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wp 2371-97-2.1.20.odt

## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CIVIL APPELLATE JURISDICTION

## Writ Petition No. 2371 OF 1997

1.Vasant Sadashiv Joshi. )  
 2.Sulabha Sadashiv Joshi )  
 3.Vidya Sadashiv Joshi )  
 4.Kishori Sadashiv Joshi )  
 5.Pradip Sadashiv Joshi ) ...Petitioners

*Versus*

1.Yeshwant Shankar Barve, since )  
 deceased through his legal heirs )  
 1A.Sunita Barve, (Widow) )  
 1B Rajendra Yeshwant Barve-Son )  
 1C Jayant Yeshwant Barve-Son )  
 2.Shri.Sadanand Shankar Barve, )  
 deceased )  
 2A Sulabha Sadanand Barve,deceased )  
 2a(1) Ravindra S.Barve )  
 2a(2) Jayshree A.Bhole )  
 2B Ravindra Sadanand Barve )  
 2C Jayashree Amrendra Bhole )  
 3. Shri.Achyut Raghunath Joshi ) ...Respondents

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Smt.Anita A.Agarwal, for Petitioners.

Mr.Drupad S.Patil, for Respondent no.2.

Mr.Dhiraj Gole i/b. Mr.Madhav Jamdar, for Respondent no.3.

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CORAM : G.S.Kulkarni, J.DATE : 3 JANUARY, 2020

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**JUDGMENT:****CHALLENGE AND INTRODUCTION**

1. This petition is by tenant original defendant No.2 (Petitioner No.1). He suffers eviction from the suit premises at the instance of the lower appellate Court under its judgment and order dated 1 November 1997 as assailed. The other petitioners are his family members.

2. Respondents are the legal heirs of the original plaintiffs- Yeshwant Shankar Barve and Sadanand Shankar Barve -the landlords. The original tenant of the suit premises was one 'Raghunath', father of Defendant No. 1- Shri Achyut Raghunath Joshi (for short 'Achyut') who is impleaded as respondent no.3 in this petition.. On the death of Raghunath in the year 1971 the rent receipt came to be transferred in the name of defendant no. 1-Achyut although Raghunath's brother and his family members also occupied the suit premises.

3. It so transpired that the tenant, defendant no.1-Achyut left the suit premises in the year 1979 as he acquired alternative premises at Pune. The suit premises hence remained in occupation of defendant no. 2 -Vasant Sadashiv Joshi, Achyut's (defendant no.1's) cousin brother along with his family members (the petitioners), who are now pursuing these proceedings.

4. The plaintiffs landlords instituted an eviction Suit No.1682 of 1982 against Defendant no. 1- Achhut Raghunath Joshi- and defendant no. 2 Shri Vasant Sadashiv Joshi- petitioner no. 1, before the Small Causes Court at Pune. During the pendency of the litigation, both the plaintiffs expired as noted above. Defendant no.1 Achyut has chosen not to assail the eviction decree.

5. For convenience, the parties are referred as they stand before the trial Court namely the petitioners as defendants and the respondents as plaintiffs.

6. The relevant legislation as applicable to the lis in question is the Bombay Rents Hotel and Lodging House Rates Control. Act, 1947 (for short the '**Bombay Rent Act**').

#### **FACTUAL ANTECEDENTS**

7. The plaintiffs who were earlier part of a larger joint family are the landlords of the suit premises namely 'House Property at CTS No.201'. In the year 1937 Six rooms ( two rooms situated on ground floor and four rooms on the first floor) bearing Block no.7 and more particularly described in para 1 of the plaint were let out to



Raghunath (original tenant), the father of defendant no.1, on a monthly rent on rent of Rs.22/-.

8. The suit in question was launched on 12/8/1982 against the defendants on three grounds namely that the tenant defendant no.1-Achyut, was a defaulter in payment of monthly rent and was in arrears of rent of Rs.1493.90 by the end of 30/4/1982. Secondly that defendant no.1 had acquired a block/flat with all modern amenities at Mittal Apartment, Pune and was residing in the the said premises along with his family, for past three years before institution of the suit, hence the defendants were absolutely not in need of the tenanted premises. Lastly that the plaintiffs bonafide and reasonably were in need of the premises. The plaintiffs' children were to be kept for education at Pune also plaintiff no.1 was to retire from service soon and except the suit premises he had no other premises to reside at Pune. Plaintiff no.1 was transferred to Pune and he was in badly in need of premises and for want of premises, he was suffering a serious inconvenience. There was also bonafide requirement of plaintiff no.1 whose office was also to be shifted at Pune. Defendant no.1 had already acquired at block at Pune and he was not at all in need of the premises.

9. The plaintiffs by their advocate's notice dated 10 May 1982 addressed to defendant no.1-Achyut, terminated the tenancy on the above grounds and demanded possession. The defendant no.1 having failed to comply with the notice, the eviction suit came to be instituted.

10. The defendants contested the suit by filing their independent written statements. The defendant no.1-Achyut, in his written statement while denying the case of the plaintiffs contended that his deceased father Raghunath and the defendant no.2's father Sadashiv were real brothers. He contended that the suit premises were taken on tenancy by the joint Hindu family since 1937 and since then, it was the joint family members who are in occupation of the said premises. His father deceased Raghunath being the Karta of the joint Hindu family, was looking after the family who had expired in the year 1971. He contended that after the death of Raghunath, the rent receipts were issued in his name. However at that time, Sadashiv (his uncle and defendant no.2's father) with his family members was also residing in the suit premises. Sadashiv expired in the year 1981 and after his death his wife and children were residing in the suit premises. Defendant No.2-Vasant is the eldest son of Sadashiv who is now residing in the said premises with his family.

The rest of the written statement of defendant no.1 proceeded purely on denial.

