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

**FIRST APPEAL NO. 95 OF 2009
ALONG WITH
FIRST APPEAL NO. 820 OF 2013**

Ms. Smita P. Doshi,
R/o. 9, Matru Chhaya,
Netaji Subhash Road,
(Marine Drive),
Bombay – 400 020.

... Appellant

Versus

1. Pravinchandra H. Doshi,
since deceased through Legal Heirs :-

1A. Nitin Pravinchandra Doshi,
Age: 54 years, Occ.: Business,
R/o. Flat No.9, Maru Chhaya,
Netaji Subhashchandra Bose Road,
70, Marine Drive, Mumbai – 400 020.

1B. Rajesh Pravinchandra Doshi,
Age: 57 years, Occ.: Business,
R/o. 72, Vishwas Colony, 3rd Floor,
Alkapuri, Vadodara – 390 007.

1C. Bharati Bipin Parekh,
Age: 56 years, Occ.: Retired,
R/o. 21/1, Arunodaya Society,
Alkapuri, Vadodara – 390 007.

2. Indumati P. Doshi,
R/o. 9, Matru Chhaya,
Netaji Subhash Road,
(Marine Drive),
Bombay – 400 020.

... Respondents

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Mr. Ashutosh M. Kulkarni along with Mr. Akshay Kulkarni and
Ms. Akansha Helaskar for the Appellant in FA/95/2009.

Ms. Sharmila U. Deshmukh with Ms. Jaya Bagwe for the Appellant in
FA/820/2013.

Ms. Smita Vora i/by Vora and Associates for Respondent No. 2 in both First Appeals.

Mr. Yahya Ghoghari for the Respondent No. 1A in FA/95/2009 and for Respondent No.3 in FA/820/2013.

Mr. R. N. Bhagattjee for the Respondent Nos. 4 and 5 in FA/820/2013.

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CORAM : R.D. DHANUKA, J.

RESERVED ON : 14th FEBRUARY, 2020

PRONOUNCED ON : 15th July,2020

JUDGMENT :

. First Appeal No.95 of 2009 is filed under Section 96 of the Code of Civil Procedure, 1908 *inter-alia* impugning the decree dated 6th December, 2008 passed by the City Civil Court, Bombay thereby decreeing the Suit No. 6487 of 2000 declaring that the appellant (original defendant) is not entitled use the suit flat and directing her to remove herself with all her bags and baggages from the suit flat and for other reliefs.

2. First Appeal No.820 of 2013 is filed by the appellant (original plaintiff) impugning the order passed by the City Civil Court on 7th November, 2012 thereby allowing the Notice of Motion No. 2240 of 2012 filed by the original defendant nos. 4 and 5 under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 and rejecting the plaint filed by the appellant. By consent of parties, both these Appeals were heard together and are being disposed off by a common order. Some of the relevant facts for the

purpose of deciding these First Appeals are as under:-

3. Appellant in both these appeals was original defendant in SC Suit No. 6487 of 2000 which is subject matter of First Appeal No. 95 of 2009. The appellant was the original plaintiff in Suit No. 1278 of 2011 which is subject matter of First Appeal No. 820 of 2013. Ms. Smita P. Doshi, the appellant in these proceedings is daughter of Mr. Pravinchandra H. Doshi and Mrs. Indumati P. Doshi. It was the case of the said Mr. Pravinchandra H. Doshi and Mrs. Indumati P. Doshi that one Mr. Hiralal G. Doshi was father of the said Mr. Pravinchandra H. Doshi and had acquired Flat No. 9, Matru Chhaya Building, situated at Netaji Subhash Road, Marine Drive, Mumbai – 400 020 (hereinafter referred to as “the said suit premises” for short) on tenancy basis.

4. The said Mr. Hiralal G. Doshi was residing in the said suit premises along with members of his family then made up of the said Mr.Pravinchandra H. Doshi. It was their case that after the death of Mr.Hiralal G. Doshi, tenancy rights in respect of the suit premises was devolved upon the said Mr. Pravinchandra H. Doshi and Mrs. Indumati P. Doshi. The rent receipt was transferred in the names of the said Mr.Pravinchandra H. Doshi and Mrs. Indumati P. Doshi and from the date of transfer of the rent receipt, the tenancy was accepted by Mr.Pravinchandra H. Doshi and Mrs. Indumati P. Doshi. They alone were entitled to the suit

premises as tenants. Both these tenants were paying rent in respect of the suit premises to the landlord.

5. It was the case of the said Mr. Pravinchandra H. Doshi and Mrs. Indumati P. Doshi that sometime in the year 1995 an offer was made by the landlord to convert the tenancy rights of the suit premises to ownership. All the tenants of the said building including the parents of the appellant formed a Condominium whereby each one of the flat occupants became entitled to use of common areas by paying percentage wise in respect of the joint premises occupied by the respective tenants. The said Mr. Pravinchandra H. Doshi and Mrs. Indumati P. Doshi had two sons and two daughters including one of the daughter being the appellant. The appellant was married several years ago and started residing with her husband for sometime. The appellant had two children from the said marriage. It was the case of the parents that son of the appellant was 21 years of age and daughter was 17 years of age in the year 2000. The son of the appellant was residing in USA.

6. It was the case of the parents of the respondents that the appellant had resided with her husband for sometime after the marriage and thereafter left the matrimonial home including her husband and came back to reside with her children in their flat. The appellant took divorce in the year 1995. The appellant has studied upto matriculation and was got married in the year

1978. The suit premises consist of three bed room of which one room was occupied by the appellant. The other bed rooms were occupied by the parents and Nitin, one of the son of the parents along with his wife and minor daughter. The other son of the parents by name Rajesh Doshi was staying at Bandra but used to often visit the suit premises and was residing with the parents as a member of the family. The said parents had become owners of the suit premises. The appellant was having her own source of income and was working in the diamond market for quite sometime.

7. The dispute arose between the parents and the appellant. The appellant started claiming 1/6th share in the suit premises. It was the case of the parents that the appellant use to be violent and was beating up the parents and also her brother Nitin. The appellant use to assault the parents physically and use to quarrel on several occasions. The parents i.e. Mr.Pravinchandra H. Doshi and Mrs. Indumati P. Doshi accordingly filed a Suit bearing SC Suit No. 6487 of 2000 before the Bombay City Civil Court against the appellant *inter-alia* praying for a declaration that the appellant was not entitled to use the suit premises and for an order and direction against the appellant to remove herself with all her baggages from the suit premises. The parents also prayed for a permanent and/or temporary injunction against the appellant for removing herself, from entering upon the suit premises and/or claiming any right to the suit premises and/or obstruct, interfere with the peaceful use, occupation, possession and enjoyment of the

suit premises by the parents and their family members.

