Bombay High Court
Rajendra Bansilal Chaudhari And ... vs Lilakant Madku Chaudhari And ... on 3 November, 2023
Bench: S. G. Mehare
2023:BHC-AUG:23822

CRA

(1)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO.201 OF 2016

1. Shri. Rajendra Bansilal Chaudhari
Age : 45 year, Occ. : Business,
R/o. : Nandurbar,
Tq. & Dist. Nandurbar
[Near Tailik Mangal Karyalaya]

2. Shri. Sunil Kantilal Chaudhari
Age : 42 years, Occ. : Business,
Tq. & Dist. Nandurbar.
[Om Medical, Near Bank of India] ...Petiti

Versus

1. Shri. Lilakant Madku Chaudhari
Age : 45 years, Occ. : Service,
R/o. : Nandurbar,
Tq. & Dist. Nandurbar.
[Near Tailik Mangal Karyalaya]

2. Deelip Daulat Chaudhari
Age : 42 years, Occ. : Business,
R/o. : Nandurbar (Bhat Galli),
Tq. & Dist. Nandurbar.

3. Chandrashekhar Namdeo Chaudhari
Age : 35 years, Occ. : Business,
R/o. : Nandurbar (Bhat Galli),
Tq. & Dist. Nandurbar

4. Smt. Rupabai Chhagan Chaudhari
Deceased, hence deleted in Trial Court. ...Respondents

Mr. Subodh P. Wani a/w Mr. Rudhir S. Wani, Advocate for petitioners;
Mr. A. S. Abhyankar a/w Mr. Navin S. Shah h/f Mr. S.V. Natu,
Advocate for the respondents.

CORAM : S.G. MEHARE, J.

RESERVED ON : 29.08.2023 PRONOUNCED ON: 03.11.2023 CRA-201-16.odt JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties.

2. The landlords have impugned the judgment and decree of the learned First Appellate Court, passed in Civil Appeal No.24 of 2007, dated 15.06.2016.

3. The facts giving rise to the dispute were that the suit premises was used to run a hotel. The landlord purchased the suit premises (20x20) ft with tenant Sukhalal (for short, the tenant). He had been the tenant since 1975. The tenant was unmarried. The respondent nos.1 to 3 are the sons of three sisters of the tenant, and the deceased respondent No. 4 was his mother. It was a specific case of the landlords that after purchasing the suit premises, they and the earlier landlord met the tenant and told him that the plaintiffs had purchased the suit premises. The suit premises was kept unused from 1994. The tenant was of their caste, his physical condition was deteriorating, and he was living there alone. Hence, the landlord did not ask him to vacate the suit premises. In his last days, he was staying alone in the suit premises. After his death, respondent nos. 1 to 3 started cleaning the suit premises and had held the possession.

4. The landlords filed a suit against them and the mother of the tenant for eviction for their bona fide need and nonuser by the tenant. The respondent no.4 (dead), though the mother of the tenant, CRA-201-16.odt did not acquire the tenancy rights. After the death of the tenant, the tenancy was automatically ceased. Respondents nos. 1 to 3 were the trespassers.

5. The respondents appeared through counsel. However, the record reveals that only respondent nos. 2 and 4 contested the suit. Their main defence was that respondent No. 4 was the mother of the tenant, and respondent no.2 was running the hotel with the tenant. Hence, they inherited the tenancy. The landlords denied the landlord- tenant relationship. Therefore, the Rent Court had no jurisdiction to try the suit.

6. During the pendency of the suit, respondent no.4, the mother of the tenant, died. However, her legal heirs were not brought. The suit against her was abated, but respondent No. 2 stuck up to his defence that since he was running the hotel with the tenant, he acquired the tenancy. He has protection under Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ("Act of 1947", for short).

7. The learned Trial Court, appreciating the evidence, held respondent No.2, a statutory tenant, as the tenant's successor and decreed the suit. The respondents had preferred the appeal before the District Judge ("the First appellate Court", for short). The first appellate Court held that the plaintiffs, though, joined respondents as a party to the suit, the suit essentially was filed against the mother of CRA-201-16.odt the tenant. Hence, the suit was maintainable. The first appellate Court further held that the suit abated as the legal heirs of respondent no.4, who were statutory tenant, were not brought and allowed the appeal.

8. The landlords, against the judgment of the first appellate Court, approached this Court in a Revision. This Court concurred with the judgment of the first Appellate Court. The landlords went in appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court remitted the case back to the learned first appellate Court.

9. The learned First Appellate Court, after the remand, had framed the following two points for determination;

(i) Whether the suit was maintainable before Rent Court?

(ii) Whether the judgment and decree passed by the trial Court needs interference?

