

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8390 OF 2024

Clestino Raymond Saldanha

...Petitioner

V/s

1. Chinamma Francis Kurian
2. Vishal Hariprakash Gupta
3. Vandana Vishal Gupta
4. Rajan Meupully Thazuttha
Kochugondan

...Respondents

WITH

WRIT PETITION NO.8396 OF 2024

Clerabelle Cynthia Saldanha

...Petitioner

V/s

Chinamma Francis Kurian

...Respondent

Dr. Abhinav Chandrachud with Mr. Arjun Savant, Mr. Soura Ghosh and Mr. Anirban Sen i/b. M/s. Indus Law for Petitioner.

Mr. Mandar Soman with Mr. Vachan Bodake and Mr. Vaibhav Gaikwad i/b. M/s. V & M Legal for Respondent No.1.

CORAM : SANDEEP V. MARNE, J.

Dated : 18 June 2024.

JUDGMENT :

1) These petitions are filed challenging orders dated 27 October 2021 passed by Small Causes Court at Mumbai, allowing applications taken out by Respondent No.1 for bringing her name on record as legal representative of

the original Plaintiff. Petitioner is original Defendant No.3 in R.A.E. Suit No.156/363 of 2008 and the sole Defendant in R.A.E. & R. Suit No. 334/705 of 1999.

2) The Petitioner is aggrieved by the impugned orders dated 27 October 2021 to the limited extent where only Respondent No.1 has brought herself on record as legal heir of the deceased Plaintiff, when in fact in accordance with the *pursis* filed by the Advocate of the Plaintiff, there are 7 other legal heirs of the deceased Plaintiff. Petitioner insists that the Respondent No.1 cannot alone prosecute the suit in absence of the other 7 legal heirs of the deceased Plaintiff and to this limited extent, orders dated 27 October 2021 allowing the applications filed by Respondent No.1 for bringing her on record as legal representative of deceased Plaintiff are challenged. The impugned orders of Small Causes Court have been unsuccessfully tested by the Petitioner by filing revision applications before the Appellate Bench of the Small Causes Court. However, revision applications filed by Petitioner have been rejected by impugned orders dated 6 November 2023. Accordingly, Petitioner has filed the present petition challenging the orders of the Trial Court dated 27 October 2021 and of its Appellate Bench dated 6 November 2023.

3) Briefly stated, facts of the case are that Ms. Mary Kutty Emmanuel was the original Plaintiff in R.A.E. & R. Suit No.334/705 of 1999 filed against Petitioner seeking recovery of possession of the suit premises admeasuring 800 sq.ft. on the ground floor of the building Lilly Villa at Bandra, Mumbai. Mary Kutti Emmanuel has instituted another suit bearing R.A.E. Suit No.

156/363 of 2008 against four Defendants (including Petitioner as Defendant No.3) for recovery of possession of suit premises admeasuring 676 sq.ft. carpet area on the first floor of the building Lilly Villa at Bandra, Mumbai. During pendency of both the Suits, Mary Kutty passed away on 26 May 2019. Her Advocate filed *pursis* on 6 January 2020 indicating details of 8 persons as her legal heirs. The said particulars indicated in the *pursis* are as under: -