11. Defendant no.2 also filed his written statement(s). He filed two written statements dated 23.8.1982 and an additional written statement dated 12.4.1985. Defendant no.2 contested the suit on all the grounds. He contended that the suit premises were taken in tenancy for the benefit of the joint hindu family of Raghunath. Hence all members of the joint family who were occupying the suit premises had a right and interest in the tenancy. He contended that for the sake of convenience, rent receipts were issued in the name of defendant no.1-Achyut, after the death of his father Raghunath. Defendant no.2 contended that due to growth of the defendant's family, defendant no.1-Achyut purchased a block/flat out of his own funds and for last 4/5 years, was residing in the said block. He contended that the joint family had no concern with the block. He stated that he had also filed a standard rent application (M.A.No.349/1982) before the Court of Small Causes at Pune, within one month from the receipt of the suit notice dated 10.6.1982, praying that the standard rent be fixed. He contended that he along with his parents, brother and sisters were residing in the suit premises, not only at the time of Raghunath's death but before his

death and even thereafter. Hence they were also tenants, as since the beginning, the suit premises were tenanted to the joint family and the defendants were members of the joint family. He contended that no notice was issued to defendant no.2 and/or to the heirs of deceased Sadashiv terminating their tenancy. Contesting the ground of bonafide requirement of the plaintiffs, defendant no.2 contended that plaintiffs children were grown up and were in service and none of them were getting educated. It was denied that plaintiff no.1 is likely to retire and he had no other premises to reside at Pune. It was contended that plaintiffs were in actual possession and occupation of 9 rooms in another property namely House No.193, Shukrawar Peth. Although plaintiff no.1 and 2 were residing at another place due to their employment these rooms were in occupation of their brother one Narayan Shankar Barve. Defendant no 2 contended that as the plaintiffs were part of the joint family, they cannot have a bonafide need and requirement for the suit premises. The defendant No.2 contended that there was scarcity of accommodation in Pune and accommodations was not available without paying exorbitant deposits and in the event, they are required to vacate, they will suffer greater hardship.

12. The parties led oral evidence. The learned trial Judge, by

his Judgment and Order dated 7.2.1987 partially decreed the suit. The learned trial Judge also in the same judgment decided the standard rent Application of the defendant thereby fixing the standard rent at Rs.22/- per month. The learned trial Judge held that defendant no.1 had acquired alternate suitable premises. It was held that the plaintiff had proved the bonafide need and requirement for the suit premises of plaintiff no.1. It was held that defendant no.2 was entitled to continue in the suit premises as a tenant in respect of the four rooms by surrendering two rooms to plaintiff no.1. In recording these findings, the learned trial Judge held that Raghunath had acquired the suit premises not in his individual capacity but, as Manager of the joint family, consisting of himself, his brothers, sister and mother. This on the basis that plaintiff no.1 had admitted in his deposition that Sadashiv brother of Raghunath was staying with Raghunath as he was attending the school at that time. It was held that plaintiff no.1 had also admitted that sons of Sadashiv were residing with Raghunath for receiving education at Pune and hence were members of the tenant's family, as defined under section 5(11) of the Bombay Rent Act. The learned trial Judge however rejected the case of defendant no.1 that the plaintiffs were not the landlords and it was held that there was an oral partition in the family of the plaintiffs and clearly the suit premises had come to the share of the

plaintiffs. It was also held that the plaintiffs had no interest in the other properties as asserted by the defendant no.2. The learned trial Judge partly decreed the suit in following terms:-

*“ The defendants are ordered to deliver the possession of the 2 rooms on the ground floor to the plaintiffs.*

*2. The remaining claim of the plaintiff is disallowed.*

*3. The parties are ordered to bear their respective costs of the suit.*

*4. The standard rent of the suit premises is held to be Rs.22/- p.m. which is exclusive of E.C. and other taxes.*

*5. The amount deposited towards rent in the standard rent proceedings be paid to the plaintiffs.*

*6. There will be no order as to costs in that proceeding also.”*

13. Both the parties assailed the judgment and order passed by the learned trial Judge in their respective appeals, before the learned District Judge, at Pune. Civil Appeal No.369 of 1987 was filed by the plaintiffs being aggrieved by the partial decree. Civil Appeal No.278 of 1987 was filed by the defendants, being aggrieved by the suit being partly decreed ordering eviction from two rooms. There was a Revision Application No.25 of 1987 filed by the defendants challenging fixation of standard rent at Rs.22/- per month.

14. Before the Appellate Court, defendant No.2 filed two

applications Exhibit 20 and 21, alleging that defendant no. 2 had received knowledge, that the plaintiffs have got vacant possession of one house property namely CTS No.171 Shukrawar Peth, Pune which stood in the name of plaintiffs and their joint family. He contended that plaintiff no.1's son -Jayant had issued an advertisement in the daily newspaper 'Sakal' dated 5.8.1990 calling upon purchasers to book offices, shops, godowns etc. It was alleged that plaintiffs had also constructed residential blocks. To bring on record these facts, defendant no.2 prayed for amendment of the written statement. By an order dated 4.1.1991 the learned District Judge allowed the said application permitting amendment to the written statement and also allowed the companion Application (Exhibit 21) permitting the defendant no.2 to adduce additional evidence.

15. The appellate Court also permitted an amendment to the written statement of defendant no.2 to incorporate paragraph 5 (a) namely defendant no.2 was permitted to plead that plaintiff no.1 during the pendency of the proceedings had received possession of two rooms in the suit premises from another tenant by name M.K.Ranade in September 1991 and that the said premises were kept closed.

16. Another application below Exhibit 54 was filed by defendant no. 2 before the learned District Judge *inter alia* praying that the matter be remanded to the lower Court, for recording evidence on a fresh issue, in view of the amendment made by respondent no.2 to the written statement. The learned District Judge by an order dated 8.9.1993 allowed the said application by framing an additional issue namely, '*as to whether defendant no.2 proves that the landlord had acquired suitable accommodation during pendency of the Appeal*'. The trial Court was directed to record additional evidence and proceed to try the issues so framed and return the findings to the Appellate Court.

17. The parties being relegated to the trial Court on the said issue as framed by the appellate Court, the trial Court recorded fresh evidence and heard the parties. The learned trial Judge in his order dated 7.3.1994 recorded a finding that defendant no.2 had proved that the landlord has received possession of two rooms during pendency of the Appeal. In recording these findings, the learned trial Judge relied on the report of the Court Commissioner.

18. Thereafter, it was the plaintiffs who moved an application below Exhibit 18 in the defendant's Civil Appeal ( Civil Appeal No.278 of 1987 ) praying that the trial Court be directed to

record evidence on the contentions as per amended para 5 (a) of the written statement of defendant no.2 and give findings in that regard. The contentions of defendant no.2 in para 5 of the written statement are as under :

*“5 (a) The house property bearing C.T.S.No.171 Shukrawar Peth is in possession of the plaintiff, the said property is owned by the joint family of plaintiffs. The son of plaintiff no.1 Yashwant Shankar Barve viz Jayant has carried out construction over the said property and he is selling shops, godown and offices. The defendants have also come to know that they have also constructed flats for residence. The plaintiffs are already possession ample premises for residence. Hence, it goes to prove that the plaintiffs are not in bonafide need of suit premises so also they have more premises than their requirement. It is the say of the defendant that allegations of plaintiffs regarding so called partition are false. The plaintiffs have share in the house property bearing no.193 Shukrawar Peth. The plaintiffs, his family members, brothers, with their families, plaintiffs’ mother are residing and doing business in the said property. Besides, the above referred property, plaintiffs have rights interest and share in the other properties of their joint family. The defendant further contends that plaintiffs are doing many business besides the business of construction works. Their financial position is well to do, hence the need of plaintiffs is not bonafide one and they are not in need of the premises in occupation of defendants. (Amendment vide Exhibit 20 dt 1.12.90 at appellate stage.) “*

19. The learned District Judge by an order dated 12.2.1995 allowed the above application of the plaintiffs being Exhibit 18 by directing the learned trial Judge to give an opportunity to the plaintiffs, to lead evidence on a plea as taken by defendant no.2 in para 5 (a) of the written statement and render its findings to that effect and remit the same to the District Court.

