

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

CIVIL REVISION APPLICATION NO.30 OF 2019

- | | | | |
|----|--|----|----------------------------|
| 1. | Kalawati Ashok Kumar Parmar |) | |
| | Age : 55 years, Occ. Housewife |) | |
| 2. | Nitin Ashok Kumar Parmar |) | |
| | Age : 36 years, Occ. Business |) | |
| 3. | Nilesh Ashok Kumar Parmar |) | |
| | Age : 31 years, Occ. Business |) | |
| 4. | Priyesh Inidraraj Parmar |) | |
| | Age : 28 years, Occ. Business |) | |
| | All R/at. A/702, Sujay Garden Society) | | |
| | Mukund Nagar, Pune – 411 037. |) | |
| | | .. | Applicants |
| | | | [Orig. Defts.1(b) to 1(e)] |

Versus

- | | | | |
|----|--------------------------------|----|--------------------|
| 1. | Sharad Dattatraya Tapray |) | |
| | Age : 70 years, Occ. : Nil |) | |
| 2. | Prabhakar Dattatraya Tapray |) | |
| | Age : 75 years, Occ. : Retired |) | |
| 3. | Ashok Dattatraya Tapray |) | |
| | Age : 72 years, Occ. : Retired |) | |
| | All R/at : 411A, Ravivar Peth, |) | |
| | Pune – 411 001. |) | |
| | | .. | Respondents |
| | | | [Orig. Pltff. & |
| | | | Defts.2(a) & 2(b)] |

Mr.Girish Godbole a/w Ms.Ketki Gadkari for the applicants.
Mr.Rhishikesh Mukund Pethe for the respondents. ---

CORAM : R.D. DHANUKA, J.
DATE : 12th July 2019

Judgment :-

1. By this civil revision application filed under Section 115 of the Code of Civil Procedure, 1908, the applicants have impugned the judgment and decree dated 29th September 2018 passed by the learned District Judge, Pune in Regular Civil Appeal No.771 of 2013 dismissing the appeal filed by the applicants and upholding the impugned judgment and decree dated 16th March 2013 passed by the learned Additional Judge of Small Cause Court, Pune in Civil Suit No.572 of 2002 thereby decreeing the civil suit filed by the respondent no.1. Some of the relevant facts for the purpose of deciding this application are as under :-

2. The applicants were the original defendant nos.1(b) to 1(e) before the trial Court. The respondent no.1 herein was the original plaintiff. The respondent nos.2 and 3 were the original defendant nos.2(a) & 2(b) before the trial Court. In the latter part of the judgment, the parties are described as per their original status before the trial Court.

3. It was the case of the plaintiff that the property bearing City Survey No.411/A, Ravivar Peth, Pune was owned by the plaintiff and the defendant nos.2(a) & 2(b). There was no partition of the suit property effected amongst the plaintiff and the defendant nos.2(a) & 2(b).

4. It was the case of the plaintiff that the predecessor in title of the defendant no.1 Ashok Kumar Nemichand Parmar succeeded as

tenant to the shop premises on the ground floor admeasuring 46.451 sq.mtrs. in the building constructed on the property bearing CTS No.411/A situated at Ravivar Peth, Pune (for the sake of convenience referred to as “suit property”).

5. It was the case of the plaintiff that the predecessor in title of the defendant no.1 Ashok Kumar Nemichand Parmar succeeded as the tenant to the said premises on demise of his predecessor Nemichand Hirachand Parmar. Ashok Kumar Nemichand Parmar died on 11th September 2002 leaving behind his mother, wife, sons and son of his deceased brother Indra Raj Nemichand Parmar being the defendant nos.1(a) to 1(e) respectively as the only heirs and successors. It was the case of the plaintiff that the tenancy of the defendant no.1 was a monthly tenancy commencing from the first day of each Gregorian calendar and expiring on expiry of last day thereof. The rent payable by the defendant no.1 was Rs.100/- per month, exclusive of taxes, cess and other charges. It was the case of the plaintiff that the predecessor of the defendant no.1 till his death did not use nor the defendant no.1 had been using the said premises for the purposes for which the same was let out and had changed the user thereof. The premises was given for the purpose of running “sarafi”shop however the business of hire purchase of articles required for any ceremony such as marriage was unauthorisedly

conducted therein. According to the plaintiff, the original defendant no.1 had also attempted to encroach upon the verandah in front of the suit premises by putting up construction. The original defendant no.1 had also put up the permanent construction without consent or permission from any of the landlords. According to the plaintiff, the entire property had been rendered dangerous as a result of heavy, permanent and unauthorised construction made by the defendant no.1.

