



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.576 OF 2019

1 KASHINATH RAMCHANDRA KOLWANKAR
Since Deceased His Legal Heirs

1A. Hemant Kashinath Kolwankar
Residing at F-2, Dulba Prasad Building,
S.M. Jadhav Marg, Naigaon Co-op Housing
Society Ltd. Naigaon, Dadar (East),
Mumbai 400 014.

1B. Girish Kashinath Kolwankar
Residing at 43, Mehta Mahal,
Dada Saheb Phalke Road,
Dadar East, Mumbai 400 014.

1C. Mrunalini Umesh Khatu
Residing at 3rd Floor,
Trisandhya Building,
Dadasaheb Phalke Road,
Dadar East, Mumbai 400 014.

...APPLICANTS

VERSUS

1 Sunanda wd/o Ramakant Desai
(SINCE DECEASED)

2 Gajanan Ramakant Desai
Age 43 Years, Occupation: Business,

3 Shashikala Rajendra Pai
Age 52 Years, Occu: Business,

4 Surekha Rajendra Keni
(SINCE DECEASED)
Through her L.R. 4A to 4C

- 4A. Rajendra Anand Keni
Widower, Age 56 Years, Occu: Medical Practitioner,
- 4B. Radhika Rajendra Keni
Daughter, Age 22 Years, Occu: Student
- 4C. Devika Rajendra Keni
Daughter, Age 22 Years, Occu: Student

All residing at 308/36
Gokul, 14th Main, 7th Cross,
Rajmahal Vilas Extension,
Bangaluru 560 080. State of Karnataka

- 5 Purnima Ashok Prabhu
Age 47 Years, Occu: Professional

All heirs and legal representatives
of Late Ramakant Baburao Desai

...PETITIONERS

Mr. Kishor Patil with Mr. R.M. Haridas and Ms. Rukmini Khairnar i/b
Mr. Shriram S. Redij *for Applicant.*

Mr. Prasad Dhakephalkar, Senior Advocate (through video conferencing)
with Mr. Abhinav Bhatkar i/b Mr. Ajit A. Kocharekar *for Respondent
Nos.2 and 4(a) to 4(c).*

CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 05 SEPTEMBER 2024
PRONOUNCED ON: 12 SEPTEMBER 2024.

JUDGMENT

1 The Applicant/original Defendant has invoked revisionary
jurisdiction of this Court to set up a challenge to the judgment and decree

dated 3 May 2019 passed by Appellate Bench of Small Causes Court, by which Appeal No. 245 of 2008 filed by Respondents/Plaintiffs has been allowed and judgment and decree dated 4 February 2018 passed by the learned Judge of the Small Causes Court in RAE & R Suit No.46/83 of 1992 is set aside. The Appellant Bench has decreed RAE & R Suit No.46/83 of 1992 directing the Applicant/Defendant to handover possession of the suit premises to the Respondents/Plaintiffs with further direction to pay Rs. 3,600/- towards arrears of rent alongwith 15% simple interest.

2 Brief facts, necessary for decision of the Civil Revision Application can be summarized as follows:

Respondents/Plaintiffs instituted RAE & R Suit No.46/83 of 1992 against Applicant/original Defendant Shri Kashinath R. Kolwankar for recovery of possession of suit premises being Flat No. F-2 on ground floor of building Dulaba Prasad, Plot No.60-D and 60-F, S. Jadhav Marg, Naigaon, Mumbai-400014 (**Suit Premises**). It is the case of Respondents/Plaintiffs in the Plaint that late Shri Ramakant B. Desai and his mother Smt. Shantabai Desai purchased Plot Nos.60-D and 60-F from M/s. Sant Brothers, who were original promoter members of Naigaon Co-operative Housing Society Limited. The purchase took place in the year 1953 at consideration of Rs.70/- per square yard. That Plot No.60-D stood in the name of Shri Ramakant B. Desai and Plot No.60-F stood in the name of Smt. Shantabai Desai. That Shri Ramakant B. Desai constructed building named 'Dulaba Prasad' on Plot Nos.60-D and 60-F by appointing Architect and Contractor. That the entire expenditure for construction of

the building was borne by said Shri Ramakant B. Desai. The construction of the building was complete in January 1955 through the contractor by Shri Ramakant B. Desai, who thereafter created tenancies in respect of various flats constructed in the said building. That said Shri Ramakant B. Desai himself stayed along with family members on second floor of the building during 1955 to 1986. That additional third floor of the building was later constructed by Shri Ramakant B. Desai at his own costs in the year 1981, which was complete by the year 1986. That Shri Ramakant B. Desai shifted from second floor to the third floor and created fresh tenancies in respect of second floor during the years 1986 to 1988. It is further averred in the Complaint that Shri Ramakant B. Desai became landlord in respect of various flats constructed in the building 'Dulaba Prasad'. That the Applicant/original Defendant Kashinath Kolwankar was inducted as tenant in respect of the suit premises.