8. The appellant filed a written statement in the said suit in the month of June 2007 denying the allegations made by the parents in the said SC Suit No. 6487 of 2000. The appellant also claimed tenancy in the suit premises and raised an issue of jurisdiction of the City Civil Court to entertain, try and dispose off the said suit filed by the parents. The Trial Court framed five issues for determination including the issue of jurisdiction. On behalf of the original plaintiffs in that suit, the plaintiff no.2 i.e. Mrs. Indumati P. Doshi, mother of the appellant filed an affidavit in lieu of examination-in-chief under Order XVIII Rule 4 of the Code of Civil Procedure, 1908 on 14th June, 2006. She was cross-examined by the appellant's advocate.

9. The appellant thereafter filed affidavit in lieu of examination-in-chief dated 3rd September, 2007. She was cross-examined by the respondents' advocate. The Trial Court passed a judgment and decree on 6th December, 2008 in terms of prayer clause 'a' of the plaint whereby declaring that the appellant was not entitled to use the suit premises and ordering and directing the appellant to remove herself with all her baggages from the suit premise. The Trial Court also restrained the appellant from interfering with the peaceful possession of the respondents (original plaintiffs in the said suit) over the suit premises and the enjoyment of the suit premises by the plaintiffs by any mode. Being aggrieved by the said judgment and decree

dated 6th December, 2008, the appellant Ms. Smita Doshi (original defendant) in the said suit filed the First Appeal No. 95 of 2009 in this Court. Mr.Pravinchandra H. Doshi died during the pendency of the First Appeal. Upon his demise, his legal heirs were brought on record as respondent nos. 1A to 1C.

10. In so far as the subject matter of the First Appeal No. 820 of 2013 is concerned, the said Ms. Smita P. Doshi who was defendant in Suit No. 6487 of 2000 before the City Civil Court, filed a Suit bearing No. 1278 of 2011 against her parents, brothers and sister on 30th March, 2011 *inter-alia* praying for a declaration that she was one of the co-owner of the suit premises and was entitled to 1/4th share in the suit premises. She also applied for partition and separate possession of her alleged 1/4th share in the suit premises and in the alternative prayed for partition and/or sell the suit premises and handover to her 1/4th share in the suit premises. The said Ms.Smita P. Doshi also relied upon a complaint filed by her before the learned Metropolitan Magistrate, 23rd Court at Esplanade, Mumbai against the parents.

11. The defendant nos. 4 and 5 i.e. Rajesh Pravinchandra Doshi and Bharti Bipin Parekh in the said suit filed an application under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 *inter-alia* praying for rejection of plaint filed by the said Ms. Smita P. Doshi. The said notice of

motion was resisted by the plaintiff in the said suit. The learned Trial Judge framed three points for determination and more particularly ‘whether the suit filed by the plaintiff was barred by law of limitation and whether plaint was liable to be rejected on that ground.’ By an order dated 7th November, 2012 passed by the learned Trial judge, the said Notice of Motion No. 2240 of 2012 came to be allowed. The learned Trial Judge rejected the said plaint under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 on the ground that the said suit was barred by law of limitation. Being aggrieved by the said order passed by the Trial Judge on 7th November, 2012, the plaintiff Ms. Smita P. Doshi filed First Appeal No. 820 of 2013. Since, both the suits were filed in respect of the same suit property, both these appeals were heard together and are being disposed off by a common order.

12. Ms. Deshmukh, learned counsel for the appellant in First Appeal No. 820 of 2013 submits that the suit premises was tenanted in the name of the grandfather of the appellant. The respondent nos. 1 and 2 were the parents of the appellant and the respondent nos. 3 and 5 are the siblings of the appellant. She submits that her client got married in the year 1978 and had left the suit premises. However, since her marriage did not last, the parents brought her client back in the suit premises in the month of January 1983. The grandfather of the appellant expired in the year 1989. It is submitted that in view of the fact that the appellant was staying with the grandfather who was a tenant in respect of the suit premises on the date of his death, the

appellant along with all other family members become tenant under Section 5(11)(c) of the Bombay Rents, Hotels and Lodging House Rates (Control) Act, 1947.

13. It is submitted that the appellant also thus became entitled to claim tenancy. She submits that in the year 1995, an offer was made by the then landlord to convert the tenancy rights into an ownership rights in respect of the suit premises. The parents and the other siblings of the appellant called upon the appellant to contribute towards the consideration payable for conversion of tenancy into ownership in the month of March 1995. The appellant had accordingly contributed a sum of Rs.19,000/- in favour of the respondent no.2 vide two cheques.

14. It is submitted by the learned counsel that against the interim order dated 1st February, 2001 passed by the Trial Court, the appellant had filed an appeal from order bearing no. 155 of 2001 in this Court. However, the said appeal from order came to be dismissed by this Court on 24th April, 2001. As a result of the said order passed by the Trial Court and confirmed by this Court, the appellant was ousted from the said premises in the year 2001.

15. Learned counsel for the appellant submits that by a judgment and order dated 6th December, 2008 the SC Suit No. 6487 of 2000 filed by the parents of the appellant came to be decreed against the appellant. The

appellant had also filed a separate First Appeal bearing No.95 of 2009 against the said judgment which is also heard along with First Appeal No. 820 of 2013.

16. Learned counsel for the appellant invited my attention to the affidavit in support of the Notice of Motion filed by the respondent nos. 4 and 5 under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 and would submit that the respondent nos. 4 and 5 had raised an issue of limitation in the said affidavit in support based on the execution of the Deed of Apartment. She submits that the cause of action arose in favour of the appellant for filing the said Suit No. 1278 of 2011 which was renumbered as Civil Suit No. 3691 of 2011 only when the judgment and decree came to be delivered on 6th December, 2008 in the suit filed by the parents against the appellant. She submits that the said Suit No. 1278 of 2011 was filed by the appellant in this Court initially on 31st March, 2011 was thus within the period of limitation and could not have been dismissed by the Trial Court on the ground of limitation.

17. Learned counsel for the appellant invited my attention to paragraph 20 of the impugned order passed by the learned Trial Judge and would submit that the learned Trial judge has wrongly applied Article 58 of Schedule I to Limitation Act, 1963 to the facts of this case. The cause of action could not have arisen when the order was passed in the Notice of

Motion filed by the parents in their suit, which order was an interlocutory order.

18. Learned counsel for the appellant invited my attention to the paragraphs 5 and 6 of the written statement filed by the appellant in the suit filed by the parents and would submit that the appellant had asserted her rights as co-tenant and thereafter claimed co-owner in respect of the suit premises. There was no declaration of title prayed by the plaintiff in the said suit. Learned counsel invited my attention to the prayers in the suit filed by the appellant and would submit that prayer clauses (a) and (b) were for seeking declaration of the ownership rights of the appellant, whereas prayer clause (c) was for seeking partition and separate possession.

