

Are Not The Owners Of The Shop Tenanted By ... vs Resisted The Suit On The Grounds Of on 12 March, 2015

[C.R.P.67] Government of Karnataka
Form No.9
(Civil) Title Sheet
for Judgment in
Suits

TITLE SHEET FOR JUDGMENTS IN SUITS
THE COURT OF THE SMALL CAUSES, AT BANGALORE
(SCCH-7)

Dated this, the 12th day of March, 2015.

Present : SMT. INDIRA MAILSWAMY CHETTIYAR
B.Com., LL.B. (Spl.), L.L.M.,
IX Addl. Small Causes Judge & XXXIV ACMM,
Court of Small Causes,
Member, MACT-7, Bangalore.

S.C.No.3168/2011

1. Sri.Samratharaj M.Bothra, : PLAINTIFF
S/o Sri.Malook Chandji,
Aged about 75 years.

2. Smt.Ugam.S.Bothra,
W/o Sri.Samrathraj M.Bothra
Aged about 61 years.

Both are residing at Flat No.302,
M.V.K.Apartment,
No.86, K.G.Nagar Main Road,
Bangalore-560 019.

Represented by their GPA Holder,
Sri.Vinod.S.Bothra,
Aged about 36 years.

(By: Sri. A.Nagaraja Naidu, Adv.,)

V/s

M/s. Ruby Engineering Company, : DEFENDANT
Ground Floor,
No.3/8, Benki Nawab Galli,
M.R.R. Cross,
Bangalore-560 002.

Represented by its Partners,

S.C.No.3168/2011

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(SCCH-7)

1. Sri.Murtuza H.Sigpurwala,
2. Sri.Moiz K.Chanarawala,
3. Sri.Yousuf A.Alayamani.

All are majors.

(By: Smt. Annapoorna Bevinje, Adv.,)

1. Date of Institution	:	24.06.2010		
2. Nature of Suit	:	Ejectment and Arrears of rentals		
3. Date of Evidence	:	01.03.2011		
4. Date of Judgment	:	12.03.2015		
5. Total duration	:	YEAR/S MONTH/S DAYS		
		04 08 16		

(INDIRA MAILSWAMY CHETTIYAR)
IX Addl. Small Causes Judge & XXXIV ACMM,
Court of Small causes,
Member, MACT-7, Bangalore.

JUDGMENT

It is pertinent to note here that, as per the Order dated 08.11.2011, this case is ordered to be transferred to this Court with immediate effect from Hon'ble X ACCJ, Bangalore. Hence, this case is pending for consideration and disposal before this Court.

2. It is further pertinent to note here that, in the present suit, a Judgment and Decree was passed on 21.02.2012 and as per the Order passed in Mis.No.140/2012, the said Judgment and Decree is set-aside and the suit is restored for further consideration. Hence, the present suit is S.C.No.3168/2011 (SCCH-7) pending for consideration and disposal on merits before this Court.

3. The Plaintiffs No.1 and 2 have filed this suit as against the Defendant for ejectment of the Defendant from the suit schedule property and directing it to pay the arrears of rent of Rupees 75,240/- and to quit, vacate and hand over the vacant possession of the suit schedule property, with costs.

4. The suit schedule property is, All the piece and parcel of the Commercial Property bearing New No.3/8, situated at Benki Nawab Galli, Bangalore, comprising of Northern Portion of Ground Floor Shop, measuring East to West 36 Feet and North to South 10 Feet 6 inches, totally measuring about 382 Square Feet, BBMP Ward No.47, PID No.47-112-3/8 together with 1/8th share of right, title and

interest, which is bounded by;

East	:	Private Property,
West	:	Road,
North	:	Property belonging to Begum,
South	:	Property belonging to Sameena Begum.

5. The brief averments of the Plaintiffs' case are as follows;

a) They represented by their Son and Power of Attorney Holder Sri.Vinod.S.Bothra.

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b) The Defendant was a tenant under the earlier landlord Smt.Sadiya Begum W/o Sri.Sujath Ali Khan in respect of the suit schedule property.

c) They are the absolute owners of all the part and parcel of the commercial property bearing New No.3/8, situated at Benki Nawab Galli, Bangalore, comprising of Northern portion of ground floor shop measuring East to West 36 feet and North to South 10 Feet 6 inches, totally measuring about 382 square feet, BBMP Ward No.47, PID No.47-112-3/8 together with 1/8th share of right, title and interest, i.e., the suit schedule property. They have purchased the Schedule Property from Smt.Sadiya Begum through a Registered Sale Deed dated 02.07.2009. After purchase of the schedule property, the Defendant becomes tenants under them in respect of the schedule property on monthly rent of Rupees 6,840/- and hence, there is a jural relationship between them/landlords and the tenant/Defendant is existing.

d) The previous land lord Smt.Sadiya Begum has intimated to the Defendant through letter dated 12.11.2009 stating that, they are the owners of the schedule property and they shall pay all the future rents to them.

e) After purchase of the schedule property, they have transferred the khatha of the same into their names jointly in the records of the BBMP and they have paid update taxes to the BBMP.

f) Since the date of purchase made by them and inspite of receipt of letter dated 12.11.2009, the Defendant have paid the rents to them till date and they are in arrears of S.C.No.3168/2011 (SCCH-7) rent of Rupees 75,240/- till date and they are the defaulters with regard to payment of rents to them.

g) The schedule property is required by them for their own occupation/bonafide use and in this regard, through their GPA Holder, they have been personally requesting and demanding the Defendant to quit, vacate and handover the vacant possession of the schedule property and the Defendant has been postponing the same by one or the other pretext and has failed to vacate the same. The schedule property is required by them for their own occupation/bonafide use and as

such, the Defendant has failed to vacate the schedule property. Left with no other alternative, they got issued a legal notice through their Advocate on 01.02.2010 calling upon the Defendant to quit, vacate and handover the vacant possession of the schedule property. The legal notice was sent to the Defendant's address through RPAD and as well as through COP. The said notice has been duly acknowledged by the Defendant. After receipt of the notice, the Defendant has issued a reply dated 09.02.2010 through its Advocate seeking details of the schedule property without mentioning vacating the schedule property.

h) Again they have issued a reply notice to the Defendant and to their Advocate on 03.03.2010 through RPAD stating that, the Defendant has misrepresented the facts.

i) The Defendant has their own premises at No.15/2, M.R.R.Lane, S.J.P. Road Cross, Bangalore-2, which has been rented to others and they are getting rents. The Defendant S.C.No.3168/2011 (SCCH-7) has every access to their property and they are getting huge rents from their property and whereas, they are paying a meager rents to them. They can as well utilize their own premises for their business.

j) There is no pendency of any legal proceedings and litigation either past or present concerning any part of the subject matter of this suit in any Court within their knowledge. Hence, pleading cause of action, the Plaintiff has filed the present suit.

6. Initially, though the suit summons was duly served on the Defendant, it was remained absent and hence, it was placed as *ex parte* on 08.11.2010. Later, after recording the evidence of Plaintiffs, the suit filed by them was decreed with costs by passing the Judgment and Decree on 21.01.2012. Later, as per the Order passed in Mis.No.140/2012, the said Judgment and Decree is set-aside and the suit is restored for further consideration. Later, the Defendant has appeared before this Court through its Learned Counsel and has filed the written statement and Additional written statement.