SL	Name of Person	Gender	Relationship	Age	Occupation	Address
1	Chinamma Kurian	Female	Sister	83	Housewife	D/o. Late M.M. Mani and W/o. Late Kurian Francis, Sujatha Bhavan, Thttumughom P.O. Aluva 683105, Keezhmad Village, Aluva Taluk
2	M.M. Joseph	Male	Brother	81	Retired Naval Officer	S/o. Late M.M. Mani Kannamprayil House, Kozha P.O.Pin 686633, Kuravilangad Village, Meenachil Taluk
3	M.M. Varkey	Male	Brother	76	Agriculture	S/o. Late M.M. Mani Kannamprayil House, Kozha P.O.Pin 686633, Kuravilangad Village, Meenachil Taluk
4	Mary	Female	Deceased brother's wife	90	Retired teacher	W/o. Late M.M. Mathai Muthukulathel House, Kozha P.O.Pin 686633, Kuravilangad Village, Meenachil Taluk
5	Mary Rajan Nediyaedathu	Female	Deceased brother's daughter	65	Retired teacher	D/o. Late M.M. Mathai and w/o.Nediyaedathu J Rajan, Nediyaedathu-Puse, Nedumkunnam, P.O. Nedumkunnam Village, Changanassery Taluk
6	James Mathew	Male	Deceased brother's son	61	Agriculture	S/o. Late M.M. Mathai Muthukulathel House, Kozha P.O.Pin 686633, Kuravilangad Village, Meenachil Taluk
7	Jessy Sunilkumar	Female	Deceased brother's daughter	57	House wife	D/o. Late M.M. Mathai and W/o. G. Sunil Kumar, TC/17/1767, Pichivila, Puthenveedu Pura 128, Poojapura P.O. Pin 695012, Thirumala Village, Tiruvanathapuram Taluk
8	Beena Gomes	Female	Deceased	52	Housewife	D/o. Late M.M. Mathai and

			brother's daughter			W/o. Jijo Gomez, Puthuparampil House, Perunad, P.O. Pin 689711, Perunad Village, Ranny Taluk
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4) Respondent No.1 filed application through her constituted attorney Mr. Akbar Khan Hamid Khan Indrapurwalla for bringing Respondent No.1 as legal representative of the deceased Plaintiff. The application was resisted by Petitioner by filing reply *inter alia* stating that all legal heirs of deceased Plaintiff were not proposed to be brought on record. Rejecting the objection raised by Petitioner, the Small Causes Court proceeded to pass order dated 27 October 2021 allowing applications of Respondent No.1 by bringing her on record as legal representative of the deceased Plaintiff.

5) Petitioner filed Revision Applications before the Appellate Bench of the Small Causes Court challenging the orders dated 27 October 2021. However, the Appellate Bench has proceeded to dismiss both the Revision Applications by orders dated 6 November 2021. Petitioner has accordingly filed the present petitions challenging the decisions of the Small Causes Court and its Appellate Bench.

6) Appearing for Petitioner Dr. Chandrachud, the learned counsel would submit that details of all the 8 persons being legal heirs of deceased Plaintiff were placed on record by Advocate for Plaintiff by *pursis* dated 6 January 2020 whereas applications came to be filed solely by Respondent No.1 without offering any explanation as to why the names of other 7 persons are excluded from being brought on record as legal heirs. That the application does not contain any averments as to whether Respondent No.1

attempted to contact the other 7 heirs or that they expressed inability or unwillingness to be brought on record as legal representatives of the deceased Plaintiffs. That therefore it was incumbent that all the 8 legal heirs are brought on record rather than Respondent No.1 selectively coming on record to represent the estate of the deceased Plaintiff. He would submit that the Appellate Bench has committed a glaring error in holding that the Suit would abate against the other 7 legal heirs and that the order to that effect can be passed by the Trial Court. He would submit that the position in law is that once a legal heir of deceased party to a suit is brought on record, such legal heir would represent the estate of the deceased and the decision in the suit would bind not just the legal heir but the entire estate including those who are not brought on record. In support of his contention, he would place reliance on judgment of the Supreme Court in ***Daya Ram and Others vs. Shyam Sundari and Others***¹. He would further submit that the Apex Court has further held in ***Daya Ram*** that once the names of all legal heirs are brought to the notice of the Court, it is the duty to bring on record all legal representatives of the deceased Plaintiffs. Relying on the judgment of the Supreme Court in ***Dolai Maliko (Dead) represented by his legal representatives and Ors. Vs. Krushna Chandra Patnaik and Ors.***² Dr. Chandrachud would indicate that it is only in rare case, where name of a particular legal representative is left out because of oversight or because of some doubt, that an exception can be made. That in the present case there is neither any oversight nor any doubt in the mind of Respondent No.1, who has deliberately omitted to bring on record names of other 7 heirs of the deceased Plaintiff despite full knowledge of their details.