19. Learned counsel for the appellant relied upon Article 65 of Schedule I which provided for 12 years period of limitation for filing a suit for possession. She submits that even if the order of this Court in the Appeal from order filed by her client is considered as the date of cause of action, since she was dispossessed pursuant to the said order passed by this Court, suit for recovery of possession was filed within 12 years from the date of dispossession and thus such suit was within the period of limitation.

20. Learned counsel for the appellant placed reliance on the judgment of Supreme Court in case of ***C. Natrajan v/s. Ashim Bai and Another, (2007)***

14 SCC 183 and in particular paragraphs 6, 10 and 14 in support of her submission that Article 65 was applicable to the facts of this case and not Article 58 simpliciter on the ground that suit was not simpliciter for declaration but it was for possession and partition of the suit premises. She submits that Article 65 would thus apply to all the three reliefs claimed by her client.

21. Learned counsel for the appellant placed reliance on the judgment of Supreme Court in case of ***Ghewarchand and Others v/s. Mahendra Singh and Others, (2018) 10 SCC 588*** and in particular paragraphs 1, 2, 5, 13, 17 and 18 in support of the submission that Article 65 would be attracted to the facts of this case. She submits that since the suit was filed within the period of 12 years from the date of averments made in the suit filed by the parents asserting their rights in the suit premises, only when unequivocal threat was caused to the ownership rights of the appellant, in view of those averments made in the plaint, the right to sue arose and not earlier.

22. Ms. Smita Vora, learned counsel for the respondent nos. 1 and 2 on the other hand would submit that the respondent no.2 who was mother of the appellant had sold her shares. The credit for sell of shares was already given to the appellant. The appellant had not contributed any amount for conversion of the tenancy rights into ownership rights of the suit premises. Tenancy was rightly converted into ownership only in the name of the

respondent nos. 1 and 2. The appellant had no right, title of any nature whatsoever in the suit premises. Learned counsel submitted that Article 65 thus was not attracted to the facts of this case.

23. Learned counsel invited my attention to the averments made in the paragraph 9 of the plaint filed by the parents and would submit that they had clearly asserted their rights as owners of property exclusively. The agreement entered into between the landlord and the respondent nos. 1 and 2 for conversion of the tenancy rights in the ownership rights has not been challenged by the appellant in any Court of law. Learned counsel invited my attention to the averments made by the appellant in her written statement filed on 14th June, 2002 in SC Suit No. 6487 of 2000. Learned counsel submits that the cause of action to file a suit premises arose in favour of the appellant when the writ of summons in the said Suit No. 6487 of 2000 filed by the parents was served upon the appellant.

24. Learned counsel for the respondent nos.1 and 2 placed reliance on the judgment of Supreme Court in case of ***I.T.C. Limited v/s. Debts Recovery Appellate Tribunal and Others, (1998) 2 SCC 70*** and in particular paragraphs 16 and 29. It is submitted by the learned counsel that since the plaintiff had not claimed any title in the suit premises, suit filed by her could not be considered as the suit for possession based on title. The plaintiff had admittedly not challenged the Deed of Apartment dated 9th June, 1995 and

thus could not claim any right for the possession of the suit premises. Merely because a prayer for a possession was inserted in the plaint, the suit would not become suit for possession and title. The plaintiff could not seek any declaration for co-ownership of the suit premises without challenging the Deed of Apartment dated 9th June, 1995.

25. Mr. Bhagattjee, learned counsel for the respondent nos. 4 and 5 on the other hand invited my attention to a chart annexed at pages 313 and 314 of the First Appeal No. 820 of 2013 and would submit that the shares of A.C.C. Limited were sold by his client for the consideration of Rs.19,000/-. He invited my attention to the written statement filed by the appellant in SC Suit No. 6487 of 2000 filed by the parents and in particular the averments made in paragraph 11 of the said written statement contending that the parents had transferred their shares and securities in the year 1995 in the name of the appellant for raising finances.

26. Learned counsel also invited my attention to the cross-examination of the said Ms. Smita P. Doshi in the said Suit No. 6487 of 2000 admitting that the parents had not sold shares of any other company to her. She did not remember whether she had paid any amount of sale proceeds of their shares. The parents never sold their shares to her. She also admitted that she did not know whether the suit premises was converted into ownership from tenanted premises in the year 1995. She came to know in the year 1996 that the suit

premises was converted into ownership. She did not raise any objection for conversion of the premises in the name of her father after coming to know that the premises was converted into ownership in the year 1996. She had no occasion to see the documents of conversion. She did not know what consideration was paid for the conversion.

27. It is submitted by the learned counsel that the Trial Court had rendered several findings in favour of the parents and the other defendants and against the said Ms. Smita P. Doshi after considering the oral and documentary evidence. Learned counsel placed reliance on the Deed of Apartment dated 9th June, 1995 executed between the landlord and the parents of the parties in support of the submission that the entire payment for conversion of tenancy into ownership was paid by the parents of the parties and others in the year 1994 itself. He submits that the shares were admittedly sold on 8th June, 1995 much after payment of the consideration amount. The case of the appellant that she had paid any contribution for conversion of the tenancy premises into ownership premises is *ex-facie* false.

28. It is submitted by the learned counsel that since both the parents of the parties were alive, the said Ms. Smita P. Doshi could not have prayed for partition of the properties during their life time. The learned counsel placed reliance on the judgment of Supreme Court in case of **Suresh Kumar through GPA v/s. Anil Kakaria and Others, (2018) 1 SCC 86** and in

particular paragraphs 9, 15, 16, 16.1 and 16.2 in support of the submission that the findings being not perverse cannot be interfered by this Court in this First Appeal. Learned counsel placed reliance on the judgment of Supreme Court in case of ***Khatri Hotels Private Limited and Another v/s. Union of India and Another, (2011) 9 SCC 126*** and in particular paragraphs 2, 6, 30 and 33 in support of the submission regarding commencement of cause of action for filing a suit.

Submission of the parties in First Appeal No. 95 of 2009

29. Mr. Kulkarni, learned counsel for the appellant would submit that this appeal is arisen out of the judgment and decree passed by the City Civil Court in the suit filed by the parents. He invited my attention to the prayers in the said suit and would submit that the suit was specifically filed by the parents for declaration that his client was not entitled to use the suit premises and praying for order and direction against his client to remove herself all her bag and baggages from the suit premises. He submits that his client had claimed to be a tenant of the suit premises. The appellant was in possession of the suit premises and thus suit for injunction filed by the parents was not maintainable. City Civil Court had no jurisdiction to entertain, try and dispose off the suit against the tenant.