10. The learned first appellate Court held that the plaintiffs were not considering any defendants as their tenants. The learned first Appellate Court, relying on the ratio laid in the case of Laxmidas Morarji (D) By Lrs v Miss Bhorse Darab Madan 2009 SAR (Civil) 1030, held that it would have to be held that the trial Court was not justified in entertaining the suit under Bombay Rent Act. The ratio laid down in the case Babulal Bhuramal and Another v Nandram Shivram and Others 1959 SCR 367: AIR 1958 SC 677 relied by the landlords was held not applicable. The learned first appellate Court CRA-201-16.odt also held that, admittedly, at the time of the death of the tenant, his mother, defendant No.4, was alive who, according to the Hindu Succession Act, was the class I heir; thus, if at all, the tenancy was to be devolved upon according to succession. However, after the death of his mother, she was simply deleted. In the absence of the heirs of the mother of the deceased tenant on record, the trial court was not justified in recognizing defendant No. 2 as a tenant of the suit premises and proceeded to adjudicate upon grounds on which the eviction was sought and allowed the appeal.

11. The tenor of the arguments of the learned counsel for the petitioners is that the learned first appellate Court did not understand the directions of the Hon'ble Supreme Court in proper perception. The issue of maintainability of the suit was finally decided in the Supreme Court. Hence, it need not be considered again. The Supreme Court's order is clear in words and easy to understand. The first appellate Court ought to have framed the points in dispute on facts for determination. However, the appeal was decided on the law point of maintainability of the suit.

12. The learned counsel for the landlords, in his notes of written arguments, has submitted that the ratio laid down in the case of Laxmidas V Miss Bhorse cannot be followed in this case as the Hon'ble Supreme Court in the present case is in relation to the very issues involved in the matter. The difference between the Judgments CRA-201-16.odt of the Supreme Court is - one is the precedent while the other is judgment in the present matter itself, giving directions to the first appellate Court for hearing the first appeal on merits. Thus, the directions of the Supreme Court in this case were rather binding than the judgment of the case of Laxmidas. The suit premises was in possession of Suklal till his death as a tenant. Hence, after his demise, who succeeds to the tenancy rights are defined under Section 5(11) (C) of the Act of 1947. Section 28 of the said Act lays down that any question arising out of the rent statute can only be determined by the Courts established under the Rent Statute. In sum and substance, his arguments were that when the suit was filed, the

landlord-tenant relationship existed, and the dispute arose out of such relationship. Hence, though respondent Nos.1 to 3 trespassed the suit premises, they would be evicted under the Act of 1947.

13. The learned counsel for the petitioners has relied on the following case laws;

1. Babulal Bhuramal and Another Vs. Nandram Shivram and Others, AIR 1958 SC 677.

2. Jivatsingh Dhansinghani Vs. Padma Hemandas and others, 2004 (1) Mh.L.J. 672.

3. Kailasbhai Tiwari Vs. Jostna Laxmidas Pujara and another, 2006 (1) Mh.L.J. 791.

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4. Sudha Sumant Barve Vs. Ranjana Ramesh Padhye, 2013 (4) Mh.L.J. 735.

14. Per contra, the learned counsel for the respondents vehemently argued that even if, as per the directions of the Hon'ble Supreme Court the suit is to be decided on merits if the law doesn't confer jurisdiction on Rent Court as per the Judgment of three Judges Bench reported in the case of Laxmidas Morarji (D) By Lrs V Miss Behrose Darab Madan 2009 SAR (Civil) 1030 , then District Court was bound to consider this basic issue of jurisdiction which could not be conferred by mere remand observation.

15. Learned counsel for respondents reiterated the arguments that he had advanced before the Trial Court and the First Appellate Court in the first round of litigation. He has vehemently argued that the jurisdiction of the Court is tested on the pleadings and not the defence.

16. He has stated that when the plaintiffs/landlords did not admit the respondents as the tenants and inheritance of the tenancy right, the Rent Court has no jurisdiction. He has relied on the same case laws he had referred to before the learned Trial Court and the First Appellate Court. The tenor of his argument was that since the Court had no jurisdiction, the learned First Appellate Court had correctly not considered the other factual aspects. The Court, under the Act of 1947, had no inherent jurisdiction, therefore, the other CRA-201-16.odt issues have automatically become redundant, and no findings on those points were required.

17. It has also been argued by the learned counsel for the respondents that from the order of the Hon'ble Supreme Court, it appears that the facts were not properly placed before the Court. Therefore, the observations recorded by the Hon'ble Supreme Court regarding the landlord-tenant relationship and the status of the defendants/so-called possessors cannot be termed as landlord-tenant relationship subsists. However, one way or the other, the learned First Appellate Court has touched the root question of the jurisdiction of the Court under the Rent Act. Finally, he submitted that in the given facts and circumstances of the case, the Rent Court has no jurisdiction to pass the eviction decree under the Act of 1947 against respondent Nos.1 to 3. Therefore, there is no substance in the petition. Hence, it is liable to be dismissed.

