Govindbhai Parshottamdas Patel And ... vs New Shorrock Mills, Nadiad on 2 December, 1983

Equivalent citations: AIR1984GUJ182, (1984)1GLR156, AIR 1984 GUJARAT 182

JUDGMENT

Ravani, J.

1. A label or the substance? Which one of them determines the real nature of relationship between the parties in a suit where the plaintiff has claimed recovery of possession of the premises? After answering the aforesaid question we are faced with the question, can an authority invested with two different jurisdictions exercise both the jurisdictions simultaneously in one and the same proceeding, notwithstanding the fact that the original forum may be different and the procedure laid down in respect of exercise of both the jurisdictions may also be entirely different? Putting it in simple form, can you ride two horses together simultaneously notwithstanding the fact that the starting point as well as the tracts charted out for onward journey by both the horses are distinct and separate? The aforesaid questions arise in the backdrop of the following facts and circumstances:

2. The respondent-original plaintiff filed a suit in the court of Civil Judge (JD), Nadiad, for recovery of vacant possession of residential premises occupied by the petitioners-original defendants. The petitioners-defendants are the heirs and legal representatives of one Parshottamdas Patel, who occupied the suit premises under an agreement labelled as "leave and licence" executed on 22-2-1962. It was the case of the plaintiff that the defendant 44 could have occupied the premises till he was in the service of, the plaintiff-Mill Company. The service of the defendant came to an end on Jan. 10, 1976. Thereafter a notice of eviction dated April 2, 1976 was served upon the defendant and he was called upon to hand over the possession of the suit premises. Since he did not comply with the requisition made in the notice, the suit was filed on July 21, 1976, invoking the ordinary civil jurisdiction of the Court of Civil Judge (JD), Nadiad, and the possession was claimed on the ground that after the termination of service of the defendant, he had no right to occupy the premises since the term of agreement of "leave and licence" also came to an end with the termination of service.

3. The defendant appeared in the suit and filed written statement inter alia contending that he was tenant and not licensee of the suit premises and that the court had no jurisdiction to entertain and decide the suit. During the pendency of the suit defendant died and his heirs and legal representatives were brought on record. The trial court after framing the issues and after recording evidence came to the conclusion that the defendant was a licensee and that the services of the defendant had been terminated on 10-1-1976 and that the defendant had failed to prove that he was tenant of the suit premises. The trial court also came to the Conclusion that it had jurisdiction to entertain and decide the case and directed the defendant to hand over possession of the suit

premises to the plaintiff-Mill Company latest before 31-12-1978 and further ordered the defendant to pay mesne profits at the rate of Rs. 15.50 per month from the date of the suit till the date of handing over of the possession. The trial court delivered, its judgment on 30-9-1978.

4. The heirs and legal representatives of deceased defendant preferred Civil Appeal No. 93 of 1980 and the learned Extra Assistant Judge, Kheda at Nadiad, who heard and decided the appeal, confirmed the judgment and decree passed by the trial court and ordered to dismiss the appeal by his judgment and order D/- 1-91982. The contentions of the appellants that the deceased defendant was not licensee and was tenant of the suit premises and that the plaintiff was not entitled to recover possession of the suit premises together with mesne profits were negatived. It was also held that even if the defendant was tenant of the suit premises he was liable to be evicted and the court. Of Civil Judge (JD), would have jurisdiction to entertain and decide a composite suit in which a claim for eviction of the premises was based on alternative grounds that the defendant was either a licensee or a tenant and in either case he was liable to be evicted. The learned Extra Assistant Judge, Kheda at Nadiad, relied upon a decision of this Court (Coram: R. C. Mankad, J.) in the case of New Shorrock Mills v. Somabhai Mathurbhai Patel, reported in 1982 Guj LH 885: (AIR 1983 Guj 21). The learned Extra Assistant Judge dismissed the appeal by judgment Dt/- 1-9-1982. Hence the present revision application by the heirs and legal representatives of deceased original defendant.

5. In 'this revision application it is contended that

1.on the basis of the so-called leave and licence agreement, Ex. 22, and in the facts and circumstances of the case, the lower courts have erred in coming to the conclusion that the defendant was a licensee; and

2. If the court comes to the conclusion that the defendant was a tenant of the suit premises then the suit having been filed in the ordinary civil jurisdiction of the Court of Civil Judge (JD), Nadiad, and not in the exclusive jurisdiction conferred upon -the court under the Rent Act, the suit must fail.

These are the two principal contentions around which the parties have concentrated their attention and have advanced their arguments.

6. The lower courts appear to have been influenced by the label "leave and licence" given to the agreement, Exh. 22. The real question which ought to have been raised and answered by the lower courts was whether the transaction in question created any interest in the property and whether it amounted to lease in favour of the defendant or not? Because the defendant was in the service of the plaintiff-Mill Company, can it be said that he was a mere licensee of the premises and that he had no interest whatsoever in the premises? In the instant case it is in evidence that the plaintiff-Mill Company recovered rent at the rate of Rs. 15.50 per month from the defendant. This is even deposed to by the witness Shri Balvantsinh Becharsinh Rana, examined by the Plaintiff-Mill Company at Exhibit 21. The learned Extra Assistant Judge, Kheda at Nadiad, during the course of his judgment in paragraph 10, has observed to the effect that this witness (Balvantsinh Becharsinh Rana, Exh. 21) has stated that the suit premises was rented to the defendant and he was serving in plaintiff's Company and he was given the premises under the agreement of leave and licence and he could stay

till he served in the Mill Company and that the agreement was produced at Exh. 22. The witness has further stated that the defendant was rented the suit premises as per the terms and conditions of the agreement and that the licence fee was collected at the rate of Rs. 15.50 per month from the defendant.

7. The lower courts held that merely because the witness stated that the defendant was rented the suit promises, it should not be held that he was tenant. According to the plaintiff-Mill Company even if the plaintiff's witness stated that the rent was being collected, such description should not be construed to mean that there was relationship of landlord and tenant between the 'plaintiff-Mill Company and the defendant. True, the description as stated by the witness should not be the sole basis of decision on the point. Similarly applying the same logic, the label given by the parties to a particular document should not determine the real nature of relationship between the parties. The court should ask the question, what is the substance of the document and that of the relationship in question? Not the form but the substance that matters; otherwise clever drafting can camouflage the real intention of the parties. On this point their is a direct decision of the Division Bench of this High Court (consisting of M. P. Thakkar, J. as he then was, and V. V. Bedarkar, J.) in the case of Virli Lavji Makwana v. Rainbow Screen Shades, reported in (1979) 20 Guj LR 352: (AIR 1979 Guj 178). In para 5 of the judgment the court has described certain conceivable situations in which genuine relationship of licensor and licensee may arise and thereafter the court has observed in para 6 as follows:

> ".....The mere fact that the relationship is enmasked by the label of 'license' is not decisive. The make-up has to be removed and the real profile of the relationship has to be identified. The device of changing the Nameplates and fixing the name-plate of 'license' cannot be countenanced for in that case it would tantamount to virtual repeal of the Rent Act (the social shield provided by the legislature) for it is not Possible to conceive of a landlord who cannot apply the label of 'license' and who cannot give the name of "fee" to the 'rent' charged by him. It requires no enterprise or ingenuity to do so."

As laid down in the aforesaid decision, what matters is not the name-plates fixed by the parties. Whatever be the make-up or the veil, it will be required to be r6moved or pierced by the court and the real nature of the relationship between the parties will have to be identified. Having regard to the aforesaid decision of the Division Bench of this High Court and the principles laid down in the decision of the Supreme Court in the case of Associated Hotels of India v. R. N. Kapoor reported in AIR 1959 SC 1262 the following propositions can be taken as well-established for the purposes of determination as to whether a document is that of a lease or a licence.

1. To ascertain whether a document creates a licence or a lease, the substance, of the document must be preferred to the form;

2. The real test is the intention of the parties, whether they intended to create a lease or a licence;

3. If the document creates an interest in the property, it is a lease; but, if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a licence, and

4. If under the document a party gets exclusive possession of the property, prima facie, he is considered to be a tenant; but circumstances may be established which may negative the intention to create a lease.