30. It is submitted that the suit could be filed only before the Small

Causes Court under Section 41A of the Small Causes Act. He placed reliance on Section 7(15) of the Maharashtra Rent Control Act, 1999 and would submit that since the appellant was occupying the suit premises along with the parents at the time of the death of the father of the parties, she became tenant in respect of the suit premises. The grandfather of the parties had expired on 6th February, 1989 and since then the appellant had become a tenant in respect of the suit premises. Learned counsel invited my attention to the affidavit in lieu of examination-in-chief filed by the mother of the parties i.e. respondent no.2 and more particularly the deposition in paragraphs 5, 7 and 10 and would submit that the respondent no.2 in the said affidavit had admitted that the appellant (original defendant in the said SC Suit No. 6487 of 2000) was residing with her in the suit premises. She also admitted that at the time of death of her father-in-law, members residing with her father-in-law were herself, her husband and her four children. He submits that the learned Trial judge had ignored these crucial part of the evidence in the impugned judgment and order. The parents in their suit had not disclosed as to how the appellant had lost her right of tenancy in the suit premises and when. Merely because the appellant did not file a suit for declaration that would not mean that she was not a tenant in respect of the suit premises.

31. Learned counsel for the appellant relied upon the judgment delivered by Full Bench of this Court in case of ***Prabhudas Damodar Kotecha and***

Anr. v/s. Smt. Manharbala Jeram Damodar and Ors., 2007(4) ALL MR 651 and in particular paragraph 62 in support of his submission that only Small Causes Court Bombay had exclusive jurisdiction to try such suit filed by the parents against the appellant and not the City Civil Court. He submits that even if the claim of the appellant would not have been considered as that of gratuitous licensee, even in that event the suit could not have been filed only before the Small Causes Court and not before the City Civil Court. He submits that once the Trial Court has rendered a finding in paragraphs 19 and 20 of the impugned judgment and decree that the appellant was a licensee in respect of the suit premises, the Trial Court ought to have returned the plaint to the Court having jurisdiction to entertain such suit i.e. Small Causes Court, Bombay. He placed reliance on the written statement filed by his client in the said suit and more particularly paragraph 4 in support of the submission that the appellant had specifically raised issue of jurisdiction of the City Civil Court to entertain the said suit.

32. Mr. Bhagattjee, learned counsel for the respondent nos. 4 and 5 on the other hand invited my attention to the pleadings filed by the parties in the suit as well as in the notice of motion filed by his clients bearing no. 2240 of 2012 *inter-alia* praying for dismissal of suit on the ground that suit was barred by law of limitation. He submits that the appellant got married in the year 1978 and was divorced in the year 1995. She had left suit flat as per the interim order passed by the Trial Court on 1st May, 2001. Hiralal G. Doshi expired in the year 1999. On 9th June, 1995, the registered agreement came to be executed in favour of the

Pravinchandra H. Doshi and Indumati P. Doshi in respect of the suit flat. He invited my attention to the cross-examination of the appellant in the said suit and would submit that the appellant had clearly admitted that she had become aware of the registered agreement entered into between the Pravinchandra H. Doshi and Indumati P. Doshi in respect of the suit flat in the year 1996. She however filed the said suit only on 30th March, 2011 after delay of 15 years and 8 months. He submits that the appellant had no title to the suit flat as she had taken money of shares of ACC Limited. No contribution of any amount was made by the appellant for purchase of the suit flat by the parents of the appellant.

33. Learned counsel placed reliance on the following judgments in support of plea that the Trial Court rightly allowed the Notice of Motion filed by his clients under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 by holding that the said suit was *ex-facie* barred by law of limitation :-

- (a) Judgment of this Court in case of ***Vasant Sadashiv Joshi and Ors. v/s. Yeshwant Shankar Barve and Ors.*** delivered on 3rd January, 2020 in Writ Petition No. 2371 of 1997.
- (b) Judgment of Supreme Court in case of ***Dharampal Satyapal Limited v/s. Deputy Commissioner of Central Excise, Gauhati and Others, (2015) 8 SCC 519.***

- (c) Judgment of this Court at Nagpur bench in case of ***Santoshkumar Swamidas Agrawal (now deceased) and anr. v/s. Ashwin Wardhaman Golechha, 2018(4) Bom.C.R. 574.***
- (d) Judgment of Supreme Court in case of ***Bagai Construction v/s. Gupta Building Material Store, (2013) 14 SCC 1.***
- (e) Judgment of Supreme Court in case of ***Sharda v/s. Dharmpal, (2003) 4 SCC 493.***
- (f) Judgment of Gauhati High Court in case of ***Atul Chandra Bora v/s. M/s. Assam Tea Brokers Pvt. Ltd., AIR 1995 Gauhati 73.***

34. It is submitted by the learned counsel that even if the family of the parties to the proceedings was to be considered as a joint family, even in that event, Section 5(11)(c) of Bombay Rent Act would not apply. On the demise of the grandfather of the appellant, the appellant could not claim any inheritance of the tenancy rights in respect of the suit flat. He submits that even otherwise the appellant never challenged the registered agreement in favour of the parents of the appellant executed as far back as on 9th June, 1995. There was delay of more than 15 years 8 months in filing the Civil Suit by the appellant.

35. Learned counsel for the appellant in rejoinder reiterated the submissions made earlier and would submit that the judgment and order passed by the Trial Court in both the matters being perverse, appeals filed by

the appellant deserves to be allowed.

Reasons and Conclusion in First Appeal No. 820 of 2013

36. It is an undisputed position that the appellant who is the daughter of the original respondent nos. 1 and 2 herein was divorced in the year 1995. She had left the premises in view of the interim order passed by the Trial Court on 1st May, 2001. There is also no dispute that the Hiralal G. Doshi who was grandfather of the appellant expired in the year 1989. On 9th June, 1995 the landlord had already entered into a registered agreement in respect of the suit flat in favour of the original respondent no.1 i.e. father of the appellant and respondent no.2 i.e. mother of the appellant conveying ownership right in respect of the suit flat in their favour.

37. The appellant filed a suit on 30th March, 2011 bearing City Civil Suit No. 1278 of 2011 against the parents and other family members *inter-alia* praying for a declaration that the appellant is a co-owner of the suit flat, that the appellant is entitled to 1/4th share in the suit flat, prayed for partition and separate possession of 1/4th share by the appellant in the said flat. Alternatively, the appellant also prayed for an order and direction against the respondents (original defendants) to partition and/or to sale the suit flat and handover the 1/4th share to the appellant.