1. 1964 SCC Online SC 153

2. AIR 1967 SC 49

7) Relying on the judgment of ***Vijay A. Mittal and Others vs. Kulwant Rai (dead) through legal representatives and Anr.***³ Dr. Chandrachud would contend that this is not a case where majority of legal representatives are brought on record, since only 1 out of the 8 heirs of the deceased Plaintiff is brought on record to the deliberate exclusion of the others. So far as the findings recorded by the Trial Court and its Appellate Bench about permissibility to maintain Rent Act Suit by one of the co-owners, Dr. Chandrachud would contend that this is not a case where the suit is originally brought by one out of the 8 original co-owners. This is a case of deliberate failure to bring on record 7 known legal heirs of deceased Plaintiff and that therefore the principle of maintainability of the Suit by one co-owner cannot be invoked in the present case. He would pray for setting aside the order passed by the Trial Court and its Appellate Bench.

8) Mr. Soman, the learned counsel appearing for the Respondent would oppose the petition submitting that it is a settled position of law that the Rent Act Suit can be maintained by one of several co-owners. In support of his contention Mr. Soman would rely upon following judgments:-

(i) ***India Umbrella Manufacturing Co. and Ors. Vs. Bhagabandei Agarwalla (dead) by LRs Savitri Agarwalla (Smt.) and Ors.***⁴

(ii) ***Boorugu Mahadev and Sons and Anr. Vs. Sirigiri Narsing Rao and Ors.***⁵

(iii) ***Baburao Ganpatrao Shirole since deceased through his L.Rs. Shrirang Dhairyasheel Shirole and ORs. Vs. Deccan Education Society, Pune and Ors.***⁶

3. (2019) 3 SCC 520

4. (2004) 3 SCC 178

5. (2016) 3 SCC 343.

6. 2013(1) MhL.J.

9) Mr. Soman would submit that Courts have repeatedly recognized marked differences between Rent Act Suit and Suit for title so far as the maintainability of Rent Act Suit by one co-owner is concerned. That since the present suits are filed for recovery of possession from Defendants under the Rent Act, the Suit can very well be continued by one legal heir, even if it is assumed that there are more legal heirs of deceased Plaintiff. That the Petitioner has not made out any case of fraud or collusion on the part of the Respondent No.1 and that therefore the Small Causes Court has not committed any error in allowing the application filed by Respondent No.1 that Petitioner cannot insist that the suit must be continued by persons of her choice. That so long as status of Respondent No.1 as legal heir of deceased Plaintiff is not disputed, the Petitioner cannot insist that other legal heirs must also continue the Suit filed by the deceased Plaintiff. He would pray for dismissal of the petitions.

10) Rival contentions of the parties now fall for my determination.

11) The two Suits have been originally filed by Ms Mary Kutti seeking recovery of possession of the suit premises described therein from the Defendants. Petitioner herein is the sole Defendant in R.A.E. & R. Suit No.334/705 of 1999 whereas she is impleaded as third Defendant in R.A.E. Suit No.156/363 of 2008. It appears that during original Plaintiff's lifetime, the suit was being prosecuted by the constituted attorney. After her death a *pursis* came to be filed on 6 January 2020 by the Advocate of the original Plaintiff informing the Court about death of the original plaintiff and stating out names of 8 legal heirs as detailed therein. Why this step was taken by the

Advocate of original Plaintiff is incomprehensible as the authority of the said Advocate to represent the original Plaintiff had come to an end with her death. This was not the case where Defendants in the Suit has passed away and names of legal heirs were to be communicated to the Plaintiff's Advocate for taking necessary steps. It was not the responsibility of the Defendants in both the suits to take any steps for setting aside abatement of the Suit and for bringing on record legal heirs of the deceased Plaintiff. In that view of the matter, it was not at all necessary for the Advocate for the Plaintiff to file *pursis* indicating the names of legal heirs of the deceased Plaintiff on 6 January 2020. Be that as it may, the Advocate for the original Plaintiff did indicate names of 8 persons as legal heirs of the original Plaintiff by way of the said *pursis*.

