance of the order dated 2.9.2005 with

Mr.Phudinawala Mohammed Rafique Usman and Mr. Raees Aziz Qureshi (respondents No.15 and 16 in C.R.A. No.343/2007) with whom agreement to sale was executed on 18.11.2005 and deposit the amount in this Court by end of March, 2006. The order dated 23.2.2006 was not challenged by Geeta and others.

23. Civil Application No.23/2012 was taken out in C.R.A. for impleading Mr.Phudinawala Mohammed Rafique Usman and Mr. Raees Aziz Qureshi as respondents. By order dated 16.10.2012, amendment was allowed and accordingly Mr.Phudinawala Mohammed Rafique Usman and Mr. Raees Aziz Qureshi were impleaded as respondents No.15 and 16 in C.R.A. No.343/2007. Ms. Batra submitted that she has served those respondents and to that effect she had filed affidavit of service.

24. C.R.A. was heard by this Court on 9.3.2018 when it was brought to the notice of the Court that the First Appeal challenging the City Civil Court's decree is pending for final hearing and disposal. In view of the controversy raised in this C.R.A. as also in the First Appeal, the parties were given liberty to move the Hon'ble the Acting Chief Justice for placing these matters before one and the same Court. In pursuance thereof, the Registry made submissions soliciting the orders of the Hon'ble the Acting Chief Justice. By order dated 10.4.2018, C.R.A.

and the First Appeal were clubbed together and were directed to be heard by the Bench taking up C.R.A. as per roster. Accordingly, the Registry has placed First Appeal along with C.R.A. for final disposal.

25. As applicant No.1 Geeta appeared in person and was not well conversant with the legal proceedings, I suggested to her that I will appoint an Advocate to represent them in these proceedings and he will not charge the fees. She, however, did not accept the suggestion and proceeded to argue the matters on merits.

26. In support of C.R.A., Ms. Batra submitted that the Courts below committed serious error in dismissing the suit instituted by Geeta and others. She submitted that admittedly father of the parties was tenant of the suit property. The trustees of defendant No.3 Trust were the landlords. They had no right to transfer the tenancy in favour of Sunderdas. She submitted that her father died in the year 1956 leaving behind widow, daughters and Sunderdas. The trustees, therefore, were not justified in transferring the tenancy rights in favour of Sunderdas and ought to have transferred the tenancy rights in favour of widow of Sadharam. She further submitted that in any case Geeta and others, Sunderdas are all L.Rs. of tenant Sadharam. Thus, Geeta and others and Sunderdas are entitled to inherit the tenancy after the death of Sadharam. The tenancy rights will devolve upon all his heirs and legal

representatives. In short, she submitted that as Geeta and others are also heirs and legal representatives of deceased Sadhuran, the Trustees were not justified in transferring the tenancy exclusively in favour of Sunderdas. The Courts below did not appreciate this fact properly. She has taken me through :

- (i) the findings recorded by the Courts below.
- (ii) the suit instituted by Sunderdas being S.C. Suit No.1704/1990 in the City Civil Court at Bombay and in particular the findings recorded by the learned trial Judge in that suit.
- (iii) the points of defence raised by Sunderdas in R.A.E. Suit No.1469/1970 instituted by the trustees of defendant No.3 and in particular paragraphs-2 and 8 thereof. In paragraph-2, Sunderdas contended that the suit against him is not maintainable. Besides him, there are other legal heirs of deceased tenant Sadhuran. The names of all legal heirs of deceased tenant were furnished to the trustees. Hence the suit is not maintainable. In paragraph-8 it was contended that after receipt of the letter dated 13.9.1965 from the Advocate of the plaintiffs, he had furnished to the then Trustees the names of all the legal heirs and representatives of the deceased Sadhuran. She submitted that thus Sunderdas accepted the fact that Geeta and others being legal heirs of Sadhuran are entitled to

inherit the tenancy rights after demise of Sadhuras.

(iv) Cross-examination of PW-1 Sunderdas in S.C. Suit No.1704/1990.

She submitted that a perusal of the cross-examination of Sunderdas show that he at many times changed his versions. He deposed that he used to refuse the demands of his mother for money because of the liabilities of Sadhuras. He further claimed to have cleared the liabilities of Sadhuras within a period of approximately ten years.