18. Learned counsel for the respondents has relied on the following case laws:

1. Laxmidas Morarji (D) by Lrs. Vs. Miss Behrose Darab Madan, 2009 SAR (Civil) 1030.

2. Raghuram Rao and others Vs. Eric P. Mathias and others, AIR 2002 SC 797.

3. Raizada Topandas and another Vs. M/s. Gorakhram Gokalchand, AIR 1964 SC 1348.

4. Sarfarzali Nawabali Mirza Vs. Miss Maneck G. Burjorji, Vol.LXXVIII, Bom. L.R. 704.

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5. Dadu Dayalu Mahasabha, Jaipur (Trust) Vs. Mahant Ram Niwas and another, 2008 SAR (Civil) 468.

7. Vasudev Gopalkrishna Tambwekar Vs. Board of Liquidator, 1964 Mh.L.J. 410.

8. Hiralal Vallabhram Vs. Sheth Kasturbhai Lalbhai and others, AIR 1967 SC 1853.

9. Rafiuddin Nuruddin Musalman Vs. Abduyl Karim Abdul Reheman and others, 2005 (4) Mh.L.J. 646.

10. Laxmikant Revchand Bhojwani and another Vs. Pratapsingh Mohansingh Pardeshi, 1995 (2) Mh.L.J. 579.

11. Vinayak Balkrishna Samant and others Vs. Mahanagar Telephone Nigam Ltd., 1996 (1) Mh.L.J. 511.

12. Jasraj Lalaji Oswal Vs. Raziya Mehboob Patel and another, 2020 (5) Mh.L.J 681.

13. Rajendra Bansilal Chaudhari and another V Lilakant Madku Chaudhary and others Civil Revision Application No. 43 of 2012 decided by this Bench on 28.11.2013 (The earlier revision between the same parties)

19. The Hon'ble Supreme Court, by order dated February 25, 2015, passed in Civil Appeal No(s).2449 of 2015 (Arising out of S.L.P. (C) No.6753 of 2014) has observed thus;

"The appellants may be alleging that they are trespassers but the respondents' case is that they are co-tenant along with Suklal, therefore, the proceedings, insofar as defendant nos.1 to 3 are in possession is maintainable. The finding recorded by the first appellate court that the suit proceedings are abated for non-impleadment of the

> daughters of Rupabai is wholly erroneous in law, therefore, the said finding concurred with by the High CRA-201-16.odt Court in the revisional jurisdiction in the impugned judgment and decree is also bad in law. Hence, the impugned judgments and decrees of the First Appellate Court as also the High Court are liable to be set aside. Accordingly, we set aside the same and remit the matter to the First Appellate Court to examine the case of the parties on merits after affording an opportunity of hearing to the parties and pass appropriate order in the case with reference to the pleadings and issues that would arise for its consideration on the basis of the pleadings and evidence on record."

On the aforesaid finding, the Hon'ble Supreme Court remitted the matter to the First Appellate Court to decide on merits.

20. Before dwelling upon the interpretation of the order of remand of the Hon'ble Supreme Court, it would be better to discuss what was challenged before this Court under Revision in the earlier round of litigation. The findings of the first appellate Court in the earlier round of litigation about the jurisdiction under the Act of 1947 were against the respondents, but they did not impugn it. The landlord's appeal was dismissed on the sole ground that the suit was abated.

21. The plain reading of the Hon'ble Supreme Court's order is explicit that the order of remand was in the context of the facts. In the earlier round of litigation, the first appellate Court had considered CRA-201-16.odt that the suit was maintainable. However, the legal heirs of the mother, who died during pendency of the suit, were not brought on record. Hence, the suit was abated. Reading the order of the Hon'ble Supreme Court, in the context of the order of the first appellate Court in the earlier round of the litigation, the Judgment and decree of the first appellate Court was set aside only on the findings on the abatement of the suit for non-impleadment of the daughters of the mother as legal heirs. Hence, it can safely be said that the issue of bringing legal heirs of respondent No. 4, mother, had attained finality.

22. The questions whether the Rent Court had jurisdiction under the Act of 1947 and whether the respondents, in view of their plea of inheritance, were entitled to the protection under the Act of 1947 were directed to be determined afresh. Hence, it cannot be said the learned first appellate Court had incorrectly framed the points for determination on the jurisdiction of the Rent Court.

23. The learned first appellate Court had determined the jurisdiction of the Rent Court relying on the case of Laxmidas as against the ratio laid in the case of Babulal Bhuramal (supra). Before discussing the ratios laid in the above cases, it would be profitable to discuss Section 28 of the Act of 1947. The Section opens with the non-obstante clause that bars the jurisdiction of the Civil Court about the dispute between the landlord and tenant relating to the recovery of rent and possession of any premises to which the Act of 1947 CRA-201-16.odt applies. Its plain reading reflects that all the issues relating to the dispute between landlord and tenant shall be dealt with only by the Courts as listed in the body of that Section. It also indicates that on the day of filing a suit under the said Act, the landlord-tenant relationship must subsist.

