Dhannalal vs Kalawatibai And Ors on 8 July, 2002

Equivalent citations: AIR 2002 SUPREME COURT 2572, 2002 AIR SCW 2873, 2002 SCFBRC 3 572, 2002 (7) SRJ 291, 2003 ALL CJ 1 38, (2002) 5 JT 53 (SC), 2002 (2) UJ (SC) 1099, 2002 (3) LRI 253, 2002 (5) SCALE 42, 2002 (6) SCC 16, 2002 (4) SLT 250, (2003) 1 JAB LJ 85, (2002) 2 CURLJ(CCR) 526, (2002) 2 RENCJ 115, (2002) 2 RENCR 126, (2002) 2 RENTLR 266, (2002) 3 SCJ 268, (2002) 5 ANDHLD 70, (2002) 4 SUPREME 552, (2002) 5 SCALE 42, (2002) WLC(SC)CVL 591, (2002) 48 ALL LR 678, (2002) 3 CURCC 109

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Bench: R.C. Lahoti, B.N. Agrawal

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           CASE NO.:
Appeal (civil)  3652 of 2002

PETITIONER:
DHANNALAL

RESPONDENT:
KALAWATIBAI AND ORS.

DATE OF JUDGMENT: 08/07/2002

BENCH:
R.C. LAHOTI & B.N. AGRAWAL

JUDGMENT:
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JUDGMENT 2002 Supp(1) SCR 19 The Judgment of the Court was delivered by R.C. LAHOTI, J. Leave granted.

The suit premises in these two appeals are two shops situated in M.T. Cloth Market, Indore on the ground-floor of a building. The property was owned by late Krishnadas. He inducted the two appellants in the two shops as tenants for non-residential purpose. Krishnadas died on 8.7.1995. His ownership and right of reversion as landlord have devolved on his widow -Smt. Kalawatibai and two sons - Govinda and Hemant. These three are the respondents in these appeals. They initiated the proceedings for eviction of the two appellants in December 1995. The case of the respondents is that the shop in the occupation of appellant Dhannalal is required bonafide for starting the business of Govinda, the respondent no.2, while the shop in the occupation of the other appellant, M/s. Tulsidas Sureshchandra is required by the respondent Hemant for shifting and continuing his readymade garments business which he is presently running in a rented accommodation situated in Gorakund locality, at a little distance from the building in question. It is alleged that the respondents do not

own or possess any other accommodation of their own suitable to satisfy their alleged requirement. These proceedings for eviction were initiated under Chapter III-A of M.P. Accommodation Control Act, 1961 (hereinafter the Act, for short) by filing applications before the Rent Controlling Authority, Indore (RCA, for short). The two appellants contested the claim preferred by the respondents. However, the R.C.A. found the claims for eviction proved and directed the two appellants to be evicted. Both the appellants preferred revision petitions under Section 23-E of the Act before the High Court. The High Court, having dealt with each of the contentions raised on behalf of the revision petitioners, has dismissed the revision petitions upholding the orders of the R.C.A. Feeling aggrieved thereby these appeals have been filed by special leave.

Two questions arise for decision in these appeals: firstly, whether looking at the nature of requirement pleaded by the landlord-respondents in their applications the forum of Rent Controlling Authority was available to the respondents under Chapter III-A of the Act or whether they were required to have recourse to the jurisdiction of Civil Court by filing suits for eviction under Section 12 of the Act; and secondly, whether the landlords have succeeded in making out case of bonafide requirement of the suit premises within the meaning of clause (b) of Section 23-A of the Act.