6. The plaintiff has two sons by names Parag Sharad Tapray and Kedar Sharad Tapray. Both are married. The locality of the suit property was the business locality where “sarafi” business and market has flourished. It was the case of the plaintiff that sons of the plaintiff had been in the business of the plaintiff since last 5 years on the date of filing the suit and have acquired necessary technical knowledge. The plaintiff accordingly required the possession of the suit premises bona fide and reasonably for the purpose of commencing the business of his sons of goldsmith and jewellers therein. It was the case of the plaintiff that he was a salaried person and did not have any other income or money to acquire and/or purchase any other property. According to the plaintiff, the defendant no.1 was wealthy person and had many business premises in and around the locality.

7. On 14th October 2002, the plaintiff filed a Civil Suit bearing

No.572 of 2002 against the defendants. It is the case of the plaintiff that since the defendant nos.2(a) & 2(b) who were also the co-owners of the property bearing CTS No. No.411/A were not available to sign the plaint, they were added as formal defendants in the suit as defendant nos.2(a) & 2(b). In the said suit, the plaintiff prayed reliefs only against the defendant nos.1(a) to 1(e) to vacate, hand over, deliver and grant possession of the suit premises to the plaintiff, for an inquiry for mesne profit under Order 20 Rule 12(1)(c) of the Code of Civil Procedure, 1908 and for payment of such mesne profit till the actual delivery of the possession of the suit premises.

8. The defendant nos.1(c) and 1(d) filed written statement in the said suit. The defendant no.2(a) filed written statement and counter claim on 20th August 2004 in the said suit and prayed for possession of the suit premises in the said counter claim. The defendant nos.1(b), 1(c) and 1(d) filed written statement to the counter claim filed by the defendant no.2(a). The defendant no.1(e) filed separate written statement to the counter claim filed by the defendant no.2(a). The defendant nos.1(c) and 1(d) also filed written statement and additional written statement to the amended copy of plaint.

9. The plaintiff filed affidavit of evidence in the said suit on 6th July 2004 and filed additional affidavit in lieu of examination-in-

chief on 11th September 2006. The plaintiff was cross-examined by the defendant nos.1(b) and 1(c). The defendant nos.1(a) to 1(e) examined the defendant no.1(c) as a witness who was cross-examined by the plaintiff's advocate. The learned trial Judge framed 7 issues originally and thereafter framed 2 additional issues. The plaintiff has examined as PW-1. The defendant nos.2(a) & 2(b) did not enter the witness box. During the pendency of the said civil suit bearing No.572 of 2002, on 10th February 2006, the defendant no. 2(a) executed Sale a Deed in favour of the defendant nos.1(c) and 1(d) in respect of his one third share in the suit property.

10. On 16th March 2013, Small Cause Court passed a decree and judgment directing the defendant nos.1(a) to 1(e) to hand over the vacant possession of the suit premises to the plaintiff within two months from the date of decree and ordered an enquiry regarding the mesne profit under Order 20 Rule 12 of the Code of Civil Procedure, 1908. The trial Court passed a decree on the ground that the plaintiff had proved the reasonable bona fide requirement of the suit premises, a greater hardship would be caused to the plaintiff if decree for possession is not passed in favour of the plaintiff. The defendant nos.2(a) failed to prove bona fide requirement of his son for commercial purpose. Trial Court held that the suit is tenable in the present form in view of

contention of defendants as regards non-consent.

11. Trial Court also held that the plaintiff had proved that Sale Deed dated 10th February 2006 between the defendant nos.1(c), 1(d) and 2(a) was bad in law and beyond the consideration of the trial Court. It is held that the plaintiff was entitled to a relief as sought and not the defendant no.2(a). Trial Court rendered finding against the plaintiff in so far as the allegation of “change of user of the suit premises” and “alleged unauthorised alterations and permanent construction in the suit premises allegedly carried out by the defendant nos.1(a) to 1(e) without consent of the plaintiff” is concerned.