8. In the instant case the lower courts have been overwhelmingly influenced by the label of "leave and licence" given to agreement Exh. 22 under which the possession of the suit premises was given to the defendant. The overwhelming influence of this label pervaded the entire approach of the lower courts to the extent that even when the plaintiff's witness stated that the suit premises were rented to the defendant, the lower courts refused to appreciate his evidence as per the ordinary meaning of the words, and rejected the same on the ground that description given by him was not material. However, thereafter the lower courts did not examine the real nature of the document, nor did the lower courts examine the question as to what was the substance of the document and as to what was the intention of the parties.

9. On scrutiny of the document and applying the tests referred to hereinabove, it is not possible to infer that the document is that of licence. The document did not confer only a bare privilege on the defendant to make use of the premises. It put him in exclusive possession of the premises, untrammeled by the control and free from the directions of the plaintiff-Mill Company. The defendant was required to pay Rs. 15.50 per month and if he failed to pay this amount, the Company was entitled to deduct the same from the salary of the defendant or realize the same even by selling the goods belonging to the defendant. The term of agreement was conterminous with his service. Therefore it was not a temporary arrangement. True, the defendant could not transfer the premises to anyone else. But such is the restriction even on a tenant protected under the Rent Act. Even after the termination of service. if the defendant retained the possession of the premises, he was required to pay Rs. 5 per day for the occupation of the premises. The exclusive nature of possession without there being any control or direction by the plaintiff Mill Company and the security of the possession till the defendant continued in service of the plaintiff-Mill Company destroys the theory of licence. In the above view of the matter, simply because the defendant was a servant of the Mill Company, it cannot be said that-there was special relationship between the plaintiff Mill Company and the defendant which would necessitate to create a relationship of licensor and licensee. On the contrary the permanent nature of the service and the exclusive possession of the premises together with obligition to pay rent and obligation to use the premises as a prudent man would, show that the relationship created between the parties was that of a landlord and tenant and not that of a licensor and a licensee.

10. It may be that the service with the plaintiff-Mill Company be the sole consideration for the plaintiff-Mill Company for providing. Residential accommodation to defendant-workman. But the permanent nature of the service together with the permanent residential accommodation may equally be the sole consideration for the defendant-workman to accept the service. If there were not to be security for the residential accommodation, the workman would not have accepted the service at all or would have made an effort to get away from such service having insecurity with regard to

residential accommodation.

11. Thus the lower courts failed to examine the real questions and had fallen into error by considering the mere label given to agreement, Exh. 22 as decisive. In this connection the lower courts were not right in rejecting the deposition of plaintiffs witness Balvantsinh Becharsinh Rana, Exh. 21, who stated that the premises were rented to the defendant and that he was collecting rent from the defendant. When the real nature of the agreement is such that it created an interest in the property and the defendant was in exclusive possession of the property, the only proper conclusion would be that there was relationship of landlord and tenant between the parties. The veil of leave and licence put on agreement Exh. 22 ought to have been pierced by the lower courts and the same should have been considered a mere device to circumvent the provisions of the Rent Act.

12. It was contended by the counsel for the respondent-plaintiff that the plaintiff Mill Company is a progressive industrial unit and that it provided residential quarters to its workmen so long as they continued to be in service and hence it should be inferred that the intention of the parties was to create a licence and not a lease. The basis of the contention so raised is that the plaintiff-Mill Company, is a progressive industrial unit. Why? Is it because that it provides residential facilities to its workmen? Providing of residential accommodation to workmen may be one of the service conditions but from this factor it is difficult to infer that the intention of the parties was to create licence only. It may well be that with a view to entice the workmen from rural areas; the Mill-Owners offer to provide them residential facilities as an incentive. Moreover if a workman resided in the vicinity of the factory of the Mill Company, he would be regular in his attendance and he would be subjected to stricter discipline. These also may be the considerations for providing residential facilities and it is difficult to come to an irresistible conclusion that the industrial units working on the commercial line having 'profit' as the main object of the industrial activity would provide residential facilities to the workmen simply out of gratuitous motive and without any business considerations. Hence the contention must fail.

13. The contention that because the Mill Company has provided for accommodation to its employees during the tenure of their service, it should be construed as creating a licence is also devoid of any merit because such a situation is envisaged by the Rent Control .Act by S. 13(l)(f) which is to the following effect: -

> "13(l) notwithstanding anything contained in this Act but subject to the -provisions of S. 15, a landlord shall be entitled to recover possession of any premises if the Court is satisfied.
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> XXX XXX XXX XXX XXX XXX XXX XXX XXX
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> (f) That the premises were let to the tenant for use as a residence by reason of his being in the service or employment of the landlord, and that the tenant has ceased, whether before or after the coming into operation of this. Act, to be in such service or employment."

Therefore if all such relationships were construed as creating a relationship of a licensor and licensee, then the abovequoted provision of S. 13(l)(f) would be redundant.

14. It was next contended that interpretation of document would certainly be a question of law. But the finding of the lower courts may be interfered with only if there was miscarriage of justice and hence the finding given by the lower courts should not be disturbed by this High Court while deciding this revision application. It was contended that in the instant case there was no miscarriage of justice inasmuch as even if the defendant is held to be a tenant, he is liable to be evicted from the premises in view of the fact that his services had admittedly come to an end and therefore in view of the provisions of S. 13(l)(f) of the Bombay Rent Act ("the Rent Act", for short) the possession of the suit premises can be recovered by the plaintiff-Mill Company. True, if the relationship between the parties is not that of a licensor and a licensee, the defendant will be governed by the provisions of the Rent Act as contended by the defendant himself. But to say that there is no miscarriage or failure of justice is not correct. If the defendant is held to be a tenant, he would be entitled to the protection of the Rent Act. Under the provisions of the Rent Act he will be entitled to take up certain contentions, which would not be open to him in a suit filed in the ordinary civil jurisdiction of the court. On the other hand, if the defendant is considered to be a licensee, he would not be in a position to claim protection of the Rent Act and he would be liable to be evicted at any time, even during the continuation of his services. He will have no security whatsoever with regard to the residential accommodation. In such a situation, the defendant may even be compelled to give up the services if he has no roof over his head to take shelter for himself and his family members. He may remain content with his meager income in a village wherefrom he might have migrated to the town/city in order to earn his livelihood. Thus the contention that there would not be failure of justice even if the document were considered as that of a lease creating an interest in favour of the defendant-tenant has no merit and must fail.

15. An analogy was sought to be given by the counsel for the plaintiff-Mill company that the President of India and Judges of High Courts and Supreme Court, so also the Government servants occupying government residential bungalows and quarters are required to vacate the same when they cease. To occupy the positions and/or when their services come to an end. On this basis it was sought to be contended that in the instant case also the defendant should be considered as a licensee and he should be evicted from the same. The analogy is inappropriate. Possession of the premises allotted to High dignitaries and government servants is not protected under the provisions of the Rent Act. Their possession is secured so long as they occupy the position or continue in government service. Thereafter by virtue of relevant statutory provisions their possession becomes unauthorized. So long as they occupy the position and/or are in government service, the government cannot (and one may say that the government even will not) compel them to vacate the premises. Thereafter when they become unauthorized occupants, their cases are being dealt with under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act inasmuch as they do not enjoy the protection extended by the Rent Act. The illustration given by the counsel for the respondent plaintiff only holds us to focus our attention as to the manner in which a person who is in, possession of the premises on account of his position or service with the government can be evicted after he ceases to occupy the position or ceases to be in service. In the case of government servants or high dignitaries as the case may be, the provisions of Public Premises (Eviction of Unauthorized

Occupants) Act will have to be resorted to. Similarly in the case of servants to whom the provisions of the Rent Act apply, the plaintiff-owner of the premises will have to take recourse to the provisions of appropriate Rent Act which may be applicable to the premises concerned. In this case it is obvious that once the defendant is held to be a tenant, he will be entitled to the protection of the Rent Act and the possession of the premises can be recovered from him only in the manner provided under the Rent Act. Thus the analogy given by the counsel for the respondent-plaintiff is of no help to him and on that basis it can never be inferred that the defendant was a licensee and not a tenant of the premises.