20. The learned trial Judge accordingly permitted the plaintiffs and the defendants to lead evidence and after hearing the parties by an order dated 30.10.1995 rendered a finding that defendant no.2 had failed to prove that plaintiffs are in possession of sufficient accommodation in the premises standing on Plot nos.171 and 193 Shukrawar Peth,Pune. The learned trial Judge in passing this order had made the following the observations :

*(i) that the partition in respect of property no.171 stood proved on evidence and that accordingly property no.171 had fallen to the share of Vishwanath and House no.193 had fallen to the share of his mother Laxmibai and brother Narayan. Thus, the plaintiffs had nothing to do with these properties after the partition.*

*(ii) There is no dispute that the old structures standing on 171 and 173 stood demolished and a new complex residential and non residential was constructed.*

*(iii) Laxmibai and Narayan Shankar Barve the other members of the joint family of the plaintiffs on partition were absolutely seized possessed and entitled to property and survey nos.193 and 171 respectively and plaintiffs had no share in it. Hence, case of defendant no.2 that construction on plot nos.171 or 193 was owned by plaintiffs was not true and correct.*

*(iv) The construction which was undertaken by M/s Vishwabandhu Construction Pvt.Ltd was a company incorporated under the Indian Companies Act, 1956 and as seen from past and present members, it shows that out of 12 members 9 are from the plaintiff's family .*

*(v) The Register of Directors of the company showed that one Narayan and plaintiff No.1-Yeshwant are Directors of the company. However, Narayan did not hold any share in the company. But, was paid a salary of Rs.500/- by the company.*

*(vi) Only because plaintiff no.1 Yeshwant was a Director of the company would not mean that he becomes a owner or has any right in respect of any flat constructed on CTS Nos.191 or 193.*

*(vii) On the evidence on record as it stands, it cannot be said that plaintiffs are in possession of sufficient accommodation in Plot no.193.*

*(viii) What is sufficient accommodation to one family may not be so to the other. Defendant no.2 did not led any evidence on the issues as to what would be sufficient accommodation for the plaintiffs.*

*(ix) Merely because the plaintiffs were residing in the property bearing Plot No.193 and which was only as a courtesy from other family members, it could not be said that they do not require the suit premises.*

*(x) The specific plea of defendant no.2 was that the plaintiffs had sufficient accommodation in premises CTS Nos.171 and 193. It was thus for the defendant to lead positive evidence about the nature of the accommodation or to the extent of the accommodation but, defendant no.2 has failed to discharge that burden. Defendant no.2 hence failed to prove that the plaintiffs are in possession of sufficient accommodation in the premises standing on CTS Nos.171 and 193, Shukrawar peth, Pune.”*

21. The learned District Judge, considering the findings which were returned by the trial Court on the additional issues as noted above, and considering the judgment in appeal, by the impugned judgment and order allowed the plaintiffs' Appeal by reversing the findings as recorded by the learned trial Judge to the extent the reliefs were declined to the plaintiffs in respect of the four rooms and decreed the plaintiff's Suit. Consequently the defendant's appeal in respect of the defendants' eviction in respect from the two rooms came to be dismissed. The findings of the learned trial judge fixing the standard rent at Rs. 22/- per month were held to be appropriate and the order in this regard came to be confirmed. The

following is the operative order dated 1.1.1997 passed by the learned

District Judge :

1. *Civil Appeal No.369/1987 instituted by the landlord is allowed.*
2. *Civil Appeal No.278/87 instituted by Defendant Vasant is dismissed.*
3. *Revision Petition No.25/1987 instituted by petitioner Vasant and others is also dismissed.*
4. *The judgment and decree passed in Regular civil suit no.1682/1982 is set aside, whereas the findings ni respect of standard Rent Application i.e Misc.Civil Application no.349/1982 are confirmed.*
5. *The standard rent of the suit premises is Rs.22/ per month.*
6. *Defendants are directed to hand over actual and vacant possession of the suit premises within 4 (four) months from the date of this decree.*
7. *In the circumstances of the case, parties to bear their own costs.*
8. *Enquiry under Order 20 Rule 12 of CPC is directed for the determination of future mesne profits.”*

*Dt.1.1.1997*

*S/d  
10<sup>th</sup> Addl.D.J.Pune\**

22. In allowing the plaintiff's Appeal, the learned District Judge held, that the plaintiffs have proved that defendant no.1 had acquired suitable accommodation. It was held that the plaintiffs have also proved that they required the suit premises reasonably and bonafide. In regard to the case of defendant no.2, that the plaintiffs possessed sufficient accommodation in the premises standing on plot nos.191 and 193 Shukrawar Peth, Pune it was held that the same could not be proved by defendant no.2. In regard to possession taken over from

Mr.M.K.Ranade, it was held that this was not sufficient to satisfy the bonafide need of the plaintiffs to have the suit premises. It was observed that the area which was in possession of Mr.Ranade was of two rooms and both the rooms were in a dilapidated condition. The learned District Judge observed that taking into consideration the living standard of the plaintiffs, the possession of these rooms would not mean that the need of the landlords stood satisfied. It was observed that the premises of Mr. Ranade were not sufficient for use and occupation of the landlord/plaintiffs, when all members of the plaintiffs were adults and their sons married.