12. Being aggrieved by the said judgment and decree dated 16th March 2013, the defendant nos.1(b) to 1(e) preferred an appeal bearing Regular Civil Suit No.711 of 2013 in the Court of District Judge-5, Pune against the plaintiff and the defendant nos.2(a) & 2(b). By an order and judgment dated 29th September 2018, the learned District Judge-5, Pune dismissed the said appeal filed by the defendant nos.1(b) to 1(e) and confirmed the judgment and decree dated 16th March 2013 passed by the learned Additional Judge of Small Cause Court, Pune. It was made clear in the said judgment that two months' time granted by the trial Court for vacating the suit premises shall be reckoned in the said judgment and decree dated 29th September 2018 passed by the

learned District Judge. Being aggrieved by the said judgment and decree dated 16th March 2013 passed by the Small Cause Court Judge, Pune and the judgment and decree dated 29th September 2018 passed by the learned District Judge, Pune, the defendant nos.1(b) to 1(e) filed this civil revision application under Section 115 of the Code of Civil Procedure, 1908.

13. Mr.Godbole, learned counsel for the applicants submits that suit for eviction was admittedly not filed by all the co-owners of the suit property against the defendant nos.1(a) to 1(e). The defendant nos.2(a) & 2(b) were admittedly the co-owners of the suit property with the plaintiff. During the pendency of the suit, the defendant no.2(a) had sold his 1/3rd share in the suit property in favour of the defendant nos.1(c) & 1(d) by executing the Sale Deed dated 10th February 2006. The plaint thereafter was amended by the plaintiff in the month of August 2010. The defendant nos.2(a) & 2(b) had resisted the suit filed by the plaintiff on the ground of bona fide requirement and the other alleged breaches of the tenancy. The defendant no.2(a) had also filed counter claim for recovery of possession of the suit premises in possession of the defendant nos.1(a) to 1(e) on the ground of alleged bona fide requirement of the defendant nos.2(a) & 2(b).

14. It is submitted by the learned counsel that the suit thus filed

by the plaintiff only for eviction of the defendant no.1(a) to 1(e) on the ground of bona fide requirement being only one of the co-owner of the suit premises could not have filed such suit for eviction.

15. It is submitted by the learned counsel that though concurrent findings of bona fide requirement in favour of the plaintiff are rendered by two Courts below, none of Courts could have passed any decree of eviction against the defendant nos.1(b) to 1(e). He submits that the defendant nos.2(a) & 2(b) had not filed suit for eviction of the defendant nos.1(a) to 1(e) in their capacity of other co-owners of the suit property.

16. Learned counsel for the defendant no.1(a) to 1(e) submits that by virtue of sale deed executed by the defendant no.2(a) in respect of his 1/3rd share in the suit property in favour of the defendant nos.1(c) and 1(d) by sale deed dated 10th February 2006, the defendant nos.1(c) and 1(d) had acquired title in the suit property to the extent of 1/3rd share of the defendant no.2(a) jointly with the plaintiff as co-owners.

17. It is submitted that the learned District Judge in the impugned judgment and decree dated 29th September 2018 has laid down Section 44 of the Transfer of Property Act, 1882 and has erroneously held that the said section does not give a transferee of a dwelling house belonging to an undivided family a right to joint possession and confer a corresponding right on the other members of the family to deny the right

to joint possession to a stranger transferee. He submits that admittedly in this case, suit property was not a dwelling house but was a commercial premises and thus Section 44 of the Transfer of Property Act, 1882 was not at all attracted to the suit premises. He submits that the judgment and decree thus passed by the learned District Judge shows perversity.

18. Learned counsel for the defendant nos.1(b) to 1(e) placed reliance on the judgment of the Supreme Court in the case of **Jagdish Dutt & Anr. Vs. Dharam Pal & Ors.**, reported in **(1999) 3 SCC 644** and in particular paragraphs 1, 3, 5 & 7 in support of his submission that tenancy rights of the defendant nos.1(c) and 1(d) in the suit property had merged with ownership rights to the extent of undivided shares of the defendant no.2(a) and thus no decree of eviction could be passed by two Courts below against the defendant nos.1(c) and 1(d). He submits that separate suit already filed by his clients against the plaintiff and the defendant no.2(a) before the Civil Court is still pending.