3 Plaintiffs further averred that Naigaon Co-operative Housing Society Limited (**the Society**) did not contribute anything for construction of the building at any point of time nor objected to construction of the building and induction of the tenants by Shri Ramakant B. Desai. It appears that various tenants allegedly inducted by Shri Ramakant B. Desai made applications to the Society for admitting them as members. The said occupants of the flats filed proceedings before Assistant Registrar of Co-operative Societies seeking their admission as members of Society. The Assistant Registrar passed order dated 9 November 1987 allowing the applications of occupants and directed that the said occupants be made ordinary members of Naigaon Co-operative Housing Society Limited. The said order dated 9 November 1987 passed by the Assistant Registrar was

challenged before Divisional Joint Registrar both by the Society as well as Shri Ramakant B. Desai. The Divisional Joint Registrar however rejected the Revision Applications by order dated 29 December 1987. When the challenge was carried to this Court, Writ Petition No.761 of 1988 filed by the Society came to be dismissed on 15 April 1988. Further challenge to the Supreme Court came to be rejected. This is how proceedings relating membership of occupants in respect of Society attained finality. Applicant/Defendant came to be admitted as member of the Society.

4 In the above background, Respondents/Plaintiffs who are heirs of Shri Ramakant B. Desai, filed RAE & R Suit No.46/83 of 1992 against Applicant/Defendant seeking recovery of possession of suit premises on the grounds of: (i) arrears of rent, (ii) reasonable and bonafide requirement of Plaintiffs, (iii) nuisance and annoyance, (iv) permanent additions and alterations, (v) unauthorized sub-letting and (vi) denial of title of Plaintiffs.

5 Applicant/Defendant appeared in the suit and filed written statement broadly taking the defence that Respondents/Plaintiffs do not have title in respect of the plot or building and that Society is the real owner in respect of land and building and in his capacity as member of the Society, Applicant/Defendant has right to occupy the suit premises. It was further contended that MCGM has allotted land to the promoters of the Society by construction of houses for lower income group persons, who were earning less than Rs.75/- per month. That accordingly the Society was formed in the year 1944 and after allotment of plot, the Society had carried out construction of the building through its own contractor. That litigation took place between Society and Contractor over non-payment of

construction charges to the contractor. That the Applicant/Defendant has secured membership of the Society in respect of the suit premises. That Shri Ramakant B. Desai gave admissions about ownership of plot and building by the Society. Applicant/Defendant prayed for dismissal of the suit.

6 The learned Judge of the Small Causes Court proceeded to dismiss Respondents/Plaintiffs' suit by judgment and decree dated 4 February 2008. The learned Judge held that the suit was barred by principle of *res judicata* as the order passed by the Joint Registrar has attained finality and could not be reagitated in the suit. The learned Judge held that Respondents/Plaintiffs could not prove that they are landlords and owners of suit premises. The suit was therefore held to be not maintainable and that the Small Causes Court did not have jurisdiction to try and entertain the suit under Sections 4 and 4A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (**Bombay Rent Act**) and also in view of section 91 of the Maharashtra Co-operative Societies Act, 1960 (**MCS Act**). Since the suit was not held to be maintainable and barred by principle of *res judicata*, the learned Judge did not answer various grounds for eviction raised by Respondents/Plaintiffs.

7 Respondents/Plaintiffs filed Appeal No.245 of 2008 before the Appellate Bench of Small Causes Court challenging the decree of the Small Causes Court dated 4 February 2008. The Appellate Bench has allowed the Appeal filed by the Respondents/Plaintiffs by its judgment and order dated 3 May 2019 and has set aside Small Causes Court's decree dated 4 February 2008. The Appellate Bench has held that the suit is not barred by *res judicata* and that the same was maintainable in law with Small Causes Court

having jurisdiction to decide the same. The Appellate Bench further held that relationship between parties as landlords-tenant was established. The Appellate Bench thereafter proceeded to examine various grounds raised by Respondents/Plaintiffs and has answered the grounds of arrears of rent, denial of title, unauthorized additions and alterations, unauthorized sub-letting and acquisition of alternate premises in the affirmative. The ground of nuisance is however rejected. The Appellate Bench has accordingly decreed RAE & R Suit No.46/83 of 1992 by directing Applicant/Defendant to handover possession of the suit premises to Respondents/Plaintiffs within 90 days. The Applicant/Defendant is further directed to pay to Respondents/ Plaintiffs Rs. 3,600/- towards arrears of rent with 15% simple interest per annum. Aggrieved by the decree of the Appellate Bench dated 3 May 2019, the Applicant/Defendant has filed the present Civil Revision Application. During pendency of the Revision Application, Applicant/ Defendant has passed away and his legal heirs are brought on record.

8 Mr. Kishor Patil, the learned counsel appearing for Revision Applicant would submit that the Appellate Bench has erred in reversing well-reasoned decision of the Trial Court. That the Appellate Bench has erroneously applied the principle of *res judicata* by following the decision delivered in case of other tenants without appreciating the fact that the Applicant/Defendant was not party to the said litigation and therefore Section 11 of the Code would have no application in to the Suit instituted against them. That it got conclusively proved before the Trial Court that lease in respect of the land was granted by MCGM in favour of promoters of the Society subject to the condition of its registration. That after

registration of the Society, the Society carried out the construction by incurring the expenditure and that therefore Society alone is the owner in respect of the land as well as building. That Applicant/ Defendant has been admitted as member of the Society and that therefore he occupied suit premises as member of the Society and not as tenant of Respondents/Plaintiffs. That Shri Ramakant B. Desai misrepresented various occupants of the building that he is the landlord and payment of rent for some period by such occupants, including Applicant/Defendant, was on account of such misrepresentation on the part of Shri Ramakant B. Desai. That mere payment of such rent for some time would not make said Shri Ramakant B. Desai or Respondents/Plaintiffs owners in respect of the plot and the building.