16. This brings us to the second question namely, can the court of Civil Judge (JD), while exercising ordinary civil jurisdiction-, entertain and decide also the question between a landlord and a tenant relating to the recovery of possession and to which the provisions of the Rent Act are applicable? The aforesaid question arises in view of the provisions of S. 28 of the Rent Act which not only confers a special exclusive jurisdiction on certain existing courts but also expressly bars the jurisdiction of other courts to entertain and decide the question relating to the recovery of rent or possession of any premises between a landlord and a tenant and to which the provisions of the Rent Act are applicable.

17. The counsel for the respondent plaintiff submitted that this is not a case arising out of the city of Ahmedabad or from any area for which a Court of Small Causes is established. Had it been so, the court-exercising jurisdiction under the provisions of Rent Act would be different. (i.e.; it would be the court of Small Causes constituted under the provisions of Small Cause Courts Act) and the court exercising ordinary civil jurisdiction would also be different (i. e., in Ahmedabad it would be the City Civil Court constituted under the City Civil Courts Act). But this case arises from a place where the Court of Civil Judge (JD) having jurisdiction in the area in which the premises are situate is conferred with the powers to entertain and decide the suit under the provisions of S. 28 of the Rent Act. Such Court of Civil Judge (JD) will also have the powers to decide all other cases of civil nature subject to the limitations regarding territorial and pecuniary jurisdiction under the relevant provisions of law.

18. As far as the facts and circumstances' of the present case are concerned, contends the counsel for the respondent-plaintiff, the Presiding Officer of the court exercising ordinary civil jurisdiction and jurisdiction conferred under S. 28 of the Rent Act will be the same. In such a situation when an ejectment suit is filed on the ground that the occupant of the premises is a licensee and alternatively a tenant, and recovery of the possession is claimed on the ground that the defendant is in unauthorized occupation of the premises or on any other ground available under the provisions of the Rent Act, the suit should be held to be maintainable. It is contended that even if such a suit is filed as a regular suit invoking the ordinary civil jurisdiction of the court and recovery of possession of the premises is claimed on the ground available under the provisions of the Rent Act also, the court should not refuse to exercise jurisdiction conferred upon it under S. 28 of the Rent Act. The argument further proceeds; if in such a suit the court refuses to exercise jurisdiction under the provisions of the Rent Act, the plaintiff will be obliged to file another suit in the same court presided over by the same officer. Will this not amount to purposeless rotation round the chair? If that be so, should it not be avoided and should it not be held that the Legislature would not have intended that

a plaintiff should move round and round in search of his forum?

19. In support of his contention the counsel for the respondent-plaintiff relied upon the decision of this High Court in the case of New Shorrock Mills (supra) reported in 1982 Gui LH 885: (AIR 1983 Guj 21). We will refer to this decision and discuss the same in details a little later, here it may be noted that this decision was challenged before the Supreme Court and the Supreme Court sounded a note of disapproval regarding the manner in which an unreported decision of this Court rendered in Second Appeal No. 282 of 1972 on 23rd June/Sept 20, 1977 by M. C. Trivedi, J. (as he then was) was de * alt with. The Supreme Court directed that if the matter at any stage goes back to the High Court and the same question is raised, in the interest of justice, it should be heard by a Division Bench afresh. That case has not directly come up before us. But in another case of the same plaintiff-landlord exactly similar question has arisen and hence the matter is before us and the same question is required to be considered by us afresh. Before we refer to the aforesaid two Decisions, namely, New Shorrock Mills' case (AIR 1983 Guj 2 1) (Supra) and Second Appeal No. 282 of 1972 rendered by M. C. Trivedi, J. (as he then was), we would like to make our own approach afresh to the Question in controversy.

20. Why was the Rent Act enacted? It is a temporary piece of legislation. To meet with the exigencies of the situation it has been enacted. The Preamble to the Act states that it was expedient to amend law relating to control

- of rents and repairs of certain, premises

- of rates of hotels and lodging houses and

- of evictions.

The Act was passed to achieve the aforesaid purposes. The Act gives special definitions of the term "landlord" and "tenant" and of certain other words and phrases. These definitions are not same or exactly similar with the definitions given in the Transfer of Property Act and other relevant statutes. In the definition of landlord even rent collector is included. In respect of the sub-tenant, the tenant is to be considered as landlord. In the doinition of tenant quite a new approach is made, so much so that now entirely a new category of statutory tenants has come into existence. The Act defines 'Standard Rent' and severely restricts the right of the landlord to receive the rent in excess of the standard rent. It also considerably restricts the right of the landlord to get the vacant possession of premises to which the provisions of the Rent Act are applicable. For our purposes it is not necessary to refer to all the provisions of the Rent Act and rules pertaining to the rights and liabilities of landlord and tenant in different field.

21. Specific reference may be made to S. 28 of the Rent Act, which deals with jurisdiction of the Courts. The section confers a special and exclusive jurisdiction on certain existing courts. At the same time it expressly bars the jurisdiction of other courts to entertain and decide the questions relating to the recovery of rent or possession of any premises between a landlord -and a tenant and to which the provisions of the Rent Act are applicable.

22. Section 29 of the Act provides for appeals and/or for revision from a decree or order passed by the trial court and also by the lower appellate court. It also provides for a special period of limitation. Section 29A of the Act makes a specific provision regarding suits involving questions of title and it states that, nothing contained in S. 28 or 29 shall be deemed to bar a party to a suit, proceeding or appeal mentioned therein, in which a question of title to premises arises and is determined, from suing in a competent court to establish his title to such premises. Section 30 of the Act provides for compensation in respect of proceedings, which are not bona fide or are false, frivolous or vexatious. Section 31 provides for procedure to be followed in trying and hearing suits, proceedings, applications and appealing in executing orders made by them.

23. Section 49 of the Act provides for making of rules for the purpose of giving effect to the provisions of the Act. Section 49(2)(iii) specifically provides for making of rules regarding the procedure to be followed in trying or hearing suits, proceedings (including proceedings for execution of decrees and distress warrants, applications, appeals and execution of orders. The State Government has in prescribed Rules called Bombay Rents, Hotel and Lodging House Rates Control Rules, 1948, which inter alia prescribes procedures to be followed by different courts in suits, proceedings etc. and by District Courts in appeals. Thus a mere reference to the Act and rules shows that special provisions with regard to the questions pertaining to and lord and tenant have been made and to a considerable extent it takes away, restricts or modifies the contractual rights of parties and confers or imposes certain special rights and obligations. It is a special Act dealing with special subject. It creates special, fights and special obligations and at the same time, in terms, it specifically makes provision as to the courts in which special rights and obligations created under the Act are to be litigated upon. It also provides for the forum of appeal and/or revision. It provides separate period of limitation and also provides that question pertaining to title to the property which may be dealt with by the court while exercising jurisdiction conferred under the Act, shall not become final and may be agitated before a competent court by filing a separate suit.

24. In the aforesaid background let us have a look at the provisions of S. 28 of the Act. Section 28 of the Act reads as follows:

> "S. 28(l) notwithstanding anything contained in any law and notwithstanding that by reason of the amount of the claim or for any other reason, the suit or proceeding would not, but for this provision, be within its jurisdiction.
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> (a) In the City of Ahmedabad, the Court of Small Causes of Ahmedabad, (aa) in any area for which a Court of Small Causes is established under the Provincial Small Cause Courts Act, 1887 (IX of 1887), such Court and
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> (b) Elsewhere, the Court of the Civil Judge (Junior Division) having jurisdiction in the area in which the premises are situate or, if there is no such Civil Judge, the Court of the Civil Judge (Senior Division) having ordinary jurisdiction, shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of this Part apply and to decide any application made under this Act

and to deal with any claim or question arising out of this Act or any of its provisions and subject to the provisions of sub-section (2), no ot ' her court shall have jurisdiction to entertain any such suit, proceeding or application or to deal with such claim or question.

(2) (a) Notwithstanding anything contained inclause (aa) of sub-section (1), the District Court may at any stage withdraw any such suit, proceeding or application pending in a Court of Small Causes established for any area under the Provincial Small Causes Courts Act, 1887 UX of 1887), and transfer the same for trial or disposal to the Court of the Civil Judge (Senior Division) having ordinary jurisdiction in such area.