19. It is submitted by the learned counsel for the defendant nos.1(b) to 1(e) that unless there was a partition of the suit property, no decree on the ground of bona fide requirement could be at all passed by the learned trial Judge and such decree could not have been confirmed by the learned District Judge. He submits that his clients are already in possession now in the capacity of co-owners and not the tenants and

thus on that ground, no decree of eviction could be passed. Learned counsel for the defendant nos.1(b) to 1(e) placed reliance on the judgment of the Supreme Court in the case of **SK Sattar SK. Mohd. Choudhari Vs. Gundappa Amabadas Bukate, (1996) 6 SCC 373** and in particular paragraphs 2, 9, 17, 18 and 37 thereof in support of the submission that no decree of eviction could be passed against his clients. The defendant nos.1(b) to 1(e) are entitled to continue to be in possession of jointly on a property till partition for metes and bounds takes place.

20. Mr.Godbole, learned counsel for the defendant nos.1(a) to 1(e) invited my attention to the judgment of the Supreme Court in the case of **Sri Ram Pasricha Vs. Jagannath and Ors., (1976) 4 SCC 184** and in particular paragraphs 26 and 27 in support of his submission that though the plaintiff was admittedly one of the co-owners of the suit property could not have filed a suit for eviction against his clients on the ground of bona fide requirement or otherwise. He submits that in the said judgment, before the Hon'ble Supreme Court, there was no such counter claim filed by the other co-owners and also seeking possession of premises on the ground of bona fide requirement.

21. Learned counsel for the defendant nos.1(b) to 1(e) also placed reliance on the judgment of the Delhi High Court in the case of

Navin Chander Anand Vs. Union Bank of India & Ors., 2018 SCC

OnLine Del 9902 and in particular paragraphs 6 and 7 in support of his submission that where the interest of the co-owners is undefined, indeterminate in the suit property, decree could not be given effect to before ascertaining the rights of the parties by appropriate decree in a partition suit.

22. Mr. Godbole, learned counsel for the defendant nos. 1(b) to 1(e) also placed reliance on the judgment of Supreme Court in the case of **India Umbrella Manufacturing Co. Vs. Bhagabandei Agarwalla (dead) by Lrs. Savitri Agarwalla & Ors., (2004) 3 SCC 178** and in particular paragraph 6 in support of the submission that one of the co-owners cannot file a suit for eviction of tenant in the property jointly owned by the co-owners. He submits that in the said judgment, it is held that the consent of the other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement. It is submitted that in this case also, the suit for eviction filed by the plaintiff on the ground of bona fide requirement as one of the co-owners of the suit property was opposed by the other two co-owners by filing written statement and counter claim and thus no decree of eviction could be passed against his clients.

23. Learned counsel for the defendant nos.1(a) to 1(e) placed reliance on the judgment of the Supreme Court in the case of **Thomson Press (India) Limited & Ors., (2013) 5 SCC 397** in support of his submission that though his clients had executed a Sale Deed in favour of 1/3rd joint ownership of the defendant no.2(a) in the suit property with the plaintiff, such transaction during the pendency of the suit would not invalidate the Sale Deed and consequently would not render transaction void.

24. Mr.R.M. Pethe, learned counsel for the plaintiff, on the other hand, submits that the Courts below have rendered a concurrent finding on the issue of bona fide requirement of the plaintiff in the suit premises after considering the pleadings and the evidence led by the parties and the findings being not perverse cannot be interfered with by this Court in this civil revision application. It is submitted by the learned counsel that the defendant nos.2(a) and 2(b) were impleaded as formal parties in the suit since they were not available at the time of filing of plaint and being co-owners with the plaintiff in respect of the suit premises. He submits that the defendant no.2(a) however, though filed counter claim and resisted the suit filed by the plaintiff did not enter the witness box and chose to remain absent. The said counter claim was in any event in collusion with the defendant nos.1(a) to 1(e) and even otherwise was

not proved. He submits that the defendant nos.1(c) and 1(d) have purchased 1/3rd shares of the defendant no.2(a) with the knowledge of the shares of the plaintiff and the defendant nos.2(b). The plaintiff has already filed a suit for partition in respect of the suit property. He submits that the plaintiff has been struggling to recover the suit premises for last 17 years. The defendant nos.2(a) has executed Sale Deed in favour of the two of the contesting defendants in respect of his 1/3rd undivided shares.

25. Learned counsel for the plaintiff distinguishes the judgment relied upon by Mr.Godbole, learned counsel for the defendant nos.1(a) to 1(e) on the ground that the plaintiff had not applied for split of tenancy in respect of the suit premises but had filed a suit for eviction as one of the co-owners. The plaintiff was entitled to file a suit for recovery of possession as one of the co-owners in view of Section 16 of the Maharashtra Rent Control Act, 1999. He submits that both the Courts below have considered this issue in great detail and have adverted to the judgment of the Supreme Court on this issue. He submits that the judgment of the Supreme Court in the case of Sri Ram Pasricha (supra) relied upon by the defendant nos.1(a) to 1(e) would clearly apply to the facts of this case and would assist the case of the plaintiff.