9 Mr. Patil would further submit that the issue of alleged ownership of plot and building by Shri Ramakant B. Desai was clearly involved in proceedings that took place before the Assistant Registrar. That defence of Shri Ramakant B. Desai was rejected by directing admission of the occupants as members of the Society. He would rely upon order passed by this Court while upholding the order of the Registrar, Co-operative Societies, in which specific observation is made that the plots were not granted to create landlords who would in turn treat the occupants of the structures by applying Rent Act. That the orders passed in the proceedings relating to admission of the occupants as members of the Society have attained finality up to the Supreme Court and that the said issue cannot again be agitated again before Small Causes Court for seeking a declaration that Respondents/Plaintiffs are owners or landlords in respect of the concerned building.

10 Mr. Patil would rely upon several documents produced alongwith compilation submitting that the said documents were never produced by other tenants against whom the decrees for eviction have been passed. He has taken me through several documents produced alongwith compilation for demonstrating Society is the real owner of land and building. That the Court, which passed the said decrees, did not have occasion to consider the said documents. Similarly, the defence of misrepresentation while collecting rent from occupants was also not raised in those proceedings. He would therefore submit that findings recorded in proceedings relating to other tenants cannot be used while answering any of the issues raised in the present proceedings. Mr. Patil would further submit that the Society has instituted Suit No.4 of 2012 in this Court seeking a declaration of its title in respect of landlord, which is pending. That Shri Ramakant B. Desai or his heirs (Plaintiffs) have not secured any independent decree from Civil Court declaring them as owners in respect of land and building. On the contrary, in proceedings before the Registrar of Co-operative Societies, the claim of Shri Ramakant B. Desai as owner has been expressly rejected. Mr. Patil would therefore pray that the impugned decree of the Appellate Bench of the Small Causes Court deserves to be set aside.

11 Mr. Dhakephalkar, the learned Senior Advocate appearing for Respondents/Plaintiffs would oppose the Revision Application submitting that no interference is warranted in the decree passed by the Appellate Bench. That in a Rent Act suit, what is relevant is not the title of the landlord but mere existence of landlord and tenant relationship. That the law does not require landlord to prove that he is the real owner. So long as the ingredients of definition of the term “landlord” are satisfied and

establishment of landlord and tenant relationship is established, even if Respondents/Plaintiffs fails to prove his title, the suit for ejectment of tenant can be maintained. In support he would rely upon judgment of this Court in *K.D. Dewan vs. Haribhajan S. Parihar*¹ and *R.S. Grewal and others vs. Chander Parkash Soni & Anr.*²

12 Mr. Dhakephalkar would submit that the following position is admitted:

- i) That Applicant/Defendant is inducted in the suit premises by Shri Ramakant B. Desai,
- ii) That possession of the suit premises was handed over to Applicant/Defendant by Shri Ramakant B. Desai,
- iii) That Applicant/Defendant paid rent to Shri Ramakant B. Desai for 36 long years from 1955 to 1988,
- iv) That application for membership of Society under Section 23 of the MCS Act, was made by Applicant/Defendant in his capacity as tenant,
- v) in Suit No. 650/4324 of 1970, Applicant/Defendant admitted that he is tenant of Shri Ramakant B. Desai in respect of suit premises.

Mr. Dhakephalkar therefore submit that in the light of the above admitted position, existence of landlord and tenant relationship is clearly established and therefore suit for recovery of possession under the provisions of Bombay Rent Act was clearly maintainable and has rightly been decreed by the Appellate Bench of Small Causes Court.

1 (2002) 1 SCC 119.

2 (2019) 6 SCC 216.

13 Mr. Dhakephalkar would further submit that under Section 116 of the Indian Evidence Act, 1872 (**Evidence Act**), a person, who gets inducted in suit premises in capacity as tenant, is estopped from challenging the title of the landlord. That in the event Applicant/Defendant wants to set up a case for title, he must surrender possession, which he received as tenant and file independent suit before Civil Court to establish his claim of title. In support Mr. Dhakephalkar would rely upon judgments of the Apex Court in *Bansraj Laltaprasad Mishra vs. Stanley Parker Jones*³ and *Atyam Veerraju and others vs. Pechetti Venkanna and others*.⁴

14 So far as the proceeding before Registrar relating to membership of the Society is concerned, Mr. Dhakephalkar would submit that the said proceedings are summary in nature, in which neither Registrar is empowered to declare nor has declared that Shri Ramakant B. Desai is not the landlord. That the Trial Court has erred in holding that the suit is barred by *res judicata* on account of decision in proceedings by the Registrar of Co-operative Societies.

15 Mr. Dhakephalkar would submit that several other tenants in respect of same building raised same claim of ownership while defending suits filed by Respondents/Plaintiffs and that decrees passed in the said suits have attained finality upto the Apex Court. That the findings recorded in the said proceedings would clearly bind the Small Causes Court as well as this Court. That therefore principle analogous to *res judicata* is clearly attracted in the present proceedings. That this Court taking a different view would create situation resulting in inconsistent and contradictory orders in similar

3 (2006) 3 SCC 91
4 AIR 1966 SC 629

cases which is required to be avoided. Mr. Dhakephalkar would pray for dismissal of the Revision Application.