**Submissions on behalf of the petitioner/Defendant no.2**

23. Mrs.Agarwal learned counsel for the petitioners, in assailing the impugned judgment and order passed by the learned District Judge, has made the following submissions :

(i) The suit premises in the year 1937 were let out to the joint family of Raghunath which comprised of his mother, brothers, and sisters which included defendant no.2's father Sadashiv who was Raghunath's brother. All these members were residing in the suit premises in respect of which there was ample evidence on record. The trial Court rightly held that Raghunath being the elder brother and karta of the joint family, the rent receipts were issued in his name and after the death of Raghunath in 1971, Sadashiv defendant no.2's father was residing in the suit premises who also died in the suit premises. The defendant no.2 along with his brothers and sisters was

residing in the suit premises after the death of Sadashiv. Thus, defendant no.2 was the member of the family residing with the tenant at the time of his death and therefore, he becomes a tenant within the meaning of Section 5 (11) (c) (i) of the Bombay Rent Act.

(ii) The learned trial Judge considering the documents and the evidence has correctly held that defendant no.2's father Sadashiv was staying with Raghunath at the time of his death in 1971. Sadashiv continued to stay in the suit premises till the year 1981 when he died in the suit premises. Therefore, under section 5 (11) (c) of the Bombay Rent Act, Sadashiv would be the joint tenant. Only because rent receipt was issued in the name of Achut (Original defendant no.1) this did not deprive defendant no.2 to assert joint tenancy rights. In support of these contentions, reliance is placed on the decision of the learned Single Judge of this Court in **Zahid Ahmed Ali Mazgaonwalla and Anr vs Smt Gulshan Pyarali Mazgaonwalla**<sup>1</sup>, decisions of the Supreme Court in **Textile Association (India) Bombay unit vs Bal Mohan Gopal Kurup & anr**<sup>2</sup>, **Watanmal vs Kailashnath**<sup>3</sup>, **Ashok Chintaman Juker & ors vs Kishore Pandurang Mantrai & anr**<sup>4</sup>, **Vasant Pratap Pandit vs Dr.Anant Trimbak Sabnis**<sup>5</sup>.

(iii) That defendant no.1-Achyut having acquired another premises, it will not amount to acquiring suitable alternate premises for the entire family. The word 'family' has to be given wider meaning, so as to include not only the head of the family but, all the members of the family as descendants, from common ancestors who are actually living with same head.

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1 2006 (5) MhLJ 522

2 1990 (4) SCC 700

3 1989 SCC 79

4 2001 (5) SCC page 1

5 1994 (3) SCC page 481

(iv) The beneficial provisions of the Bombay Rent Act are required to be meaningfully construed so as to advance the objects of the Act.

(v) The appellate Court in para 15 of the impugned judgment, has also held that Raghunath father of defendant no.1 was a tenant of the suit premises, and at that time, the father of defendant no.2 Sadashiv was residing with him and that defendant no.2 after the death of his father-Sadashiv was paying rent by drafts, although the rent receipts were issued in the name of defendant no.1- Achyut. It is submitted that when these findings are recorded, the learned District Judge could not have observed that after the death of Sadashiv, the defendants had chosen Achyut to be the tenant of the suit premises. It ought to have been held that defendant No.2 Vasant, son of Sadashiv also had an independent tenancy rights in respect of the premises.

(vi) It is submitted that the Courts below ought not to have believed the oral partition of the plaintiffs family to record a finding that the Suit property had come to the share of the plaintiffs and that they had no interests in any other joint family properties, and more particularly CTS Nos.193 and 171. The theory of oral partition in the year 1980 canvassed on behalf of the plaintiffs, before the trial Court was not pleaded in the plaint. No document has been placed on record regarding partition except the 7/12 Extract and the city civil extracts.

(vii) The learned District Judge ought to have accepted the findings of the learned trial judge on the additional issue that

defendant No.2 had failed to prove that the plaintiffs were having sufficient accommodation in premises standing on plot nos.171 and 193 Shukrawar peth, Pune.

(viii) The learned District Judge ought to have held that the plaintiffs were blowing hot and cold in the same breath, as it suited their purpose. The plea of bonafide requirement as taken by the plaintiffs was a plea taken for the benefit of the joint family of the plaintiffs and later on, pleaded to be the bonafide requirement of plaintiff nos.1 and 2.

(ix) The learned District Judge failed to appreciate that during the pendency of this petition, the plaintiffs had acquired the premises of Mr.Ranade. It is submitted that amendment in written statement was permitted that actual possession of two rooms was obtained by the plaintiffs from Mr.Ranade in September 1991 and that they were not put to use. The Court Commissioner's report, in this regard that these two rooms were not habitable should not have been accepted by the learned District Judge.

(x) The contention of defendant no.2 that bonafide requirement of the plaintiffs was bogus as they had already 9 rooms in CTS No.193 and had constructed additional buildings around 1994 consisting of ground plus three floors, ought to have been accepted.

(xi) The learned District Judge ought to have accepted the case of defendant no.2 that the plaintiffs had formed a private limited company namely M/s Vishwabandhu Developers consisting of all the family members and that the plaintiff no.1 was appointed as a

Director of the company receiving big remuneration. Thus, the financial status of the plaintiff was much better than the defendant no.2 who is a retired employee from Bharat Forge requiring to maintain his family. Even otherwise during the pendency of the proceedings, additional premises were acquired from the other tenants which was huge area for the landlord for his occupation as the bonafide requirement of the landlord is met from the other tenants.

(xii) It ought to have been held that greater hardship would be caused to petitioner/defendant no.2 who is now occupying part of the premises and who has handed over possession of two rooms to the plaintiff at the time of admission of the present writ petition which are also kept locked and not used.

(xiii) In the alternative, even if the plaintiff is held to have proved bonafide requirement, on the basis of comparative hardship, the plaintiff's Suit ought to have been dismissed considering the provisions of section 13 (2) of the Bombay Rent Act, which is an exception, to eviction under section 13 (1) (g). This submission is supported by relying on the decisions in **Badrinarayan Chunilal Bhutada vs Govindram Ramgopal Mundada 2003 (3) BCC 527** and **Gafur vs Hirabai Kolte 2001 (4) BCR 691**.

(xiv) Lastly, and in the alternative it is contended that the trial Court has rightly granted a partial decree of two rooms which ought not to have been interfered with by the learned District Judge.

**Submissions on behalf of the plaintiffs (landlords)/respondents**

24. Mr. Patil, learned counsel for plaintiff (respondent nos.1 and 2) has made the following submissions :

(i) It is not correct for the petitioners to contend that after the death of Raghunath, Sadashiv had become the tenant as it was accepted by the defendants that defendant no.1-Achyut would succeed to the tenancy and rent receipts were accordingly issued, in favour of defendant no.1 -Achyut as permissible under provisions of section 5 (11) (c) of the Bombay Rent Act.