7. The Defendant inter-alia denying the entire case of the Plaintiffs, in its Written Statement has further contended as follows;

a) The suit is false, frivolous, vexatious and is not maintainable on facts or in law.

b) The shop described in the suit schedule is not tenanted by it. It is a tenant of the Shop No.1 in Corporation S.C.No.3168/2011 (SCCH-7) No.3, Benki Nawaba Street, Bangalore. The suit itself is not maintainable against it for this reason.

c) The Plaintiffs are not the owners of the shop tenanted by it. The Registered Sale Deed dated 02.07.2009 does not relate to the shop tenanted by it. Hence, the Plaintiffs are not the owners of the shop tenanted by it. Hence, this suit is not maintainable.

d) It sought the particulars of the Plaintiffs' claimed title to the shop tenanted by the firm, immediately after they sent the legal notice. They did so in their reply notice and also personally with the GPA Holder of the Plaintiffs several times. But, he evaded showing the title deeds to its

partners with ulterior motive. In fact, this suit itself is filed with an ulterior motive, best known to the Plaintiffs, since, under the guise of sale deed, they are trying to evict from their shop, to which, the Plaintiffs have no title. No reason is forthcoming for their conduct of suppressing the title deed so far from it.

e) Its firm became a tenant under Mrs. Sadiya Begum under the Rental Agreement dated 13.06.2008 for a rent of Rupees 6,840/- per month. It has paid to the landlady an advance of Rupees 2,00,000/- by cheque. Though the agreement was for a period of eleven months, it continued as a tenant under the landlady on the same terms and conditions mentioned in the said rent agreement. It was agreed that, either party to the agreement may terminate the tenancy by a notice of two months clear notice to the other, vide clause 12 of the Agreement.

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f) The Plaintiffs claim to have purchased the plaintiff schedule shop under the Registered Sale Deed dated 02.07.2009 executed by Mrs. Sadiya Begum. It is pertinent to note that, Mrs. Sadiya Begum became the owner of the shop situated on the northern portion of the ground floor portion of property bearing Old.No.29, New No.3, Benki Nawab Street, MRR Lane, Bangalore under the registered gift deed dated 22.07.2003 executed by her mother, Mrs.Hajira Begum in favour of Mrs. Sadiya Begum and others. Mrs. Sadiya Begum acquired title under Schedule 5 to the said gift deed. Mrs. Hajira Begum had acquired title to the property under the registered gift deed dated 15.04.1955 executed by her father, Mr.Mohammed Abdul Sattar in her favour. However, under the Registered Sale Deed dated 02.07.2009 executed by Mrs. Sadiya Begum in favour of the Plaintiffs, the southern portion of the ground floor shop was sold and not the northern portion of ground floor shop was sold and not the northern portion of ground floor shop Mrs. Sadiya Begum had no title to southern portion of the ground floor shop and so the Registered Sale Deed dated 02.07.2009 did not convey any title to the Plaintiffs. Hence, the Plaintiffs are not the owners of the northern portion of ground floor shop, which the shop is rented out by Mrs. Sadiya Begum to it. Hence, the Plaintiffs are not the landlords in respect of the shop tenanted by it. Hence, the suit is not maintainable.

g) They are not the tenant in the shop described in the plaintiff schedule. The shop purchased by the Plaintiffs is described in the plaintiff schedule. But, that shop never S.C.No.3168/2011 (SCCH-7) belonged to their vendor and it was never the tenant of that shop. The Plaintiffs have no title to the shop tenanted by it. Hence, the suit is not maintainable against it.

h) Even assuming for the sake of argument that, the Plaintiffs are the landlords, without admitting it, they have not issued any notice terminating the tenancy and so, the suit is not maintainable. Moreover, there is no quit notice of two months as per the terms of the rent agreement. For this reason also, there is no valid termination of the tenancy and so the suit is not maintainable, even assuming that, the Plaintiffs are the landlords.

i) The suit is not properly valued under Section 41 of the Karnataka Court Fees and Suits Valuation Act, 1958. The Plaintiffs should have taken into consideration the advance of Rupees 2,00,000/- paid by it to the landlady Mrs.Sadiya Begum. The Court fee paid is also incorrect, since the Court fee

should have been paid on the advance amount too.

j) The suit valuation under Section 41 of the Karnataka Court Fees and Suits Valuation Act 1958 exceeds the pecuniary jurisdiction of this Court, taking into consideration the advance paid by it to their landlady at the inception of the tenancy. This Hon'ble Court has no jurisdiction to adjudicate the suit for this reason.

k) A Small Cause Court has no jurisdiction to take cognizance of and adjudicate a suit, where title is an issue. So this Hon'ble Court has no jurisdiction to decide this suit, since S.C.No.3168/2011 (SCCH-7) title of the Plaintiffs over the shop tenanted by it is in issue. Their title to the plaint schedule shop is also in issue. The question, whether it is a tenant in the plaint schedule shop is also in issue. Hence, the suit is liable to be returned to the Plaintiffs for presentation to the appropriate competent Court.

l) There is no cause of action to sue.

m) The suit is not properly valued and the Court fee

paid is not correct. Hence, prayed to dismiss the suit with costs.

8. Since the Plaintiffs have amended the plaint during the course of trial, the Defendant has filed the Additional Written Statement by contending as follows;

a) The Plaintiffs are not the landlords of its tenanted shop, namely, shop No.1, Corporation No.3, Benki Nawaba Street, Bangalore. The Plaintiffs are not the owners of this shop nor of that shop described in the plaint schedule.

b) The schedule property as described presently is vague and cannot be identified clear and specific boundaries are not given to identify the suit property, especially the northern boundary. This shows that, the Plaintiffs themselves are not sure, which is the shop they claim.

c) The Plaintiffs have produced a photostat copy of a registered document with the nomenclature of 'Rectification Deed'. It is claimed that, their vendor rectified the description of the shops originally shown in their Registered Sale Deed S.C.No.3168/2011 (SCCH-7) dated 02.07.2009. In effect, through a Rectification Deed, the shop, which is shown to have been sold under the Registered Sale Deed dated 02.07.2009 is sought to be substituted for some other shop. This is not permissible under law. No title to the substituted shop passes to the purchasers by means of a mere process of rectification. Hence, the sale deed as rectified does not convey any title to the Plaintiffs to the substituted shop.

d) The shop tenanted by it, is not New No.3/8, therefore, the suit against it, is not maintainable, since the it is not a tenant of Shop No.3/8, Benki Nawaba Galli/street.

e) The Rectification Deed dated 26.06.2013 is a forged document. It's landlady Mrs. Sadiya Begum has not signed this deed. The Plaintiffs have committed a serious fraud before this Hon'ble Court by

claiming that, Mrs. Sadiya Begum has executed the Rectification Deed. On this count also the Plaintiffs cannot claim any title to the shop tenanted by it. Hence, prayed to dismiss the suit.