16 Rival contentions of parties now fall for my consideration.

17 Respondents/Plaintiffs instituted RAE & R Suit No.46/83 of 1992 against Applicant/Defendant claiming that they are landlords and Applicant/Defendant is tenant in respect of the suit premises. It therefore became necessary for the Trial Court to decide the issue as to whether Respondents/Plaintiffs are landlords in respect of the suit premises or not. It appears that additional issue No.3 was framed by the Trial Court about status of Respondents/Plaintiffs as landlords. The said additional issue No.3 has been answered by the Trial Court together with other issues relating to jurisdiction of the Court, maintainability of the suit and bar of *res judicata*. Based on the pleadings and evidence before it, the Trial Court held that Respondents/Plaintiffs could not establish their status as landlords in respect of the suit premises. While deciding the said issue, the Trial Court considered one singular aspect viz. orders passed in proceedings before Registrar of Co-operative Societies relating to grant of membership in the society. After going through orders passed at various hierarchical levels by Assistant Registrar, Divisional Joint Registrar, this Court and the Apex Court, the Trial Court held that late Ramakant B. Desai himself was the member of the Society and that the promoters of the Society were not entitled to transfer the flat in question in favour of late Ramakant B. Desai. The Trial Court held that the membership proceedings have attained finality and on this ground the Trial Court held that Respondents/Plaintiffs could not claim their status as landlords.

18 The Trial Court further held that the objective behind allotment by MCGM to the Promoters of Society was merely for construction and provision dwelling houses for lower income group personnel. Though the Small Causes Court has recorded at couple of places that it cannot go into the issue of ownership or the title of the Respondents/Plaintiffs, it further went on to hold that the question of title or ownership was correlated with the question of landlordship and that therefore various documents in that regard needed to be looked into. The relevant findings recorded by the Trial Court in this regard is to be found in paragraph 29 of the judgment which reads thus:

“29. It is to be noted that this court cannot go into the issue of ownership or title of the plaintiff in respect of the suit premises but the question of title or ownership being co-related with the question of landlordship, certain documents in that regard needs to be looked into.”

19 After holding that the issue of title/ownership was correlated with the issue of landlordship, the Trial Court went on to enquire whether Respondents/Plaintiffs could establish their title in respect of the suit property. This is where, in my view, a folly was committed by the Trial Court in instituting an enquiry into the title of the Respondents/Plaintiffs. By now, it is well established principle of law that in a suit filed under provisions of Rent Control Legislation, all that needs to be established is existence of landlord-tenant relationship and the issue of title become wholly irrelevant. Even if Respondents/Plaintiffs are not in a position to establish their title in respect of the property in question, the suit for ejectment would nevertheless be maintainable so long as Respondents/Plaintiffs can prove existence of landlord-tenant relationship. While there is no dearth judgments on this settled principle, it would be necessary to

make a brief reference to two judgments of the Apex Court. In *K.D. Dewan* (supra) the Apex Court has held in paragraphs 6, 7 and 8 as under:

“6. The short question that arises for our consideration is, what is the import of the word “landlord” in clause (c) of Section 2 of the Act and whether the respondent has rightly been held to be the landlord and entitled to seek eviction of the appellant.

7. The said provisions reads as follows :

" 2.(c): ‘landlord’ means any person for the time being entitled to receive rent in respect of any building or rented land whether on his own account or on behalf, or for the benefit of any other person, or as a trustee, guardian, receiver, executor or administrator for any other person, and includes a tenant who sublets any building or rented land in the manner hereinafter authorised, and, every person from time to time deriving title under a landlord;"

8.A perusal of the provision, quoted above, shows that the following categories of persons fall within the meaning of landlord : (1) any person for the time being entitled to receive rent in respect of any building or rented land; (2) a trustee, guardian, receiver, executor or administrator for any other person; (3) a tenant who sublets any building or rented land in the manner authorised under the Act and (4) every person from time to time deriving title under a landlord. Among these four categories of persons, brought within the meaning of “landlord”, Mr. Sharma sought to derive support from the last category. Even so that category refers to a person who derives his title under a landlord and not under an owner of a premises. For purposes of the said category the transferor of the title referred to therein must fall under any of the categories (1) to (3). **To be a landlord within the meaning of clause (c) of section 2 a person need not necessarily be the owner; in a vast majority of cases an owner will be a landlord but in many cases a person other than an owner may as well be a landlord. It may be that in a given case the landlord is also an owner but a landlord under the Act need not be the owner.** It may be noted that for purposes of the act the legislature has made a distinction between an owner of a premises and a landlord. The Act deals with the rights and obligations of a landlord only as defined therein. Ownership of a premises is immaterial for purposes of the Act.”

(emphasis added)

20 The judgment in *K.D. Dewan* (supra) had been followed by the Supreme Court in *R.S. Grewal* (supra), in which it is held in paragraphs 17 and 18 as under:

“17. This submission cannot be accepted both as a matter of first principle and having regard to the precedent on the subject. The expression ‘landlord’ is defined in Section 2(c) of the East Punjab Urban Rent Restriction Act 1949 thus:

“**2. Definitions.**- In this Act, unless there is anything repugnant in the subject or context –

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(c) ‘**landlord**’ means any person for the time being entitled to receive rent in respect of any building or rented land whether on his own account or on behalf, or for the benefit, of any other person, or as a trustee, guardian, receiver, executor or administrator for any other person, and includes a tenant who sublets any building or rented land in the manner hereinafter authorised, and every person, from time to time, deriving title under a landlord;”

18. **A landlord within the meaning of Section 2(c) is not necessarily the owner of the property.** The definition of the expression ‘landlord’ is relatable to an entitlement to receive rent in respect of any building or rented land. The inclusive definition of ‘landlord’ under Section 2(c) would take in its sweep Shiv Dev Kaur who held a life interest in the property. This position in law has been explained in a decision of a two Judge Bench of this Court in *K.D. Dewan v Harbhajan S. Parihar*, where it was held thus:

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xxxx

(emphasis added)

21 The term landlord has been defined under the provisions of section 5(3) of the Bombay Rent Act as under:

“**5. Definitions.**

(3) "landlord" means any person who is for the time being, receiving, or entitled to receive, rent in respect of any premises whether on his own account or on account, or on behalf, or for the benefit of any other person or as a trustee, guardian, or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant; and includes any person not being a tenant who from time to time derives title under a landlord; and further includes in respect of his sub-tenant, a tenant who has sub-let any premises, [and also includes in respect of a licensee deemed to be a tenant by section 15A, licensor who has given such license, and in respect of the State Government, or as the case may be, the Government allottee referred to in sub-clause (b) of clause (1A), deemed to be a tenant by section 15B, the person who was entitled to receive the rent if the premises were let to

a tenant immediately before the coming into force of the Bombay Rents, Hotel and Lodging House Rates Control, Bombay Requisition and Bomby Government Premises (Eviction) (Amendment) Act, 1996.”

22 Thus any person who receives or is entitled to receive rent in respect of premises either for himself or on behalf of any other person becomes a landlord. Therefore, to establish status as landlord it is not necessary for Respondents/Plaintiffs to set up a case of title or ownership. The learned Judge of the Small Causes Court has erred in not appreciating this established position of law and has unnecessarily conducted an enquiry into Respondents/Plaintiffs’ title in respect of the suit premises.

23 In the present case there is no dispute to the position that the initial induction of Applicant/Defendant in the suit premises is in his capacity as tenant of Shri Ramakant B. Desai. This is not the case where Applicant/Defendant was originally a member of the Society and that the Society issued any allotment letter to him. The possession of the suit premises was admittedly handed over to him by Shri Ramakant B. Desai. Thus, the Applicant/Defendant’s entry in the suit premises is directly connected with relationship with Shri Ramakant B. Desai. There is no dispute to the position that right since 1995 Applicant/Defendant paid rent to Shri Ramakant B. Desai and this position continued till the year 1988. Thus, there was no dispute about existence of relationship between Shri Ramakant B. Desai and Applicant/Defendant as landlord and tenant. Here provisions of Section 116 of the Indian Evidence Act would clearly be attracted. Section 116 provides thus:

“116. Estoppel of tenant; and of licensee of person in possession.

No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny

that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.”

24 The salutary principle is thus that a person who gets entry into the premises in capacity as tenant cannot take a *volte face* and question title of the landlord or even claim his own status as owner. The law does not prevent a tenant to claim status as owner. However if he desires to do, he must give up the benefit that he has received in his capacity as tenant. This means that the tenant must first surrender the possession of premises to the landlord as his very entry in the tenanted premises is connected only to his relationship as tenant. After surrendering possession of the tenanted premises, the erstwhile tenant is free to then file appropriate proceedings to establish his title to the premises, in which he was a tenant at one point of time. If he succeeds in establishing his title, he can pray for handing back possession of the premises. He cannot squat inside the premises and question title of the owner or seek to establish his own title in respect of premises in his possession. The law in this regard is well settled. As early as in 1965, Constitution Bench of the Apex Court in *Atyam Veeraj* (supra) has held in paragraphs 13 and 14 as under:

“13. Having regard to Section 116 of the Indian Evidence Act, 1872, during the continuance of the tenancy, a tenant will not be permitted to deny the title of the deity at the beginning of the tenancy. In *Bilas Kunwar v. Desraj Ranjit Singh*, the Privy Council observed :

"A tenant who has been let into possession cannot deny his landlord's title, however defective it may be, so long as he has not openly restored possession by surrender to his landlord."

14. It is also well settled that during the continuance of the tenancy, the tenant cannot acquire by prescription a permanent right of occupancy

in derogation of the landlord's title by mere assertion of such a right to the knowledge of the landlord. See *Mohammad Mumtaz Ali Khan v. Mohan Singh, Madhavrao Waman Satindalgekar v. Raghunath Venkatesh Deshpande, Naini Pillai Marakayar v. Ramanathan Chettiar*. In the last case, Sir John Edge said :

"No tenant of lands in India can obtain any right to a permanent tenancy by prescription in them. against his landlord from whom he holds the lands."

25 In *Bansraj Laltaprasad Mishra* (supra), the Apex Court has held in paragraph 11 as under :

"11. It is not in dispute that on 1-5-1971 an agreement was entered into. What the defendant tried to establish was that prior to the date of agreement one Shamsheer Khan had put the defendant in possession and therefore the subsequent agreement with the plaintiff-appellant was really of no consequence. This aspect was dealt by the learned Single Judge in detail. It was held that the concept of constructive possession was clearly applicable even if the defendant's case of Shamsheer Khan having put him in possession is accepted. Illustrations were given to buttress the interpretation given. The learned Single Judge was of the view that the word "possession" in Section 116 also includes constructive possession. Unfortunately the Division Bench has not dealt with this aspect. It would be relevant at this point of time to take note of what is stated in Section 116 of the Evidence Act. The same reads as follows:

"116. *Estoppel of tenant; and of licensee of person in possession*-No tenant of immoveable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy a title to such immoveable property and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given."