(b) Where any suit, proceeding or application has been withdrawn under clause (a), the Court of the Civil Judge (Senior Division) which thereafter tries such suit, proceeding or application, as the case may be, may either re-try it or proceed from the stage at which it was withdrawn.

(c) The Court of the Civil Judge trying any suit, proceeding or application withdrawn under cf. (a) from the Court of Small Causes, shall, for purposes of such suit, proceeding or application, as the case may be, deemed to be the Court of Small Causes.

Explanation: - In this section proceeding does not include an execution proceeding arising out of a decree passed before the coming into operation of this Act."

A mere reading of the section shows t6t it is in two parts. On the one hand, it confers jurisdiction on the specified courts to entertain and try matters mentioned in the section, and on the other hand, in terms, it ousts the jurisdiction of every civil court to try those matters. The Scheme of the Act is that the cases arising under the Rent Act, which are specifically mentioned in the section, should be dealt with by certain c6urts only, both for the purposes of trying. These cases and while dealing with the appeals arising there from. It is clear that S. 28 does not mention special court or does it set up special courts. The section invests exclusive jurisdiction upon existing courts to entertain and try certain subject matters coming within the purview of the provisions of the Rent Act and to hear appeals arising there from. To be precise, these courts may not be described as "special courts" or "rent courts". But these courts can be described as "courts functioning under S. 28 of the Rent Act."

25. The provision of S. 29 of the Act makes it clear that the Rent Act also sets up a special sel or hierarchy of forums specially empowered to deal with or adjudicate upon the rights and obligations created by the Act. Section 29 of the Act confers revision. Jurisdiction upon the District Court also as well as on the Appellate Bench of the Courts of Small Causes, as the case may be. Section 29 further provides for revision before the High Court in certain cases. This provision is quite different from the provision under S. I is, Civil P. C.

26. The provisions of S. 29A of the Act is a clear pointer to the fact that the jurisdiction to be exercised by the court under the provisions of the Act is quite distinct and different. The Court of Civil Judge (JD) may decide a question of title to the premises while deciding questions arising: under the provisions of the Rent Act and while exercised its jurisdiction under the provisions of S. 28 of the Act. But that determination of the question as to title of the premises being merely an incidental determination would not preclude the aggrieved party from suing ina competent court to establish his title to such premises. In this connection, if necessary a reference may be made to a decision of this Court in the case M Jayantkumar Ramprasad Mehta v. Lilavatiben, reported in (1966) 7 Guj LR 1018, wherein it has been specifically held by Bhagwati, J. (as he then was) that the courts specified under S. 28 of the Act have jurisdiction to decide question of title, but. Inquiry as to title is only incidental and it does not bar new suit under S. 29A of the Act inasmuch as the determination of the question of title being merely an incidental determination and therefore it would not preclude the aggrieved party from filing a suit, in ordinary civil court to establish his title to the premises as provided by S. 29A of the Act. Be it noted that this question of title as to the premises might have been decided even by the superior courts, i. e.; the District Court and High Court and probably even by the Supreme Court, in a proceeding arising under the Rent Act and yet it will be open to a party to a suit, proceeding or application mentioned in S. 28 or 29 of the Act, to file a suit in a competent court to establish his title to such premises.

27. As far as the procedure is concerned, there is a special provision made in the Act and Rules. Section 28 makes it clear that irrespective of the pecuniary jurisdiction, the Courts of Small Causes and the Court of Civil Judge (JD) may entertain certain matters, as the case may be. Similarly the Rules of procedure for trying the suits and hearing of appeals, etc. prescribed under the provisions of the Act show that a special and different procedure for the conduct of the suit and of hearing of appeals has been made. Thus there is a clear distinction as regards procedure to be followed in cases arising under the provisions of S. 28 of the Rent Act.

28. Moreover there is clear distinction as regards the limitation put upon the powers of the court regarding the pecuniary and territorial jurisdiction of the court when it deals with the questions, which arise under the provisions of S. 28 of the Act. The section in terms provides that notwithstanding anything contained in any law and notwithstanding by reason of the amount of claim or for any other reason, the courts specified therein shall have jurisdiction to entertain and decide the cases pertaining to the questions mentioned therein. The section again in the latter part expressly provides that no other court shall have jurisdiction to entertain any such suit, proceeding application or to deal with such claim or question. Even apart from the entire scheme of the Rent Act, if one looks at the aforesaid specific provisions of S. 28, it becomes clear that the jurisdiction of all other courts is expressly ousted.

29. In the aforesaid background the question that is required to be answered is, when the same person or individual is invested with two different jurisdictions, would it not open to him to exercise two different jurisdictions simultaneously in one and the same proceeding? To put it in a simplified form, the question raised is like this, when a person has got two horses, should he not ride both of them together simultaneously?

30. In the light of the Scheme of the Rent Act, if the question is examined, it would be clear that when the same person or individual is invested with two different jurisdictions, he cannot exercise two jurisdictions simultaneously in one and the same proceeding. He has to exercise one jurisdiction at a time because it is not 'he' (the individual officer), who acts, but it is the 'authority' under the particular Act which is distinct and independent which exercises that particular jurisdiction. If one jurisdiction is exercised, not only the original forum may be changed, but the procedure for trial and hearing of the particular proceeding to be adopted by that forum will also be different. Similarly the superior forum of appeals and revisions also will be different.

31. If the view that the alternative plea under the Rent Act as well as under the provisions of general law can be taken before the same authority is held to be a correct one, then in such a proceeding what would happen when the matter is to be carried in appeal or in revision? Take an instance in which the arrears of rent claimed is in excess of the limit prescribed for the pecuniary jurisdiction of the Court of Civil Judge (JD). In that case if the suit is treated in the ordinary civil jurisdiction of the court, it. Will be a special suit and the appeal would ' lie to the High Court and there will be no second appeal or revision. In this very suit the court is to deal with: the questions arising under the provisions of the Rent Act, then in view of the provisions of S. 28 of the Act, the Court of Civil Judge (JD) will have jurisdiction to entertain and decide such suit and the forum of appeal and revision would be not as provided under the provisions of the, Civil P. C.

32. In the case of Gandhi Gop8idas Gordhandas v. Bai Lalitabai Marghabkti, reported in (1971) 12 Guj LR 492: (AIR 1971 Guj 270) it was held that in execution proceedings arising out of the decree passed after the coming into operation of the Rent Act, the forum for further appeals and/or revisions would be as per the provisions of S. 29 of the Rent Act. As per the then existing provisions of law (in the year 1971), second appeals in execution proceedings were maintainable by virtue of S. 100 read with S. 2(2) and, S, 47 of the Civil P. C. But in view of the provisions of S. 29(2) of the Act, the same was held to have been barred in the proceedings instituted to execute decrees passed in suits governed by S. 28 of the Act. In that case it was held that second appeal was not competent and could not be entertained.

33. A reference may be made to the provisions of S. 29(3) of the Act, which provides for revision to the appellate forum (i. e., the Bench of two Judges of Small Causes Court, Ahmedabad, and elsewhere the District Court) in certain cases. There is no such provision of preferring revision before the District Court in cases where the Court of Civil Judge (JD) is execrating its ordinary civil jurisdiction. When the trial court exercises its jurisdiction conferred upon it under S. 28 of the Rent Act and determines the question as to the standard rent of the premises or passes other orders regarding the questions which fall within the purview of its jurisdiction and against which no appeal is provided for under the provisions of the Act, a revision can be preferred even before the District Court (or before a Bench of Small Causes Court Judges, as the case may be) and the decision of the, Civil Judge (JD) (or that of the Small Causes Court Judge) can be challenged by way of revision. Now if the matter is considered to be under the general law in the ordinary civil jurisdiction of the court, such an order would only be subject to revision before the High Court under S. 115 of the Civil P. C.

34. A further distinguishing feature may be noted. A dispute between two parties litigating their cases in ordinary civil jurisdiction of the court may be referred to an Arbitrator, by consent of the parties or through the intervention of the court. The award and consequent decree, which may be passed by the court .in terms of the award, will be binding to the parties subject to the provisions of the Arbitrations Act. However, disputes under the Rent Act cannot be referred to an Arbitrator, though the parties may be the same and the court before which the parties are litigating upon may be the same J see Sabavva Kom Hanmappa Simpiger v. Basappa Andaneppa Chiniwar, reported in (1955) 57 Bom LR 2611.