38. It was alleged in the plaint filed by the appellant that the grandfather of the appellant i.e. Late Shri Hiralal G. Doshi had acquired the suit flat on tenancy basis from Shri Tulsi Shah and others in the name of her grandfather. The rent receipts were issued in the name of the grandfather. It was alleged in the plaint that the appellant resided in the suit flat along with her grandfather from the date of her birth till her marriage in the year 1978. However, the said marriage did not last. The appellant was brought back to the suit flat by her parents in the year 1983 and thereafter the appellant stayed in the said flat till she was restrained by an order of interim injunction from entering the suit premises vide order dated 1st February, 2001 passed in Notice of Motion No. 5492 of 2000 in SC Suit No. 6487 of 2000 filed by the parents of the appellant. In para 6 of the plaint, it was alleged by the appellant that at the time of death of the grandfather, the appellant and the respondent nos. 1 to 3 were residing with the grandfather as members his family. It was contended that by virtue of the provisions of Section 5(11)(c) of the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 upon the expiry of the original tenant, the appellant and the respondent nos. 1 to 3 became the co-tenant of the landlord. The rent receipts were transferred in the name of the respondent nos. 1 and 2 by mutual agreement and for the sake of the convenience. There was no dispute prevailing between the appellant and the respondents regarding the suit flat. It was alleged that the appellant did not realize or waive her right, title or interest in the tenanted premise and continued to occupy one bed room in the tenanted

premises as co-tenant.

39. In paragraph 8 of the plaint it was alleged that in the year 1995 an offer was made by the then landlord that the tenancy rights in the suit flat be converted into ownership rights in the name of the original respondent nos.1 and 2. It was alleged that initially the original respondent no.1 was not ready and willing to convert the ownership agreement with the landlord and had accordingly addressed a letter dated 18th July, 1994 to the landlord. Subsequently, by letter dated 22nd December, 1994, the respondent no.1 informed the landlords that there had been a final consensus on tenancy to continue for the suit flat. It was alleged that it was agreed amongst the respondents that the ownership rights will be transferred in favour of the respondent nos. 1 and 2 and the tenancy in respect of the suit flat will be created in favour of the respondent nos. 3 and 4. Respondent Nos. 3 and 4 also executed declaration dated 24th December, 1994 to the effect that they were the tenants in respect of the suit flat.

40. It was alleged that the appellant was totally unaware of the intentions of the respondents and accepted the assurance that the appellant had a proportionate rights in the suit flat. It was further alleged that the appellant was also called upon by the respondents to contribute towards the consideration for conversion of the tenancy to ownership and accordingly the appellant had allegedly contributed a sum of Rs.19,000/- towards her

contribution to purchase the suit flat. It was alleged that the appellant paid a sum of Rs.19,000/- vide two cheques bearing no. 051427 dated 28th March, 1995 drawn on Bank of Baroda amounting to Rs.18,000/- and issued in favour of the respondent no.2 and another cheque bearing no. 051428 dated 8th June, 1995 amounting to Rs.1,000/- and issued in favour of the respondent no.2. It is alleged that the appellant was called upon to pay the amount of Rs.30,000/- The appellant initially handed over the two cheques to the respondent no.2 which were blank signed cheques. The appellant was asked to fill an amount of Rs.18,000/- on cheque no. 051427 and other cheque was kept blank with the respondent no.2. After almost 3 months upon the enquiry of the appellant, the respondent no.2 directed her to fill an amount of Rs.1,000/- on the cheque no. 051428 which the appellant did.

41. In paragraph 10, it is admitted by the appellant that the tenancy was converted into ownership by execution of Deed of Apartment dated 9th June, 1995 between the landlord and the respondent nos. 1 and 2 as per alleged mutual understanding between the appellant and the respondent nos. 1 to 3. It is alleged that the appellant was co-tenant of the suit flat and by virtue of being co-tenant the appellant had contributed towards the payment of purchase price and thereby the appellant become co-owner of the suit flat. In the said paragraphs, the appellant contended that though the Deed of Apartment was executed in favour of the respondent nos. 1 and 2, the respondents did not have absolute right over the suit flat to the exclusion of

the appellant. The respondent nos. 2 and 4 were convicted of an offence punishable under Section 323 read with 34 of the Indian Penal Code vide judgment dated 11th December, 2008. The revision application filed by them against the said judgment is pending.

42. In paragraph 13 of the plaint, it was alleged by the appellant that as a counter blast to the criminal complaint filed by the respondents, the respondent nos. 1 and 2 at the instance of the other respondents filed a suit in the City Civil Court being SC Suit No. 6487 of 2000 against the appellant *inter-alia* praying for declaration that the appellant was not entitled to use the suit flat and for an order directing the appellant to remove herself with all her bags and baggages from the suit flat. The respondent nos. 1 and 2 also filed a Notice of Motion No. 5492 of 2000 in the said suit. The said Notice of Motion came to be allowed by an order dated 1st February, 2001. In the said Notice of Motion, the respondent nos. 1 and 2 had prayed that the appellant be restrained from entering the said flat and disturbing the peaceful use, occupation and possession of the said flat by the respondent nos. 1 and 2. In the said order dated 1st February, 2001 passed by the City Civil Court, it was recorded that admittedly the said flat was owned by the respondent nos. 1 and 2. The City Civil Court allowed the said Notice of Motion thereby restraining the appellant from entering the suit flat and disturbing the peaceful use, occupation and possession of the suit flat by the appellant.

43. The appeal from order filed by the appellant impugning the said order passed by the City Civil Court came to be dismissed by this Court by an order dated 24th April, 2001. It is not in dispute that the said suit filed by the respondent nos. 1 and 2 came to be decreed in terms of prayer clause (a) by judgment and order dated 6th December, 2008 which is separately impugned by the appellant by filing Appeal No. 95 of 2009 in this Court which appeal is also heard along with the Appeal No. 820 of 2013. Admittedly, the appellant did not file any suit *inter-alia* praying for declaration of her alleged tenancy rights in respect of the suit flat along with the respondents at any point of time. The appellant also did not challenge the said Deed of Apartment dated 9th June, 1995 executed in favour of the respondent nos. 1 and 2 by the then landlord at any point of time till date. Though, the appellant filed a separate suit for various other reliefs which are subject matter of this suit, even in this suit the appellant did not challenge the said Deed of Apartment.

44. A perusal of the averments made in the Notice of Motion No. 2240 of 2012 filed by the respondent nos. 4 and 5 *inter-alia* praying for dismissal of suit under Order VII, Rule 11(d) of the Code of Civil Procedure, 1908 indicates that it was the case of the respondent nos. 4 and 5 that appellant had paid Rs.19,000/- towards sale price of 5 shares of ACC Limited belonging to respondent nos. 1 and 2 who sold and duly transferred those shares to raise funds for purchase of the ownership rights in respect of the

suit flat. Respondent Nos.1 and 2 had also sold many other shares which were purchased by their close relatives at the then prevailing market value. It was contended by the respondent nos. 4 and 5 in the affidavit in support that the appellant had also executed a share transfer form in respect of those 5 shares of ACC Limited.