(v) Evidence of DW-2 Sadhuras Dudeja in S.C. Suit No.1704/1990.

DW-2 deposed that Sadhuras's business was running very well. He had the best business position in the market. He used to purchase the hosiery on payment in cash. In the year, 1956 also the business position of Sadhuras was good. Sadhuras was ill for one month prior to his death. At that time, he did not attend the business. The business was looked after by his Manager Narimal. In addition, there were three servants helping the Manager. He had no debts. He had to receive monies from the customers. At the time of death of Sadhuras, about Rs.35,000/- was due from different customers to him. In short, she submitted that the testimony of PW-1 Sunderdas is not reliable as Sadhuras had no liabilities. In short, she submitted that Sunderdas was not exclusively carrying on business from the suit property.

27. She invited my attention to issue No.5 and the finding recorded by the learned trial Judge in S.C. Suit No.1704/1990 which is to the following effect :

	Issue	Finding
5.	Do the defendants (Geeta and others) prove that the defendants as well as the plaintiff (Sunderdas) became joint tenants in respect of the shop premises ?	In the affirmative

28. She further submitted that the learned Judge of the City Civil Court also recorded a finding that the rent receipts continued to stand in the name of Sadharam till the year 1983 when Sunderdas purchased the properties from the landlords. After the death of Sadharam, the trustees of the Trust ought to have issued rent receipts in the name of mother of the parties. She also submitted that Sunderdas was carrying on business in the capacity of *karta* of the joint family and on behalf of other members of the family. She further submitted that though the trustees had instituted the eviction suit against Sunderdas in the Small Causes Court, the same was withdrawn behind the back of Geeta and others. She submitted that Geeta and others used to sign the documents given by Sunderdas. He took undue advantage of this fact and obtained their signatures. The trustees entered into compromise clandestinely with

Sunderdas and sought permission to withdraw the suit. By order dated 10.6.1985, the learned trial Judge permitted the trustees to withdraw the suit as settled out of the Court and accordingly dismissed the suit.

29. For all these reasons she submitted that C.R.A. deserves to be allowed and the suit instituted by Geeta and others deserves to be decreed. She also submitted that the appeal instituted by Sunderdas and prosecuted now by his L.Rs. deserves to be dismissed.

30. On the other hand, Mr. Kanuga supported the orders impugned in C.R.A.. Insofar as the impugned order in First Appeal is concerned, he submitted that as admittedly Sunderdas had purchased the suit property exclusively. Not only that in pursuance of the orders passed by this Court, the L.Rs. of Sunderdas have also sold the property to respondents No.15 & 16 Mr.Phudinawala Mohammed Rafique Usman and Mr. Raees Aziz Qureshi, who are presently in possession of the suit property.

31. Mr. Kanuga invited my attention to issue No.4 and the finding recorded by the learned trial Judge of the City Civil Court in S.C. Suit No.1704/1990, which is to the following effect :

	Issue	Finding
4.	Do the defendants prove that the defendants and plaintiff constituted the Hindu Undivided Family and plaintiff	In the negative

	carried on the business in the said shop premises as karta and manager of the family ?	
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32. Thus, even while dismissing the suit the learned Judge of the City Civil Court held that the defendants (Geeta and others) and the plaintiff (Sunderdas) did not constitute HUF and that they failed to prove that Sunderdas carried out the business in the suit property as karta and manager of the family. He further submitted that the finding recorded by the learned trial Judge of the City Civil Court against issue No.5 is without jurisdiction. In view of Section 28 of the Act the suit between the landlord and the tenant relating to the recovery of rent or possession of any premises and to decide any application made under the Act is within the exclusive jurisdiction of the Court of Small Causes at Mumbai. He submitted that Section 28 opens with “Notwithstanding anything contained in any law.....” He, therefore, submitted that the appeal instituted by Sunderdas and now prosecuted by his L.Rs. does not survive on account of subsequent developments.