M.P. Accommodation Control Act, 1961 is a legislation providing for regulation and control of letting and rent of accommodations and generally to regulate the control of eviction of tenants from accommodations and for other matters connected therewith or incidental thereto. It also provides for expeditious trial of eviction cases on ground of bonafide requirement of certain categories of landlords. Section 12 of the Act, which opens with a non-obstante clause, provides for no suit against a tenant for his eviction from any accommodation being filed in any Civil Court except on one or more of the grounds enumerated therein. Thus the rights, obligations and protection of the tenants in the matter of eviction from accommodations are governed principally by Section 12 of the Act and suit against tenant seeking eviction can be filed only in Civil Court. The procedure applicable and the remedy of appeal and revision are those as enumerated in the Code of Civil Procedure. The M.P. Amendment Act No. 27 of 1983 w.e.f. 16.8.1983 inserted in the Act Chapter I1I-A entitled "Eviction of tenants on grounds of 'bonafide' requirement" making provision for a special and summary procedure for dealing with claims for eviction of tenants founded on the ground of bonafide requirement for all the landlords generally. Corresponding amendment was made in Section 12 of the Act so as to do away with jurisdiction of Civil Court so far as claim for eviction on the ground of bonafide requirement, residential or non-residential, is concerned. Within a short range of time the Legislature gave a second thought and in its wisdom considered it appropriate to not to extend the benefit of the provisions contained in Chapter III-A to all landlords generally but to keep it confined to such specified categories of landlords who on account of certain handicap, adversity or a peculiar position in which they are placed need to be dealt with on a different pedestal and given advantage of a summary, quick and expeditious remedy of seeking eviction on the ground of personal requirement. Chapter III-A was hence amended by M.P. Act No. 7 of 1985 w.e.f. 16.1.1985. We are concerned with the provisions of Chapter III-A as amended. Chapter III-A, as it stands now (since 16.1.1985), makes provision for proceedings for eviction of tenants, on the ground of bonafide requirement for residential or non-residential purpose, being initiated in the forum of Rent Controlling Authority only by specified categories of landlords (and not by any landlord generally).

Section 12 of the Act, placed in Chapter III dealing with control of eviction of tenants, provides (by relevant part thereof) as under :

> Sec. 12. Restriction on eviction of tenants. (1) Notwithstanding anything to the contrary contained in any other law or contract, no suit shall be filed in any Civil Court against a tenant for his eviction from any accommodation except on one or more of the following grounds only namely:-
>
> XXX XXX
> XXX
> XXX XXX
> XXX
>
> (e) that the accommodation let for residential purposes is required
>
> bona-fide by the landlord for occupation as a residence for himself or for any member of his family, if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitably residential accommodation of his own his occupation in the city or town concerned;
>
> (f) that the accommodation let for non-residential purposes is required bona-fide by the landlord for the purpose of continuing or starting his business or that any of his major sons or unmarried daughters if he is the owner thereof or of any person for whose benefit the accommodation is held and that the landlord or such person has no other reasonably suitably non-

residential accommodation of his own in his occupation in the city or town concerned.

The abovesaid provision needs to be read in juxtaposition with Section 23-A of the Act placed in Chapter III-A of the Act which reads as under:

> "23-A. Special provision for eviction of tenant on ground of bona-fide requirement.-Notwithstanding anything contained in any other law for the time being in force or contract to the contrary, a landlord may submit an application, signed and verified in a manner provided in rules 14 and 15 of Order VI of the First Schedule to the Code of Civil Procedure, 1908 (V of 1908) as if it were a plaint to the Rent Controlling Authority on one or more of the following grounds for an order directing the tenant to put the landlord in possession of the accommodation, namely:-
>
> (a) that the accommodation let for residential purposes is required "bonafide" by the landlord for occupation as residence for himself or for any member of his family, or for any person for whose benefit, the accommodation is held and that the landlord or such person has no other reasonably suitable residential accommodation of his own

in his occupation in the city or town concerned."