35. Thus it should be clear that %k Rent Act confers special and exclaim jurisdiction on certain existing courts and prescribes special and distinct procedure for the conduct of suits and applications. It also sets up different hierarchy for appeals and/or revisions. The discussion of the scheme of the Rent Act and the relevant. Provisions of the rules should make it clear that the conferment of two -different jurisdictions in one individual does not and would not obliterate the fundamentally distinct and separate jurisdiction created under the provisions of the Rent Act.

36. After all what is meant by 'jurisdiction'? Jurisdiction means the extent of the power conferred upon the court by its constitution to try a proceeding (see AIR 1965 SC 1449). This jurisdiction of the court may be qualified or restricted by a variety of circumstances. The jurisdiction of a court may have to be considered with reference to place, value and nature of the subject matter. For the assumption of jurisdiction it is necessary to have regard to the subject matter in a proceeding before the court. In this connection a reference may be made to a decision of the Supreme Court in the case of A. C. Estates (Landlords) v. Serajuddin & Co. (Tenants), reported in 1(1973) 2 SCC 3241: AIR 1973 SC 2117. In that case the, question arose as to whether the High Court and/or Supreme Court could decide about the constitutional validity of the provisions of the Rent Act in a proceeding arising out of a question of fixation of standard rent. The Supreme Court referred to its earlier decisions in taxation cases and pointed out as follows (at p. 2119):

> "The question of ultra vires was wholly foreign to the scope and the jurisdiction of the Rent Controller. As the appeals and the revisions which were later preferred were from the orders of the Rent Controller fixing the standard rent in accordance with the provisions of the Rent Control Statute, we are unable to see any distinction between present cases and those decided by this court arising out of a taxing statute. If the Rent Controller could not have decided the constitutional validity of the provisions which have been impugned in the same way as the taking authorities could not have determined the constitutional validity of the taxing statute, it would not be open either to the High Court or to this Court to go into those questions in proceedings arising out of fixation of standard rent."

37. It is axiomatic to say that the High Courts and the Supreme Court have power to decide the constitutional validity of the Rent Act or for that matter any Act enacted by the State Legislature or the Parliament. But as laid down by the Supreme Court itself, when - High Court or the Supreme Court in exercising its jurisdiction in a case arising under the Rent Act, it shall not have jurisdiction to decide about the constitutional validity of the particular Act since the jurisdiction of the lower

forum itself was limited. The aforesaid principle laid down in the decision of the Supreme Court would make it clear that when the District Court hears an appeal against a decision rendered by a Court of Civil Judge (JD) in a case arising out of the provisions of S. 28 of the Rent Act, the jurisdiction of the District Court would be as provided under the provisions of the Rent Act. But the trial court as well as the District Court and other superior courts, while exercising powers under the Rent Act will not, rather cannot travel beyond the course charted the provisions of the Rent Act.

38. We may refer to another decision of this High Court in the case of Bhikhabhai Jethabhai v. J. V. Vyas, Addl. Collector, reported in (1963) 4 Guj LR 873. In that case a question arose as to whether the decision of the Agricultural Lands Tribunal on the question that a particular person was a tenant or not, was without jurisdiction or not. It was an admitted position that on the date when the ALT took this decision, ALT was not clothed with the power to decide the question. But the same person who was exercising the powers of Mamlatdar was also exercising the powers as ALT. It was suggested that the person who constituted the Tribunal would be the same person who would decide the matter even if the matter were held to be triable exclusively by a Mamlatdar unde ' r S. 70(b) of the Tenancy Act and that the Addl. Collector would be the person having authority to hear an appeal from the order made by such a person under S. 70(b) of the Tenancy Act. On the basis of this ground it was urged that the High Court should not interfere in the exercise of its power under Art. 227 of the Constitution even when the High Court found that the impugned order was made by an authority having no jurisdiction to make it. The Court rejected the contention so raised and observed :

> " ..... The same person may occupy both the positions, viz., that of a Tribunal under S. 32G and that of a Mamlatdar under S. 70(b), but in one case he would be exercising the jurisdiction of a Tribunal under S. 32G and in the other, he would be exercising the jurisdiction of a Mamlatdar under S. 70(b). The two authorities would be entirely distinct and independent authorities possessing distinct and independent jurisdictions and it is no argument to say that merely because the same person might constitute both the authorities, the order of one authority can be equated with the order of the other. The orders would be of the authorities and not of the individual person. Mr. M. H. Chhatrapati is, therefore, not right in his contention that merely because the same person might be constituting both the authorities and the same person might also hear appeals from the orders of both the authorities, we should refuse to exercise our power under Art. 227 even if we find "that the impugned order was made by an authority which did not have the jurisdiction to make it."

39. Thus both on the basis of the principles and on the basis of the authorities, it is clear that it would not be open to the Court of Civil Judge QD) to entertain the dispute which fails outside the purview of the provisions of S. 28 of the Rent Act when it exercises jurisdiction conferred on it under S. 28 of the Rent Act. Similarly, when the Civil Judge (JD) exercises his ordinary civil jurisdiction, it will not be open to him to decide the disputes, which fall within the purview of S. 28 of the Rent Act. This restriction arises on account of the nature of proceedings with which the court is dealing.

40. In support of the contention that the Court of Civil Judge (JD) can exercise both the jurisdictions, i.e., the jurisdiction conferred under S. 28 of the Rent Act and the ordinary civil jurisdiction, simultaneously in one and the same proceeding, counsel for the respondent-plaintiff relied upon the decision of the Supreme Court in the case of Khemchand Dayalji and Co. v. Mohammadbhai Chandbhai, reported in AIR 1970 SC 102: (11 Guj LR 173). Since the decision in New Shorrock Mills' case (AIR 1983 Guj 21) (supra) is mainly based on this case, we would like to consider this decision in greater details. In the case before the Supreme Court the appellant tenant had inter alia raised a contention that the Court of Small Causes, Ahmedabad, had no jurisdiction to pass an order directing to issue distress warrant while trying a suit or proceeding under the provisions of the Rent Act. The factual background in which the question arose may be seen.

41. The respondent was the owner of a house situated in Ahmedabad. The appellants were tenants of the suit house. A part of the rent payable every month was to be appropriated towards a loan advanced by the appellants-tenants to the respondent-landlord for constructing the house. The appellants-tenants had agreed to pay municipal taxes and electricity charges. The appellants-tenants filed a suit in the Court of Small Causes, Ahmedabad, inter alia praying that the standard rent of, and the suit premises under the provisions of S. I I of the Rent Act may' be fixed. The Court of Small Causes, Ahmedabad, fixed the contractual rent as "interim standard rent" and directed the appellants-tenants to pay the rent and the municipal taxes. The appellants-tenants in pursuance of the aforesaid order deposited Rs. 2,403,'- as rent and Rs. 8,921.25 due as municipal taxes for the year 1964-65. The respondent-landlord applied for withdrawal of the amount deposited by the appellant's tenants. The application was objected to by the appellants-tenants and the court partly upheld the objection and permitted the respondent-landlord to withdraw only the amount of Rs. 2,403/- which was paid as rent but did not allow the respondent landlord to withdraw the amount of Rs. 8,921.25 paid towards municipal taxes. Thereupon the respondent-landlord obtained an order for the issuance of a distress warrant under S. S3 of the Presidency Small Cause Courts Act read with R. 5 of the Rules framed under the Rent Act for the recovery of the amount due as municipal taxes. Distress was levied, and the order was confirmed. A revision application moved in the High Court of Gujarat against that order was rejected and the appeal was preferred before the Supreme Court. In the aforesaid context the questions urged before the Supreme Court were as follows: (see para 3 of the judgment)

1. Rule 5 of the Rules framed under S. 49 of the Act was ultra vires of the State Government;

2. That the Court of Small Causes at Ahmedabad, had in any event no jurisdiction to pass an order issuing a distress warrant when trying a suit or proceeding under the Rent Act especially when an application for determination of standard rent under S. I I of the Act was pending; and

3. That the municipal taxes and electricity' charges did not constitute rent which may be recovered by the issuance of a distress warrant.