9. In order to prove their case, the Plaintiffs have examined their son as their GPA Holder as P.W.1 by filing an affidavit as his examination-in-chief and have placed reliance upon the Ex.P.1 to Ex.P.20. On the other hand, the Defendant has examined one of its Partners, as D.W.1 by filing an affidavit as his examination-in-chief and has placed reliance upon Ex.D.1 and Ex.D.1. Since, Ex.D.1 is marked twice, Ex.D.1, which is marked second time, is treated as Ex.D.2.

10. Heard the arguments.

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11. In support of the submission, the Learned Counsel appearing for the Defendant Smt. Annapurna Bevinje has placed reliance upon the decisions reported in,

i) ILR 1985 Karnataka 3025 (M/s Doddannavar Bros. V/s Malathibai), wherein, it is observed that, Karnataka Rent Control, Act 1961 (Karnataka Act No.22 of 1961) as Amended by Amendment Act, 1983 (No.17 of 1983) - Section 1(2)-Act applies to areas included by Amendment Act deemed to have come into force from 31.12.1982 - Suit for possession before Small Causes Court not within jurisdiction.

Suit filed in Small Causes Court for possession, after withdrawal of HRC case filed earlier, on the ground Rent Control Act was inapplicable to the area in the absence of notification issued by State Government, Defendant resisted the suit on the grounds of lack of jurisdiction, denial of title and relationship of landlord and tenant etc. Trial Court held it had jurisdiction to try the suit. In Revision:

HELD:

When the rent Control Act is made applicable to the areas, within the limits of cities under the Karnataka Municipal Corporation Act, 1976, and to the area within a radius of three kilometers from the limits of the cities and when Belgaum City is covered by the provisions of the Karnataka Municipal Corporation Act, 1976, and when the locality in which the suit property is situate has been admittedly included within the limits of Belgaum City by a Notification, the provisions S.C.No.3168/2011 (SCCH-7) of the Rent Control Act would apply to the suit premises. Small Causes Court has no jurisdiction at all to try this suit in view of the Karnataka Rent Control (Amendment) Act, 1983 which shall be deemed to have come into force from 31.12.1982.

(B) KARNATAKA SMALL CAUSE COURTS ACT, 1964 (Karnataka Act No. 11 of 1964-

Section 8-No jurisdiction to try question of title.

HELD:

Whenever a question of title is involved or is in dispute in a Small Causes suit, the jurisdiction of the Small Causes Court stand ousted.

ii) ILR 1987 Karnataka 957 (Dr.Gopalkrishna V/s Pukhraj.D.Jain), wherein, it is observed that, (A) CIVIL PROCEDURE CODE, 1908 (Central Act No.5 of 1908-Order 12 Rule 6-Suit not properly instituted until payment of deficit court fee-Decree can be passed only if suit properly instituted- Not applicable where payment of deficit court-fee is involved.

HELD:

Order 12 Rule 6 speaks about the determination of any other question, between the parties'. The question of Court fee is not a matter between the parties. It is matter between a party and the State. Therefore Order 12 Rule 6 would not apply in such cases. A suit cannot be properly instituted until the deficit court-fee is paid. The question of passing a decree would arise only if the suit is properly instituted. So long as deficit court fee is not paid the suit cannot be said to be properly instituted at all. Therefore, Order 12 S.C.No.3168/2011 (SCCH-7) Rule 6 will not also be applicable to the facts of the case where the question of payment of deficit court-fee is involved.

(B) KARNATAKA COURT FEES & SUITS VALUATION ACT, 1958(Karnataka Act No.16 of 1958-Section 11(2)-Mandatory-If deficit court fee not paid within time allowed, plaint to be rejected, unlike under Section 10 of Central Act, providing for dismissal of suit.

HELD:

Section 11(2) of the Karnataka Court Fees and Suits Valuation Act, 1958 makes a departure from the principle laid down in Section 10 of the Indian Court Fees Act. Section 11(2) leaves no discretion to the Court, but, to reject the plaint if the deficit Court Fee is not paid within the time allowed, whereas, the Central Act empowers the Court to dismiss the suit. The Words 'shall be' in Section 11(2) of the Karnataka Court Fees and Suits Valuation Act, 1958 leaves no discretion with the Court.

iii) ILR 2011 KAR 229 (Abdul Wajid V/s A.S.Onkarappa), wherein, it is observed that, (A) KARNATAKA SMALL CAUSES COURTS ACT, 1964-Jurisdiction of Small Cause Courts to take cognizance of the suits for Ejectment in respect of the premises to which the provisions of Karnataka Rent Act, 1999 are not applicable-

Conflicting decisions rendered by the learned Single Judge and the Division Bench- Reference to full Bench- Decision of the Division Bench in "SMT SAROJAMMA V/s K.M.VENKATESH reported in ILR 2007 KAR 3399-interpretation on clause (b) of Article 4 of Schedule to Karnataka Small Cause

Court Act- HELD, The courts of Small Causes have S.C.No.3168/2011 (SCCH-7) jurisdiction to take cognizance of not only a bare suit for Ejectment But, also a suit for Ejectment with a prayer for recovery of mesne profits or damages, in respect of the premises to which Karnataka Rent Act is not applicable. In view of this, it is held that, the interpretation placed by the Division Bench in Sarojamma's Case, on Clause (b) of Article 4 of Schedule to KSCC Act does not lay down the correct law. The opinion of that the Division Bench that, Court of Small Causes can take cognizance only of such suits which are filed seeking Ejectment of tenants of the premises to which KR Act applies runs contrary to the provisions of said Act as such it does not lay down correct law. In respect of the premises to which KR Act is applicable, only the 'Court' specified under the Clause (c) of Section 3 of KR Act alone is competent to make order for recovery of such premises on the landlord proving any one or more grounds enumerated therein.- In the context of jurisdiction of Small Causes Court, a suit for recovery of possession of immovable property does not include a suit for Ejectment as such, a suit for Ejectment is distinct and different from suit for recovery of possession of immovable property or for recovery of any interest in such immovable property. In the context of jurisdiction of Court of Small Causes to take cognizance of a suit for ejectment, recovery of mesne profits would not amount to either recovery of an interest in the immovable property or determination or enforcement of any other right or interest in the immovable property, and the Court of Small Causes is competent to consider prayer for mesne profits against non-statutory tenant after termination/determination of lease subject to its pecuniary jurisdiction. The contrary view expressed by the Division Bench in this regard does not lay down correct law-

FURTHER HELD, Courts of Small Causes S.C.No.3168/2011 (SCCH-7) have jurisdiction to take cognizance of not only a bare suit for Ejectment but, also a suit for Ejectment with a prayer for recovery of mesne profits or damages, subject to its pecuniary limits, in respect of the premises to which KR Act is not applicable. The interpretation placed by the Division Bench in SAROJAMMA'S CASE, on Clause (b) of Article 4 of schedule to KSCC Act does not lay down the correct law. The suits for Ejectment with or without prayer for rent, mesne profits or damages, pending before the Civil Courts, either upon representation of plaintiffs pursuant to decision in SAROJAMMA'S CASE or presented afresh after SAROJAMMA'S CASE, the value of the subject matter of which is within the pecuniary limits of the Courts of Small Causes, shall be transferred to the Court of Small Causes, which on receipt of such records, shall proceed from the stage at which they were pending before Civil Court and dispose them of in accordance with law-

(i) KARNATAKA COURT FEE AND SUITS VALUATION ACT, 1958-920 KARNATAKA SMALL CAUSES COURTS ACT, 1964-SUB-

CLAUSE (b) OF CLAUSE -4 OF THE SCHEDULE CIVIL PROCEDURE CODE, 1908-SECTION 2 (12)-Mesne profits-Discussed.