Explanation. For the purposes of this clause, "accommodation let for residential purposes" includes -

(i) any accommodation which having been let for use as a residence is without the express consent of the landlord, used wholly or partly for any non-residential purpose; (ii) any accommodation which has not been let under an express provision of contract for non-residential purpose;

(b) that the accommodation let for non-residential purposes is required "bonafide" by the landlord for the purpose of continuing or starting his business or that of any of his major sons or unmarried daughters, if he is the owner thereof or for any person for whose benefit the accommodation is held and that the landlord or such person as no other reasonably suitable non-residential accommodation of his own in his occupation in the city or town concerned:

The specified categories of landlords by whom proceedings can be initiated under Chapter III-A are defined in Section 23-J which reads as under:-

"Sec.23J. Definition of landlord for the purposes of Chapter III-

A. For the purposes of this Chapter "landlord" means a landlord who is-

(i) a retired servant of any Government including a retired member of Defence Services; or

(ii) a retired servant of a company owned or controlled either by the Central or State Government; or

(iii) a widow or a divorced wife; or (iv) physically handicapped person; or

(v) a servant of any Government including a member of defence services who, according to his service conditions, is not entitled to Government accommodation on his posting to a place where he owns a house or is entitled to such accommodation only on payment of a penal rent on his posting to such place."

Such a landlord seeking eviction of his or her tenant on the ground of bonafide requirement of residential or non residential accommodation, the ground as defined in Section 23-A of the Act, must have recourse to Chapter III-A only. Section 11-A of the Act provides that the provisions of Chapter III so far as they relate to matter specially provided in Chapter III-A shall not apply to the landlord defined in Section 23-J. Section 45 of the Act also provides that as to the matters which the Rent Controlling Authority is empowered by or under the Act to decide are not entertainable by Civil Court. The effect of these provisions is that a landlord as defined in Section 23-J of the Act cannot have recourse to the forum of Civil Court.

Broadly speaking, the main features of Chapter III-A are that it provides a summary procedure for the hearing of applications on the lines similar to those contained in Order 37 of the CPC. The tenant cannot contest the prayer for eviction from accommodation unless leave to defend is sought for by moving an application within the prescribed period of time and allowed. Default in appearance or refusal of leave results in the statement made by the landlord in the application for eviction being deemed to have been admitted by the tenant obliging the Rent Controlling Authority to pass an order of eviction. Where leave is granted to the tenant to contest the application, the Rent Controlling Authority shall hold an enquiry consistently with the practice and procedure of a Court of Small Causes. The requirement of the landlord is presumed to be bonafide unless the contrary is proved, that is to say, the burden of proof is placed on the tenant to rebut the case of the landlord contrary to the ordinary procedure in a Civil Court where the burden of proof lies on the landlord. As against an order of eviction passed by the RCA, a revision lies to the High Court and the remedy of appeal is excluded.

The submission of Shri S.S. Ray, the learned senior counsel for the appellants, has been that the procedure and remedy provided by Chapter III- A are summary and onerous to the tenant. Mainly speaking, the tenant is not entitled to defend himself as of right, the burden of proof is shifted on him from the very inception and he does not have a right of appeal.

At the very outset, we may point out that the issue as to the constitutional validity of the provisions contained in Chapter III-A of the Act is not before us. The proceedings have originated in the jurisdiction of Rent Controlling Authority where the question of vires could not have been raised and gone into. Before the High Court, during the hearing of revision filed by the appellants, the plea was faintly raised and urged but turned down. In the absence of proper pleadings and the Advocate General of the State having been put on notice, we do not deem it proper to enter into the question of constitutional validity. However, it needs to be noted that the controversy as to the constitutional validity of Chapter III-A on the ground of being violative of Article 14 of the Constitution as conferring benefit of special procedure for eviction of tenant on certain classified landlords and the classification suffering from invidious discrimination is a beaten track. All these questions have been exhaustively gone into by a Division Bench of the High Court of Madhya Pradesh presided over by J.S. Verma, J. (as His Lordship then was) in B. Johnson v. C.S. Naidu, AIR (1986) MP 72, and the challenge was turned down. In Kewal Singh v. Lajwanti, [1980] 1 SCC 290, a similar challenge laid against similar provisions of the Delhi Rent Control Act, 1958, was rejected. Similarly in Ravi Dutt Sharma v. Ratanlal Bhargava, [1984] 2 SCC 75, challenge to the classification between landlords in order to provide benefit of the special procedure only to some of them constituting a distinct class was upheld as permissible and reasonable classification. Both these decisions were relied on by the Division Bench of the High Court of Madhya Pradesh in B. Johnson's case (supra). To the same effect is a later Full Bench decision of Madhya Pradesh High Court in Kunjulal Yadu v. Parasram Sharma, (2000) II MPJR 123. So much observation would suffice for the purpose of the present case as in our opinion, the present one is not a fit case, on the basis of the pleadings and material available, to examine the question of constitutional validity of Chapter III-A of the Act.