45. Respondent nos. 4 and 5 also relied upon the bills of sale from a broker on or around 20th December, 1994 in respect of the said transaction. The appellant also confirmed that her payment to respondent no.2 was made on 28th March, 1995 whereas the entire payment to the landlord for purchase of the said flat by the respondent nos. 1 and 2 was made on 31st December, 1994. The respondent nos. 4 and 5 also pointed out various contradictions in the pleadings filed by the appellant in the First Appeal No. 95 of 2009 and subsequent pleadings in the other suit filed by the appellant herself.

46. The Trial Court after considering the arguments of both sides and after considering the pleadings and various judgments relied upon by both the sides allowed the said Notice of Motion No. 2240 of 2012 and rejected the plaint under Order VII Rule 11(d) of Code of Civil Procedure, 1908 on the ground of limitation. The Trial Court had rendered a finding that the appellant was fully aware about *ad-interim* order passed by the City Civil Court that the alleged rights of the appellant to the suit flat had been denied by the respondents. The said suit was also decreed by the City Civil Court

in favour of the respondent nos. 1 and 2 in the year 2008.

47. A perusal of the averments in the plaint thus clearly indicates that the appellant was fully aware of the execution of Deed of Apartment dated 9th June, 1995 which was duly registered. The appellant herself has admitted before the Trial Court that she become aware of the said registered documents in the year 1996. The suit is admittedly filed by the plaintiff on 31st March, 2011. The appellant had prayed for a declaration of her alleged rights in the suit flat and has applied for partition. Article 58 of the Schedule I to the Limitation Act, 1963 provides for 3 years period of limitation to obtain any other declaration from the date when the rights to sue first accrues.

48. The appellant was fully aware of the suit filed by the original respondent nos. 1 and 2 in the year 2000 seeking declaration to the effect that the appellant had no right to reside in the suit flat and for mandatory injunction to remove her from the suit flat and also perpetual injunction from residing in the suit flat. The appellant had also filed a detailed written statement in the said suit as far back as in the month of June 2002. In the said written statement, it was the case of the appellant that the appellant was claiming to be a co-tenant in respect of the said premises and had been residing in the suit flat in her own right. In paragraph 11 of the said written statement, it was contended by the appellant that the respondent nos. 1 and 2

in the said suit filed by them had alleged the strained relations between the respondent nos. 1 and 2 and the appellant since 1996.

49. It is thus clear that the alleged right, title or interest of the appellant if any in the suit flat was clearly denied by the respondent nos. 1 and 2 in the said Short Cause Suit No. 6487 of 2000 in which the appellant had filed a detailed written statement in the year 2002. In my view, the right to sue and seek a prayer for declaration under Article 58 thus had accrued when the copy of the plaint in the said suit filed by the respondent nos. 1 and 2 was served upon the appellant i.e. in the year 2000 itself. Even otherwise, the appellant had asserted her alleged rights in the said suit in the year 2002 but did not file any counter-claim in the said suit and chose to file a separate suit in the year 2011 for declaration and for other reliefs. In my view, the suit for declaration and for other consequential reliefs including relief for partition of the alleged share of the appellant in the suit flat was *ex-facie* barred by law of limitation on the date of filing of the said suit. The right to sue for a declaration arose on the date of the knowledge of the appellant about the denial of alleged rights, title or interest of the appellant in the suit flat i.e. prior to 2000 or atleast from the date of service of the papers and proceedings in the said suit in the year 2000. The Trial Court has thus rightly allowed the Notice of Motion filed by the respondent nos. 4 and 5 under Order VII Rule 11(b) of the Code of Civil Procedure, 1908 and has rightly rejected the plaint filed by the appellant.

50. This Court in case of **Santoshkumar Swamidas Agrawal (now deceased) and anr.** (supra) has held that suit filed after three years from the date of execution of Memorandum of Understanding was barred by law of limitation. In this case also it was the specific case of the appellant that it was the mutual understanding of the respondents with the appellant that though the suit flat was being transferred in favour of the respondent nos. 1 and 2 i.e. the parents of the appellant and other respondents, the appellant was also entitled to share in the said flat but had also specifically pleaded that the appellant had also paid her contribution in the sum of Rs.19,000/- to the respondent no.2 for buying suit flat. If it was the case of the appellant that inspite of such alleged mutual understanding between the parties and the appellant allegedly contributing Rs.19,000/- for transfer of the tenancy rights into ownership rights under the said Deed of Apartment, the appellant was not given her due share, the cause of action had already accrued much prior to the date of three years before the date of filing the suit. The suit was thus *ex-facie* barred by law of limitation. The principles of law laid down by this Court in the case of **Santoshkumar Swamidas Agrawal (now deceased) and anr.** (supra) would apply to the facts of this case. I am respectfully bound by the said judgment.

51. It is not in dispute that both the parties filed various criminal complaints against each other even prior to the year 2000. The relations

between the parties were not cordial even prior to the year 2000. The dispute between the parties in respect of the suit flat thus had arisen even prior to the year 2000. The cause of action once having commenced, limitation commenced for filing a suit for declaration. Such limitation would not stop unless there was an acknowledgment of alleged rights in favour of the appellant by the respondents. The appellant had failed to prove any such acknowledgment of the alleged rights of the appellant in the said suit by any of the respondents at any point of time.

52. Supreme Court in case of ***Khatri Hotels Private Limited and Another*** (supra) has dealt with Article 58 of the Schedule I to the Limitation Act, 1963 and has dealt with a similar facts where rights of the plaintiff were denied in another suit by the defendant. The Supreme Court accordingly held that under Article 58 of the Schedule I to the Limitation Act the prayer for the declaration should have been made within the period of limitation which is within three years from the date when right to sue commenced. It is held that the suit which was filed not within the period of limitation of three years from the date when the other side had filed its written statement in another suit disputing the rights of the plaintiff, suit filed after expiry of three years was beyond the period of limitation. The principles of law laid down by the Supreme Court in the said judgment in case of ***Khatri Hotels Private Limited and Another*** (supra) clearly applies to the facts of this case. I am respectfully bound by the said judgment.

53. Supreme Court in case of **Suresh Kumar through GPA** (supra) also dealt with the issue of limitation in a suit filed for specific performance which is to be filed within three years from the date specified in the said section and held that the suit having been file almost after 12 years from the date of agreement and that too for a declaration and mandatory injunction but not for specific performance was barred by law of limitation. The principles laid down by the Supreme Court in the said judgment would assist the case of the respondents.