24. In its wisdom, the Legislature took care of protecting the tenancy rights of the legal heirs of the tenant in the case of the tenant's death. The inheritance of the tenancy has been defined under respective State Legislation. Section 5 (11) (C) of the Act of 1947 is relevant to this case. The unmarried tenant had no male descendants after his death, except his mother. She was his sole legal heir. Admittedly, the suit premises was used for the business. Hence, Section 5 (11) (C) (ii) would apply, which reads thus;

> "(ii) in relation to any premises let for the purpose of education, business, trade or storage, when the tenant dies, whether the death has occurred before or after the commencement of the said Act, any member of the tenant's family using the premises for the purposes of education or carrying on business, trade or storage in the premises, with the tenant at the time of his death, or, in the absence of such member, any heir of the deceased tenant, as may be decided in default of agreement by the Court."

25. Admittedly, the respondents nos.1 to 3 were the sons of the three daughters of respondent no.4.

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26. The core question that falls for consideration is who was entitled to inherit the tenancy after Sukalal.

27. Respondent No.2 claimed that he and the deceased respondent No.4 were doing the hotel business with the deceased tenant. He did not claim that he is a class I legal heir. Therefore, the term "any member of the tenant's family using the premises" as incorporated in clause (ii) of sub-clause (c) of sub-section (11) of Section 5 of the Act of 1947 would attract.

28. The Bombay High Court, in the case of Jaysen Jayant Rele and Ors v Shantaram Ganpat Gujar and Ors AIR 2002 Bombay 462, had occasion to deal with a similar issue. Some relevant paragraphs have been reproduced here;

> "13. It is very pertinent to note that in spite of the catena of judgments interpreting and construing the words "member of a family of the tenant and a family", the legislature has not budged from its position and has not moved to amend Section 5(11)(c) of the Act to reflect the precis of the judicial pronouncements in the Act in any manner. Section 5(11)(c) has remained as it is, though the Act has undergone surgery by way of amendments on a number of occasions at the hands of the Legislature to meet off-arising problematic situations. It is far more pertinent to note that even in the present Maharashtra Rents Act, which has replaced the earlier Bombay Rents Act the Legislature has not taken cognizance of the interpretation of the words in Section 5(11)(c) and the CRA-201-16.odt Legislature has not enlarged the words "family and the member of a family". It would have been very easy for the Legislature to have removed all the doubts and difficulties which have created innumerable disputes giving rise to innumerable judgments by replacing the words

"any member of the tenant's family" by "any person..... residing with the tenant at the time of his death." The Legislature has not enlarged the term used in the original Sub-section 5(11)(c) i.e. "any member of the tenant's family". The Legislature could have deleted the aforesaid words and could have put only one word "person" in place of "member of the tenant's family" to resolve all the so called construction and interpretation difficulties. The intention of the Legislature therefore is absolutely clear to retain the present construction in the Sub-section 5(11)(c) in the form in existence i.e. "any member of the tenant's family". It did not and it does not intend to give a wider meaning to the concept of family to include even a stranger as a member of the family. The Legislature did not and does not intend to depart from the ordinary meaning of the word "family" as understood in common parlance. We understand a family as consisting of father, mother, sons, daughters, sisters and all such blood relations and other relations arising from lawful marriages in the family. We don't include in the concept of family anyone who is not related by blood and that is the whole purpose and intention of the Legislature not to remove the word "family" from the said provision. If it wanted to enlarge the meaning of the family it would have expressly said so. The Legislature wants to protect only the members of the family, who are bound by the blood relations and never CRA-201-16.odt any stranger however near he or she might be and however thick the love and affection bonds might exists. In my opinion the Legislature has not given any importance to such emotional and sentimental ideas in the Rent Control Act, which regulates relationship between the landlord and the tenant. It is enacted to protect the tenants and their families and not to create any rights in favour of strangers who have no blood relations with the tenant or his family. The Legislature never intended to wide open the umbrella of the Rent Act to give protection to everyone who would claim to be a member of the tenant's family on one or the other ground of love and affection or close friendship or father like and son-like or such relationship. A tenant cannot be heard to say that the person residing with him is like his father or like his son or like his daughter or brother. There is no place for the words "like" or "as". The Act protects only those who were really blood relations of the tenant. The Legislature has not allowed any provision in respect of the relationship. The present protection is to the tenant and his family members with whom he has blood relations. The Legislature has been reasonable and moderate to grant protection to the tenant and extend the protection to the members of the family in the ordinary parlance as commonly understood in the society. The Legislature is fully conscious of the fact that it cannot fly at tangent to give protection to all such occupants of the tenanted premises at the cost of the landlord and the valuable property rights of the owners of the premises. The landlord rents out his premises to a tenant on certain terms and conditions which the tenant must observe and if CRA-201-16.odt such terms and conditions are observed by the tenant the landlord cannot evict him at his sweet will and in contravention of the provisions of the Rent Act. The Act protects the tenants at the same time controls the property rights of the landlords by imposing reasonable restrictions on them within the four corners of the Act. The rights of the landlords are not given a complete go by and are not extinguished altogether. If the Legislature

intended that a tenant and all those who claim through him should be granted protection from eviction at any cost that would result in total extinguishment of the rights of the landlords and that would mean that the landlord has to write-off his property forever, as the tenants and all such strangers who would claim to be the members of their families talking love and affection would have grabbed the property forever and the same would be bequeathed for such love and affection at the cost of the landlord.