The principal issue is that out of three co-landlords, the respondents herein, one is a widow falling within the definition of 'landlord' as defined in Section 23-J of the Act and hence entitled to have

recourse to the provisions of Chapter III-A while other two co-landlords do not fall within the definition of 'landlord' in Section 23-J. Though the requirement pleaded is of all the landlords, i.e. the widow as also the other two co- landlords, it is only the widow who can take advantage of the special procedure for eviction but the others two, who actually require the premises for their non-residential use, should have gone to Civil Court and cannot, under the law, have recourse to the forum of Rent Controlling Authority.

The submission of Shri S.S. Ray, the learned senior counsel for the appellants, is that inasmuch as the requirement is of non-classified landlords to whom the forum of Civil Court under Section 12 of the Act is open, they could not have invoked Chapter III-A to their advantage and to the prejudice of the tenant-appellants and should have filed their suits for eviction before the Civil Court. It is further submitted that unless that view is taken the provisions of Chapter III-A would be liable to be struck down as violative of Article 14 of the Constitution and, therefore, the provisions of Chapter III-A should be so read as to save them from constitutional invalidity. The submission made by the learned senior counsel for the appellants, though attractive, is liable to be discarded on scrutiny of its merit.

We will first note how the issue has been dealt with by the High Court of Madhya Pradesh. In Shivraj Jat v. Smt. Asha Lata Yadav and Ors., (1989) MPJR HC 336, a widow filed an application under Section 23-A of the Act for eviction of the tenant from the leased premises on the ground that the same was bonafide required for the purpose of starting the business of her major son who was also arrayed as a co-plaintiff. One of the pleas raised on behalf of the tenant was that only one of the applicants being a widow a 'landlord' as defined by Section 23-J of the Act, while the other applicant was not such a landlord, the special procedure provided by Section 23-A of the Act was not available to them. It was held by the Division Bench that the provisions of Section 23-A (b) were unambiguous. The legislation enables a "landlord" to seek eviction if the leased premises are bonafide required by the landlord for starting the business of a major son or daughter of the landlord; there can be no logic or justification for denying that relief to the landlord because the major son or daughter of the landlord also happens to be co-owner of the leased premises. The case was held to be covered by Section 23-A(b) of the Act. A similar issue arose for consideration by a Ful Bench of Madhya Pradesh High Court in Harbans Singh v. Smt. Margrat G. Bhingardive, AIR (1990) MP 191. The question posed before the Full Bench was : "Whether out of several landlords of an accommodation including a widow, an application for eviction of the tenant by the widow alone, on the ground of her own bonafide need or joint need of herself and that of her married sons and their children, would be competent before the Rent Controlling Authority under Section 23-A(a) read with Section 23-J(iii) of the Act". The premises in question were let out by the late husband of the landlady and after his death the widow as well as her children succeeded to the tenanted premises by inheritance and therefore the widow and her children all became co-owners and joint landlords thereof. The application for eviction was filed by the widow alone. It was urged that the widow alone cannot maintain an application under Section 23- A of the Act either for her own bonafide need or for the joint need of herself and her married sons who are also joint landlords but do not belong to the special class envisaged in Section 23-J of the Act and have not joined the widow in making application for eviction. The Full Bench held that application filed by the widow alone as one of the landlords was competent. The Full Bench further held :-

"If we examine the language of Section 23-A and clause (a) thereof it would be clear from the plain and unambiguous words and language used therein that they are capable of only one construction that the person who falls in the category of special class of landlords is authorized to take action for eviction of the tenant either for his own bonafide need or for the bonafide need of any member of his family who may not belong to any of the special class of landlords. If we accept the submissions advanced by the learned counsel for the tenant/applicant then in that event we would be doing violence to the plain-language and words used in the provisions under consideration by reading into the said provisions the words that the member of the family for whose bonafide need, the application has been filed by the special class of landlord, should also belong to that category. But law of Interpretation of Statute does not permit such a course. Consequently the result is that the application made by the widow/non-applicant under S.23-A(a) of the Act for eviction of the tenant/applicant herein on the ground of her bonafide need and that of her married sons who are members of his family is competent and maintainable before the Rent Controlling Authority"(para 17).