B) KARNATAKA SMALL CAUSES COURTS, ACT 1964-The Court of Small Causes is a designated Tribunal-Pecuniary limits of the Court of the Small Causes- Discussed-HELD, while functioning as a Court under the provisions of the Karnataka Rent Act, 1999, the Court of Small Causes is a designated Tribunal and exercises its jurisdiction in terms of the provisions of the Karnataka Rent act, 1999 and this jurisdiction of Court of Small Causes as a special Tribunal under the Karnataka

Rent Act, 1999 should not be confused with the jurisdiction which the Court of Small Causes S.C.No.3168/2011 (SCCH-7) has independently under the provisions of the KSCC Act-The Court of Small Causes is also a Court, conferred with jurisdiction to try disputes of civil nature but, with a limited jurisdiction, in the sense, within the limits of pecuniary jurisdiction and within the limits of a specified nature of suits apart from those excluded from its purview in terms of section 8 of the KSCC Act, is a Court created for the purpose of convenience and expediency as it becomes obvious on a perusal of the provisions of the Act relating to its jurisdiction that, the Court of Small Causes is enabled to try only suits of simple nature, where complications are minimal and where disputes regarding title are not involved and such suit Respondent also tried in an expedient and attains finality quickly by manner avoidance of an appeal provision-FURTHER HELD, while the exclusion of the types of suits from the purview of the Court of Small Causes is to be found in the schedule in the KSCC Act in terms of Section 8 of the KSCC Act, here again, there are exceptions to such exclusion, in the sense that even amongst such suits which are excepted from the cognizance of Court of Small Causes, a few varieties of such suits are nevertheless brought back within the jurisdiction of the Court of Small Causes subject to certain conditions being fulfilled-For interpreting and understanding the provisions of the Karnataka Small Causes Courts Act, 1964 and to find out the jurisdiction of a Court of Small Causes, it is only the provisions of the KSCC Act which has to be looked into and therefore to link the question of the jurisdiction of the Small Causes Court Act to the provisions of the Karnataka Rent Act, 1999 is a basic fallacy which has resulted in the view expressed by the Division Bench of High court in SAROJAMMA's Case- No doubt under Article 4 of a suit for recovery of an S.C.No.3168/2011 (SCCH-7) interest in immovable property and under Article 10 a suit for determination of any other right to or interest in immovable property are excepted from the jurisdiction of a Court of Small Causes. However, under Article 28 since a suit for mesne profits, has been curbed out as an exception and thereby making such suit for recovery of mesne profits cognizable by Courts of Small Causes, even if it is accepted that, recovery of mesne profits amounts to recovery of an interest in immovable property, in the context of jurisdiction of Court of Small Causes it doesn't amount to recovery of an interest in the immovable property-SMALL CAUSES COURTS ACT 1964-SECTION 8- ARTICLE 10 AND 28-Discussed.

iv) AIR 1988 Supreme Court 1772 (Budhu Mal V/s Mahabir Prasad and Others), wherein, it is observed that, Provincial Small Cause Courts Act (9 of 1887) S.23-Small Cause Court-Jurisdiction-Suit involving question of title-Return of plaint-No obligatory on Small Cause Court - However, in some cases discretion to return plain ought to be exercised in order to do complete justice between the parties, decision of Allahabad High Court, Reversed.

S.23 does not make it obligatory on the Court of Small Causes invariable return the plain once a question of title is raised by the tenant in a suit for eviction. Also in a suit instituted by the landlord against his tenant on the basis of contract of tenancy, a question of title could also incidentally be gone into and any finding recorded by a Judge, Small Causes in this behalf could not be Res-judicata in a suit based on title, it cannot, however, be gainsaid that, in enacting S.23 the Legislature must have had S.C.No.3168/2011 (SCCH-7) in contemplation some cases in which the discretion to return the plaint ought to be exercised in order to do complete justice between the parties.

In the instant case, there was a family settlement in respect of the tenanted premises by virtue of which the owner of the premises had given his daughter-in-law the right to realize rent of that property. The original owner subsequently cancelled the family settlement entered by him and brought a suit for eviction against the tenants. One of the pleas raised in defence by the tenants was that, the deed of family settlement could not be unilaterally cancelled by the owner by subsequent deed and that, the rent claimed by the owner to be in arrears had already been paid by them to his daughter in law in other words, title of the original owner realize rent from the tenants was disputed by them. It was pleaded that by way of fair settlement, the right to rent and not only the right to realize the rent was transferred and this right was described in the deed by saying " I give the benefits arising out of the above property"

Held, that, the small cause court above exercise the discretion to return the plaint, civil court in order to do complete justice to the parties. In case the plea set up by the tenants that, by the deed of family settlement the benefit arising out of immovable property which itself constituted immovable property was transferred and in pursuance of the information conveyed in this behalf by the original owner to them, the tenants started paying rent to his daughter- in-law land the said deed could not be unilaterally cancelled is accepted, it is likely not only to affect the title of the original owner to realise rent from the tenant but, will also have the effect of snapping even the S.C.No.3168/2011 (SCCH-7) relationship of landlord and tenant between the original owner and the tenants which could not be revived by the subsequent unilateral cancellation of the deed of family settlement. In that, event it may not be possible to treat the suits filed by the original owner against the tenants to be suits between landlord and tenant simpliciter based on contract of tenancy in which an issue of title was incidentally raised. If the suits cannot be construed to be one between landlord and tenant they would not be cognizable by the court of small causes and it is for these reasons these are such cases where the plaints ought to have been returned for presentation by appropriate court so that, none of the parties was prejudiced. Decision of Allahabad High Court Reversed.

v) 1972(1) Mys.L.J. 211 (Baduvakunhi Beary V/s Venkatesha Shanbhongue), wherein, it is observed that, Mysore Small Cause Courts Act (11 of 1964), S.8 & Sch, Art 4-Excepted under.

Under S.8 read with Art.4 of the Sch. of the Act, a Small Court causes can take cognizance of a suit for possession of immoveable only where a substantial issue arises as to whether the lease had examined by efflux of time or has been determined by notice in accordance with law. Where the substantial issue that arose was whether the Defendant is in possession of the suit house as a tenant under the Plaintiff, Small Cause Court is not competent o try the suit.