15. The universal epigrammatical adage of "Vasudhaiv Kutumbkamb" was and is not unknown to the Legislature. The whole world is my family is the eternal message given by the age old sages. The Legislature however has not adopted or borrowed the said concept of family to include everyone in its compass. It has in my opinion rightly restricted to the commonly known and plainly understood concept of family. Though there is no definition of a family in the Rent Act, the Legislature has explained in Section 6 of the Maharashtra Co-operative Societies Act, 1960 who is a member of a family. For the purposes of this Section and the explanation under Section 8 a member of a family means a wife, husband, father, mother, son or unmarried daughter. The context in which CRA-201-16.odt the aforesaid explanation is given is a membership of a Co-operative Housing Society to hold a flat or tenement in such a society. The Legislature has indicated that by a member of a family it contemplates only blood relations and no strangers are included as a member of a family. It cannot be contemplated that the legislative intention would take radical departure from one Act to another Act In respect of the terms which are normally used and understood in society without making it explicitly clear.

16. In a judgment of the Supreme Court given under the Uttar Pradesh Urban Building (Regulation of Letting, Rent and Eviction) Act, 1972, in the case of Mohd. Azeem v. District Judge, Aligarh (1985) 2 SCC 550: AIR 1985 SC 1118). The Legislature has wisely defined a family as under (at page 1119 of AIR) :

"Family in relation to a landlord or tenant of a building, means : "his or her - (i) spouse, (ii) male lineal descendants, (iii) such parents, grandparents and any unmarried or widowed or divorced or judicially separated daughter or daughter of a male lineal descendant, as may have been normally residing with him or her, and includes, in relation to a landlord, any female having a legal right of residence in that building".

In my humble opinion the Legislature has clearly indicated what is meant by a family in the scheme of Rent Control and Eviction. There is no place for a stranger in the said definition. In a similar situation under the Delhi Control Act, 1958 a family is defined as spouse, son, daughter, parents, daughter-in-law. In paragraph 17 of the judgment in the case of Baldev Sahal Bangla v. R. C. Bhasin, (1982) 2 SCC 210 : (AIR 1982 SC 1091) the CRA-201-16.odt Supreme Court has summarised what would consist family, as under (at page 1093 of AIR) :

> 17. A conspectus of the connotation of the term 'family' which emerges from a reference to the aforesaid dictionaries clearly shows that the word 'family' has to be given not a restricted but a wider meaning so as to include not only the head of the family but all members or descendants from the common ancestors who are actually living with the same head. More particularly, in our country, blood relations do not evaporate merely because a member of the family - the father, the brother or the son
>
> - Leaves his household and goes out for some time. Furthermore, in our opinion, the legislature has advisedly used the term that any member of the family residing therein for a period of six months immediately before the date of the filing of the action would be treated as a tenant. The stress is not so much on the actual presence of the tenant as on the fact that the members of the family actually live and reside in the tenanted premises. In fact, it seems to us that clause (d) of the proviso to Section 14(1) of the Act is a special concession given to the landlord to obtain possession only where the tenanted premises have been completely vacated by the tenant if he ceased to exercise any control over the property either through himself or through his blood-relations.
>
> The Supreme Court has considered in the context of the aforesaid Rent Act definitions of family given in different Dictionaries the Supreme Court has specifically observed the real interpretation of a family and that is the national heritage. It is very significant to note that under the emphasis given by the Supreme Court to blood CRA-201-16.odt relations to construe a family. By construing the term family widely the Supreme Court has not included within the family those who do not have blood relations. Blood is the limit to consider a family relationship."

29. The right to succeed the commercial tenancy would crop up when the person claiming protection under clause(ii) was using the premises for the purpose it was let.