33. While supporting the impugned orders in C.R.A., Mr. Kanuga submitted that after appreciating the evidence on record the Courts below concurrently held that Geeta and others did not prove that they and Sunderdas were the members of Hindu Undivided Family and were

residing together as members of the family of the deceased Sadharam and the business was carried out by Sunderdas as karta of HUF. The Courts below also held that Geeta and others failed to prove that though Geeta and others and Sunderdas were carrying on the business along with the deceased tenant in the suit property after the death of the deceased tenant, the tenancy in respect of the suit property devolved upon them after death of Sadharam.

34. Insofar as the contention of Geeta and others that defendant no.3 transferred the tenancy of the suit property clandestinely, illegally and surreptitiously in favour of Sunderdas, the learned trial Judge observed that the said issue was not pressed by Geeta and others. He, therefore, submitted that as the Courts below have concurrently dismissed the suit, no case is made out for invocation of the powers under Section 115 of C.P.C.

35. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. It is not in dispute that Sadharam was the tenant of the suit property. It is not in dispute that Sadharam died on 4.9.1956. Equally it is not in dispute that till 1983, the landlord used to issue rent receipt in the name of Sadharam. It has also come on record that by agreement of sale dated 26.10.1982, defendant No.3 landlord Trust agreed to sell the suit property for

Rs.48,000/- to Sunderdas. Since the landlords were the Charitable Trust, they were required to obtain permission from the Charity Commissioner as well as this Court. The permissions were obtained by the landlords by filing Trust Petition No.4/1983 in this Court. It has also come on record that Sunderdas issued Public Notice through his Advocate in Indian Express dated 25.6.1983 inviting the claims of whatsoever nature. In pursuance thereof, nobody including Geeta and others filed any objection for purchasing the suit property. By a conveyance deed dated 16.7.1983, the landlord conveyed the suit property to Sunderdas upon paying the balance consideration. It is the case of Sunderdas that entire consideration for purchasing the suit property was paid by him. Geeta and others did not contribute for purchasing the suit property. In pursuance thereof, the suit property was transferred in the name of Sunderdas in all the records of the Government and Corporation. Though Geeta and others claimed that they have inherited tenancy rights in respect of the suit property, no material is placed on record disclosing any involvement in the business activities in the suit property. On the other hand, the Courts below have concurrently found that Sunderdas exclusively inherited tenancy rights in the suit property.

36. Insofar as the judgment of the trial Court is concerned, the

learned trial Judge considered the definition of the expression 'tenant' under Section 5(11)(c)(ii) of the Act as also evidence adduced by the parties. The learned trial Judge discussed issues No.2 to 6 from paragraphs-13 to 57. In paragraph-57, the learned trial Judge recorded the conclusions to the effect that Geeta and others failed to establish that being the members of the family of the deceased tenant they were carrying on his business along with the deceased tenant. They failed to prove that Sunderdas, as the karta of their joint family, was carrying on the business in the suit property for and on behalf of entire family. On the contrary, it was established that Sunderdas was carrying on the business along with his father during his lifetime and continued the same after his death. The conduct of Geeta and others of not agitating their rights immediately after Sunderdas took over the business of the suit property indicates that they have given their implied consent in respect of the tenancy which was transmitted in the name of Sunderdas. Sunderdas also established that the Trustees of the Trust had sold the suit property to him under conveyance deed dated 16.7.1983 and he became absolute owner of the suit property. The learned trial Judge further held that the tenancy rights merged into the ownership rights.

37. Insofar as the decision of the Appellate Court is concerned, the Appellate Court once again reappreciated the entire evidence on

record and upheld the findings recorded by the learned trial Judge.

38. Ms. Batra relied upon the points of defence raised by Sunderdas in eviction suit filed by the Trustees to contend that Sunderdas admitted that he was not the only tenant in the suit property. It is not possible to accept this submission for more than one reason. In the first place, that suit was not decided on merits and in fact the Trustees had withdrawn the suit and same was dismissed as withdrawn on the ground that the controversy between the parties was settled out of Court. The learned Judge of the Small Causes Court disposed of the suit on 10.6.1985. Secondly, as mentioned earlier, by conveyance deed dated 16.7.1983, the Trustees had sold the property to Sunderdas. Thus, the relationship between the parties as landlord and tenant (Trust and Sunderdas) ceased to exist after execution of the conveyance deed. Geeta and others have not challenged the conveyance deed dated 16.7.1983 till date by adopting appropriate proceedings. Thirdly, in the suit filed by Geeta and others, the competent Court has held that Sunderdas was the tenant.