12) In the present case, Plaintiff has passed away and it was for her legal heirs to take voluntary steps for their impleadment to the suit as legal representatives of the original plaintiff. Such a voluntary step came to be taken only by Respondent No.1, who happens to be one of the legal heirs indicating in the list of 8 persons communicated by Plaintiff's Advocate. It appears that other 7 persons failed to take any voluntary steps to bring themselves on record as legal representatives of the deceased Plaintiff. The issue here is whether Respondent No.1, who volunteered herself to be brought on record for carriage of the Suit, is under any legal obligation to run behind other 7 legal heirs and to ask for their willingness to join the application for impleadment as legal heirs? The answer, to my mind, appears to be in the negative. On the contrary, if any person than the one who files application for impleadment as legal heirs, claims any entitlement to the

estate of the deceased Plaintiff, it is for that person to file an appropriate application before the Court seeking his /her impleadment as legal heirs of the deceased Plaintiff. Since such non-impleaded person has independent right to file and maintain an application for being impleaded as legal representative of the deceased Plaintiff, the obligation would obviously not with the other legal heir, who volunteers to file his /her own application for impleadment. In my view therefore, when Plaintiff passes away and if any particular legal heir is omitted from being brought on record by the other legal heirs, carriage of suit by some of the heirs would not be rendered bad as the excluded legal heir can always file independent application to be brought on record as legal heir of the deceased Plaintiff.

13) Dr. Chandrachud's reliance on judgment of the Apex Court in ***Daya Ram*** (supra) does not assist the case of the Petitioner. In paragraphs 11, 12 and 13 of the judgment, the Apex Court has held as under:-

11. The case before us is entirely different. There was a decree in favour of Shyam Sundari and that is the subject-matter of this appeal. The question is whether there has been abatement of the appeal against Shyam Sundari. Shyam Sundari's heirs have been brought on record within the time allowed by law and the only question is whether the fact that two of the legal representatives of Shyam Sundari have been omitted to be brought on record would render the appeal incompetent. This turns on the proper interpretation of Order 22, Rule 4 of the Civil Procedure Code :

"4. (1) Where..... a sole defendant or sole surviving defendant dies and the right to sue-survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

4. (3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant."

When this provision speaks of "legal representatives" is it the intention of the legislature that unless each and every one of the legal representatives of the

deceased defendants, where these are several, is brought on record there is no proper constitution of the suit or appeal, with the result that the suit or appeal would abate? The almost universal consensus of opinion of all the High Courts is that where a plaintiff or an appellant after diligent and bona fide enquiry ascertains who the legal representatives of a deceased defendant or respondent are and brings them on record within the time limited by law, there is no abatement of the suit or appeal, **that the impleaded legal representatives sufficiently represent the estate of the deceased** and that a decision obtained with them on record will bind not merely those impleaded but the entire estate including those not brought on record. The principle of this rule of law was thus explained in an early decision of the Madras High Court in Kadir v. Muthukrishna Ayyar ILR 26 Mad.230. The facts of that case were that when the defendant died the first defendant before the Court was impleaded as his legal representative. The impleaded person raised no objection that he was not the sole legal representative of the deceased defendant and that there were others who had also to be joined. In these circumstances, the Court observed:

"In our opinion a person whom the plaintiff alleges to be the legal representative of the deceased defendant and whose name the Court enters on the record in the place of such defendant sufficiently represents the estate of the deceased for the purposes of the suit and in the absence of any fraud or collusion the decree passed in such suit will bind such estate If this were not the law, it would, in no few cases, be practically impossible to secure a complete representation of a party dying pending a suit and it would be specially so in the case of a Muhammadan party and there can be no hardship in a provision of law by which a party dying during the pendency of a suit, is fully represented for the purpose of the suit, but only for that purpose, by a person whose name is entered on the record in place of the deceased party under sections 365, 367 and 368 of the Civil Procedure Code, though such person may be only one of several legal representative's or may not be the true legal representative."