(ii) It is submitted that Achyut had admitted acquisition of alternate suitable premises. Hence, the plaintiffs had succeeded in establishing the grounds of eviction under section 13 (1) (k) and 13 (1) (l) of the Bombay Rent Act namely on the grounds of non-user and the tenant having acquired alternative premises respectively.

(iii) It is submitted that defendant no.1-Achyut who had become the tenant after his father Raghunath expired, has not challenged the eviction decree. Defendant no.2 can have no locus in law in the facts of the case to assail the judgment and order passed by the learned District Judge, in the absence of any legal right of tenancy.

(iv) It is submitted that only one person can be considered as a tenant under the Bombay Rent Act considering the definition of "tenant" as defined under section 5 (11) (c) of the Act. It is

submitted that if there was to be any dispute, between the heirs and family members of a deceased tenant, then it was necessary for such family member to obtain appropriate declaration under section 5 (11) (c) of the Act.

(v) It is submitted that this is a case where the family members elected and accepted Achyut to be the tenant on the death of his father Raghunath (original tenant) and till the filing of the Suit, rent was paid by defendant no.1-Achyut who had in fact vacated the suit premises. The defendant no.2/petitioner was never treated as a tenant by the plaintiffs either before or after the death of the original tenant- Raghunath.

(vi) It is submitted that there is no concept of joint family tenancy under the Act, and more particularly considering the definition of a tenant as contained in section 5 [11] (c) of the Act. Even otherwise, the rent receipt was issued firstly in the name of Raghunath and later on in the name of Achut it was never issued in the name of the HUF.

(vii) The findings of facts recorded by the trial Court as also confirmed by the District Court on bonafide requirement cannot be, held to be perverse requiring interference in writ proceedings.

(viii) Both the Courts below have correctly held that the premises which were available during the pendency of the proceedings, are not suitable. The premises are more than a hundred-years-old without having the facility of toilet and bathrooms and that

after the death of original plaintiffs, the family members of the plaintiffs bonafide required the suit premises.

25. In support of the above contentions, reliance is placed on the following decisions in (i) **Gool Rustomji Lala vs Smt Rustomji Lala**<sup>6</sup>; (ii) **Kanti Bhattacharya & ors vs K.S.Parmeshwaran & anr**<sup>7</sup> (iii) **Vimalabai Keshav Gokhale vs Avinash Krishnaji Binjewale & ors**<sup>8</sup>; (iv) **Smt Parvatibai w/o Bandu Marathe vs Smt Radhabai Chaggan Bhandarkar (decd) by her legal heirs**<sup>9</sup>; (v) **Shamkant Tukaram Naik vs Dayanabai Shamsan Dighodkar (Smt)**<sup>10</sup>; (vi) **Urmi Deepak Kadia vs State of Maharashtra**<sup>11</sup>; (vii) **Ramesh Ramgopal Daga vs Prashant Baburao Khandare**<sup>12</sup>; (viii) **Nandkishor Savalaram Malu vs Hanumanmal G.Biyani**<sup>13</sup>; (ix) **Vasant Pratap Pandit vs Dr.Anant Trimbak Sabnis**<sup>14</sup>;

#### **REASONS AND CONCLUSIONS:**

26. I have heard learned counsel for the parties, with their assistance, have perused the records and proceedings and the judgments of the Courts below.

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6 AIR 1973 Bom 113

7 1994 (3) Bom CR 100

8 2004 (1) Bom C R 839

9 W.P.No.4969/1998 (Aurangabad Bench)

10 1989 1 Bom CR 554

11 WP no.1853/2014

12 2006 (1) Bom C.R.844

13 2017 (3) Mh.L.J. (Supreme Court) page 37

14(1994) 3 Supreme Court Cases 481

27. At the outset, some admitted facts are required to be noted. The tenancy of residential premises comprising of six rooms in the suit property was created in the year 1937 in favour of defendant no.1's father Raghunath Ganesh Joshi. Raghunath expired in the year 1971. Till his death, the rent receipts were issued in his name. After Raghunath's death, the rent receipts were transferred in the name of his son defendant no.1-Achyut, who continued to reside in the suit premises till the year 1979 when he shifted his residence to a newly purchased flat. As seen from the record, it appears to be not in dispute that Raghunath was residing in the tenanted premises along with his family members which included Sadashiv-defendant no.2's father. Sadashiv expired in the year 1981. Even after Raghunath expired, Sadashiv although continued to reside in the suit premises, till he expired in 1981, he had accepted that the tenancy be held by defendant no.1-Achyut and accordingly rent receipt be issued by the plaintiff in favour of Achyut –Defendant No.1, (son of Raghunath). After defendant no.1 moved out of the suit premises, in the year 1979 defendant no.2 Vasant along with his father and family members however continued to occupy the suit premises. The record indicates that it is Defendant No. 2 who has really contested the proceedings before the courts below by claiming

independent right as a tenant. Admittedly, defendant no.1 has not assailed the eviction decree passed by the learned District Judge.

28. It is also quite clear that neither Sadashiv the late father of defendant no.2 nor for that matter Vasant- defendant no.2 thought it appropriate to assert that they had become tenants after the original tenant- Raghunath expired in the year 1971 and/or when defendant no.1-Achyut moved out of premises in the year 1979. They never took a position that even if the rent receipt was issued in the name of defendant no.1-Achyut, they can be said to be real tenants of the suit premises. This more pertinently when defendant no. 2 had asserted before the Courts below that the suit premises were taken in tenancy for the joint family of Raghunath and Raghunath being the 'Karta' at the relevant time the rent receipt was issued in his name. If this contention of defendant no.2 is to be accepted, then after the death of Raghunath, his brother Sadashiv became the 'Karta' of the joint family and the rent receipts should have been transferred in his name, however this never happened and the rent receipts came to be transferred and issued in favour of defendant no.1-Achyut to the knowledge of Sadashiv as also defendant no.2-Vasant.

29. This undisputed position taken by deceased Sadashiv after the death of his brother Raghunath (original tenant) or for that matter defendant no.2-Vasant, after the death of his father Sadashiv who expired in 1981, assumes significance so as to consider as to who was the actual tenant for the purposes of the eviction proceedings as launched by the plaintiffs/landlords by way of the suit in question.