".....out of several landlords of an accommodation including a widow, an application for eviction of the tenant by the widow alone, on the ground of her own bonafide need or joint need of herself and that of her married sons and their children, who are members of his family would be competent before the Rent Controlling Authority under S.23-A(a) read with S.23-J of the Act" (para 18).

We find ourselves in agreement with the view of the law taken by the High Court of M.P. in Shivraj Jat' s case (supra) and Harbans Singh's case (supra). An analysis of Section 23-A(b) of the Act shows that an application seeking eviction of tenant thereunder is maintainable if :- (i) the accommodation is let for non-residential purpose; (ii) it is required bonafide by the landlord for the purpose of continuing or starting (a) his business, or (b) business of any of his major sons or unmarried daughters;

(iii) the landlord is the owner of such accommodation or is holding accommodation for benefit of any person who requires the accommodation; and

(iv) the landlord or such person has no other reasonably suitable non-

residential accommodation of his own in his occupation in the city or town concerned.

It is well settled by at least three decisions of this Court, namely, Sri Ram Pasricha v. Jagannath and Ors., [1976] 4 SCC 184, Kanta Gael v. B.P. Pathan and Ors., [1977] 2 SCC 814 and Pal Singh v. Sunder Singh (dead) by Lrs. and Ors., [1989] 1 SCC 444 that one of the co-owners can alone and in his own right file a suit for ejectment of tenant and it is no defence open to tenant to question the maintainability of the suit on the ground that other co-owners were not joined as parties to the suit. When the property forming subject matter of eviction proceedings is owned by several owners, every

co-owner owns every part and every bit of the joint property along with others and it cannot be said that he is only a part owner or a fractional owner of the property so long as the property has not been partitioned. He can alone maintain a suit for eviction of tenant without joining the other co-owners if such other co-owners do not object. In Shri Ram Pasricha's case (supra) reliance was placed by the tenant on the English rule that if two or more landlords institute a suit for possession on the ground that a dwelling house is required for occupation of one of them as a residence the suit would fail; the requirement must be of all the landlords. The Court noted that the English rule was not followed by the High Courts of Calcutta and Gujarat which High Courts have respectfully dissented from the rule of English law. This Court held that a decree could be passed in favour of the plaintiff though he was not the absolute and full owner of the premises because he required the premises for his own use and also satisfied the requirement of being "if he is the owner", the expression as employed by Section 13(1) (f) of W.B. Premise s Tenancy Act, 1956.

It follows that a widow, who is a co-owner and landlady of the premises can in her own right initiate proceedings for eviction under Section 23-A(b), as analysed hereinbefore, without joining other co-owners/co-landlords as party to the proceedings if they do not object to the initiation of proceedings by such landlady, because she is the owner of the property and requires the tenanted accommodation for the purpose of continuing or starting the business of any of her major sons. The major sons though co- owners/co-landlords may not have been joined as party to the proceedings but it would not adversely affect the maintainability of the proceedings. It would also not make any difference if they are also joined as party to the proceedings. Their presence in the proceedings is suggestive of their concurrence with the widow landlady maintaining the proceedings in her own right. The presence of such co-landlords, as co-plaintiffs or co- applicants, as are not classified landlords as defined in Section 23-J of the Act does not alter the nature of claim preferred by the widow landlady and therefore does not take the proceedings out of the scope of Section 23- A (b). Conversely, the major sons or any of them suing alone without joining a widow co-landlord as party to the proceedings may institute a suit before a Civil Court under Section 12 of the Act pleading that the non-residential premises were required bonafide by them or any of them for the purpose of continuing or starting their own or his own business as they would be owners thereof and the requirement will be theirs. It would not make any material difference if the widow co-landlord was joined as party to the proceedings either as plaintiff or as co-applicant because the case pleaded in the plaint would squarely fall within the ambit of clause (f) sub-Section (1) of Section 12 of the Act.