54. In my view, the Trial Court has rightly held that even according to the appellant the alleged consideration was paid by the appellant to the respondent no.2 on 28th March, 1995 in the sum of Rs.18,000/- from 8th June, 1995 in the sum of Rs.1,000/- whereas the Deed of Apartment was already executed in favour of the respondent nos. 1 and 2 on 9th June, 1995. The respondent nos. 1 and 2 had already made payment and the consideration amount to the then landlord in the year 1994 itself. The appellant herself has admitted the sale of shares of the respondent no.2 in favour of the appellant and had executed share transfer form in respect of those shares. The suit filed by the respondent nos. 1 and 2 *inter-alia* praying for a permanent and/or interim injunction against the appellant and for removing herself from entering upon the suit flat and/or claiming any right to the suit flat was already decreed by the Trial Court in the year 2008 itself. In my view, the

date of passing a decree in the suit filed by the respondent nos. 1 and 2 in the month of December, 2008 will not give any fresh cause of action in favour of the appellant for filing a suit for declaration in the year 2011. The alleged rights of the appellant were already disputed by the respondent nos. 1 and 2 much prior to the year 2000 and in any event by filing a suit for various reliefs in respect of the suit flat in the year 2000.

55. Learned counsel for the appellant did not dispute that though the appellant had claimed to be a co-tenant with the other members of family in respect of the suit premises, the appellant did not file any suit for seeking declaration of the alleged tenancy rights in the suit premises till date. The appellant also could not prove before the trial Court that she had contributed any amount towards consideration or otherwise for conversion of tenancy rights in the suit premises into ownership rights in favour of the original respondent nos.1 and 2 before the trial Court. In my view, there is no merit in the submission of the learned counsel for the appellant that cause of action for filing the said civil suit by the appellant arose when the suit filed by the parents came to be decreed on 6th December 2008 in Civil Suit No.3691 of 2011. In my view the learned trial Judge rightly rejected the plaint on the ground of limitation in the notice of motion filed by the respondent nos.4 and 5 under Order VII Rule 11(d) of the Code of Civil Procedure, 1908.

56. In so far as judgment of the Supreme Court in the case of **C.Natrarajan Vs. Ashim Bal and Anr (supra)** relied upon by the learned counsel for the appellant is concerned, a perusal of the said judgment indicates that the defendant in the suit had not contended that the suit was barred by limitation under Article 58 of the Limitation Act, 1963. In this case, the respondent nos.4 and 5 had specifically raised a plea of limitation on that ground. The prayer for declaration sought by the appellant was the substantive and primary relief whereas the possession sought in the said suit by the appellant was consequential to the relief of declaration. The period of 12 years thus sought to be relied upon by the appellant was not at all attracted to the facts of this case. In my view, the trial Court has not committed any error in rejecting the plea on the ground of limitation. Appeal is totally devoid of merit and thus deserves to be dismissed.

57. In so far as the judgment of the Supreme Court in the case of **Ghewarchand and Ors. Vs. Mahendra Singh & Ors. (supra)** relied upon by the learned counsel for the appellant in support of the submission that Article 65 of the Schedule to the Limitation Act, 1963 would be attracted and not Article 58 is concerned, reliance placed by the learned counsel for the appellant on the said judgment is totally misplaced. In this case, substantive prayer for seeking declaration of the alleged rights in the suit property which was followed by consequential prayer was lost by the

appellant in view of the interim order passed by the trial Court against the respondent nos.1 and 2. The judgment of the Supreme Court in the case of ***Ghewarchand and Ors. Vs. Mahendra Singh & Ors. (supra)*** is thus clearly distinguishable in the facts of this case and would not assist the case of the appellant. In my view, learned trial Judge has rightly applied Article 58 of the Schedule to the Limitation Act, 1963.

Reasons and Conclusions in First Appeal No.95 of 2009

58. The appellant had impugned the judgment dated 6th December 2008 in S.C. Suit No.6487 of 2000 filed by the original respondent nos.1 and 2 *inter-alia* praying for declaration that the appellant had no right to reside in the suit flat and for mandatory injunction for removing defendant from the suit flat and also from restraining defendant from residing in the suit flat and for other reliefs. The trial Court passed a decree in terms of prayer clause (a) of the plaint thereby declaring that the appellant is not entitled to use the said suit flat and directed the defendant to remove herself with all her bag and baggages from the suit flat. It is not in dispute that during the pendency of the said suit, the respondent nos.1 and 2 filed notice of motion *inter-alia* praying for injunction against the appellant. The trial Court had passed an interim order restraining the appellant from entering in the suit flat. Appeal filed against the said order came to be dismissed. Since the date of the said order, the appellant did not enter upon the said suit flat.

59. The suit was resisted by the appellant by filing written statement. In the written statement, the appellant had raised an issue of alleged tenancy in the suit flat. The appellant had also raised an issue of jurisdiction contending that the only Small Cause Court would have jurisdiction to entertain and try the said suit in view of Section 28 of the Bombay Rent Act. It was also urged by the appellant that the said suit was filed as a counter blast to the proceedings initiated by the appellants in the Court of Metropolitan Magistrate, Mumbai bearing Case No.40/S/2000 wherein the learned Magistrate had directed issuance of summons upon the respondent no.2 and Mr.Nitin Doshi, one of the brothers of the appellant. Trial Court framed five issues for adjudication. The appellant admitted before the trial Court that after the death of grand father of the appellant, who was the father of the respondent no.1 and few others, the tenancy was already transferred in the name of the respondent no.1. On the date of transfer, the appellant was not residing with her husband though married and had returned back to the matrimonial home and was residing there since 1995. Grand father died on 6th February, 1989.

60. The transfer of tenancy in the name of the respondent no.1 was never challenged by the appellant or by other legal heirs of the respondent nos.1 and 2. The appellant also admitted in the cross-examination that she never tried to get rent receipt transferred in her name even after she came to know that it was transferred in the name of the respondent nos.1 and 2. She

also admitted that in respect of the suit flat, the rent was paid by the respondent nos.1 and 2 and nobody else. Trial Court accordingly rendered a finding that relation of landlord and tenant between the respondent nos.1 and 2 and their landlords remained unchallenged and thus could not be reopened in the said suit filed before the City Civil Court.

61. Trial Court accordingly rendered a finding that the respondent nos.1 and 2 (original plaintiffs) had proved that the appellant herein was not entitled to use the said flat. It is rightly held by the trial Court that the appellant had failed to prove that she had contributed any amount when the said suit flat was purchased in the name of the respondent nos.1 and 2. The appellant also failed to prove that City Civil Court did not have jurisdiction to entertain and try the said suit. It is rightly held by the trial Court that the respondent nos.1 and 2 are entitled for declaration as prayed and that they are entitled for mandatory injunction to remove herself with her parents.