30. The landlord in law and as recognized under the provisions of section 13 of the Bombay Rent Act, is entitled to recover possession on the grounds, as available under the said provisions. Section 13 (1) which *inter alia* provided that the landlord shall be entitled to recover possession of the tenanted premises, on various grounds. A perusal of sub-clauses (a) to (l) of sub-section 13 (1) would indicate that it is “the tenant” from whom the possession would be required to be recovered. The word ‘tenant’ would be required to be understood as defined under section 5 (11) of the Bombay Rent Act which reads thus :

**Section 5 (11)**

*“tenant” means any person by whom or on whose account rent is payable for any premises and includes-*

(a) *such sub-tenants and other persons as have derived title, under a tenant before the commencement) of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959.*

(aa) *any person to whom interest in premises has been*

***assigned or transferred as permitted or deemed to be permitted, under section 15.***

*(b) any person remaining, after the determination of the lease, in possession with or without the assent of the landlord, of the premises leased to such person or his predecessor who has derived title (before the commencement) of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance 1959).*

*(bb) such licensees as are deemed to be tenants for the purposes of this Act by section 15A)*

***(c) (I) in relation to any premises let for residence when the tenant dies whether the death has occurred before or after the commencement of the Bombay Rents Hotel and Lodging House Rates Control (Amendment) Act 1978 a member of the tenant's family residing 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;***

*(I) in relation to any premises let for the purposes 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 tenants' 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.*

*Explanation-The provisions of this clause for transmission of tenancy shall not be restricted to the death of the original tenant, but shall apply and shall be deemed always to have applied even on the death of any subsequent tenant who becomes tenant under these provisions on the death of the last preceding tenant.” (emphasis supplied)*

31. It would also be relevant to note the provisions of Section 15 of the Bombay Rent Act as the same deals with the right of a tenant to assign his rights in the tenancy. Section 15 reads as under :-

“15. (1) Notwithstanding anything contained in any law (but subject to any contract to the contrary) it shall not be lawful

after coming into operation of this Act for any tenant to sub-let the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein (and) after the date of commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1973 for any tenant to give on licence the whole or part of such premises).”

Provided that the (State) Government may by notification in the Official Gazzetee, permit in any area the transfer of interest in premises held under such (leases or class of leases) (or the giving on licence any premises or class of premises) and to such extent as may be specified in the notification).....”

32 . From a plain reading of section 5 (11) (c) (i) of the Act, it is difficult to accept the contention as urged on behalf of the petitioner/defendant no.2 that the provisions recognize that every member of the joint family or the joint family itself becomes a tenant for the purposes of the Bombay Rent Act. The introductory words of section 5 (11) defining tenant are crystal clear when it describes a “tenant” to mean “any person” by whom or whose account, rent is payable and would include as defined in sub-clause (c) of sub-section 5 (11) any member of the tenants family residing with the tenant at the time of his death. Sub-clause (c) is required to be read in conjunction with the preceding relevant sub-clauses namely sub clauses (aa), (b) which also uses a similar phrase ‘any person’. Thus a tenant necessary has to be any person as recognized by section 5(11) and not otherwise and certainly not a joint family as a unit. The legislature has avoided to include any such incident to include a

joint family to be a tenant within the meaning of section 5(11).

33. In the present context, to interpret the phrase 'any person' as used in section 5 (11) of the Act to include any member of the joint family as asserted by the petitioner/defendant no.2, would lead to an absurdity. This more particularly contrary to the election as exercised by the family of the deceased tenant Raghunath, in choosing Achyut –defendant no.1 (Raghunath's son) to succeed to the tenancy. The absurdity would be two fold firstly it would amount to reading something into the definition of tenant, (Section 5(11) (c) (i)), what has been not provided for and/or excluded by the legislature; secondly it would be contrary to the conduct of the parties who wholeheartedly accepted, chose and elected that the tenant for the suit premises after the death of Raghunath would be defendant no 1–Achyut. Once this is a factually established position on record the petitioner/ defendant no.2 was not permitted and/or was estopped from taking a contrary stand.

34. In my opinion, such an assertion as made on behalf of the petitioner/defendant No.2 would lead to another absurdity namely, that it would create an insurmountable uncertainty for the landlord in pursuing eviction proceedings against a tenant as permissible in law. This for the reason that when a landlord grants

the premises on tenancy it is a contract of tenancy as entered with a specific person (tenant). The landlord expects fulfillment of legal obligations from the tenant. The law therefore does not envisage that the landlord would be required to deal with all members of the joint family, a situation as in the present case when on the death of the original tenant he is replaced by another named member of a family. Hence, if such an argument by the petitioner/defendant no.2 to recognize him as a tenant, is accepted the landlord would never obtain an eviction of a tenant as may be permissible to him in law as every successive member of the tenant's family would start claiming legal rights and protection under the provisions of the Bombay Rent Act. Such can never be the object and intention of this rent legislation.

35. In the present case, the intention and conduct on the part of the defendants, in my opinion was quite clear namely to permit defendant no.1-Achyut to inherit tenancy after the death of the original tenant his father-Raghunath. The rent receipts were accordingly issued in favour of Achyut on the death of Raghunath. Certainly, on two occasions namely when the original tenant-Raghunath expired in the year 1971, and secondly when in 1979 defendant no.1-Achyut moved out of the suit premises, it was

available to the father of defendant no.2 Sadashiv to assert a position that he had become the lawful tenant of the plaintiff's landlords. Sadashiv however, chose not to assert any such right. He throughout accepted the defendant no.1- Achyut to be the tenant since the year 1971 that is from the death of his father Raghunath. Resultantly, it was no defence for defendant no.2 to assert that he would be now the lawful tenant having independent rights merely because his father Sadashiv was a member of Raghunath's joint family. It needs to be observed that there is no legal foundation to the assertion of the petitioner/defendant no. 2 referring to section 5(11) (c) in as much as this provision is attracted only when a tenant dies. In the present case defendant no.1 -Achyut who was accepted to be the tenant by the petitioner/ defendant no.2 is surviving and has moved out of the suit premises. In this situation it is difficult to comprehend, as to how section 5(11) (c) can be pressed into service by the petitioner, to assert any legal right to be a tenant .

36. The inevitable consequence in law on defendant no.1- Achyut , (the tenant) moving out of the suit premises, brought about a situation that defendant no.2-Vasant could not have asserted any legal rights as a tenant, so as to contest the eviction proceedings as instituted by the plaintiffs in the present Suit. In any event earlier

to the filing of the present suit petitioner/defendant no. 2 even qua the plaintiffs never asserted any independent rights of tenancy in any proceedings as could be brought by him.

38. The position in law in construing section 5 (11) (c) and as to who ought to be regarded as a tenant on the death of the original tenant expires also would support the above observations.

37. In **Miss Gool Rustomji Lala vs Jal Rustomji Lala**,( supra), a learned Single Judge of this Court held that the Court cannot declare more than one person as a tenant under section 5 (11) (c) of the Bombay Rent Act.