The Supreme Court negative all these contentions. It is not necessary to refer to all the three in details. As regards the contention that the Court of Small Causes at Ahmedabad had no jurisdiction to issue a distress warrant in the case under the Rent Act before it, the Supreme Court discussed the

relevant provisions of the Act, Rules and certain other statutory provisions and came to the conclusion as follows :

> "By the enactment of the Ahmedabad City Courts Act_ 1961, the proceedings before the Court of Small Causes at Ahmedabad were governed by that Act and by virtue of the amendment made in S. 28 of the Bombay Act 57 of 1947 it became a Court of exclusive jurisdiction to try suits, proceedings, claims and questions arising under that Act. Being a Court governed by the Presidency Small Cause Courts Act, the Ahmedabad Court of Small Causes was competent to exercise, subject to the Ahmedabad City Courts Act, all the powers which a Presidency Small Cause Court may exerc ise. Power to issue a distress warrant being expressly conferred by S. 53 of the Presidency Small Cause Courts Act upon the Courts governed by it, the Court of Small Causes, Ahmedabad, was competent' to exercise that power."

The Supreme Court answered the contention that the Court of Small Causes at Ahmedabad was competent to exercise power under S. 53 of the Presidency Small Cause Courts Act and therefore could order to issue a distress warrant when trying a suit or proceeding under the Rent Act even though an application for determination of standard rent under S. I I of the Rent Act was pending. In short the Supreme Court said that when the Court of Small Causes at Ahmedabad exercises jurisdiction conferred upon it under S. 28 of the Rent Act, it has the jurisdiction to issue distress warrant for recovery of rent as contemplated under the provisions of Presidency Small Cause Courts Act. In substance the question before the Supreme Court was to determine the extent of jurisdiction of the Court of Small Causes at Ahmedabad when it exercised exclusive jurisdiction conferred upon it under S. 28 of the Rent Act. The Supreme Court held that the Court of Small Causes at Ahmedabad had jurisdiction to issue distress warrant for recovery of rent. It may be noted that S. 53 of the Presidency Small Cause Courts Act, 1882 deals with the procedure regarding the application for distress warrant and as to when it can be made. It may also be noted that Chap. VII of the,said Act deals with recovery of possession of immoveable property and Chap. VIII deals with distresses.

42. The question, which has arisen in the present proceeding, was not there at all before the Supreme Court in Khemchand's case (AIR 1970 SC 102) (supra). The question which has arisen in this proceeding is whether in a suit filed as a regular suit invoking ordinary civil jurisdiction of the court and in which possession is sought on the allegation that the defendant was a mere licensee and whose licence was terminated, can the court simultaneously in the same proceeding exercise jurisdiction conferred upon it under S. 28 of the Rent Act on the basis that the relationship between the plaintiff and the defendant was that of a' landlord and a tenant and governed by the provisions of the Rent Act? Since this was not the question before the Supreme Court it is obvious that the decision rendered therein would not be helpful to resolve the question, which has arisen in the instant case. However, the counsel for the petitioner has relied upon the following observations of the Supreme Court made during the course of the judgment (at p. 104) :

> "The argument that S. 28 sets up a new set of Courts with special powers and jurisdiction is without substance. S. 28 merely confers upon the existing Courts exclusive jurisdiction in respect of matters relating to possession of premises and

recovery of rent and to determine claims and questions arising under that Act. On that account it does not become a Special Court: it is a Court, which is competent to exercise all the powers, which are conferred upon it by virtue of its constitution under the statute, which governs it. The Court of Small Causes at Ahmedabad had, therefore, power to issue distress warrant and that power could be exercised even in respect of suits; And proceedings which were exclusively triable by it by virtue of the Bombay Act 57 of 1947.-

The very first sentence suggests that it was the argument of the counsel for the appellants that S. 28 of the Act sets up a new set of courts with special powers and jurisdiction. The Supreme Court repelled this argument.

43. The answer given by the Supreme Court, if analyzed, comes to this:

1. Section 28 of the Rent Act confers upon the existing courts exclusive jurisdiction in respect of matters relating to possession of premises and recovery of rent and to determine claims and questions arising under the Rent Act.

2. Because the exclusive jurisdiction is conferred upon the Court of Small Causes at Ahmedabad, it does not become a special court.

3. It is a court which was competent to exercise all the powers which were conferred upon it by virtue of its constitution under the statute which governed it.

4. Because the provisions of S. 28 of the Rent Act read with R. 5 and S. 53 of the Presidency Small Cause Courts Act, conferred power upon it to issue distress warrant, this power could be exercised in respect of suits and proceedings which were exclusively triable by it by virtue of the Act (i.e., the Rent Act).

To repeat, the Supreme Court merely spelt out the width of power of the Court of Small Causes at Ahmedabad when it (i.e., the Small Causes Court) exercised jurisdiction conferred upon it under S. 28 of the Rent Act. The Supreme Court said that the Court of Small Causes at Ahmedabad could order to issue distress warrant while trying a case under the Rent Act, therefore, such 'power also fell within the scope of jurisdiction of the court when it exercised jurisdiction conferred upon it under S. 28 of the Rent Act. The Supreme Court never said that when the Court of Small Causes at Ahmedabad exercised its jurisdiction conferred under the Rent Act, it can also exercise its ordinary jurisdiction simultaneously in the same proceeding. In fact, no such question arose before the Supreme Court for being resolved.. Therefore we do not see any merit in the argument advanced on the basis of the aforesaid observations of the Supreme Court.

44. In the New Shorrock Mills' case (AIR 1983 Guj 21) (supra) the argument advanced by the counsel herein and the reading of the Supreme Court judgment in Khemchand's case (AIR 1970 SC 102) (supra) found favour with our learned brother R. C. Mankad, J. Our learned brother R. C. Mankad, J. after posing the question which arose before the Supreme Court and after narrating the

answer given by the Supreme Court observed as follows (at p. 24):

> "Applying the ratio of the decision of the Supreme Court in Khemchand's case (supra), there is no doubt that the trial court was competent to pass appropriate orders in exercise of the powers and jurisdiction conferred upon it under S. 28 of the Act even in respect of the suits and proceedings of which it was seized in exercise of its ordinary civil jurisdiction. In other words, the trial Court, while ' exercising its ordinary civil jurisdiction, could exercise powers conferred upon it under S. 28 of the Act. There are no two different Courts operating in different fields. It is the same Court, which- is conferred jurisdiction to exercise ordinary civil jurisdiction and the jurisdiction under S. 28 of the Act. Since the same Court was exercising ordinary civil jurisdiction and the jurisdiction under S. 28 of the Act, the petitioner could have pleaded an alternative case that the respondent was its tenant and prayed for recovery of possession of the suit premises on any ground available to it under the provisions of the Act. There is nothing in law which. precludes the petitioner from raising such an alternative plea and seeking assistance of the Court for grant of the relief in exercise of the powers and jurisdiction conferred upon it under S. 28 of the Act.-
>
> With utmost respect we do not agree with this part ,of the observations made by our learned brother R. C. Mankad, J. for the following reasons :
>
> 1. The question before the Supreme Court was quite different. The question was as to the width or extent of power of the Court of Small Causes at Ahmedabad when it exercised its jurisdiction conferred upon it under S. 28 of the Rent Act. The exclusive jurisdiction to try the matters under the Rent Act is vested in the Small Causes Court having procedural provisions under the Presidency Small Cause Courts Act. The question before the Supreme Court was not of exercising different type of jurisdictions vested in the same court. The Presidency Small Cause Courts' Act provided for issuance of distress warrant and that was held to be available for Rent cases also. This had nothing to do with the jurisdiction to decide or not to decide a dispute under the Rent Act as well as a dispute not covered under the Rent Act. When the Court of Small Causes exercises its power to issue distress warrant under S. 53 of the Presidency Small Cause Courts Act, 1882, while dealing with a case under the I Rent Act, it does not exercise its ordinary jurisdiction. 'The power to issue distress warrant is within the scope, of jurisdiction conferred upon it under the provisions of S. 28 of the Rent Act. This becomes clear if reference is made to' the provisions of S. 49(2)(iii) of the Rent Act and R. 5 of the Bombay Rents, Hotel and Lodging House Rates (Control) Rules, 1948. A. specific reference to these provisions has been made in Para 5 of the judgment of the Supreme Court. Particularly in view of the aforesaid provisions the Supreme Court said that the Court of Small Causes at Ahmedabad had power to issue distress warrant when it exercised its jurisdiction in respect of suits and proceedings which were exclusively triable by it by virtue of S. 28 of the Rent Act.