26 In my view, in the suit filed by Plaintiffs claiming their status as landlord, it was impermissible for Defendant to claim his own status as owner. For doing so it is incumbent on him to first surrender the possession and then file a declaratory suit claiming his title in appropriate Court of law. Though Mr. Patil has sought to suggest that the Society has already

instituted Suit No.4 of 2012 in this Court seeking declaration of title, the same would have no effect on landlords entitlement to seek ejectment of Defendant. In the event Society succeeds in establishing title in respect of land and/or building, it can seek necessary relief for reinduction of its members into the premises occupied by them as tenants. However mere filing and pendency of suit by the Society cannot be a reason for its members to defeat suit for recovery of possession filed by landlords.

27 In view of the well settled position of law that enquiry into status of Plaintiffs as owners is immaterial, it is not necessary to consider various documents sought to be relied upon by Mr. Patil which are essentially aimed at proving that Society is the real owner in respect of the land and building. Mr. Patil has relied upon various documents such as Municipal Assessment in the name of Society, Resolution passed by MCGM dated 5 August 1943, MCGM's direction for formation and registration of Society, correspondence relating to transfer of flats in the name of Society, alleged agreement with contractor for construction of building, correspondence between MCGM and Registrar of Co-operative Societies, correspondence between MCGM and Liquidator of the Society, etc. Mr. Patil has also sought to contend that these vital documents were not relied upon by other tenants against whom eviction decrees have been passed. However as observed above, the journey through the series of documents sought to be relied upon by Mr. Patil essentially leads to Defendant's pursuit to establish title of the Society in land and building, which in my view is wholly irrelevant to the present proceedings. All that Plaintiffs were required to prove, and which they have conclusively proved, is the factum of the Defendant's entry into the suit premises was in his capacity as tenant. That

he received possession of the premises from Shri Ramakant B. Desai and that he continued to pay rent to Shri Ramakant B. Desai for 36 long years. All the ingredients required for establishment of landlord-tenant relationship were thus conclusively established. Once landlord-tenant relationship gets conclusively established, even if landlord is unsuccessful in proving his title to the suit premises, the same would not affect his right to seek ejectment of tenant on grounds specified under Sections 12 and 13 of the Bombay Rent Act.

28 Mr. Patil is at pains to take me through various orders passed in proceedings relating to admission of occupiers as members of the Society. The effect of those orders has already been considered by this Court in numerous orders passed in case of other tenants, brief reference to which is being made in later portion of judgment. In any case, those orders passed in proceedings relating to membership of Society are wholly irrelevant for deciding Respondents/Plaintiffs' suit for ejectment of Applicant/Defendant. The limited remit of enquiry before the Court of Small Causes was whether Respondents/Plaintiffs established the ingredients of definition of the term 'landlord' under section 5(3) of the Bombay Rent Act. The findings recorded in proceedings relating to membership of Society may or may not be relevant for the purpose of deciding question of title in respect of the suit premises, which issue becomes wholly irrelevant for deciding the suit for ejectment. This is a reason why the Small Causes Court ought to have ignored the findings recorded in those proceedings. Far from doing so, the Small Causes Court not only relying upon those findings but went on to hold the said findings operate as *res judicata* in Respondents/Plaintiffs' suit for establishing his status as landlord in respect of the suit premises.

29. As a matter of fact, recording such detailed reasons for dismissal of the Revision Application was not necessary in view of the fact that this Court had four occasions in the past to decide the same points that are canvassed before me in the present Revision Application. A brief reference to the said orders would be apposite:

i) Decree for eviction of seven tenants was questioned in group of Writ Petitions in this Court and the learned Single Judge (*D.K. Deshmukh, J.*) by his orders dated 27 August 2002 and 3 September 2002 passed in *S.Y. Wagle vs. Sunanda Ramakant Desai & Ors*, (Writ Petition No.3669 of 2002) dismissed the same by recording following findings:

“1. The respondents in all these petitions are the same and these petitions also challenge a common order passed by the Appellate Bench of the Small Causes Court at Bombay. Therefore, all these petitions can conveniently disposed off by a common order. be

2. Suits under section 28 of the Bombay Rent Act were instituted by the respondents against the petitioners in these petitions, claiming that they are tenants of the plaintiffs and seeking a decree of eviction on several grounds including the ground of default in payment of rent. It was claimed in the suits by the petitioners that they are tenants of a building which was constructed by the plaintiffs. It appears that certain plots of land were allotted on lease by the Bombay Municipal Corporation to a Co-operative Housing Society by name Naigaon Co-operative Housing Society Ltd.. After sub-division of these plots, the Society allotted these plots to its members. It appears that the members constructed buildings having tenements and leased out the tenements to the petitioners. The lease was granted in favour of the petitioners admittedly by the respondents and they were also paying rent pears that the petitioners applied to the Society for membership. That application was rejected. Therefore, an application was made under the Maharashtra Co-operative Societies Act 1960 before the Assistant Registrar, Co-operative Societies. challenging the action of the Society rejecting their applications for membership. In those proceedings ultimately the petitioners were held entitled to membership of the Society and that order has been confirmed upto the Supreme Court. It appears that thereafter the Assistant Registrar initiated proceedings suo motu for

change of classification the Society and the Society was classified as tenant co-partnership housing society. A litigation challenging that order also came upto this Court, ultimately that writ petition was withdrawn.