Here we may divert a little and refer to a decision of this Court in Messrs. Importers and Manufacturers Ltd. v. Pheroze Framroze Taraporewala and Ors., AIR (1953) SC 73. The local law (applicable to Bombay) provided for a suit between landlord and tenant being filed in the Small Causes Court. In the suit filed by the landlord against the tenant, the sub-tenant was also impleaded as a party. The defendant objected to the maintainability of the suit before the Small Causes Court submitting that the suit being not one between landlord and tenant alone it would not be within the competence of the Small Causes Court to try the same. This Court held that a sub-tenant was a proper party in a suit for ejectment between landlord and tenant. The joinder of such a proper party cannot alter the character of the suit and does not make the suit any the less a suit between the landlord and the tenant; to hold otherwise will be to encourage multiplicity of the suits which will result in no end of inconvenience and confusion. It is clear from the ratio of this decision that

presence of proper party does not alter the basic character of the suit and availability of forum is to be determined by examining the essential nature of the suit.

The submission of the learned senior counsel for the tenant-appellants if accepted may create a diabolical situation. The requirement pleaded is the requirement of a widow landlady for continuing or starting the business of her major sons. In proceedings for eviction of a tenant it is permissible for all the co-owner landlords to join as plaintiffs. Rather, this is normally done. Now, if they all file a claim before the Civil Court an objection may possibly be raised on behalf of the tenant-defendant that the widow landlady being one of the claimants for eviction she must go to the Rent Controlling Authority under Chapter III-A. If they collectively join in initiating the proceedings for eviction of the tenant before the Rent Controlling Authority under Chapter III-A the tenant-defendant may object that the requirement being that of the major sons who are themselves landlord-applicants the claim should have been filed before the Civil Court, as is the plea before us. How such dilemma can be resolved?

Both the learned senior counsel for the parties stated that there is no specific statutory provision nor a binding precedent available providing resolution to the problem posed. Procedural law cannot betray the substantive law by submitting to subordination of complexity. Courts equipped with power to interpret law are often posed with queries which may be ultimate. The judicial steps of judge then do stir to solve novel problems by neat innovations. When the statute does not provide the path and precedents abstain to lead, then they are the sound logic, rational reasoning, common sense and urge for public good which play as guides of those who decide. Wrong must not be left unredeemed and right not left unenforced. Forum ought to be revealed when it does not clearly exist or when it is doubted where it exists. When the law-procedural or substantive- does not debar any two seekers of justice from joining hands and moving together, they must have a common path. Multiplicity of proceedings should be avoided and same cause of action available to two at a time must not be forced to split and tried in two different fora as far as practicable and permissible.

Reference to, or deriving aid from, certain legal maxims will be useful. Ubi jus ibi remedium-there is no wrong without a remedy. Where there is a right there is a forum for its enforcement. According to Broom's Legal Maxims (Tenth Edition, pp.118-119), the maxim has been considered so valuable that it led to the invention of the form of action called an action on the case. Where no precedent of a writ can be produced, the clerks in Chancery shall agree in forming a new one. The principle adopted by courts of law accordingly is, that the novelty of the particular complaint alleged in an action on the case is no objection, provided that an injury cognizable by law be shown to have been inflicted on the plaintiff, in which case, although there be no precedent, the common law will judge according to the law of nature and the public good. If a man has a right, he must, "have a means to vindicate and maintain it, and a remedy if he is injured in the exercise and enjoyment of it, and, indeed, it is vain thing to imagine a right without a remedy, for want of right and want of remedy are reciprocal".

As held in Smt. Ganga Bai v. Vijay Kumar and Ors., [1974] 2 SCC 393 there is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit, howsoever frivolous the claim, that the

law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit.