2. The Supreme Court did not say, nor there was any occasion for the Supreme Court to decide a question, that the Court of Small Causes at Ahmedabad could exercise its ordinary jurisdiction simultaneously in the same proceeding while exercising jurisdiction conferred upon it under S. 28.

3. In an area where the Court of Civil Judge (JD) is exercising its powers, there are no two different courts operating in two different fields; but there is one court exercising two different jurisdictions -one ordinary civil jurisdiction and another exclusive jurisdiction conferred under the provisions of the Rent Act.

4. Since the forum - of appeal and revision is different and since the width of power to be exercised by the court while deciding two different proceedings is also quite distinct and separate, two distinct and separate jurisdictions cannot be simultaneously exercised in the - same proceedings.

5. For the plaintiff could alternative case in the same proceeding that the defendant was his tenant and he be granted decree of eviction of the suit premises on any ground available to it under the provisions of the Rent Act.

6. An alternative plea which takes away the case beyond the scope of the jurisdiction of the court while dealing with specific proceeding and which changes the aforesaid reasons the not have pleaded an nature of the suit or proceeding, will surely cause embarrassment and prejudice to the other side and hence the same will not be permissible.

Let us examine the question from another angle. Can a landlord who does not. Wish to claim possession of the premises file a summary suit in the Court of Small Causes for recovery of arrears of rent alone? Or will he be obliged to file a H.R.P. suit as it is being called? There is an unreported decision of this High Court which provides answer to this question (Civil Revision Application No. 674 of 1972 decided on Jan. 23, 1973, by B. J. Divan, J., as he then was). In that case the plaintiffs were the trustees of a Public Charitable Trust and they were the owners of a building situated in Revdi Bazaar locality of Ahmedabad City. They claimed that the defendant had not paid rent and municipal taxes for nearly about four years and had not even paid education for about two years and hence they filed suit to recover Rs. 656.21 as a summary suit in the Court of Small Causes at Ahmedabad. The trial court granted leave to defend on certain conditions and in revision file against the order of the trial court, B. J. Divan, J. (as he then was) took the view that the suit should have been filed as H.R.P. suit, as it is called, in the Court of Small Causes and not as a summary suit, even though both the summary suit as well as the suit under the Rent Act are cognizable or triable by the Court of Small Causes. The difference comes in this manner that the provisions of 0. 37 of the Civil P. C, relating to summary suits do not apply to a suit filed by the landlord against a tenant for recovery of arrears of rent. There is no provision in Rent Act regarding summary suits applicable to the suits for recovery of rent. In this view of the matter on this very narrow point the revision application was allowed.

45. In the aforesaid case the difference pointed out is only with regard to the procedure but the further difference would be with regard to the original forum, forum of appeal and/or revision and the powers of the court while dealing with the proceedings. Therefore it will become impossible for the court to proceed further at all. Hence it has got to be held that the court cannot entertain a composite suit invoking two different jurisdictions of the court and the plaintiff must make his choice right at the beginning i.e. at the time of filing the suit itself.

46. In New Shorrock Mills' case (AIR 1983 Guj 21) (supra), an unreported decision of this Court rendered in Second Appeal No. 282 of 197:2 by M. C. Trivedi, J. (as he then was) was pointed out. That, decision was not followed on the sole ground that the decision of the Supreme Court in Khemchand's case (AIR 1970 SC 102) (supra) was not brought to the notice of the Court. However, as discussed hereinabove, the Supreme Court in Khemchand's case (supra) has not dealt with the question as to whether a court invested with two different jurisdictions can exercise both the jurisdictions simultaneously in the same proceeding. Therefore it will be necessary to consider the decision in Second Appeal No. 282 of 1972.

47. In that case the plaintiff filed a suit for eviction from the suit premises in the Court of Civil Judge (JD), Vadodara, contending that the defendants, who were heirs of deceased tenant, were trespassers in the suit premises and hence they were liable to be evicted. The defendants contended that they were renants of the premises in view of the provisions of S. 5(11) of the Rent Act. The trial Court held that the defendants were tenants in the suit premises and therefore the court of Civil Judge (JD) while exercising its ordinary jurisdiction under the Civil P. C. had no jurisdiction to entertain and decide the suit and therefore ordered to dismiss the suit. The plaintiff filed an appeal before the District Court, Vadodara. The learned Assistant Judge, Vadodara; who heard the appeal, held on interpretation of the provisions of S. 5(11) of the Rent Act that the defendants were not tenants in the suit premises. He, however, without considering and deciding the question regarding the jurisdiction of the Court of Civil Judge (JD) to entertain and decide the suit, reversed the judgment and decree passed by the trial court and ordered to allow and decree the suit of the plaintiff. The aforesaid judgment and decree passed by the learned Assistant Judge, Vadodara, was challenged before the High Court. The High Court came to the conclusion that it was not a simple suit for eviction by an owner of the property against 'a trespasser in unauthorized possession. In substance it was a case in which the plaintiff wanted the court to give its decision as to whether the defendants were tenants in the suit premises under S. 5(11) of the Rent Act. Therefore, after referring to case law, M. C. Trivedi, J. (as he then was) found that it was a suit in which the Court was required to deal with and decide the questions arising under the provisions of the Rent Act and therefore the civil court while exercising its ordinary civil jurisdiction had no jurisdiction to try the suit, as the same has been barred under S. 28(1) of the Rent Act.

48. In that case a contention was raised by the counsel for the respondents that even if the ordinary civil court had no jurisdiction to try the suit, the ordinary civil court and the court exercising powers under the Rent Act being the same, the suit should not be dismissed for want of jurisdiction. Dealing with this contention it was observed by the Court as follows "This is an argument which, I think, I need not go into. Though the same Judge may be presiding over the two Courts, jurisdictions are quite different and the ordinary Civi I Court is denuded of the powers to try the suit under the Act

and, therefore, a decree passed by the Court having no jurisdiction in the matter cannot be confirmed by the Court. There was inherent lack of jurisdiction in the trial Court and, therefore, the suit should have been returned to the plaintiff for presentation in the proper Court .

The aforesaid observations have probably led to the impression that there were two different courts operating in two different fields. In view of the decision of the Supreme Court in Khemchand's case (AIR 1970 SC 102) (supra) it cannot be said that there are two different courts operating in two different fields. As laid down by the Supreme Court, certain existing courts have been invested with special and exclusive jurisdictions to decide the questions mentioned in S. 28 of the Act. The result is that the same court is conferred with two fundamentally different and separate jurisdictions. Hence the aforesaid observations are required to be read in this context. If read in the context of the Supreme Court decision and the decision of this High Court in Bhikhabhai's case (1963-4 Guj LR 873) (supra), the aforesaid observations would mean that the same court presided over by one and the same individual is invested with two different jurisdictions. Since no. argument based on the decision of the Supreme Court in Khemchand's case (AIR' 1970 SC 102) (supra) was made before M. C. Trivedi. J. (as he then was), he had no opportunity to make the points explicitly clear. But from the fact that two different jurisdictions are conferred upon one and the same court/authority, it is not permissible to conclude that the same court/authority can exercise both the jurisdictions simultaneously in one and the same proceeding.

49. In New Shorrock Mills' case (AIR 1983 Guj 21) (supra) reliance was also placed on another decision of this Court in the case of Narayanprasad Haribhai Majmudar v. Merubhai Revabhai reported in (1967) 8 Guj LR 897. In that case Bhagwati, J. (as he then was) held that the Agricultural Lands Tribunal had jurisdiction to decide whether a person is a protected tenant or a permanent tenant when such a question arises in a proceeding under the Bombay Tenancy and Agricultural Lands Act (LXVII of 1948) and an application under S. 71 of the said Act was not necessary for determination of that question. The Court came to the aforesaid conclusion in view of the Notification D/'July 9, 1960 by which the Agricultural Lands Tribunal was invested with the jurisdiction of the Mamlatdar and this point has been made clear by the court when it has observed at page 902 of the judgment as follows:

> ".....Merely because the same person happens to be both the Agricultural Lands Tribunal and the Mamlatdar, it does not mean that while acting as the Agricultural Lands Tribunal, he can also exercise the jurisdiction of the Mamlatdar. The officer may be the same but the jurisdiction are distinct and independent and while exercising the jurisdiction of the Agricultural Lands Tribunal, he cannot do that which is permissible to him only in the exercise of the jurisdiction of the Mamlatdar. But a fundamental difference in the position is made bv the Notification dated 9th July 1960 f6r that notification invests the Agricultural Lands Tribunal with the Jurisdiction of the Mamlatdar."