12. Now, the Points that arise for my consideration are as follows:

POINTS S.C.No.3168/2011 (SCCH-7)

1. Whether the Plaintiffs prove that, they are the owners and landlords and the defendant is a tenant under them in respect of the suit schedule property on a monthly tenancy?
2. Whether the Plaintiffs prove that, the Defendant is in arrears of rentals of Rupees 75,240/-?
3. Whether the Plaintiffs prove that, by issuing a legal and valid quit notice dated 01.02.2010, they terminated the tenancy of the defendant in respect of the suit schedule property?
4. Whether the Plaintiffs are entitled for the reliefs of eviction and arrears of rentals from the Defendant as prayed for?
5. What Order?

13. My answers to the above Points are as follows;

Point No.1 :	In the Affirmative,
Point No.2 :	In the Affirmative,
Point No.3 :	In the Affirmative,
Point No.4 :	In the Affirmative,
Point No.5 :	As per final Order,

for the following:-

REASONS

14. POINT NO.1 :- The Plaintiffs have examined their Son as their GPA Holder, who is representing them in the present suit as P.W.1, who has stated in his evidence that, he S.C.No.3168/2011 (SCCH-7) is a GPA Holder of the Plaintiffs. In this regard, the Plaintiffs have produced Ex.P.1 Special Power of Attorney executed by them in favour of their Son, i.e., P.W.1. On perusal of the contents of Ex.P.1 Special Power of Attorney, it clearly goes to show that, the Plaintiffs have authorized their Son, i.e., P.W.1, to represent them in the present suit in respect of the suit schedule property and to give evidence on their behalf in the present suit. Ex.P.20 GPA dated 31.03.2010 is also executed by the Plaintiffs in favour of P.W.1, which also disclosed about the authorization given by the Plaintiffs in favour of their Son to represent the suit relating to the suit schedule property. Therefore, the very institution of the present suit by the GPA Holder on their behalf by the Plaintiffs as against the Defendant in respect of the suit schedule property is maintainable and the said GPA Holder, who is the son of the Plaintiffs have authorized to give evidence on their behalf in the present suit and as such, the evidence of P.W.1 can very well be looked into for consideration of the case made out by the Plaintiffs in respect of the suit schedule property.

15. The D.W.1, who is one of the partners of the Defendant Firm, has stated that, he is one of the partners of the Defendant Firm doing business in Shop No.1, Corporation NO.3, Benki Nawaba Street, Bangalore. In this regard, the Defendant has produced Ex.D.2 Certified Copy of Registered Partnership Deed dated 22.07.2003. On perusal of the recitals of the said Ex.D.2, it prima-facie appears that, the D.W.1 is one of the partner of Defendant Firm.

S.C.No.3168/2011 (SCCH-7)

16. The P.W.1 has stated that, the Defendant was a tenant under the earlier landlord Smt.Sadiya Begum W/o Sujath Ali Khan in respect of suit schedule property and the original rental agreement came into existence in between Smt.Sadiya Begum and the Defendant on 13.06.2008. He has further stated that, the Plaintiffs are the absolute owners of all the part and parcel of agreement property bearing Old.No.29, New No.3, Benki Nawab Street, MRR Lane, Bangalore comprising of northern portion of ground floor shop measuring East to West 36 feet and North to South 10 feet 6 inches, totally measuring about 382 Square Feet, BBMP Ward No.47 PID No.47-112-3/8 together with 1/8 th share of right, title and interest i.e., the suit schedule property, from Smt.Sadiya Begum through a Registered Sale Deed dated 02.07.2009. He has further stated that, after the purchase of the suit schedule property, the Defendant became a tenant in respect of the suit schedule property on a monthly rental of Rupees 6,840/- and hence, there is a jural relationship between the Plaintiffs/landlord and tenant/Defendant is in existing. He has further stated that, by either side, in the said Registered Sale Deed, it has been typed as southern portion and it has been later rectified as northern portion and the said mistake has been rectified by way of Registered Rectification Deed dated 26.06.2013. He has further stated that, the previous land lord Smt.Sadiya Begum has intimated to the Defendant through letter 12.11.2009 stating that, the Plaintiffs are the owners of the schedule property and the Defendant shall pay all the future rents to them. He has further stated that, after purchase of the suit schedule property, they have transferred S.C.No.3168/2011 (SCCH-7) the khata of the same into their names jointly in the records of the BBMP and they have paid update taxes to the BBMP.

17. To corroborate the oral version of P.W.1, the Plaintiffs have produced Ex.P.2 Certified Copy of Rectification Deed dated 26.06.2013 executed by Smt.Sadiya Begum in their favour, Ex.P.3 Original Rental Agreement dated 13.06.2013 entered into between Smt.Sadiya Begum and the Defendant, Ex.P.4 Certified Copy of Registered Sale Deed dated 02.07.2009 executed by Smt.Sadiya Begum in their favour, Ex.P.5 Letter of Attornment of Tenancy dated 12.11.2009 issued by Smt.Sadiya Begum to the Defendant, Ex.P.6 Khata Extract, Ex.P.7 Khata Certificate, Ex.P.8 Tax Paid Receipt and Ex.P.9 Encumbrance Certificate relating to the suit schedule property.

18. On perusal of the above said oral version of P.W.1 and the contents of Ex.P.2 to Ex.P.9, it clearly goes to show that, earlier the suit schedule property was owned by Smt.Sadiya Begum W/o Sri.Sujath Ali Khan and the present Defendant was the tenant under the said Smt.Sadiya Begum in respect of the suit schedule property under Rental Agreement dated 13.06.2008 and the Plaintiffs have purchased the suit schedule property from Smt.Sadiya Begum under a Registered Sale Deed dated 02.07.2009 and in this regard, Smt. Sadiya Begum has issued notice of Attornment to the Defendant informing about the purchase of the suit schedule property by the Plaintiffs from her and

since there is mistake in mentioning the northern portion of the suit S.C.No.3168/2011 (SCCH-7) schedule property in the said Registered Sale Deed, Smt.Sadiya Begum has executed the Registered Rectification Deed dated 26.06.2013 in favour of the Plaintiffs and by virtue of the said purchase, the suit schedule property got mutated in the names of the Plaintiffs and as such, the Plaintiffs are the absolute owners/landlords in respect of the suit schedule property and the Defendant is continuing as tenant under the Plaintiffs in respect of the suit schedule property. The P.W.1 in his cross-examination has further clearly stated that, the said Smt.Sadiya Begum had acquired the suit schedule property by way of Gift Deed, which was originally owned by her father. He has also clearly stated about the shop premises situated in the entire building, wherein, the suit schedule property is situated. The P.W.1 has also clearly identified the Gift Deed executed by Hajira Begum, who is the mother of Sadiya Begum, in favour of her, which is marked at Ex.D.2. It is pertinent to note here that, though the Defendant has denied the very identification of the suit schedule property, except the oral version of D.W.1, it has not adduced any acceptable material evidence to show that, the description of the suit schedule property shown in the plaint is not proper and correct and it is not clearly identified by it. Further, the D.W.1 has shown his ignorance about the title, extent of suit schedule property, i.e., 380 Square feet as per Ex.P.2. He has further shown his ignorance that, on 02.07.2009, Sadiya Begum sold the suit schedule property to the Plaintiffs as per Ex.P.3 Sale Deed and as per Ex.P.4 Letter, Smt.Sadiya Begum has informed the sale of suit schedule property to the Defendant. The P.W.1 has further clearly denied the suggestion put to him that, the suit schedule property and the S.C.No.3168/2011 (SCCH-7) property shown in Ex.P.4 Sale Deed are different from each other. From this, it is made crystal clear that, the vendor of the Plaintiffs had acquired the suit schedule property by virtue of Gift Deed and based on the same, she was a owner of the suit schedule property and as such, she let-out the suit schedule property to the Defendant as per Ex.P.3 Rental Agreement and thereafter, she sold the property, which includes the suit schedule property in favour of the Plaintiffs under the Registered Sale Deed and Rectification Deed and also intimated the sale of the suit schedule property by her to the Plaintiffs by issuing Ex.P.5 Letter of Attornment to the Defendant. From this material evidence, it is made crystal clear that, the Plaintiffs are the absolute owners of the suit schedule property and the Defendant, who was a tenant under the vendor of the Plaintiffs, continued as a tenant under the Plaintiffs also.