38. In **Kanti Bhattacharya & ors vs K.S.Parmeshwaran & anr** (supra) a similar contention as urged by defendant no.2 in the present case, was taken. In the said case, Kanti Bhattacharya was a tenant who expired leaving behind his wife-Smt Usha Rani Devi and the petitioners who were the children of K.K.Bhattacharya and Usha Rani Devi, who were all residing in the suit premises as members of K.K.Bhattacharya's family. The rent receipt which was issued in the name of K.K.Bhattacharya was not transferred in the name of any of the members of his family after his death but was continued to be

issued in his name. A notice demanding rent and terminating the tenancy was issued to Usha rani Devi which was received by Usha rani Devi. As the notice in regard to arrears of rent and possession was not honored by Usha Rani Devi, an eviction suit came to be instituted against her in the year 1971. During pendency of the Suit, Usha Rani Devi died. After her death, the petitioners were brought on record as her heirs and legal representatives. The legal heirs contended that tenancy of these legal heirs/defendants was not duly terminated in as much as no notice to quit was addressed to them as heirs of the deceased Kanti Bhattacharya and thus, there was no termination of tenancy. In effect, the contention was that these legal heirs on death of Usha Rani Devi, were entitled to inherit the right of Usha Rani Devi and as the Suit notice was not addressed to Usha Rani Devi, the same was invalid and there was no termination of the tenancy. The learned trial Judge rejected the said contention as urged on behalf of the legal heirs of Kanti Bhattacharya. This finding was also confirmed by the Appellate Bench as also by this Court, in the said decision. The Court emphasizing the importance of conduct of the parties in relation to section 5 (11) (c) of the Bombay Rent Act is relevant in the context of the present case. The learned single Judge made the following observations :

“18. After hearing the rival contentions of the parties, I am

inclined to accept the submission of Miss Nichani. I am inclined to hold that under section 5 (11) (c) an agreement need not be in writing. An agreement amongst members of the tenants family can be inferred on the basis of the conduct of the parties and in this matter, Miss Nichani was justified in contending that after the death of K.K.Bhattacharya for a period of almost 4 years Usha Rani Devi, I who was his widow went on paying rent, the suit notice was served on the address where all the members of the tenants family were residing and therefore it was reasonably presumed they would know the tenants family were residing and therefore it was reasonably presumed that would knew that their mother was received a notice of demand so also it is reasonable to hold that when the suit notice was served upon the suit premises where every member of the tenants family was residing was aware of the filing of the suit against their mother. Notwithstanding, this nobody raised any objection till they were brought on record as legal heirs or legal representatives. Even the objections raised is so cryptic that nowhere it is contended by them that there were no agreements arrived at by them amongst the members of the tenants family.

19. The emphasis laid by Miss Nichani in the written statement filed by deceased Usha Rani Devi is worth noting. She had not denied that after the death of her husband she was paying the rent. She had not denied that after the receipt of the suit notice she had sent defendant no.3 the present no.3 to inform the landlords that they are not agreeing with the increased charges regarding the standard rent and pump house charges etc. She did also not dispute that petitioner no.3 acted on her behalf. Thus, Miss Nichani points out that from the evidence as well as from the defence taken in the written statement by Usha Rani Devi, it can be inferred that an agreement was entered into in the tenants family and it was agreed by all the members of the tenants family that after the death of her husband Usha Rani Devi as the widow was agreed to be treated as tenant of the suit premises to the knowledge of everybody else. The emphasis placed by Shri.Angal on the rent receipt being continued in the name of the deceased K.K.Bhattacharya help the petitioners in as much as it is not even the landlords case that any agreement was communicated by the members of the tenants family but the land lords inferred an agreement since for a period of 4 years, the evidence discloses that Usha Rani Devi, I went on paying rent. Even on some occasion defendant no.3 tendered rent on her behalf. This necessitated the plaintiffs to file suit against Usha Rani Devi and since these circumstances are clinching circumstances which are relied upon by the two courts below, I am also inclined to accept the same and on the face of the discussions above, I intent to hold that from the various circumstances narrated above there was an agreement between the members of the tenants family and Usha Rani Devi was treated as the members

of the tenants family and therefore the notice served upon her is binding on all the members because every members of the tenants family cannot be a tenant and only member of the tenants family, either by an agreement or by a declaration by a court of law can be a tenant.”

39. In **Vimalabai Keshav Gokhale vs. Avinash Krishnaji Binjewale & ors (supra)** contention of the respondents therein that section 5 (11) (c) of the Bombay Rent Act would enable each and every member of the tenant’s family to claim an independent right in respect of the tenancy was rejected and it was held that any member would mean ‘any one member.’

40. In **Smt.Parvatibai w/o Bandu Marathe vs Smt Radhabai Chaggan Bhadarkar decd by her legal heirs (supra)**, a learned Single Judge of this Court held that it is only one member of the family who can be recognized as a tenant by the Court and not all members residing in the premises at the time of demise of the original tenant.

41. In **Shamkant Tukaram Naik vs Dayanabai Shamsan Dighodkar (supra)** a learned Single Judge of this Court held that the words “ *any member of the tenant’s family residing with the tenant at the time of his death*” as used in section 5(11)(c) would not enable each and every member of the tenant’s family to claim an independent right in the tenancy, in respect of the tenanted premises.

It was held that 'any member' would mean only "one member".

42. In **Ramesh Ramgopal Daga vs Vasant Baburao Khandare** (supra), it was again held that once the petitioner was recognized as a tenant, in such cases, there was no question of considering the case of other relatives as a tenant or joint tenant. The landlord in no way would be concerned with the other occupants.

43. Considering the above decisions, it is beyond a pale of doubt that in the facts of the present case the petitioner/ defendant no.2, merely because he was a family member, being the son of Sadashiv, brother of the deceased tenant-Raghunath, could not have claimed any independent right of tenancy and/or could claim to have inherited the tenancy rights.