3. In the written statements filed in all these suits, the principal defence of the petitioners was that the plaintiffs are not landlords and that the plaintiffs have ceased to be the landlords because as a result of the order passed by the authorities under the Co-operative Societies Act, the title of the plaintiffs to the building constructed on the plot stands transferred to the Co-operative Society of which they are members and that the Society has allotted the tenements in their favour. The learned Single Judge of the Small Cause's Court, who decided the suite, accepted this version and dismissed the suits. In the appeals that were filed by the landlords before the Appellate Bench of the Small Causes Court, however, the Appellate Bench has reversed that finding and held that the petitioners are estopped from denying the title of landlords viz. the plaintiffs. It was also held that by virtue of an order made by the Co-operative Societies Act, changing classification of the Society, title of the building which is immovable property, does not get transferred to the Society and therefore, the plaintiffs continue to be the tenants of the landlords. As a result, the appeals were allowed and suits filed by the plaintiffs were decreed in favour of the plaintiffs and decree of eviction was passed against the tenants. It is this order of the appellate Court which is impugned in these petitions.

4. The learned counsel appearing for petitioners took me through the observations of the authorities under the Co-operative Societies Act as also the observations in the judgment of the learned Single Judge of this Court as also observations of the Division Bench of this Court in Letters Patent Appeal arising out of the proceedings initiated for grant of membership of the Society in favour of the petitioners and submitted that the ownership of the plots as also the buildings always vest with the Co-operative Society and the plaintiffs had constructed the building for and behalf of the Society, therefore, it was always the Society which was the owner of the building. In the alternative, it was submitted by referring to various observations made by the authorities under the Co-operative Societies Act in orders passed in relation to change of classification of the Society, that a result of change of classification, the plaintiffs cannot claim to be the owner of the building.

5. So far as the first submission of the learned counsel is concerned, as the tenancy in favour of the petitioners was admittedly created by the plaintiffs after constructing the building in terms of provisions of section 116 of the Evidence Act, the petitioners are estopped from claiming that at the time when the tenancy was created, the plaintiffs were not owners of the building and therefore, title does not vest in them. Section 116 of the Evidence Act reads as under:-

"116. Estoppel of tenant and of licensee of person in possession - No tenant of immovable property, or person claiming through such tenant, shall during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property and no person who came upon any immovable property by the licence of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such licence was given.."

Thus, the tenants cannot say that when the building was constructed by the respondents, they were not the owners of the building and that the Society was the owner of the building. So far as the second aspect of the argument is concerned, that is considered by the Appeal Court and the appeal Court has given cogent reasons for holding that by virtue of an order passed by under the Cooperative Societies Act in relation to change of clarification of a Co-operative Society from one sub-clause to another sub-class, title in immovable property does not get transferred. The learned counsel was not in a position to point out to me anything which would even remotely suggest that the reasons that have been given by the Appeal Court for holding that merely because of an order passed under the Cooperative Societies Act effecting change in classification of the Society, title of the structure gets transferred to the Society. It is thus clear that as the defendants were disputing the title of the plaintiffs, a decree on the ground of disclaimer was liable to be passed in favour of the plaintiffs. The decree has been passed in favour of the plaintiffs and against the tenants also on the ground that they are not willing to pay rent. Admittedly, the petitioners are not paying any rent to the plaintiffs for a long time. They have not paid any rent even after receiving the demand notice, they have not deposited rent in Court and therefore, a decree on the ground that they are not ready and willing to pay the rent was liable to be passed against them which has been passed by the Appellate Court. In this view of the matter therefore, I find that there is no substance in these petitions. Petitions fail and are dismissed. Rule is discharged with no order as to costs.

6. At this stage, a request is made by the learned counsel for petitioners for stay of this order. Operation of this order is stayed for a period of six weeks from today subject to filing an undertaking by the petitioners in this Court within two weeks from today undertaking therein not alienate, handover or create third party interests in the suit premises during the aforesaid six weeks and to handover vacant and peaceful possession of the suit premises to the decree holder on expiry of six weeks in case no suitable order is obtained from superior Court.

Parties to act on the copy of this order duly authenticated by the Sheristedar / Personal Secretary as true copy.

Certified copy expedited."

The order passed by this Court in ***S.Y. Wagle*** (supra) was challenged before the Supreme Court by filing Special Leave to Appeal (Civil) No.19415 – 19421 of 2002 which came to be dismissed by order dated 28 October 2002.

ii) Eviction decree passed against another tenant in ***Shri G.K. Nilkanth vs. Smt. Sunanda Ramakant Desai & Ors.*** (Writ Petition No.6145 of 2002) became subject matter of challenge before another Single Judge of this Court (*Justice R.M. Lodha*, as His Lordship then was) and by order dated 20 March 2003 this Court dismissed tenants Writ Petition and upheld the decree for eviction by following order passed in ***S.Y. Wagle*** (supra);

iii) Eviction Decree passed in the case of tenant in ***Shri Sudam M. Patilhande vs. Smt. Sunanda Ramakant Desai & ors.***, was challenged before this Court in Civil Revision Application No.80 of 2007. The learned Single Judge, (*Justice S.J. Vazifdar*, as His Lordship then was) dismissed the Civil Revision Application by holding in paragraphs 4 and 5 of the judgment as under:

“4. Almost identical suit had been filed by the respondents against various tenants in the same building. Identical defences had been taken by the tenants in those proceedings. The tenants therein had denied the respondents status as landlords and had admittedly refused to pay the rent. The trial court dismissed the suit. The Appellate Court of the Small Causes Court however allowed the appeals and decreed the suits. The tenants filed in this Court various petitions being Writ Petition Nos.3669 of 2002 to 3675 of 2002 challenging the orders of the Appellate Court.