39. Ms. Geeta invited my attention to the finding recorded by the learned Judge of the City Civil Court against issue No.5 in S.C. Suit No.1704/1990. She submitted that in the cross-examination of PW-1 he deposed that he had cleared all the liabilities of Sadharam within a

period of approximately ten years. She submitted that from the evidence of DW-2 Sadharam Dudeja in S.C. Suit No.1704/1990, it would be clear that her father had no liabilities and the business was running in excellent condition. I do not find any merit in any of the submissions. The learned Judge of the City Civil Court while trying S.C. Suit No.1704/1990 held that Geeta and others proved that the defendants therein as well as the plaintiff Suderdas became tenants in respect of the suit property. In my opinion, the finding recorded by the learned trial Judge was without jurisdiction. Section 28(1) of the Act reads thus :

“28. Jurisdiction of Courts.--- (1) Notwithstanding anything contained in any law and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or proceeding would not, but for this provision, be within its jurisdiction.-

- (a) in Greater Bombay, the Court of Small Causes, Bombay,
- (aa) in any area for which, a Court of Small Causes is established under the Provincial Small Cause Courts Act, 1887, such Court and
- (b) elsewhere, the Court of the Civil Judge (Junior Division) having jurisdiction in the area in which the premises are situate or, if there is no such Civil Judge the Court of the Civil Judge (Senior Division) having ordinary jurisdiction, shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of this Part apply or between a licensor and a licensee relating to the recovery of the licence fee or charge and to decide any application made under this Act and to deal with any claim or question arising out of this Act or any of its provisions-and subject to the provisions of sub-section (2), no other court shall have jurisdiction to entertain any such suit, proceeding or application or to deal with such claim or question.”

40. In view thereof, the exclusive jurisdiction lies with the Small Causes Court for deciding the issue of tenancy. The City Civil Court had, therefore, no jurisdiction to record any finding qua this issue.

41. Insofar as the depositions of PW-1 Sunderdas and DW-2 Sadhuran Duda in S.C. Suit No.1704/1990 are concerned, Sunderdas has instituted First Appeal challenging the judgment and decree passed in that suit. As mentioned earlier, during pendency of this proceeding, the suit property was sold by Sunderdas in favour of respondents No.15 and 16. The Courts below, after appreciating the evidence on record, have concurrently held that Geeta and others failed to establish their tenancy rights.

42. After considering the evidence on record, I do not find that the Courts below committed any error in dismissing the suit instituted by Geeta and others for declaration of tenancy rights.

43. In the case of **Shri M.L. Sethi vs. Shri R.P. Kapur, (1972) 2 SCC 427**, the Apex Court has considered the scope of revision under Section 115 of C.P.C. In paragraph-12 of that decision, the Apex Court observed that the jurisdiction of the High Court under Section 115 of C.P.C. is a limited one. The Apex Court considered following decisions :

- (i) **Rajah Amir Hassan Khan vs. Shoo Baksh Singh, (1884) LR 11 IA 237;**
- (ii) **Balakrishna Udayar vs. Vasudeva Aiyar, (1917) LR 44**

- IA 261, 267;
- (iii) **N.S. Venkatagiri Ayyangar vs. Hindu Religious Endowments Board, Madras, (1948-49) LR 76 IA 73;**
 - (iv) **Manindra Land and Building Corporation Ltd., vs. Bhutnath Banerjee and others, AIR 1964 SC 1336;**
 - (v) **Vora Abbasbhai Alimahomed vs. Haji Gulamnabi Haji Safibhai, AIR 1964 SC 1841; &**
 - (vi) **Pandurang Dhuni Chowgule vs. Maruti Hari Jadhav, AIR 1966 SC 153.**

44. The Apex Court quoted the observations of Privy Council in **Rajah Amir Hasan Khan** (supra) which is to the following effect :

“The question then is, did the judges of the lower Courts in this case, in the exercise of their jurisdiction, act illegally or with material irregularity. It appears that they had perfect jurisdiction to decide the question which was before them, and they did decide it. Whether they decided rightly or wrongly, they had jurisdiction to decide the case; and even if they decided wrongly, they did not exercise their jurisdiction illegally or with material irregularity.”