19. The D.W.1, who is one of the partner of the Defendant firm has stated in his examination-in-chief that, the suit schedule shop premises is not tenanted to them and it is not a tenant to Shop No.1 in Corporation No.3, Benki Nawaba Street, Bangalore and the Plaintiffs have not given clear and specific boundaries for the Shop claimed by them, especially the northern boundary, which shows that, they are not sure of the shop claimed by them. As this Court has already observed while discussing above that, though the Defendant has denied the description of the suit schedule property, it has not adduced any material evidence to consider the same. The D.W.1 has also shown his ignorance about the very extent of the suit schedule property as well as Ex.P.3 Sale Deed S.C.No.3168/2011 (SCCH-7) executed by Smt.Sadiya Begum in favour of the Plaintiffs in respect of the suit schedule property and Ex.P.4 Letter of Attornment issued by the said Smt.Sadiya Begum informing about the sale of the suit schedule property by her to the Plaintiffs. More so, the D.W.1 has clearly admitted in his cross- examination that, the boundaries shown in Ex.D.1 Gift Deed, in respect of his Shop is true and correct and the boundaries shown in Ex.D.1 Gift Deed and Ex.P.2 Rectification Deed relating to same shop and they are one and the same and his

shop is situated on the northern portion of the ground floor. He has further clearly stated that, in the sale deed executed by Smt.Sadiya Begum to the Plaintiffs there is error and as such, the Rectification Deed came into existence in between them. From this, it is made crystal clear that, the Defendant has clearly identified the suit schedule property, which is in its occupation as a tenant.

20. The D.W.1 in his examination-in-chief has disputed about the very title of the Plaintiffs, which acquired by them under the Registered Sale Deed and Rectification Deed from Smt.Sadiya Begum. But, the same cannot be decided in the present suit as the scope of the suit is very limited and the Defendant being a tenant in respect of the suit schedule property has no locus-standi to question the title of the Plaintiffs over the suit schedule property. Furthermore, from the above said material evidence, both oral and documentary, it is made crystal clear that, the Defendant was a tenant under Smt.Sadiya Begum, who was a vendor of the Plaintiffs and the Plaintiffs have purchased the suit schedule property from the said Smt.Sadiya Begum under Registered Sale Deed S.C.No.3168/2011 (SCCH-7) and Rectification Deed and Smt.Sadiya Begum herself issued a Letter of Attornment to the Defendant informing about the purchase of the suit schedule property by the Plaintiffs from her and by virtue of the said Sale Deed, the Plaintiffs got mutated the suit schedule property in their name and the Defendant continues as a tenant under the Plaintiffs also. Furthermore, under Section 116 of the Evidence Act, the Defendant is estopped from claiming or questioning the title of the landlords, i.e., the Plaintiffs over the suit schedule property as it is a tenant. Therefore, it is not necessary to discuss in detail about the entire evidence of D.W.1, which has been stated by him in his examination-in-chief.

21. Though the P.W.1 has been cross-examined by the Defendant, nothing has been elicited from his mouth that, there is no relationship of landlord and tenant in between the Plaintiffs and it in respect of the suit schedule property. On the other hand, it is clear from the cross-examination of D.W.1 that, earlier, the Defendant was a tenant under Smt.Sadiya Begum and after the execution of Sale Deed by Smt.Sadiya Begum in favour of the Plaintiffs, it has continued as a tenant under the Plaintiffs in respect of the suit schedule property. The relationship of landlord and tenant between themselves and the Defendant in respect of the suit schedule property is clearly proved by the Plaintiffs by adducing acceptable material evidence. Accordingly, I answered Point No.1 in the Affirmative.

S.C.No.3168/2011 (SCCH-7)

22. POINT NO.2 :- The P.W.1 has stated that, since the date of purchase made by them and inspite of receipt of letter dated 12.11.2009, the Defendant has not paid rent to them till date and they are in arrears of rent of Rupees 75,240/- till the date of filing of this suit and the Defendant is defaulter with regard to payment of rent to them. He has further stated that, after purchase of the schedule property, the Defendant became tenant in respect of the suit schedule property on monthly rent of Rupees 6,840/-.

23. On perusal of the said evidence of D.W.1, it appears that, the rate of rent of the suit schedule property is of Rupees 6,840/- per month and since the date of purchase of the suit schedule property by the Plaintiffs, the Defendant has not paid rents to the Plaintiffs and as such, it is in

arrears of rent of Rupees 75,240/-.

24. Except the oral version of P.W.1, there is no acceptable material and documentary evidence available on record to consider that, as on the date of filing of the suit, a sum of Rupees 75,240/- is due from the Defendant to the Plaintiffs as arrears of rent at a monthly rental of Rupees 6,840/-. But, based on the said grounds, it cannot be thrown away the said claim of arrears of rentals made by the Plaintiffs, as, no specific question or suggestion put to P.W.1 by the Defendant that, they are not in arrears of any rentals to the Plaintiffs as alleged by them. Further, the Plaintiffs have produced Ex.P.2 Rental Agreement executed in between Smt.Sadiya Begum and the Defendant, wherein, it has been S.C.No.3168/2011 (SCCH-7) clearly mentioned that, the agreed rent is of Rupees 6,840/- per month, which shall be payable by the Defendant according to the English Calendar month, which shall be paid on or before 5th of each calendar month and the rent is effective from first day of June 2008 and valid up to 30.04.2009, which shall be renewed at the option of the lessor subject to enhancement of 5% after 11 months of existing rent. Further, the D.W.1 in his cross-examination has clearly stated that, they have entered into the rental agreement with Smt.Sadiya Begum in respect of the suit schedule property and the said rental agreement is marked as Ex.P.2, wherein, the signature of him, Sadiya Begum, Moies and Yousuff are found and as per Ex.P.2 Rental Agreement, the rate of rent is of Rupees 6,840/- per month. From this, it is made crystal clear that, the rate of rent in respect of the suit schedule property is Rupees 6,840/- per month and the same shall be payable by the Defendant to the Plaintiffs, as the Plaintiffs have purchased the suit schedule property from the said Smt.Sadiya Begum and from the date of purchase, the Defendant has not paid the rentals to the Plaintiffs, which is already discussed above. Furthermore, when the question put by the Plaintiffs to D.W.1 that, "You have not paid the rent from 10.08.2009 to the Plaintiffs", he has answered that, "he has paid the rent through cheques to Smt.Sadiya Begum, but, she has not received the said cheques and returned it". To substantiate the same, the Defendant has not produced any scrap of paper. He has further stated that, he has not issued any letters to Sadiya Begum claiming her receipt of arrears of rent. When Smt.Sadiya Begum has sold the suit schedule property in favour of the Plaintiffs under a legal and valid S.C.No.3168/2011 (SCCH-7) Registered Sale Deed and Rectification Deed in accordance with law and when the Defendant continues as a tenant even after the purchase of the suit schedule property by the Plaintiffs, the Defendant ought to pay rentals of Rupees 6,840/-per month to the Plaintiffs from the date of purchase. But, the Defendant has not paid the rentals from the date of purchase of the suit schedule property to the Plaintiffs as stated by them, which is also clear from the cross- examination of D.W.1. Therefore, the Defendant is liable to pay the said arrears of rents of Rupees 75,240/- to the Plaintiffs, which is due from the date of purchase till filing of this suit.