30. The landlord had a case that the suit premises was rented to the deceased tenant to run a hotel. In his last days, he was residing there in the hotel due to his deteriorating health. Respondent nos 2 and 4 had a case that the suit premises was rented for running a hotel and ancillary residence. Respondent no.2 deposed that during the death of Sukhlal, respondent No. 4 was in the suit premises, and he was doing business with him. He did not depose that respondent no.4 was using the suit premises to run the hotel. Respondent no.2, in cross-examination, admitted that, for the last 12 years, he was running a pan shop near the suit premises. He had a tea shop. Its name was Samrat hotel, which was similar to the name of the hotel of the deceased tenant. He admitted that Sukhlal was a convict of the murder and released from jail around in the year 1995 or 1996. In 1994, the deceased tenant had surrendered his hotel shop licence to the Municipal Council and his hotel business was closed. Thereafter, the deceased tenant did not renew his shop licence. There was no electric supply in the hotel and water tap of the said hotel was also CRA-201-16.odt disconnected two years back. He also admitted that respondent no.4 had given her house situated in Bhate Galli to her daughter Basantibai as she was looking after her. For the last twenty years, respondent no.4 and her daughter Basantibai had been residing in the house at Bhate Galli. He admitted that

respondent No. 4 died in the said house. Respondent No.4 was his grandmother, and he was the son of Basantibai. Respondent No. 4 died on 06.02.2000.

31. From the above evidence, it is evident that the suit premises was not used from 1994. The deceased tenant was a convict for 14 years, and he was released from jail around in the year 1995 or 1996. This evidence proves that respondent no.4 was never in the suit premises with the deceased tenant, and respondent no.2 had no occasion to help or run the hotel in the suit premises with the deceased tenant. Both contesting respondents claimed protection under the first part of clause (ii) of sub-section 11 (c) of Section 5 of the Act of 1947. On reading the above evidence, it cannot be believed that they acquired statutory tenancy in the suit premises and entitled to the protection under the first part of Section 5 (11) (c)(ii) of the Act of 1947. Otherwise, respondent no.2 did not fall in the definition of 'family member of the deceased tenant'; he does not deserve protection under the Act of 1947. The landlords proved that he was a trespasser with other respondents.

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32. Respondent No. 4 had also claimed protection under the second part of clause (ii) of sub-section 11 (c) of Section 5 of the Act of 1947. A member of the family of the deceased tenant if proves using the suit premises for the business or other commercial purpose when the tenant dies, such a family member debars the other successor covered under the Succession Act. The question is, when such a family member fails to prove the protection under the first part of the said clause, can he claim the protection under the second part also?

33. The evidence was in the line that respondent No.4 was residing with the deceased tenant. She did not claim that she was using the suit premises for running the hotel. She was the sole legal heir of the deceased tenant. The recent photograph of the suit premises placed on record shows that the suit premises has been completely collapsed. In the circumstances she can succeed the tenancy, is doubtful. In the order of remand reproduced above, the Hon'ble Supreme Court clearly mandated that the suit in her absence is maintainable. Hence, it needs no more discussion.

34. In the case Vasant Pratap Pandit and another vs. Dr. Anant Trimbak Sabnis and others, 1995(2) Bom C.R. 388 , the object of extending the protection to the person in Section 5(11)(c) of the Rent Act 1947 has been explained, and held as under:-

> CRA-201-16.odt "From a plain reading of Section 5(11)(c)(i) it is obvious that the legislative prescription is first to give protection to members of the family of the tenant residing with him at the time of his death. The basis for such prescription seems to be that when a tenant is in occupation of premises the tenancy is taken by him not only for his own benefit but also for the benefit of the members of the family residing with him. Therefore, when the tenant dies, protection should be extended to the members of the family who were participants in the benefit of the tenancy and for whose needs as well the tenancy was originally taken by the tenant. The legislature has, irrespective of the fact whether such members are 'heirs' in the strict sense of the term or not, given them the first priority to be treated as tenants. It is only when such

> members of the family are not there, the 'heirs' will be entitled to be treated as tenants as decided, in default of agreement, by the court. In other words, all the heirs are liable to be excluded if any other member of the family was staying with the tenant at the time of his death."

35. The purpose, in short, was that the person residing with the deceased tenant in case of residential premises and the person using the premises for the purpose it was let should not lose the roof and the source income from the premises for his livelihood.

36. Considering the object of protection under the Act of 1947, it must be established that persons entitled to the protection in the case of commercial tenancy were dependent on the tenant, and the tenant was living only on the source of income from using the CRA-201-16.odt rented premises. The successor should also depend on the income form the business run in the rented premises. The successor must also be able and interested in using the premises for the business if it was rented for it. If it is not so, the object may change its perception. If the successor was otherwise living on the income of his other heir, then the situation must change. It is evident that respondent no.4 had transferred her self-acquired property in her life to her one daughter, who was the mother of respondent no.2. It is also evident that till her last breath, she was living in her house with her daughter. From these facts, a safe inference could be drawn that she was never dependent on the income of the deceased tenant, who was earning from the hotel run in the suit premises. The use of the commercial premises for the purpose for which it was rented is the primary requirement to extend the protection under the above section. Therefore, this Court is of the view that if the protection was granted to respondent no.4, no purpose would be served.