26. After conclusion of the arguments, after giving notice to the

learned counsel for the applicant, learned counsel for the respondent no.3 tendered copy of the judgments of the Supreme Court in case of **T. Lakshmipathi & Ors. vs. P. Nithyananda Reddy & Ors. (2003) 5 SCC 150**, in case of **Pramod Kumar Jaiswal & Ors. vs. Bibi Husn Bano & Ors. (2005) 5 SCC 492**, and the judgment of this Court in case of **Vasudeo Dagadulal & Ors. vs. Kankoochand Hirachand Visashrimali & Ors., AIR 1951 Bombay 226** in support of his submission that even if the defendant nos.1(c) and 1(d) had purchased 1/3rd share of the defendant no.2(a) in the suit property, there was no merger of tenancy rights of the defendant nos.1(c) and 1(d) with the alleged ownership in respect of 1/3rd share in the suit property derived from the defendant no.2(a) who was one of the co-owner in the suit property to the extent of 1/3rd share. He submits that even if the defendant nos.1(c) and 1(d) have acquired 1/3rd share of the defendant no.2(a) in the suit property, that is not enough to determine the lease and to claim ownership in the joint property of the plaintiff, the defendant nos.2(a) and 2(d).

27. It is submitted by the learned counsel for the plaintiff that the section 45 and 111(d) of the Transfer of Property Act, 1882 have to be read together. He submits that his client has already filed a separate suit for seeking pre-emption and also for partition of the property. The defendant nos.1(c) and 1(d) have also filed a separate suit for partition.

All these three suits are pending before the civil courts.

28. Mr.Godbole, learned counsel for the defendant nos.1(b) to 1(e) submits that though the decree for eviction on the ground of bona fide requirement is against his clients by rendering a concurrent findings in view of the issue of title having been decided against his clients by the District Court, his clients cannot be evicted by this Court at this stage till issue of partition is determined by this Court first.

29. Ms.Ketki Gadkari, learned counsel for the defendant nos. 1(b) to 1(e) in rejoinder submits that these three additional judgments relied upon by the learned counsel for the plaintiffs are clearly distinguishable in the facts of this case since the defendant nos. 1(b) to 1(e) have not pleaded the case of the merger of tenancy with the ownership.

REASONS AND CONCLUSION :-

30. There is no dispute that the plaintiff had filed the suit against the defendant nos. 1(b) to 1(e) and defendant nos 2(a) and 2(b). The plaintiff in the said suit had prayed for eviction only against the defendant nos. 1(b) to 1(e) and not against the defendant nos. 2(a) and 2(b). Defendant nos. 2(a) and 2(b) were joined as formal parties in view of they being co-owners of the suit property.

31. The suit was filed by the plaintiff for eviction, though on the

grounds of (1) Change of user of the suit premises, (2) unauthorized alteration and permanent consideration in the said premises without consent of the plaintiff by the defendant nos. 1(b) to 1(e) and (3) on the ground of reasonable *bonafide* requirement of the suit premises for the personal use and occupation of the plaintiff, the Trial Court passed the decree of eviction against the defendant nos. 1(a) to (e) only on the ground of reasonable *bonafide* requirement of the suit premises of the plaintiff and his two sons for their personal use and occupation.

32. Mr. Godbole, learned Counsel for defendant nos. 1(b) to 1(e) did not make any submissions on the decree of eviction on the ground of *bonafide* requirement of the suit premises of the plaintiff and his two sons in view of their being concurrent finding of fact rendered by the Trial Court and confirmed by the District Court. Even otherwise a perusal of the record indicates that the Trial Court has summarized the evidence led by both the parties on this issue and has categorically held that the witness examined by the defendant nos. 1(a) to 1(e) in his examination-in-chief itself had admitted that those defendants were doing business in the name and style as “Parmar Mangal Kendra” at 420, Ravivar Peth, 430, Ravivar Peth and 743, Ravivar Peth, Pune, which shops were at the short distance of the suit premises. The said witness also admitted that those premises in fact were suitable for running business of supply of

articles for religious functions.

