

Arun Sankpal

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5618 OF 2025**

Pune Kadabakutti Karkhandar Pvt Ltd

..Petitioner

Versus

Ravindra Jagannath Kore

...Respondent

Mr. Sagar Bhirange, for the Petitioner.

CORAM: N. J. JAMADAR, J.

DATED : 18th JUNE 2025

P.C.:

1. This Petition under Article 227 of the Constitution of India assails the legality, propriety and correctness of a judgment and decree passed by learned District Judge, Pune, in RCA No. 1026 of 2016, affirming a decree of eviction passed by the learned Judge, Court of Small Causes, Pune, in Civil Suit No. 36 of 2009, on 30th September 2016.

2. Smt. Shantabai Kore, the mother of the Plaintiff, was the landlord of the suit premises initially demised under a Registered Lease Deed dated 9th December 1968. She passed away on 25th September 2004. The Plaintiff claimed that, he became absolute owner of the suit property by virtue of the Will executed by the original owner, dated 24th

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April 2000. The Plaintiff terminated the tenancy by a Notice dated 31st March 2008, and, eventually, filed Suit for recovery of possession.

3. The Petitioner-Defendant refuted the claim of the Plaintiff that he became absolute owner of suit property. It was contended that there were other legal heirs of Shantabai Kore. Thus, the Suit for eviction at the instance of the Plaintiff-Respondent was not tenable. The termination of lease was assailed on the ground that by executing a Supplementary Agreement of Lease dated 12th November 2001, perpetual lease was granted.

4. The Trial Court did not accede to any of the defences and decreed the Suit, holding that the relationship of lessor and lessee was admitted and the Plaintiff had lawfully terminated the tenancy. Appeal preferred thereagainst also came to be dismissed by the Learned District Judge concurring with the view of the Trial Court.

5. Mr. Bhirange, the leaned Counsel for the Petitioner, would submit that the Trial Court despite recording a categorical finding that the Plaintiff failed to prove the Will, could not have held that the Suit was maintainable by one of the co-owners. The Plaintiff was required to elect. Once the Plaintiff chose to assert absolute ownership, the Plaintiff could not have been permitted to fall back on the theory of co-ownership. Reliance was placed on the decision of the Supreme Court in the case of **National Textile Corporation Ltd Vs Nareshkumar**

Badrikumar Jagad & Ors¹ to draw home the point that it is a settled legal proposition that a decision of a case cannot be based on grounds outside the pleadings of the parties.

6. Mr. Bhirange would further urge that the Courts below also committed a gross error in law in holding that the jural relationship between the parties was admitted as the pleadings in the Written Statement in that regard were qualified. To this end reliance was placed on a Privy Council decision in the case of **Motabhoy Mulla Essabhoy Vs Mulji Haridas**.²

7. It was urged that when landlord's derivative title is challenged, it is incumbent upon the landlord to establish his title. To buttress this submission, reliance was placed on the judgment of the Supreme Court in the case of **Vinay Eknath Lad Vs Chiu Mao Chen**.³

8. It is true the Plaintiff failed to prove the Will in evidence. Nonetheless, the jural relationship between the parties was not put in contest. The submission of Mr. Bhirange that there was no admission in the Written Statement is belied by the contentions in paragraph 6 of the Written Statement. Whilst admitting the relationship of lessor and lessee between Plaintiff and Defendant, the Defendant sought to contend that the relationship was not on account of the Will but for the

1 AIR 2012 SC 264.

2 1915 SCC OnLine PC 10.

3 AIR 2020 SC (Supp) 86.

fact that the Plaintiff and his siblings were the legal heirs of Shantabai Kore.

9. In effect, the jural relationship was categorically admitted. Consequently, once it is conceded that the Plaintiff is one of the co-owners, the competence of the Plaintiff to institute a Suit for eviction of the tenant can hardly be questioned as the authority to seek possession of the demised premises on behalf of the co-owners is presumed on the basis of doctrine of agency (**India Umbrella Manufacturing Co & Ors Vs Bhagabandei Agarwalla (Dead) By LRs Savitri Agarwalla (Smt) & Ors**)⁴

10. The decision in the case of **India Umbrella Manufacturing Co (Supra)** was followed by the Supreme Court in the case of **Om Prakash & Anr Vs Mishri Lal (Dead) Represented By His LR Savitri Devi & Anr**⁵ wherein, in some what similar fact-situation, the Supreme Court held that the dismissal of the Suit on the sole ground that the Appellants had no locus to maintain the same in absence of formal proof of the Will was grossly misdirected.

11. The Supreme Court observed, *inter alia*, as under:

“32. It is no longer res integra and is settled by this Court in Sri Ram Pasricha Vs Jagannath (1976) 4 SCC 184, Dhannalal Vs Kalawatibai (2002) 6 SCC 16 and India Umbrella Manufacturing Co Vs Bhagabandei Agarwalla (2004) 3 SCC 178 that a suit for eviction of a tenant can be maintained by one of the co-

4 (2004) 3 SCC 178.

5 (2017) 5 SCC 451.

owners and it would be no defence to the tenant to question the maintainability of the suit on the ground that the other co-owners were not joined as parties to the suit. The judicially propounded proposition is that when the property forming the subject matter of eviction proceedings is owned by several co-owners, every co-owner owns every part and every bit of the joint property along with others and thus it cannot be said that he is only a part owner or a fractional owner of the property and that he can alone maintain a suit for eviction of the tenant without joining the other co-owners if such other co-owners do not object. In the contextual facts, not only the compromise decree, as aforementioned, has declared the appellants to be the joint owners of the suit premises, their status as such has not been questioned at any stage by anyone interested in the title thereto.”

12. The aforesaid being the position in law, the challenge to the impugned decree on the ground that the Plaintiff having approached the Court with a case of absolute ownership on the basis of the Will and, failed to prove the same, could not have maintained the Suit for eviction despite being one of the co-owners, does not merit countenance. The Writ Petition thus deserves to be dismissed.

13. Hence the following order:

: O R D E R :

The Writ Petition stands dismissed.

[N. J. JAMADAR, J.]