62. The respondent no.2 had entered the witness box in the said suit. She deposed that in the name of her father-in-law suit flat was acquired on tenancy basis in the year 1941 who had expired on 6th February 1989 whilst residing in the suit flat and whilst tenancy rights were subsisting. Rent receipt was issued in favour of her father-in-law. After the death of father-in-law, the respondent no.1 being the only heir and legal

representative, the landlord accepted the same and after being satisfied, transferred the rent receipt in the name of her husband and herself. She deposed that at the time of death of her father-in-law, members residing with her father-in-law were she herself, her husband and her children. The respondent no.2 was cross-examined by the appellant's advocate. The deposition of the respondent no.2 in the cross-examination was not shattered in the cross-examination by the appellant's advocate.

63. The appellant herself entered the witness box. In her cross-examination, she deposed that she was not assessed to income tax. She was not earning any amount on the date of recording the evidence. She was also trading in shares. In her cross-examination, she admitted that she did not remember whether she had sold shares of ACC Company to her parents. She did not remember whether she had paid any amount to her parents as sale proceeds of their shares. She admitted that the respondent nos.1 and 2 had paid rent in respect of suit premises after the death of her grandfather. She had never tried to get the rent receipt transferred in the name of her parents.

64. In her cross-examination, she deposed that she did not know if the suit premises was converted into ownership from the tenanted premises in 1995. She deposed that she did not know that the suit premises was converted into ownership. She did not raise any objection for conversion

of the premises in the name of the respondent no.1 after coming to know that the premises was transferred into ownership in 1996. She deposed that she did not know what consideration was paid for the conversion. She admitted that the suit building was presently being managed by a Co-operative Housing Society formed by the flat owners residing in the suit building. She deposed that it was possible that society might have issued share certificates in the name of the respondent nos.1 and 2.

65. In paragraph 10 of the cross-examination, she deposed that she was not aware that her parents only are paying maintenance charges for the suit flat. She admitted that she did not possess any writing executed between the respondent nos.1 and 2 stating therein that she had some share in the suit premises. She admitted that she did not have any documentary evidence to show that the amount of Rs.30,000/- paid by her was her share in the contribution for transfer of tenancy into ownership in respect of the suit flat. The appellant admitted that she left her husband's place permanently on 11th January 1983. Since then she was residing at the place of her parents. She obtained divorce in September, 1995.

66. A perusal of the evidence led by the parties clearly indicates that the appellant failed to prove any alleged rights in the suit flat. Trial Court was thus justified in passing an order of eviction against the appellant for various other reliefs as prayed and grant the respondent nos.1 and 2 in the

plaint. Even otherwise the trial Court could not have granted any relief in favour of the appellant in respect of the suit flat in the absence of any counter claim in the said suit filed by the appellant. The appellant admittedly did not file any separate proceedings for asserting her alleged rights in the suit flat though filed several other proceedings against the respondents. In my view, there is no merit in the submission of the learned counsel for the appellant that the suit could be filed only before the Small Causes Court under Section 41A of the Small Causes Act. It was not the case of the respondent nos.1 and 2 that the appellant was a tenant in respect of the suit premises and her tenancy rights had come to an end. Even as a family member, the appellant could not have claimed any tenancy rights in the suit flat along with tenants i.e. the respondent nos.1 and 2. There is no merit in the submission of the learned counsel for the appellant that the trial Court had ignored any crucial part of the evidence as canvassed in the impugned judgment and order.

67. In so far as the judgment delivered by Full Bench of this Court in the case of ***Prabhudas Damodar Kotecha and Anr. (supra)*** strongly relied upon by the learned counsel for the appellant is concerned, it is held by the Full Bench of this Court that a suit filed by a licensor against a gratuitous licensee is tenable before the Presidency Small Cause Courts Act, 1882. It was not the case of the appellant that she was a gratuitous licensee of the respondent nos. 1 and 2 in the suit flat. She claimed co-tenancy in

respect of the suit flat along with the respondent nos.1 and 2 and other family members. The said judgment of the Full Bench of this Court in the case of ***Prabhudas Damodar Kotecha and Anr. (supra)*** is clearly distinguishable in the facts of this case and would not assist the case of the appellant.

68. This Court in the case of ***Vasant Sadashiv Joshi and Ors. (supra)*** relied upon by the learned counsel for the respondent nos.4 & 5 has held that on plain reading of Section 5(11)(c)(i) of the Bombay Rent Act, it is difficult to accept the contention of the defendant no.2 that the said provision recognizes that every member of the joint family or the joint family itself becomes a tenant for the purpose of the Bombay Rent Act. It is held that introductory words of Section 5(11) defining tenant are crystal clear that when it describes a “tenant” to mean “any person” by whom or whose account, rent is payable and would include as defined in sub-clause (c) of sub-section 5(11) any member of the tenants family residing with the tenant at the time of his death, sub-clause (c) is required to be read in conjunction with the preceding relevant sub-clauses namely sub clauses (aa), (b) which also uses a similar phrase ‘any person.’ This Court has held that a tenant necessary has to be any person as recognized by section 5(11) and not otherwise and certainly not a joint family as a unit. The legislature has avoided to include any such incident to include a joint family to be a tenant within the meaning of Section 5(11).

69. In paragraph 33 of the said judgment, this Court has held that to interpret the phrase 'any person' as used in section 5(11) of the Act to include any member of the joint family as asserted by the defendant no.2 would lead to an absurdity. In this case, the appellant had asserted that she was a co-tenant along with other members of the family and later on, asserted that she had also paid contribution towards consideration paid for conversion of tenancy in the name of the respondent nos.1 and 2 into ownership. The appellant however, failed to prove the case of the alleged co-tenancy as well as the alleged payment of consideration for conversion of tenancy into ownership in the name of the respondent nos.1 and 2.

70. In my view, even if the appellant's case is accepted that she was staying with grandfather who was the original tenant at the time of his death, the fact remains that the tenancy in the name of grandfather was subsequently transferred in the name of the respondent nos.1 and 2 which fact was never challenged by the appellant nor the appellant challenged the conversion of tenancy rights in the suit flat into ownership in the name of the respondent nos.1 and 2 at any point of time. Principles laid down by this Court in the case of **Vasant Sadashiv Joshi and Ors. (supra)** would thus apply to the facts of this case. I am thus respectfully bound by the said judgment.

71. In my view, learned trial Court has considered the pleadings, oral and documentary evidence led by both the parties and have rendered various findings of the facts which are not perverse. I do not find any infirmity in the judgment and order passed by the learned trial Judge. Appeal is totally devoid of merit.

72. I therefore pass the following order :-

- (i) First Appeal Nos.95 of 2009 and 820 of 2013 are dismissed.
- (ii) In view of dismissal of the first appeals, pending civil applications, if any, do not survive and also stand disposed of.
- (iii) There shall be no order as to costs.

(R.D. DHANUKA, J.)