33. The learned Trial Judge also dealt with oral evidence led by the plaintiff on the issue of *bonafide* requirement and on the issue of hardship suffered by the plaintiff in carrying out business of Sarafi/Goldsmith in two small rooms on the back side of the suit premises for providing/supplying articles for religious functions under the name and style “Paras Mangal Kendra”. The Trial Court also considered the written statement filed by the defendant nos. 1(a) to 1(e) admitting that both the sons of the plaintiff were carrying on business of SARAFI/Goldsmith on the back side of the suit premises. The witness examined by the defendant no. 1(b) to 1(e) admitted that the premises in their possession bearing CTS Nos. 420, 430 and 743 at Ravivar Peth are sufficient for them to carry out their business. The said witness also admitted that the suit premises is the only commercial premises in the building 411A.

34. The Trial Court accordingly held that the requirement of the defendant nos. 1(b) to 1(e) was not greater than that of the plaintiff. The defendant nos.1(b) to 1(e) were carrying on various businesses such as goldsmith/supply of article for religious functions and money lending business. The desire of the sons of the plaintiff to acquire the said premises for their betterment cannot be said to be unreasonable one. The District Court also has rendered the finding of fact that the plaintiff's

requirement of the suit premises was reasonable and bonafide and that greater hardship would be caused to the plaintiff in the event of refusal of decree of eviction in favour of the plaintiff. The findings of fact on the issue of bonafide requirement being concurrent and being not perverse even otherwise cannot be interfered by this Court in this application filed under Section 115 of the Code of Civil Procedure, 1908.

35. In so far as the submission of Mr. Godbole, learned Counsel for the defendant nos. 1(b) to 1(e) that the defendant nos. 2(a) was admittedly one of the co-owner of the suit premises with the plaintiff and had not only filed written statement opposing the suit filed by the plaintiff but has also filed a counter-claim is concerned, there is no dispute that the defendant no. 2 (a) had filed counter-claim against the plaintiff for eviction of the suit premises on the ground of bonafide requirement. There is no dispute that the defendant no. 2(a) though had filed the written statement and counter claim did not enter the witness box to prove his plea of bonafide requirement. He also did not file any appeal against the judgment and decree of the Trial Court. The Trial Court as well as the District Court has considered this issue at length in the Judgment and decree passed by those Courts.

36. So far as the submission of Mr. Godbole, learned Counsel for the defendant nos. 1(b) to 1(e) that the learned Trial Judge as well as

the District Court could not have decided the issue of title of the defendant nos. 1(c) and 1(d) to the extent of 1/3 share of the defendant no. 2(a) in the suit premises is concerned, a perusal of the decree passed by the learned Trial Judge indicates that the Trial Court had framed a point for determination 'Does the plaintiff proves that the sale deed dated 10th February 2006 between the defendant nos.1(c) and 1(d) and 2(a) is bad in law and beyond the consideration of this court' and answered the said issue in affirmative.

37. The District Court in paragraph 24 of the impugned Judgment and Degree has held that admittedly there was no petition between the plaintiff and defendant no.2(a) in respect of suit property. It is held that if the property is jointly owned, one co-owner can sue for possession under Section 16 of the Act. The District Court referred to Section 44 of the Transfer of Property Act, 1882 in paragraph 25 of the Judgment and Decree. In paragraph 26 of the Judgment and Decree, it is held that a plain reading of Section 44 of Transfer of Property Act, 1882 makes it crystal clear that the said provisions does not give transferee of a dwelling house belonging to undivided family a right to joint possession and confer a corresponding right on the other members of the family to deny the right to joint possession to a stranger transferee. It is held that Section 4 of the Partition Act gives a right to a member of the family who

has not transferred his share to purchase the transferee's share on a value to be fixed in accordance with the law. When transferee filed a suit for partition. In paragraph no. 28, it is held that in absence of partition sought under Section 4 of the Partition Act, source of title of defendant no. 1 could be no avail, especially in endeavouring to retain the possession against desire of the plaintiff landlord.

38. Insofar as the judgment of Supreme Court in case of ***Jagdish Dutt & Anr.*** (supra) relied upon by Mr. Godbole, learned counsel for the defendant nos. 1(b) to 1(e) is concerned, Supreme Court in the said judgment held that when a decree is passed in favour of a joint family, the same has to be treated as a decree in favour of all the members of the joint family in which event it becomes a joint decree. It is also held that the purchaser of the undivided interest of a coparcener in an immovable property cannot claim to be in joint possession of that property with all the other coparceners. However, in case where he is already in possession of the property, unless the rights are appropriately ascertained, he cannot be deprived of the possession thereof for a joint decree holder can seek for execution of a decree in the whole and not in part of the property. A joint decree can be executed as a whole since it is not divisible and it can be executed in part only where the share of the decree holders are defined or those shares can be predicted or the share is not in dispute. In my

view, since the decree passed by the trial court in this case was not in favour of the joint family, the said judgment even otherwise would not assist the case of the defendant nos. 1(b) to 1(e).