37. Let's now deal with the issue of jurisdiction of the Rent Court under Section 28 of the Act of 1947.

38. The learned counsel for respondents nos. 1 to 3 has raised a strong objection that since the landlords did not admit respondents No.1 to 3 as tenants, the Rent Court has no jurisdiction. Respondent No.2 and the mother of the deceased tenant had filed a joint written statement. Their defence is reiterated for dealing with CRA-201-16.odt the issue of jurisdiction. It was pleaded that defendant no.4, the mother of the tenant being his successor and respondent no.2 as heir were doing the hotel business with the deceased and respondent no.2 is his legal heir. After the death of the tenant, respondent no.2 and the deceased mother acquired the tenancy right. They were in actual and physical possession of the suit premises. Hence, they cannot be evicted without following due procedure of law. The plaintiffs were trying to acquire the possession without filing an application under the Act of 1947. The landlord-tenant relationship does not subsist. Hence, the suit is not maintainable under the Act of 1947. Therefore, the Court had no jurisdiction.

39. Per contra, the learned counsel for the landlord argued that respondents Nos. 1 to 3 were not the legal heirs of the deceased tenant. However, they were the trespassers. Respondent no.4 was alive at the time of filing the suit as a legal heir of the deceased tenant. Hence, the landlord-tenant relationship subsisted at the time of the cause of action, and the dispute arose from that relationship. Thus, the suit was to be filed in the Rent Court and not the other. However, the learned

first appellate Court erroneously held that the Rent Court had no jurisdiction.

40. He relied on the case of Babulal Bhuramal (cited supra) in which, in Para 7, it has been observed that CRA-201-16.odt "7. In a suit for recovery of rent where admittedly one party is the landlord and the other the tenant, Section 28 of the Act explicitly confers on courts specified therein jurisdiction to entertain and try the suit and expressly prohibits any other court exercising jurisdiction with respect thereto. Similarly, in a suit relating to possession of premises where the relationship of landlord and tenant admittedly subsists between the parties, jurisdiction to entertain and try such a suit is in the courts specified in Section 28 and no other. All applications made under the Act are also to be entertained and disposed of by the courts specified in Section 28 and no other. In all such suits or proceedings the courts specified in Section 28 also have the jurisdiction to decide all claims or questions arising out of the Act or any of its provisions. The words employed in Section 28 make this quite clear. Do the provisions of Section 28 cover a case where in a suit one party alleges that he is the landlord and denies that the other is his tenant or vice versa and the relief asked for in the suit is in the nature of a claim which arises out of the Act or any of its provisions? The answer must be in the affirmative on a reasonable interpretation of Section

28. Suit No. 483/4400 of the Court of Small Causes, Bombay was admittedly by a landlord. Eviction of the tenant and those to whom he had sublet the premises was sought on the ground that the latter were trespassers and the former was not entitled to remain in possession, that is to say, that none of the defendants to that suit were protected from eviction by any of the provisions of the Act. The suit, in substance, was a denial of the right of the defendants as tenants. The claim of the defendants was that they were protected by the provisions of the Act. In such a suit the CRA-201-16.odt claim of the defendants was one which arose out of the Act or any of its provisions and only the courts specified in Section 28 and no other could deal with it and decide the issue."

41. To counter the above case law, the learned counsel for respondents relied on the case of Laxmidas Morarji (cited supra) and argued that the landlord-tenant relationship was denied in the said case. Hence, it was held that the Rent Court had no jurisdiction to entertain a suit of the landlord. He further argued that the learned First Appellate Court, considering the ratio laid down by the Hon'ble Supreme Court, took a correct view that in such a suit by the landlord, the Rent Court cannot pass any decree against the alleged trespassers and only the original Civil Court has jurisdiction to entertain the suit.

42. The facts of Lamidas's case were that one Salehbhai, the owner of the suit premises, had rented it to one Dosabai. Dhanbai Batliwala was residing with her brother in the suit premises. After the death of the original tenant, Dhanbai became the tenant of the suit premises by virtue of Section 5(11)(c)(i) of the Bombay Rent Control Act. She expired in the year 1963, but by way of her Will dated 24 April 1959, she appointed the trustees and executors of her Will. In 1965, the landlord had sent the notice to the trustees to handover the vacant possession of the suit premises. Since the trustees failed to vacate the suit premises, the suit for recovery of possession was filed CRA-201-16.odt before the Court of Small Causes in Bombay. In the said suit, defendant No.5 was arrayed by way of caution and was not accepted as a tenant. An objection was taken that the Small Causes Court had no jurisdiction to entertain the suit since the landlord of the premises has not

accepted her as a tenant of the suit premises; she has been adopted as a daughter of the deceased tenant, and the deceased tenant had bequeathed the tenancy rights. She was the daughter of the sister of the tenant and was residing with the deceased tenant. Under this premise, it has been held that the Rent Court had no jurisdiction.