25. In view of the said reasons, this Court has come to the conclusion that, the Plaintiffs have proved that, the Defendant is in arrears of rentals of Rupees 75,240/- as on the date of filing of this suit. Accordingly, I answered Point No.2 in the Affirmative.

26. POINT NO.3 :- The P.W.1 has stated that, the suit schedule property is required by them for their own occupation and bonafide use and in this regard, they have personally requesting and demanding the Defendant to quite, vacate and handover the vacant possession of the suit schedule property and the Defendant has been postponing for one or the other pretext and failed to vacate the

same. He has further stated that, he got a legal notice issued through their Advocate on 01.02.2010 calling upon the Defendant to quit, vacate and handover the vacant possession of the suit schedule property, through RPAD and COP and after receipt of S.C.No.3168/2011 (SCCH-7) the notice, the Defendant has issued a reply dated 09.02.2010 through its Advocate seeking details of the suit schedule property without mentioning of vacating the suit schedule property. He has further stated that, again they have issued a legal notice to the Defendant through its Advocate on 03.03.2010 by RPAD and the Defendant has mis-represented the facts.

27. To corroborate the said oral version of P.W.1, the Plaintiffs have produced Ex.P.10 Office Copy of Legal Notice dated 01.02.2010, Ex.P.11 Postal Receipt, Ex.P.12 Under Certificate of Posting Receipt, Ex.P.13 Postal Acknowledgment, Ex.P.14 Reply dated 09.02.2010, Ex.P.15 Notice dated 03.03.2010, Ex.P.16 Postal Receipts and Ex.P.19 Postal Acknowledgments.

28. The contents of the said documents are not disputed by the Defendant while cross-examining the P.W.1. No doubt, as per the recital of Ex.P.2 Rental Agreement, in the event of lessor or lessees would like to terminate the lease or would like to vacate the schedule shop premises may do so by giving two months early clear notice in writing to each other. The same has also been stated by the D.W.1 by saying that, the Plaintiffs have not issued any notice terminating the tenancy to them and there is no quit notice of two months as per the terms of the Rent Agreement and for this reason also, there is no valid termination of tenancy and as such, the suit is not maintainable. The P.W.1 in his cross-examination has also stated that, as per Ex.P.3, 2 months prior notice should S.C.No.3168/2011 (SCCH-7) be given to the Defendant. But, based on the same, it cannot be said that, Ex.P.10 Quit Notice dated 01.02.2010 issued by the Plaintiffs to the Defendant is not a legal and valid notice, as, the Plaintiffs have filed the present suit as against the Defendant in accordance with the provisions of Section 106 of the Transfer of Property Act and as per the said provision, only 15 days clear notice is required for terminating the tenancy of Defendant in respect of the schedule property. Furthermore, the said admitted Ex.P.3 Rental Agreement is executed in between the earlier landlord, namely, Smt.Sadiya Begum and the Defendant and not in between the Plaintiffs and Defendant. From this, it appears that, the termination of the tenancy of the Defendant in respect of the suit schedule property as narrated in Ex.P.3 admitted Rental Agreement is quite contrary to the provisions of Section 106 of the Transfer of Property Act. Therefore, the said defence taken by the Defendant questioning the legality and validity of the Ex.P.10 Quit Notice is not proper and correct and hence, it is discarded.

29. The Plaintiffs in Ex.P.10 Quit Notice have clearly disclosed that, they do not have any property in their names in Bangalore and hence, they required the schedule property for their bonafide use and they called upon the Defendant to vacate and handover the schedule premises within 30 days from the date of receipt of said notice. No doubt, the Defendant by issuing Ex.P.14 Reply questioning the contents of Ex.P.10 Quit Notice. But, based on the issuance of said Ex.P.14 Reply, it cannot be said that, the said Ex.P.10 Quit Notice issued by the Plaintiffs is not legal and valid, as the S.C.No.3168/2011 (SCCH-7) Plaintiffs have given 15 days clear notice to the Defendant to vacate and handover the suit schedule premises to them. Further, the Plaintiffs have also issued Ex.P.15 Notice dated 03.03.2010 to the Defendant calling upon them to vacate and handover the schedule premises within 15 days from the date of receipt of the said notice and as per Ex.P.16 to Ex.P.19 Postal

Receipts and Postal Acknowledgements, it is duly served on the Defendant. As per Section 106 of the Transfer of Property Act, only 15 days clear notice is required for termination of the tenancy. On perusal of the recitals of Ex.P.10 Quit Notice and Ex.P.15 Another Notice, it clearly goes to show that, the Plaintiffs have given 15 days clear notice to the Defendant calling upon them to quit and handover the vacant possession of the suit schedule property to them. Hence, the said quit notice issued by the Plaintiffs to the Defendant is legal and valid. Accordingly, I answered Point No.3 in the Affirmative.

30. POINT NO.4 :- The Plaintiffs No.1 and 2 have filed this suit as against the Defendant for ejectment of the Defendant from the suit schedule property and directing it to pay the arrears of rent of Rupees 75,240/- and to quit, vacate and hand over the vacant possession of the suit schedule property, with costs.

31. While answering Points No.1 to 3, this Court has come to the conclusion that, the Defendant is in arrears of rentals of Rupees 75,240/- to the Plaintiffs and by issuing a legal and valid quit notice, the Plaintiffs have terminated the S.C.No.3168/2011 (SCCH-7) tenancy of the Defendant in respect of the suit schedule property. In spite of issuance of the said quit notice, which is legal and valid, the Defendant did not care to vacate and handover the vacant possession of the suit schedule property to the Plaintiffs and it had dragged the Plaintiffs to file the present suit. Hence, the Plaintiffs are entitled for the said reliefs of ejectment and arrears of rentals as against the Defendant as prayed for in this suit. In view of the said reasons, the suit filed by the Plaintiffs as against the Defendant is liable to be decreed with costs. In view of the observations made in the above said Points and findings on the Points, the principles enunciated in the decisions cited by the Learned Counsel appearing for the Defendant are not applicable to the present facts and circumstances of the case on hand. Accordingly, I answered Point No.4 in the Affirmative.