12. This, in our opinion, correctly represents the law. It is unnecessary, here, to consider the question whether the same principle would apply when the person added is not the true legal representative at all. **In a case where the person brought on record is a legal representative we consider that it would be consonant with justice and principle that in the absence of fraud or collusion the bringing on record of such a legal representative is sufficient to prevent the suit or the appeal from abating.** We have not been referred to any principle of construction of Order 22, Rule 4 or of the law which would militate against this view. This view of the law was approved and followed by Sulaiman, Acting C.J. in Muhammad Zafaryab Khan v. Abdul Razzaq Khan, ILR 50 Allahabad 857. A similar view of the law has been taken in Bombay -see Jehrabi Sadullakhan Mokasi v. Bismillahi Sadruddin Kaji, AIR 1924 BOM 420- as also in Patna -See Lilo Sonar v. Jhagru Sahu, ILR 3 Patna 853 and Shib Dutta Singh v. Sheikh Karim Bakhas, ILR 4 Patna 320, as well as in Nagpur-Abdul Baki v. R.B.

Bansilal Abirchand firm, Nagpur, ILR 1944 Nagpur 577. The Lahore High Court has also accepted the same view of the law-see Umrao Begum v. Rehmat Ilahi. We are therefore, clearly of the opinion that the appeal has not abated.

13. The next question is about the effect of the appellant having omitted to include two of the heirs of Shyam Sundari, a son and a daughter who admittedly had an interest in the property, and the effect of this matter being brought to the notice of the Court before the hearing of the appeal. The decisions to which we have referred as well as certain others have laid down, and we consider this also, correct, that though the appeal has not abated, when once it is brought to the notice of the Court hearing the appeal that some of the legal representatives of the deceased respondent have not been brought on record, and the appellant is thus made aware of this default on his part, it would be his duty to bring these others on record, so that the appeal could be properly constituted. In other words, if the appellant should succeed in the appeal it would be necessary for him to bring on record these other representatives whom he has omitted to implead originally. The result of this would be that the appeal would have to be adjourned for the purpose of making the record complete by impleading these two legal representatives whom the appellant had omitted to bring on record in the first instance. This is the course which we would have followed but we had regard to the fact that the suit out of which this appeal arises was commenced in 1939 and was still pending quarter of a century later and having regard to this feature we considered that unless we were satisfied that the appellant had a case on the merits on which he could succeed, it would not be necessary to adjourn the hearing for the purpose of formally bringing on record the omitted legal representatives. We therefore proceeded to hear the appeal and as we were satisfied that it should fail on the merits we did not think it necessary to make the record complete.”

(emphasis and underlining supplied)

14) Observations made by the Apex Court in **Daya Ram** (supra) essentially apply to a situation where the Respondent in the appeal, who was a successful decree holder, had passed away and Appellant omitted to bring on record two of the legal representatives. It is in the light of this factual position that the Apex Court has held that failure to bring on record two heirs of the deceased Respondent despite knowledge of their names and details was fatal as it was the duty of the Appellant to bring on record names of all legal representatives of the deceased Respondent in the appeal. This

duty, in my view, cannot be extended to a case where Plaintiff passes away as there is no duty on the Respondents to take any steps in such a case and it is for the legal heirs of the Plaintiffs to bring themselves on record as Plaintiff's legal representatives. Such a duty can also not be cast on one or more legal representatives, who volunteer to file an application for setting aside abatement for impleadment of each of the legal heir. Dr. Chandrachud is however, right in submitting that the Appellate Court has recorded an erroneous finding that the suit would abate *qua* other 7 legal heirs. As held by the Apex Court in ***Daya Ram*** (supra), the decision in the Suit would be binding on the heirs of the deceased party including those who are not brought on record. However, as observed above, the duty to implead each of the legal heirs cannot be fastened in case where Plaintiff passes away and some of the legal representatives decide to file application for setting aside abatement and for their impleadment as legal representatives.