43. In reply, the learned counsel for the landlord argued that each case has its facts and circumstances. Hence, while applying the ratio laid down in a case, a doctrine of ratio decidendi is the test.

44. To bolster his arguments, he relied on the case of Sudha Suman (cited supra). He argued that the facts of Laxmidas' case were altogether different from the case of Babulal Bhuramal (cited supra). The facts of the case of Babulal were similar to the case at hand. Hence, the ratio laid down in that case would apply by following the rule of ratio decidendi.

45. The ratio decidendi is a point in a case that determines the judgment or the principle that the case establishes. In other words, the ratio decidendi is a legal rule derived from and consistent with those parts of legal reasoning within a judgment on which the CRA-201-16.odt outcome of the case depends. It is normally used to refer to some binding rule found in a decided case which later Court cannot generally question. The facts of the two cases cannot be similar, and therefore, the observations pertinent to the facts cannot be binding in the other cases, though similar laws are attracted, the reasons for arriving at a decision are binding. The principle on which the earlier case was decided is binding. The meaning of ' ratio decidendi' is the reason for deciding.

46. In the case of Sudha (cited supra), the observations as regards ratio decidendi in the case of Regional Manager and another v Pawan Kumar Dubey (1976) 3 SCC 334 were considered, which read thus;

> "It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts."

47. Based on the above findings, it has been observed that one additional or different fact can make a world of difference between conclusions in two cases, even when the same principles are applied in each case to similar facts.

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48. Evaluating the facts of Laxmidas Morarji and Babulal Bhurmal cases for ratio decidendi, there was a vast difference in the facts. In Laxmidas, a tenancy was transferred to a trust by the tenant by Will and in the case of Babulal, the original tenant had inducted a sub-tenant and the sub-tenant was added as a trespasser. In the facts of Babulal's case, it has been held that the suit is governed under Section 28 of the Act of 1947. In the case of Jivatsingh relied upon by the learned counsel for

the landlord, Bombay High Court referring to the case of Importers and Manufacturers Ltd vs Phiroze Framaroz Taraporwala, 1952 (55) BLR 271 Supreme Court, has held that a Bench of three Judges, held that the claim or question as to the respective rights of the plaintiffs and the second defendant (sub- tenant) raised in the plaint certainly arose out of the Act and the language of section 28 appeared wide enough to cover the same.

49. In the case at hand, the plaintiffs had a case that respondents nos. 1 to 3 were the trespassers; however, respondent no.5, being legal heir, was entitled to succeed the tenancy.

50. The Act of 1947 has provided that the tenancy is transferable by succession. Therefore, the landlord-tenant relationship does not cease merely on the death of the tenant. However, it must be accepted that the landlord-tenant relationship subsists even after the death of the tenant, and the claim and question as to the respective rights between the landlord and respondent No. 5 arose CRA-201-16.odt out of the Act of 1947 and was covered under section 28 of the said Act. Firstly, the cause of action to recover the possession arose against respondent No.5. Hence, the suit was correctly filed under the Act of 1947, and the other respondents trespassed the suit land; hence, they were the necessary parties to the suit for eviction.

51. In view of the facts of the instant case, the Court is of the view that the ratio laid down in the case of Babulal is applicable and not the case of Laxmidas. The other case laws relied upon by the respective counsels are on different facts. Hence, those are not discussed to maintain brevity.

52. A landlord has been running pillar-to-post for the last twenty-five years to recover the possession of a small piece of plot measuring about 400 sq. ft. No specific oral evidence was required to determine the questions as mostly the facts were admitted, and legal objections were raised. This was a second round of litigation. This Court has considered all the aspects involved in the case as they were based on the legal issues and decided it finally in the revision as, in any case, respondents No.1 to 3 have no merits. Sending the landlords again to the Civil Court, as argued by the learned counsel for the respondents, would be unjust to a landlord. There must be a full stop somewhere to such litigations.

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53. For the reasons mentioned above, the impugned judgment and decree of the learned first appellate Court warrants interference. Hence, the following order :-

ORDER

(i) The civil revision application is allowed.

(ii) The impugned judgment and decree of the learned First Appellate Court is quashed and set aside, and the judgment and decree of the learned trial Court is restored.

(iii) The respondent nos. 1 to 3 shall vacate the suit premises and hand over its peaceful and vacant possession to the plaintiffs within four months from today.

(iv) No order as to costs.

(v) Rule made absolute in the above terms.

(S.G. Mehare)
JUDGE

Later on :

54. The learned counsel for the respondents pray to stay the effect of this order. The Court has considered the condition of the suit premises which is completely collapsed. It is a small piece of 400 sq. ft. land. In the facts and circumstances, it would be unjustifiable to ask the landlord to wait again from enjoying the fruits of the decree.

CRA-201-16.odt There appears no merit in the submissions. Hence, the request to stay the effect of this order is declined.

(S.G. Mehare) JUDGE Mujaheed//