44. Now coming to the decisions as relied by Mr. Smt. Agarwal learned counsel for the petitioner/defendant no.2. The decision of the learned Single judge of this Court in **Zahid AhmedAli Mazgaonwalla and another vs Smt Gulshan Pyarali Mazgaonwalla** (supra) is in the proceedings of a first appeal arising out of a non-rent suit decided by the Bombay City Civil Court. The question which fell for consideration of the High Court in the First Appeal, was

whether tenancy rights could bequeathed and whether an heir of the deceased tenant can claim exclusive tenancy right especially, in the light of section 5 (11) (c) of the Bombay Rent Act. The Court allowing the appeal held that the tenancy could not have been bequeathed by Zenabai on the basis of a Will, left by the original tenant Pyarali. Even in this decision, the Court recognized the legal position as enunciated by the decision of the Supreme Court in **Ashok Chintaman Juker & ors vs Kishore Pandurang Mantri & another (2001) 5 SCC Cases 1** wherein the Supreme Court held that there are two requisites which must be fulfilled, before a person is entitled to be called a 'tenant' under sub clause 5(11) (c); firstly he must be a member of the tenant's family and a secondly, he must have been residing with the tenant at the time of his death. It was further held that besides fulfilling these conditions, he must have agreed to be a tenant by members of the tenant's family, and in default of such an agreement, the decision of the Court shall be binding on such members. I am afraid as to how this decision would assist the case of defendant no.2.

45. The decision in **Textiles Association (India) Bombay Unit vs Balmohan Gopal Kurup &Anr** (supra) would also not assist the petitioner/ defendant no.2. This was a case where the respondent

therein asserted that he was a tenant and there was a finding recorded by the Court below that the respondent was as much a tenant, as the mother and elder brother and therefore, the respondents could not have suffered a decree which was passed ex-parte against him, and it was passed only against his mother and brother. Certainly, the facts are different in the present case. The decision in **Textile Association** (supra) would be required to be read in context of the facts, arising before the Court. In the present case, the family of the original tenant had decided to agree that the defendant no.1-Achyut would be a tenant on expiry of the original tenant-Raghunath.

46. **H.C.Pandey vs G.C.Paul** (supra) was not a case arising under the Bombay Rent Act but under the Transfer of Property Act. The decision of the Civil Court in **Baldev Sahai Bangla Appellant vs R.C.Bhasin** 1982 Supreme Court 1091 is also not relevant, as the facts are totally different. In the said case the eviction proceedings were filed merely because the tenant had shifted to Canada leaving his mother and brother in house who, regularly paid rent to the landlord.

47. The sequel to the above discussion is that petitioner

no.1/defendant no. 2 had no legal right to occupy the suit premises as a tenant. As the tenant –defendant no. 1 (Achyut), had already vacated the suit premises the legal consequence that occurred was that the tenant no more required the suit premises, the plaintiffs accordingly had become entitled to a decree of eviction under section 13(1)(k) and (l) of the Bombay Rent Act. The findings of the learned District judge on this count on law and facts cannot be held to be perverse.

48. Although *stricto sensu* the other issue on bonfide requirement would now be rendered secondary considering the above conclusion that the petitioner/defendant no. 2 has no legal right to claim tenancy, however for completeness the same is also considered. In regard to the issue of bonafide requirement, admittedly, there are concurrent findings of fact as recorded by the Courts below. It is sufficiently established that the plaintiffs have no other premises and considering the requirement of their respective families their requirement to re-possess the tenanted premises was proved on evidence and is held as genuine and bonafide. In my opinion the approach of the learned trial judge to record a finding that bonafide requirement of plaintiff no.1 was proved and hence only a decree qua two rooms be passed was certainly legally and

factually perverse in the facts of the present case. Also the assertion of the defendant no.2 that the plaintiffs have ample premises, and more particularly in CTS Nos. 191 and 173, also could not be proved by the defendant no.2 inasmuch as, there is a clear finding of fact that the plaintiffs had no right and/or interest of any nature, in the said premises after the partition in the family. It was also proved that the plaintiff no.1 was merely a Director in one of the family concerns without any right in respect of any of the premises which was constructed on a plot not falling to the share of the plaintiffs. It was also rightly held by the learned District Judge that merely because, the plaintiffs were residing under a gratuitous arrangement in house CTS No.193, it cannot be said that they have any premises of their right and entitlement, so as to non-suit the plaintiffs on their bonafide requirement. It is also appropriately proved and taken into consideration by both the Courts, that there was a partition in the year 1980 in the family of the plaintiffs and the same was acted upon whereby the suit premises had fallen to the share of the plaintiffs and other properties had fallen to the share of other joint family members. Another contention as urged on behalf of the petitioner/ defendant no.2, is that during pendency of the proceedings two rooms were surrendered by one Shri. Ranade another tenant as a result of the plaintiffs succeeding in a suit filed against him and

which were also not in use of the plaintiffs. I am not persuaded to accept this contention, so as to in any manner to disturb the findings arrived by the learned District Judge. I am in complete agreement, as recorded by the learned District Judge that necessity and requirement of the family would differ in the facts of each case. The plaintiffs' family which now, comprises of their sons and legal heirs is rightly recognized by the learned District Judge. It is clearly seen that it was in fact too much for defendant no.2 to assail, dissect and indulge in so much of hair splitting on the landlord's family and so many of their personal attributes. The findings of fact as recorded by the Courts below, are based on substantive evidence. All these are findings of fact. The scope of these proceedings cannot be to re-appreciate evidence and reach to a different conclusion than what has been arrived by the Courts below.

49. In regard to the contention that comparative hardship as urged by the defendant no.2, in my opinion, the same is totally untenable, firstly in the absence of any legal right of the petitioner/defendant no 2 to occupy the premises as a tenant in respect of the suit premises. Secondly on the conduct of the petitioner/defendant no.2, he has not taken any efforts whatsoever to search for alternate premises in such a situation so as to have at least

some foundation to his plea of comparative hardship. What he did is to simply assert that he has all the right and interest to continue in occupation of the present premises as a tenant when he had none. Surely, even the provisions of the Bombay Rent Act would not support such a position to be taken by a tenant and more particularly, when premises are residential premises claimed by the landlord on a bonafide requirement.

50. Hence, none of the submissions as urged on behalf of the petitioner/defendant no.2 can be accepted. There is no perversity in the findings as recorded by the learned District Judge. The learned District Judge has correctly decreed the suit as also dismissed the petitioner's appeal.

51. There are some decisions as cited on behalf of the parties on different propositions. I have thought it appropriate not to burden this judgment by referring to those decisions, as the principles these decisions lay down are well-settled. However, it would be unnecessary in the facts of the present case to discuss the same and more particularly considering the view I have taken.

52. Before parting, it needs to be noted that the eviction suit

in-question was instituted by the plaintiffs in the year 1982. The defendant no.2 who had no legal right by taking pleas which were not tenable in law has certainly deprived the plaintiffs the benefit of their premises and their bonafide requirement.

53. In the above circumstances, I am certain that writ petition is without any merit. It is accordingly dismissed. No cost.

54. The petitioners are directed to hand over the possession of the suit premises to the plaintiffs within a period of six months from today.

(G.S.Kulkarni, J.)