15) Dr. Chandrachud has relied upon judgment of the Apex Court in ***Dolai Maliko*** (supra) in which it is held in paragraph Nos.4 and 11 and under:-

4. It has been contended on behalf of the appellants that the principle of these cases applies to the present case and the fact that three of the heirs were left out would make no difference as the entire estate of Dolai deceased must be held to be represented by the widow and the major son who were brought on the record. It will be noticed that there is one difference between the present case and the two cases on which reliance has been placed on behalf of the appellants. This is not a case where a plaintiff or an appellant applies for bringing the heirs of the deceased defendant or respondent on the record; this is a case where one of the appellants died and his heirs have to be brought on record. In such a case there is no question of any diligent or bonafide enquiry for the deceased appellant's heirs must be known to the heirs who applied for being brought on record. **Even so we are of opinion that unless there is fraud or collusion or there are other circumstances which indicate that there has not**

been a fair or real trial or that against the absent heir there was a special case which was not and could not be tried in the proceeding, there is no reason why the heirs who have applied for being brought on record should not be held to represent the entire estate including the interests of the heirs not brought on the record. This is not to say that where heirs of appellant are to be brought on record all of them should not be brought on record and any of them should be deliberately left out. But if by oversight or on account of some doubt as to who are the heirs, any heir of a deceased appellant is left out that in itself would be no reason for holding that the entire estate of the deceased is not represented unless circumstances like fraud or collusion to which we have referred above exist.

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11. We are of opinion that these cases have been correctly decided and even where the plaintiff or the appellant has died and all his heirs have not been brought on the record because of oversight or because of some doubt as to who are his heirs, the suit or the appeal, as the case may be, does not abate and the heirs brought on the record fully represent the estate unless there are circumstances like fraud or collusion to which we have already referred above.”

(emphasis and underlining supplied)

16) In case before the Apex Court in *Dolai Maliko*, the suit was brought by 11 Plaintiffs including *Dolai* for a declaration of tenancy rights in the lands in dispute. The Suit was dismissed and appeal was filed by original Plaintiffs. During pendency of the appeal, *Dolai* passed away and his widow and major son were brought on record. The Appellate Court allowed the appeal and decreed the Suit. In the Second Appeal pending before the High Court, it was discovered that *Dolai* and three other heirs viz. a minor son, married and unmarried daughters besides the widow and major son. In the light of the above position, the issue before the Apex Court was whether the estate of *Dolai* was sufficiently represented before the Appellate Court by widow and major son. The Apex Court held that in a case where Appellant dies, his heirs must know details of all other heirs. The Apex Court further held that if there is no fraud or collusion, the heirs who applied for bringing them on record can be held to represent the entire estate including the

interest of heirs not brought on record. Dr. Chandrachud would particularly highlight the observations of the Apex Court that all the heirs should be brought on record and that any one of them should not be deliberately left out. He has submitted that it is only in cases where there is oversight or occurrence of doubt that failure to implead some of the legal heirs does not render the decision in proceedings invalid. In my view as rightly contended by Mr. Soman, there is no allegation of fraud or collusion on the part of Respondent No.1 and I do not see any reason why Respondent No.1 cannot represent the estate of the deceased Plaintiff even on behalf of 7 other non-impleaded heirs.

17) Reliance by Dr. Chandrachud in *Vijay Mittal* (supra) does not cut any ice as the Apex Court has held in paragraph 24.4 as under:

Fourth, it is a trite law that if out of all the legal representatives, majority of them are already on record and they contested the case on merits, it is not necessary to bring other legal representatives on record. The reason is that the estate and the interest of the deceased devolved on the legal representatives is sufficiently represented by those who are already on record.

Thus, even if majority of the legal representatives are brought on record, the case can be contested on merits without any necessity of other representatives being brought on record. Though according to Dr. Chandrachud, Respondent No. 1 does not constitute 'majority' as there are other seven heirs, considering the peculiar nature of the suit, which is for recovery of possession from tenant, failure to bring on board other 7 heirs of deceased original Plaintiff would not be fatal.