39. Insofar as judgment of Supreme Court in case of **Sk.Sattar Sk.Mohd.Choudhari** (supra) relied upon by Mr.Godbole, learned counsel for the defendant nos. 1(b) to 1(e) is concerned, it is held that the partition, if any, amongst the brothers would not affect the lease which would still remain indivisible and consequently, eviction proceedings at the instance of only one of the co-landlords would not be maintainable. The plaintiff in this case had not applied for partition or any eviction decree in respect of his 1/3rd share but had filed a suit for eviction of the suit premises in which the plaintiff had 1/3rd share whereas the defendant nos. 2(a) and 2(b) were having other 1/3rd share each. In my view, the said suit of eviction filed by one of the co-owner was maintainable. Though the defendant no.2(a) had filed a counter claim in the suit and had prayed for possession of the said property alleging his *bonafide* requirement, the fact remains that the defendant no.2(a) neither entered the witness box nor proved his case of *bonafide* requirement.

40. Be that as it may, insofar as defendant nos. 1(b) to 1(e) are concerned, the fact remains that the plaintiff as well as the defendant no.2(a) had prayed for eviction of the defendant nos.1(a) to 1(e) in respect

of the suit premises. In my view, insofar as the decree for eviction against the defendant nos.1(a) to 1(e) is concerned, both the co-owners have prayed for decree of eviction against the defendant nos. 1(b) to 1(e). In the said judgment of the Supreme Court and more particularly in paragraph (14), it is held that it is open to the owners to apportion the rent inter se, but if no such apportionment is made, the obligation of the tenant remains single and in that situation, the lessor will not be allowed to split the tenancy by recovering the rent of a part only; nor can a purchaser of a part of the property insist on payment of his part of the rent to him. It is not the case of the defendant nos. 1(b) to 1(e) that the plaintiff had applied for split of the tenancy. The judgment of the Supreme Court in case of *Sk.Sattar Sk.Mohd.Choudhari* (supra) thus would not assist the case of the defendant nos. 1(b) to 1(e) even remotely.

41. Insofar as the judgment of Supreme Court in case of *Sri Ram Pasricha* (supra) relied upon by Mr.Godbole, learned counsel for the defendant nos. 1(b) to 1(e) is concerned, in the said judgment it is clearly held that it is not correct to say that a co-owner of a property is not its owner. He owns every part of the composite property along with others and it cannot be said that he is only a part-owner or a fractional owner of the property. In my view, the plaintiff was entitled to file a suit for eviction against the defendant nos. 1(b) to 1(e) by impleading the

other co-owners as defendants. The judgment of Supreme Court in case of ***Sri Ram Pasricha*** (supra) would advance the case of the plaintiff and not the defendants.

42. Insofar as the judgment of Supreme Court in case of ***Navin Chander Anand*** (supra) relied upon by the learned counsel for the defendant nos. 1(b) to 1(e) is concerned, the said judgment is clearly distinguishable on the ground that in this case the plaintiff as well as defendant no.2(a) had separately applied for eviction against the defendant nos. 1(b) to 1(e) on the ground of bonafide requirement. The defendant no.2(a) in his counter claim has not opposed the termination of the tenancy by the plaintiff in respect of the suit property.

43. Insofar as judgment of Supreme Court in case of ***India Umbrella Manufacturing Co. and others*** (supra) relied upon by Mr.Godbole, learned counsel for the defendant nos. 1(b) to 1(e) is concerned, in the said judgment it is clearly held that one of the co-owner can file suit for eviction of tenants in property generally owned by co-owners. It is held that the consent of other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement. In my view, this judgment would also assist the case of the plaintiff and not the case of the defendant nos. 2(a) to 2(e). In this case, the defendant no.2(a) had

filed a counter claim and also applied for eviction of the defendant nos.1(b) to 1(e) and had prayed for possession for himself. In my view, insofar as the eviction of the defendant nos.1(b) to 1(e) is concerned, the prayer for eviction of the defendant nos.1(b) to 1(e) in the suit filed by the plaintiff and in the counter claim filed by the defendant no.2(a) was common directly or indirectly. The judgment of Supreme Court in case of **India Umbrella Manufacturing Co. and others** (supra) thus would not advance the case of the defendant nos.2(a) to 2(e) and is clearly distinguishable with the facts of this case.