32. POINT NO.5 :- For the aforesaid reasons, I proceed to pass the following;

ORDER The suit filed by the Plaintiffs is hereby decreed with costs.

The Defendant is hereby directed to quit and deliver the vacant possession of the suit schedule property to the Plaintiffs within one month from the date of this Order.

The Defendant is further hereby directed to pay arrears of rent of Rupees 75,240/- to the Plaintiffs within one month from the date of this Order.

S.C.No.3168/2011 (SCCH-7) If the Defendant fails to do so, by then, the Plaintiffs are at liberty to recover the same, in accordance with law.

Draw decree accordingly.

(Dictated to the Stenographer, transcribed and typed by her, corrected and then pronounced by me in the open Court on this the 12th day of March, 2015.) (INDIRA MAILSWAMY CHETTIYAR) IX Addl. Small Causes Judge & XXXIV ACMM, Court of Small Causes, Member, MACT-7, Bangalore.

ANNEXURE

1. WITNESSES EXAMINED BY THE PLAINTIFFS :-

P.W.1 : Sri.Vinod.S.Bothra

2. DOCUMENTS MARKED BY THE PLAINTIFFS :-

Ex.P.1 : General Power of Attorney
Ex.P.2 : Certified Copy of Rectification Deed
Ex.P.3 : Rental Agreement
Ex.P.4 : Certified copy of Sale Deed
Ex.P.5 : Letter of Attornment
Ex.P.6 : Khatha Extract
Ex.P.7 : Khatha Certificate
Ex.P.8 : Tax paid receipts
Ex.P.9 : Encumbrance Certificate
Ex.P.10 : Office Copy of Notice
Ex.P.11 : Postal receipt
Ex.P.12 : Certificate of Posting
Ex.P.13 : Postal Acknowledgment
Ex.P.14 : Reply Notice
Ex.P.15 : Reply Notice to Reply Notice
Ex.P.16 : Postal Receipts
to Ex.P.19
Ex.P.20 : General Power of Attorney
S.C.No.3168/2011

(SCCH-7)

3. WITNESSES EXAMINED BY THE DEFENDANTS :-

D.W.1 : Murtuza Singapoorewala

4. DOCUMENTS MARKED BY THE DEFENDANT :-

Ex.D.1 : Certified Copy of Gift Deed Ex.D.2 : Certified copy of Registered Partnership deed dated 22.07.2003.

(INDIRA MAILSWAMY CHETTIYAR) IX Addl. Small Causes Judge & XXXIV ACMM, Court of Small Causes, Member, MACT-7, Bangalore.

S.C.C.H.No.7 IN THE COURT OF SMALL CAUSES AT BANGALORE
S.C.No.3168/2011 S.C.No.3168/2011 (SCCH-7)

1. Sri.Samratharaj M.Bothra, : PLAINTIFF S/o Sri.Malook Chandji, Aged about 75 years.

2. Smt.Ugam.S.Bothra, W/o Sri.Samrathraj M.Bothra Aged about 61 years.

Both are residing at Flat No.302, M.V.K.Apartment, No.86, K.G.Nagar Main Road, Bangalore-560 019.

Represented by their GPA Holder, Sri.Vinod.S.Bothra, Aged about 36 years.

(By: Sri. A.Nagaraja Naidu, Adv.,) V/s M/s. Ruby Engineering Company, : DEFENDANT Ground Floor, No.3/8, Benki Nawab Galli, M.R.R. Cross, Bangalore-560 002.

Represented by its Partners,

4. Sri.Murtuza H.Sigpurwala,

5. Sri.Moiz K.Chanarawala,

6. Sri.Yousuf A.Alayamani.

All are majors.

(By: Smt. Annapoorna Bevinje, Adv.,)

1. Date of Institution : 24.06.2010

2. Nature of Suit : Ejectment and Arrears of rentals

3. Date of Evidence : 01.03.2011

4. Date of Judgment : 12.03.2015 S.C.No.3168/2011 (SCCH-7)

5. Total duration : YEAR/S MONTH/S DAYS Claim: Suit filed on prays for directing defendants to pay a sum of Rs. with interest at % , costs and such other reliefs.

This suit coming on for final disposal before Smt.Indira Mailswamy Chettiyar, IX Addl. Senior Civil Judge, Court of Small Causes, Bangalore, in the presence of Sri/Smt. Advocate, for the Plaintiff and Sri/Smt Advocate, for the defendant.

ORDER The suit filed by the Plaintiffs is hereby decreed with costs.

The Defendant is hereby directed to quit and deliver the vacant possession of the suit schedule property to the Plaintiffs within one month from the date of this Order.

The Defendant is further hereby directed to pay arrears of rent of Rupees 75,240/- to the Plaintiffs within one month from the date of this Order.

If the Defendant fails to do so, by then, the Plaintiffs are at liberty to recover the same, in accordance with law.

And it is further ordered and decreed that, defendant do pay to the Plaintiff, a sum of Rupees towards costs.

Given under my hand and the seal of the Court this day of 2015.

S.C.No.3168/2011 (SCCH-7) DY. REGISTRAR, Court of Small Causes, Bangalore.

MEMORANDUM OF COST INCURRED IN THIS SUIT By the Plaintiff Defendant Court fee on plaint Court fee on power Court fee on exhibits Service of process + Postal charges Commissioner's fees Pleders fee Total of Rs.

Amount payable by the defendant to the Plaintiff is Rs.

SCHEDULE All the piece and parcel of the Commercial Property bearing New No.3/8, situated at Benki Nawab Galli, Bangalore, comprising of Northern Portion of Ground Floor Shop, measuring East to West 36 Feet and North to South 10 Feet 6 inches, totally measuring about 382 Square Feet, BBMP Ward No.47, PID No.47-112-3/8 together with 1/8th share of right, title and interest, which is bounded by;

East	:	Private Property,
West	:	Road,
North	:	Property belonging to Begum,
South	:	Property belonging to Sameena Begum

Decree Drafted	Scrutinised by	DY.REGISTRAR,
Decree Clerk	Sheristedar	Court of Small Causes,
		Bangalore.

S.C.No.3168/2011

(SCCH-7)

12.03.2015.

JUDGMENT PRONOUNCED IN THE OPEN COURT
(vide separate order)

The suit filed by the Plaintiffs is hereby decreed with costs.

S.C.No.3168/2011 (SCCH-7) The Defendant is hereby directed to quit and deliver the vacant possession of the suit schedule property to the Plaintiffs within one month from the date of this Order.

The Defendant is further hereby directed to pay arrears of rent of Rupees 75,240/- to the Plaintiffs within one month from the date of this Order.

If the Defendant fails to do so, by then, the Plaintiffs are at liberty to recover the same, in accordance with law.

Draw decree accordingly.

(INDIRA MAILSWAMY CHETTIYAR) IX Addl. Small Causes Judge & XXXIV ACMM, Court of Small Causes, Member, MACT-7, Bangalore.

S.C.No.3168/2011 43 (SCCH-7)