On account of this fundamental change brought about by the issuance of the aforesaid notification, this Court decided that Agricultural Lands Tribunal had jurisdiction to decide whether a person was a protected tenant or a permanent tenant, when. Such a question arose in proceedings under S. 32G

of the Tenancy Act. The decision in Narayanprasad's case (1967-8 Guj LR 897) (supra) reflects the changed position brought out by the publication of notification dated July 9, 1960. It does not obliterate or in any way water-down the principles laid down in Bhikhabhai's case (1963-4 Guj LR 873) (supra). In above view of th6 matter, reliance placed on the decision of Narayanprasad's case (supra) is of no help and on that basis the case of the plaintiff cannot be advanced further.

50. Counsel for the respondent plaintiff contended that it was open to the plaintiff to plead an alternative case. He submitted that the plaintiff may rely upon different grounds alternatively and there is nothing in the Code, which prevents from making two or more inconsistent sets of allegations and claiming relief there under in the alternative. It is further contended that the alternative case which the plaintiff could have made, was not only admitted by the defendant in his written statement but was expressly put forward as an answer to the claim which the plaintiff made in the suit, there would be nothing improper in giving the plaintiff a decree upon the case Which the defendant himself makes. The plaintiff could in the alternative have pleaded that the respondent was his tenant and prayed for possession of the suit premises on the ground that it was entitled to claim possession under the provisions of the Rent Act. This contention is sought to be supported by pressing into service the decision of the Supreme Court in the case of Firm Srinivas Ramkumar v. Mahabir Prasad, reported in AIR 1951 SC 177, and also by referring to the ~case of New Shorrock Mills' case (AIR 1983 Guj 21) (supra). The following observations from the decision of the Supreme Court have been particularly relied upon (at p. 179180):

> "A plaintiff may rely upon different rights alternatively and there is nothing in the Civil P. C. to prevent a party from making two or more inconsistent sets of allegations and claiming relief there under in the alternative. Ordinarily, the Ct. cannot grant relief to the plaintiff on a case for which there was no foundation in the pleadings and which the other side was not called upon or had an opportunity to meet. But when the alternative case, which the plaintiff could have made, was not only admitted by the deft. in his written statement but was expressly put forward as an answer to the claim which the plaintiff made in the suit, there would be nothing improper in giving the plaintiff a decree upon the case which the deft. Himself makes. A demand of the based on the deft's own plea cannot possibly be regarded with surprise by the latter and no question of adducing evidence on these facts would arise when they were expressly admitted by the defendant in his pleadings. In such circumstances, when no injustice can possibly result to the defendant, it may not be proper to drive the plaintiff to a separate suit."

We had an occasion to deal with this case while deciding First Appeal No. 151 of 1977 decided on Jan. 17, 1983 (Reported in AIR 1983 Guj 202). Therein we have dealt with the question as to whether admission made by the defendant in written statement can be availed of by the plaintiff who had filed a suit invoking the ordinary civil jurisdiction of the court and as to whether on the basis of such an admission in the written statement decree can be passed on the ground that alternative case which the plaintiff could have pleaded is not only admitted by the defendant but it is specifically set up as a defence. While dealing with the question as to whether the plaintiff could be permitted to raise alternative plea, we have observed as follows (at p. 205):

> "In that case the question was as to whether alternative relief can be granted although there may not be pleadings in that behalf. In this case the relief claimed by the plaintiff is the same. The plaintiff wishes to place an alternative case. Moreover in a case before an ordinary civil court, it would not have been possible for the plaintiff to put his case raising questions between landlord and tenant. Therefore the plain-tiff could never have raised such inconsistent plea in a suit for possession filed in an ordinary civil court."

It should be clear that before the Supreme Court the alternative plea which the plaintiff could have taken and which the plaintiff was permitted to take was not such that it would have taken the case beyond the purview of the jurisdiction which the court was called upon to exercise in that particular' proceeding. This is the main distinction, which should be borne in mind.

51. Counsel for the respondent plaintiff submitted that it was a case arising from the City Civil Court, Ahmedabad, and therefore the distinction made in that case and the observations made therein would not be applicable to this case. This argument has no substance in as much as we have held that a court invested with two fundamentally distinct and separate jurisdictions cannot exercise both the jurisdictions simultaneously in the same proceeding. An alternative plea which may change the entire nature of the suit and which may take the case out of the jurisdiction of the court which the court was called upon to exercise in that particular proceeding. Cannot be permitted. Moreover it would surely cause. Embarrassment to the defendant and would cause serious prejudice in his defense. In view of the fact that the court cannot exercise two different jurisdictions simultaneously in the same proceeding, such inconsistent and alternative plea cannot be permitted.

52. In support of the same contention three decisions of the Supreme Court in the following cases have been cited by the counsel for the respondent-plaintiff: (1) Nagubai v. B. Shama Rao. Reported in AIR t956 SC 593. (2) Kunju Kesavan v. M. M. Philip reported in AIR 1964 SC t64. (3) Bhagwati v. Chandramaul. Reported in AIR 1966 SC 735.

In none of these cases the question as to whether a party can be permitted to put an inconsistent and alternative plea, which may be beyond the scope of the jurisdiction of the court in respect of that particular proceeding, was involved. For the reasons stated while discussing the decision of the Supreme Court in the case of Firm Srinivas Ramkumar (AIR 1951 SC 177) (supra), we are of the opinion that these decisions of the Supreme Court are of no help to the respondent plain tiff.

No other contention is raised by the respondent-plaintiff.

53. In above view of the matter, with utmost respect, we do not agree with the finding arrived at by our learned brother R. C. Mankad, J. in New Shorrock Mills' case (AIR 1483 Guj 21) (supra). In our opinion a plaintiff who has filed a suit claiming possession of the premises on the ground that the defendant is a trespasser, cannot be permitted in the same proceeding to claim possession on any ground available under the provisions of the Rent Act. In such a case the plaintiff cannot be permitted to rely upon the so called admission made by the defendant in his written statement and the decree cannot be passed on the basis of such admission inasmuch as the court cannot decide the

questions between a landlord and a tenant in a proceeding to which the provisions of the Rent Act do not apply.

54. In the instant case the respondent plaintiff filed the suit for recovery of possession of the premises on the ground that the defendant was a licensee and his licence having been terminated he was in unauthorized occupation of the premises and hence liable to be evicted. We have come to the conclusion that the defendant was not a licensee but he was a tenant and therefore entitled to claim protection of the provisions of the Rent Act. Since the respondent plaintiff f has failed to prove that the defendant was a licensee, the suit is liable to be dismissed. As held by us hereinabove the court of Civil Judge (JD) cannot deal with a claim or question arising out of the provisions of the Rent Act simultaneously in one and the same proceeding while exercising its ordinary civil jurisdiction. Therefore, once it is held that the defendant is not a licensee, then on that ground alone the suit has to be dismissed for the simple reason that the 'claims or questions falling within the purview of S. 28 of the Rent Act cannot be dealt with and determined by the court of Civil Judge (JD) while exercising its ordinary civil jurisdiction.

55. In the result, the judgment and decree passed by the learned Extra Assistant Judge, Kheda at Nadiad, in Civil Appeal No. 93 of 1980 decided on Sept. 1, 1982 confirming the judgment and decree passed by the court of Civil Judge (JD),Nadiad, on Sept. 13, 1978, in Regular Civil, Suit No. 292 of 1976 is quashed and set aside and the suit filed by the respondent plaintiff is ordered to be dismissed. Rule made absolute with cost to the extent indicated hereinabove.

56. Rule made absolute.