Plaintiff is dominus litis, that is, master of, or having dominion over, the case. He is the person who has carriage and control of an action. In case of conflict of jurisdiction the choice ought to lie with the plaintiff to choose the forum best suited to him unless there be a rule of law excluding access to a forum of plaintiffs choice or permitting recourse to a forum will be opposed to public policy or will be an abuse of the process of law.

Reference may also be had to Section 17 of CPC which provides that where a suit is to obtain relief respecting immoveable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situated; provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court. The provision confers right on plaintiff suing on consolidate cause of action to choose one out of several fora available to him and it is his convenience and sweet will which will prevail. The provision is not an answer to the problem posed in the present case; nevertheless the principle underlying thereunder can be read out and pressed in service. In Nrisingha Charan Nandy Choudhry v. Rajniti Prasad Singh and Ors., AIR (1936) PC 189, their Lordships referred to Section 17 of the CPC and termed it as the ordinary rule for determining the Court which can take cognizance of a suit for immoveable property situated within the local limits of two or more tribunals. Where cause of action is one against several defendants and they reside in different jurisdictions, the plaintiff may. under Section 20 of CPC file the suit in a court within whose jurisdiction any one of the defendants, at the time of the commencement of the suit, actually and voluntarily resides. Thus in case of a cause of action being triable in more than one forum it may be tried by any one forum subject to any other provision or rule of law.

Reverting back to the issue before us, the cause of action is one requirement of a major son, who himself is a co-owner. It is capable of being construed in two ways, depending on from the point of view of which of the landlords we look at. From the point of view of the widow landlady an owner it is a case of the accommodation let for non-residential purpose required bonafide by the landlady for the purpose of continuing or starting the business of any of her major sons, within the meaning of Section 23- A(b) of the Act. From the point of view of the major son himself, who is also himself an owner, it is a case of the accommodation let for non- residential purpose required bonafide by the landlord for the purpose of continuing 01 starting his business as he is owner thereof, within the meaning of Section 12(1)(f) of the Act. In the former case the cause of action is triable by way of an application before R.C.A. In the latter case the cause of action is triable in a suit instituted in Civil Court. Any one of them may singally commence the proceedings without impleading the other or by impleading the other as a non-applicant or defendant in pro-forma capacity in which case the choice of forum would present no difficulty. The former shall go to R.C.A. The latter shall go to Civil Court. However, the law does not prevent the co-owner landlords from joining together to sue on the cause of action common to them all. And if they do so the conflict of jurisdiction arises. The choice of forum, in such a case, must of necessity be left open to the plaintiffs. Otherwise they will be left without remedy. Keeping in view the three relevant principles (i) that every wrong must have a remedy and every right to relief must have a forum for enforcement,

(ii) that plaintiff is dominus litis, and (iii) that one co-owner/landlord can file a suit for ejectment of tenant and it is not necessary that all co-owner/landlords must jointly sue for ejectment though they are not prevented from rather entitled to - joining together and suing jointly if they wish to do so, we proceed to state our conclusions as under :-(i) where a claim for eviction is filed by a landlord, or a co-landlord, belonging to any one of the five categories defined in Section 23-J of the Act, as the sole applicant without objection by other co-landlords who have not joined as co-applicants and the nature of claim for eviction is covered by Section 23-A(b) of the Act, the proceedings would lie only before the Rent Controlling Authority;

(ii) where a claim for eviction is filed by a landlord or by such a co- landlord who does not belong to any of the categories defined by Section 23-J and the other co-landlord/landlady falling in one of the categories defined in Section 23-J is not joined as co-plaintiff the claim shall have to be filed only by way of a suit instituted in a Civil Court;

(iii) if the proceedings are initiated by such co-owner landlords, one or more of whom belong to Section 23-J category while some others are those not falling within the definition of 'landlord' under Section 23-J and the requirement pleaded provides a cause of action collectively to all the landlords arrayed as plaintiffs or applicants, the choice of forum lies with the landlords. They may file an application before R.C.A. under Chapter III-A or may file a civil suit in a Civil Court under Section 12 of the Act; in either case the proceedings would be competent and maintainable.