18) Also, there is marked difference in the present case and nature of suits involved in judgments relied upon by Dr. Chandrachud. The Suit is for recovery of possession from tenants and has been filed under the provisions of Maharashtra Rent Control Act, 1999 before the Court of Small Causes Court. By now it is settled position of law that such a Suit in a Rent Court can always be brought and maintained by one out of seven co-owners. In ***India Umbrella*** (supra) the Apex Court has held in paragraph 6 as under:-

6. Having heard the learned counsel for the parties we are satisfied that the appeals are liable to be dismissed. **It is well settled that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners.** (see *Sri Ram Pasricha v. Jagannath* (1976) 4 SCC 184 para 25) **This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. 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 the present case, the suit was filed by both the co-owners. One of the co-owners cannot withdraw his consent midway the suit so as to prejudice the other co-owner. The suit once filed, the rights of the parties stand crystallised on the date of the suit and the entitlement of the co-owners to seek ejectment must be adjudged by reference to the date of institution of the suit; the only exception being when by virtue of a subsequent event the entitlement of the body of co-owners to eject the tenant comes to an end by act of parties or by operation of law.

(emphasis supplied)

19) In ***Boorugu Mahadev*** (supra), the Apex Court has observed as under:-

18. **It is also now a settled principle of law that the concept of ownership in a landlord-tenant litigation governed by rent control laws has to be distinguished from the one in a title suit.** Indeed, ownership is a relative term, the import whereof depends on the context in which it is used. In rent control legislation, the landlord can be said to be the owner if he is entitled in his own legal right, as distinguished from for and on behalf of someone else to evict the tenant and then to retain control, hold and use the premises for himself. What may suffice and hold good as proof of

ownership in landlord-tenant litigation probably may or may not be enough to successfully sustain a claim for ownership in a title suit (Vide *Sheela v. Firm Prahlad Rai Prem Prakash* (2002) 3 SCC 375.

(emphasis supplied)

20) In *Baburao* (supra) this Court has held as under:

8. ...**Thus the position of law is settled that a co-owner can file a suit for eviction of a tenant.** In the present case, the suit is filed by the successors-in-title of the original owners and, therefore, they are co- owners. It is not the case of defendant No.1 that there is dispute as to entitlement of recovery of possession of the suit property amongst the co-owners and, therefore, if one co-owner is entitled to maintain the suit, it logically follows that the death of one of the co-owners amongst several co-owners will not result in abatement. The Court can continue with rest of the co-owners/plaintiffs especially when the suit is pending adjudication before the trial court and the rights of the parties are not crystallized. The things, however, would be different in case of abatement of the appeal as against abatement of the suit. If during the pendency of appeal, the appeal is abetted against some of the appellants or respondents and the trial courts' decree is joint and indivisible, the same stands confirmed so far as these appellants or respondents are concerned and, therefore, the appeal could not be proceeded with against rest of the respondents as it would, in the event of success, result in conflicting decrees and, therefore entire appeal abates. The abatement of the suit and abatement of the appeal are two different things. **As stated above, if the suit can be continued with rest of the co-owners- plaintiffs, then, certainly it cannot be said that suit is abetted as a whole, in the event of death of some of the co-owners/ plaintiffs.** In these circumstances, I do not find any merit in Writ Petition No.4179 of 2012.

(emphasis supplied)

21) In my view therefore Respondent No.1 is competent to act as an agent of other heirs of the deceased Plaintiff in the carriage of the Suit. The Petitioner cannot insist that all legal heirs must participate in the carriage of the Suit. In the event the suit is decreed, Respondent No. 1 will recover possession of suit premises from Defendants in the suit as agent of all heirs of the original deceased Plaintiff and it will be for the other heirs to stake their claim of share in the suit premises against Respondent No. 1. A tenant

facing suit for eviction cannot contend that the Suit becomes bad for failure to bring all legal heirs of deceased Plaintiff on record. The objection raised by Petitioner to impugned orders of the Small Causes Court and its Appellate Bench is thus wholly untenable.

22) Consequently, I do not find any merits in the petitions. The writ petitions are accordingly dismissed without any orders as to costs.

[SANDEEP V. MARNE, J.]