By the said order and judgment dated 3.9.2000 the learned judge dismissed the group of petitions challenging similar orders. The learned judge traced the history of the matter including the orders passed by the authorities under the Maharashtra Cooperative Societies Act and the orders passed by this court in

various other proceedings adopted by the tenants. The learned judge rejected the tenants contentions regarding the maintainability of the suit by the respondents who were also the plaintiffs in those proceedings. The learned judge held that the tenancy in favour of the petitioners had admittedly been created by the respondents/ plaintiffs after constructing the building and that the tenants were therefore estopped from claiming that at the time when the tenancy was created the plaintiffs were not owners of the building and that therefore the title did not vest in them. The learned judge also held that as the tenants were disputing the title of the plaintiffs a decree on the ground of disclaimer was liable to be passed in favour of the plaintiffs. Finally the learned judge observed that admittedly the tenants had not been paying rent to the plaintiffs for a long time on the ground that they were not willing to do so as the plaintiffs were not the landlords. Therefore the learned judge held that the decree for eviction was liable to be passed even on the ground of non-payment of rent.

5. Similar contentions have been raised in the present proceedings by the petitioner who is another tenant admittedly identically situated and whose stand and conduct has been identical to that of the tenants before the learned judge in the other matters. In the present case the petitioner after having accepted the relationship between herself and the respondents as that of one between a tenant and landlords and having paid rent from 1955 to 1989 i.e. for a period of 39 years sought to deny the relationship. On the basis of this contention the petitioner also admittedly stopped paying rent for a number of years leading to the filing of the present proceedings. In this view of the matter it was not open to the lower courts to take a different view in the present matter. Nor is it open to me to take a different view in the present case as admittedly the facts in this regard and the findings are binding on me. This is more so in view of the fact that the order and judgment of the learned judge has been confirmed by the Supreme Court.”

Special Leave to Appeal (Civil) No.21529 of 2008 challenging the order of this Court in the case of ***Shri Sudam M. Patilhande vs. Sunanda & Ors.*** came to be dismissed by the Apex Court by order dated 30 July 2010.

iv) Lastly, the eviction decree passed in the case of obstructionist in **Mohanrao Mallaiah Dussa and Anr. vs. Sunanda wd/o Ramakant**

Desai & Ors. was questioned before the learned Single Judge of this Court (*R.G. Ketkar, J.*) in Civil Revision Application No.226 of 2016. In the said case, the tenant therein specifically questioned the status of Plaintiffs therein as owners/landlords by raising following contentions:

“10. Mr. Godbole has also taken me through the impugned orders. In nutshell, he submitted that the plaintiffs cannot claim to be owners/landlords of the building. There is no relationship of landlord and tenant between the plaintiffs and Ghesubhai Jain, the predecessor-in-title of the obstructionists. The decree passed by the Small Causes Court is a nullity . The challenge to the nullity can be raised at any stage and even in collateral proceedings. He submitted that the findings recorded by the Assistant Registrar, Co-operative Societies merged in the order passed by the learned Single Judge and the Division Bench of this Court. Those findings will operate *res judicata* in the subsequent proceedings instituted by the plaintiffs against the predecessor-in-title of the obstructionists. In support of this submission, he relied upon the following decisions:-

1. Lal Chand Vs. Radha Krishan, (1977)2 SCC 88, and in particular Para.19.
2. M/s Anita Enterprises Vs. Belfer coop Housing Society Ltd,(2008) 1 SCC 285 and in particular, paras 34 and 35 thereof;
3. Chandrasekhar Narayan Tambe Vs. Dhondusa Sitaram Pawar, 2003 (1) ALL MR 446.”

This Court thereafter took into consideration the orders passed in case of three sets of tenants referred to above and proceeded to dismiss the Petition. The Special Leave Petition preferred against the order passed by the Single Judge has been dismissed by the Supreme Court on 9 January 2007. The Review Petition is also dismissed.

30 Mr. Patil has strenuously sought to submit that eviction decrees passed in cases of other tenants or findings recorded in their cases cannot constitute *res judicata* for the Applicant/Defendant in the present case.

While Mr. Patil cannot be said to be entirely wrong, and Mr. Dhakephalkar fairly does not dispute the position, that principle of *res judicata* in strict sense does not apply to the present case. However, the findings recorded by this Court in its past judgments relating to status of Respondents/Plaintiffs as landlords and denial claims of other tenants in relation to title of the Society in respect of the land and building cannot altogether be ignored. In fact those findings are binding not only on the learned Judge of the Small Causes Court and its Appellate Bench but also binding on this Court as held by this Court in ***Shri Sudam M. Patilhande (supra)***. Contentions of Mr. Patil that the findings in cases relating to other tenants are recorded without considering the argument of misrepresentation and without considering various documents now sought to be relied upon by the Applicant/Defendant does not cut any ice. As observed above, reliance on the said documents is only for the purpose of establishing Society's title in respect of the land and building, which enquiry is wholly irrelevant for deciding Respondents/Plaintiffs suit for ejectment of tenant.

31 After considering the overall conspectus of the case, I am of the view that no palpable error is committed by the Appellate Bench of Small Causes Court while reversing erroneous decree of the Trial Court and by decreeing the suit for this Court to exercise revisionary jurisdiction under Section 115 of the Code. The decree of the Appellate Court, to my mind, appears to be unexceptional. Civil Revision Application is accordingly **dismissed**.

SUDARSHAN
RAJALINGAM
KATKAM
Digitally signed
by SUDARSHAN
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KATKAM
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2024.09.12
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(SANDEEP V. MARNE, J.)