We are, therefore, of the opinion that there is no merit in the plea raised on behalf of the appellants that the three respondents, one widow and her two major sons, could not have initiated proceedings for eviction before the Rent Controlling Authority. We have carefully perused the two applications for eviction filed by the respondents. The bonafide requirement pleaded is of the widow landlady, the respondent no.l, who requires the suit premises for Govinda, respondent no.2 for starting his business and that of another son Hemant, the respondent no.3 for continuing the business which presently he is carrying on in rented premises. Respondents 2 and 3 being major sons of the widow respondent no.l, such requirement clearly falls also within the purview of Section 23-A (b) of the Act. The proceedings initiated before R.C.A. do not suffer from want of jurisdictional competence.

So far as the challenge to proof of requirement is concerned it merits a summary dismissal. The Rent Controlling Authority and the High Court, both, have on a meticulous evaluation of evidence found the requirement proved. None of the landlords is possessed of any other suitable alternative accommodation of his or her own to satisfy the requirement found proved. A landlord cannot be compelled to carry on business in rented premises and the proved requirement cannot be defeated by the tenant submitting that the landlord can start or comfortably continue to run his business in rented premises. It has come in evidence that the landlords have secured possession of some premises in Ahilyapura locality situated at a short distance from the suit premises but the Ahilyapura accommodation is again a tenanted accommodation and hence irrelevant for defeating the claim of the landlords. To be an alternative accommodation relevant within the meaning of Section 12(1)(f) or Section 23-A(b) it must be 'of his own', that is, the one 'owned' by the landlord. Another alternative accommodation pointed out by the tenant is the one situated on the first floor of the building. It has come in the evidence that the second floor of the building is used for residence of

the landlords while the first floor is used partly as a godown and partly for stitching the clothes which are sold as readymade garments in the shop of respondent no.3. To amount to an alternate non- residential accommodation so as to defeat the requirement of the landlord for the suit premises, it should be reasonably suitable non-residential accommodation. It should be suitable in all respects as the suit accommodation is. In Shiv Sarup Gupta v. Dr. Mahesh Chand Gupta, [1999] 6 SCC 222 this Court has held that an alternative accommodation, to entail denial of the claim of the landlord, must be reasonably suitable, obviously in comparison with the suit accommodation wherefrom the landlord is seeking eviction. The availability of another accommodation, suitable and convenient in all respects as the suit accommodation, may have an adverse bearing on the finding as to bonafides of the landlord if he unreasonably refuses to occupy the available premises to satisfy his alleged need. The bonafides of the need of the landlord for the premises or additional premises have to be determined by the Court by applying objective standards and once the Court is satisfied of such bonafides then in the matter of choosing out of more accommodations than one available to the landlord, his subjective choice shall be respected by the Court. For the business, which the respondents no.2 and 3 propose to start or continue respectively, an accommodation situated on the first floor cannot be said to be an alternative suitable accommodation in comparison with the shops situated on the ground floor. A shop on the first floor cannot attract the same number of customers and earn the same business as a shop situated on the ground floor would do. Moreover, there is no evidence adduced by the appellants to show that in M.T. Cloth market shops are also situated on first floor of buildings and attract the same business as the shops on ground floor do. The High Court and the R.C.A. have held none of the premises pointed out by the tenant-appellants such alternate accommodation as may defeat the respondents' claim. We find no reason to take a different view. Between the years 1987 and 1989 late Krishna Das, the then sole owner of the building, had sold three shops but that was an event which had taken place in the life-time of late Krishna Das and cannot have relevance for denying the claim of the respondent-landlords filed in the year 1995.

For all the foregoing reasons we find the appeals devoid of any merit and liable to be dismissed. They are dismissed with costs. However, each of the appellants is allowed four months time for vacating the suit premises subject to each of them clearing all arrears of rent and filing usual undertaking, within a period of four weeks from today.