45. The Apex Court further quoted its observations in the case of **Pandurang Chowgule** (supra) as under :

“The provisions of Section 115 of the Code have been examined by judicial decisions on several occasions. While exercising its jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross they may be, or even errors "of law, unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. As clauses (a), (b) and (c) of Section 115 indicate, it is only in cases where the subordinate Court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked. It is conceivable that points of law may arise in proceedings instituted before subordinate courts which are related to questions of jurisdiction. It is well settled that a plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the Court which tries the

proceedings. A finding on these pleas in favour of the party raising them would oust the jurisdiction of the court and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdiction which fall within the purview of Section 115 of the Code. But an erroneous decision on a question of law reached by the subordinate court which has no relation to questions of jurisdiction of that court, cannot be corrected by the High Court under Section 115.”

46. The above decision reiterates that under Section 115 of C.P.C., the High Court has to satisfy itself on three matters, namely,

- (a) that the order of the subordinate Court is within its jurisdiction;
- (b) that the case is one in which the Court ought to exercise jurisdiction, and
- (c) that in exercising jurisdiction the Court has not acted illegally, that is, in breach of some provisions of law, or with material irregularity,

that is, by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. If the High Court is satisfied on these three matters, it has no power to interfere because it differs from conclusion of the subordinate Court on question of facts or of law.

47. Applying the tests laid down by the Apex Court, as aforesaid, to the facts of the present case, it cannot be said that Geeta and others have made out a case for invocation of powers under Section 115 of C.P.C.. Geeta and others are not in a position to demonstrate that the

findings recorded by the Courts below are perverse, being based upon no evidence or that they are contrary to the evidence on record. Geeta and others are also not in a position to demonstrate that no reasonable person would have arrived at the conclusions other than arrived by the Courts below. Merely because on the basis of evidence on record another view is possible, that itself is no ground for invocation of powers under Section 115 of C.P.C. Hence, no case is made out for invocation of powers under Section 115 of C.P.C. Civil Revision Application No.343/2007 deserves to be dismissed.

48. Insofar as the First Appeal is concerned, it has come on record that by conveyance dated 16.7.1983, the Trustees sold the property to Sunderdas. Geeta and others have not challenged the conveyance deed dated 16.7.1983 by filing appropriate proceedings. During pendency of the First Appeal, L.Rs. of Sunderdas also executed agreement of sale on 18.11.2005 in favour of respondents No.15 and 16. In view thereof, the order passed by the learned trial Judge deserves to be set aside and accordingly First Appeal deserves to be allowed.

49. During the course of hearing, I suggested to Ms. Batra that in case she does not press C.R.A., the L.Rs. of Sunderdas will pay her Rs.10 Lakhs towards full and final settlement of their claim in respect of the suit property. She, however, declined to accept the suggestion.

50. In the result, I pass the following order:

ORDER

- i. Civil Revision Application No.343/2007 is dismissed with no order as to costs.
- ii. First Appeal No.489/1998 is allowed. As Sunderdas had purchased the suit property from the Trustees by Conveyance Deed dated 16.7.1983, the impugned order dated 24.1.1996 passed by the learned trial Judge in S.C. Suit No.1704/1990 is set aside and suit stands decreed. It is declared that Geeta and others have no right, title or interest in the suit property. Decree be drawn up accordingly.
- iii. In pursuance of the order dated 1.9.2009 passed in Civil Application No.1373/2009, L.Rs of Sunderdas had deposited an amount of Rs.57,55,100/- in this Court. As I have dismissed the C.R.A. and allowed the First Appeal, appellant No.1 Smt. Hansa Sunderdas Batra is permitted to withdraw that amount along with accrued interest.

51. At this stage, Ms. Batra orally applies for stay of this order for a period of ten weeks from today. As the applicants desire to challenge this order in the higher Court, this order shall remain stayed for a period of ten weeks from today. All parties to act upon the authenticated copy of this order. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)