44. Insofar as judgment of Supreme Court in case of **Thomson Press (India) Limited** (supra) relied upon by Mr.Godbole, learned counsel for the defendant nos. 1(b) to 1(e) is concerned, there is no dispute about the proposition of law laid down by the Supreme Court in the said judgment. The trial court has not passed a decree against the defendant nos. 1(c) and (d) on the ground that those defendants had purchased 1/3rd undivided share of defendant no.2(a) in the suit property.

45. Insofar as the judgments relied upon by Mr.Pethe, learned counsel appearing for the plaintiff in case of **T.Lakshmipathi and others** (supra) and in case of **Pramod Kumar Jaiswal and others** (supra) are concerned, it is held by the Supreme Court that where the party had acquired only partial ownership interest, the interests of the lessee and

lessor in the whole of the property is not vested in such party at the same time and in the same right and there was no merger of such right in view of section 111(d) of the Transfer of Property Act, 1882. It is held that the merger takes place and the lease gets determined only if entire reversion or entire rights of landlord are assigned to or purchased by the tenant. On tenant taking assignment from only some of co-owner landlords, interests of lessee and lessor in whole of property do not become vested in one person.

46. A perusal of the averments made in the appeal memo filed by the defendant nos. 1(b) to 1(e) before the learned District Judge impugning the decree passed by the trial court and more particularly ground (N) clearly indicates that it was the specific ground raised by those defendants that those defendants had become 1/3rd owner in the suit property and as the owner, the relationship between the plaintiff and those defendants had changed and that in view of the same, no decree of eviction can be passed against those defendants. Similar grounds are raised by the defendant nos. 1(b) to 1(e) in ground (n) in this civil revision application. I am thus not inclined to accept the submission of the learned counsel for the defendant nos. 1(b) to 1(e) that his clients have not pleaded merger of tenancy right in the suit property with ownership rights in respect of the 1/3rd share of defendant no.2(a). The principles of

law laid down by the Supreme Court in case of ***T.Lakshmipathi and others*** (supra), ***Pramod Kumar Jaiswal and others*** (supra) relied upon by Mr.Pethe, learned counsel for the plaintiff would apply to the facts of this case. I am respectfully bound by the said judgment.

47. Insofar as judgment of this court in case of ***Vasudeo Dagadulal and others*** (supra) relied upon by Mr.Pethe, learned counsel for the plaintiff is concerned, it is held by this court that the purchaser is not entitled to partition of the property alone, for his vendor himself could not have claimed it, unless the other coparceners consented to the same. He can only enforce his rights by a suit for a general partition. Be that as it may, the suit for partition filed by the plaintiff as well as defendant nos. 1(b) to 1(e) and suit for pre-emption filed by the plaintiff are pending.

48. In my view, no case is made out for interference with the judgment and decree passed by the two Courts below. The Civil Revision Application is devoid of merits. I therefore pass the following order :-

- i). Civil Revision Application No. 30 of 2019 is dismissed.
- ii). There shall be no order as to costs.

(R.D. DHANUKA, J.)

49. Learned Counsel for the Applicants seeks stay of the execution of the impugned decree passed by the two courts below and

agrees to furnish an undertaking within one week from today to the effect that if the applicants do not succeed in the Supreme Court, the applicants would handover the possession of the suit premises to the original plaintiff forthwith.

50. Learned Counsel further states that her clients are in physical possession of the property and the possession thereof is not parted with in favour of anybody else. She further submits that during the period of stay, her client would not create any third party rights and would not handover possession of the suit property in favour of any party. The undertakings rendered by learned Counsel on behalf of her clients are accepted. Undertaking shall be filed to this Court within one week from today. Impugned decrees passed by the two courts below are stayed for a period of six weeks on the aforesaid conditions.

51. It is made clear if the undertaking is not filed within one week from today with a copy to be served upon the plaintiff's advocate, protection granted by this Court to stand vacated without further reference to Court. Special Leave Petition if filed by the applicants shall be served upon the plaintiff's advocate in advance.

(R.D. DHANUKA, J.)