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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 520 OF 2013
WITH
INTERIM APPLICATION NO. 11734 OF 2025

1. Mishrilal Chhagganlalji Dhing]
2. Mahendra Chhagganlalji Dhing]
(Deleted since deceased)]
- 2a) Teji Bai Mahendra Dhing]
- 2b) Sunil Mahendra Dhing]
- 2c) Nilesh Mahendra Dhing]
- 2d) Ankit Mahendra Dhing]
Shop No.1, Manohar Niwas,]
Carter Road No.9, Borivli (East),]
Mumbai – 400066.] ... Revision Applicants

Versus

1. Mrs. Manohardevi Naharmal Mehta]
(Deleted)]
2. M/s. Sitaram Enterprises]
A firm registered under the Indian]
Partnership Act, 1932,]
carrying on business]
At Manohar Niwas,]
9th Kasturba Road, Borivali (East),]
Mumbai-400 066] ...Respondents

WITH
INTERIM APPLICATION NO. 344 OF 2023
IN
CIVIL REVISION APPLICATION NO. 520 OF 2013

- M/s. Sitaram Enterprises ... Applicant
In the matter between:
Mishrilal Chhagganlalji Dhing ... Revision Applicants
Vs
Mrs. Manohardevi Naharmal Mehta & Anr. ... Respondents

Mr. Vishal Kanade a/w. Mr. Digvijay Singh, Mr. S.H. Singh & Ms. Tanaya Patankar, Advocates for the Revision Applicants.

Mr. Vishal Pattabiraman i/b. Mr. Amey C. Sawant for the Respondent and for the Applicant in IA/344/2023.

CORAM : M.M. SATHAYE, J.
RESERVED ON : 19th DECEMBER, 2025
PRONOUNCED ON : 4th MAY, 2026

JUDGMENT :

1. This civil revision application under Section 115 of the Civil Procedure Code, 1908 ('CPC' for short) is filed challenging the judgment and order dated 16.04.2013 passed in A-1 Appeal No. 225 of 2010 by the Appellate Bench of Small Causes Court at Bandra, Mumbai. By the said impugned order, the appeal filed by the Revision Applicants, is dismissed and judgment and decree of eviction dated 16.08.2010 passed in R.A.E. Suit No.245/640 of 1995 filed by the Respondent is confirmed.

2. Few facts necessary for disposal of this petition, are as under:

2.1. Proceedings arise out of provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ('Bombay Rent Act', for short).

2.2. Respondent No.1 is original Plaintiff-landlady and the Applicants are Defendant No.1 and legal heirs of Defendant No.2 - Tenants.

2.3. Respondent No.1 filed the said suit for recovery of the

possession of the suit premises i.e. Shop No. 1, Manohar Niwas, Carter Road No. 9, Borivli (East), Mumbai – 400 066.

2.4. In 1995, the Respondent filed the said suit contending *inter alia* that she is the landlady of building known as ‘Manohar Niwas’ under a family arrangement dated 17.12.1994. That suit premises was let out to the Defendants for the purpose of business cum residence. That front portion of suit premises was used by the Defendants for business purpose and rear portion was used for residential purpose. In the front portion, the Defendants carried out business of jewelry in the name and style of ‘Mangal Jewellers’. That monthly rent of suit premises was Rs.95.63. That without permission of the landlady, the Defendants have constructed a loft of permanent nature inside the suit premises admeasuring 10 X 20 feet and has unauthorizedly extended the said shop by 4 feet in 1994. That the Defendants have committed acts contrary to provisions of clause 108(o) of the Transfer of Property Act, 1882 (‘TP Act’, for short). That the Defendants have started using suit premises exclusively for business purpose and shifted residence to Dahisar (East). That Defendant No. 2 has ceased to occupy the suit premises and shifted somewhere else and not using the suit premises for the purpose for which it is let out, without reasonable cause, continuously more than 6 months prior to filing of the suit. That Municipal Corporation has demolished the unauthorized extension of 4 feet on 15.02.1995. However, the Defendants attempted to reconstruct said unauthorized construction.

2.5. The plaint was amended in the year 2004 by adding paragraph

No. 4-A contending inter alia that in or about beginning of October 2000, The Defendants have again extended front side of the premises by 6 feet unauthorizedly and have constructed Ota admeasuring 6 X 10 feet and has also constructed unauthorized wall of 3 feet height on the rear side of the suit premises. That complaint was made to the Municipal Corporation. That by Advocate's notice dated 20.02.1995, the tenancy has been terminated, calling upon the Defendants to vacate and handover suit premises. However, suit notice is not complied. Hence, the suit is filed for eviction of Defendants under sections 13(1)(a), 13(1)(b) and 13(1)(k) of the Bombay Rent Act.

2.6. During pendency of the suit, the suit premises was conveyed in favor of Respondent No.2-Partnership firm and necessary amendment was carried out impleading Respondent No.2.

2.7. The Defendants filed written statement contending inter alia as under. That suit should be dismissed for non joinder of necessary party. That the Plaintiffs had filed Suit No. 3931 of 1995 in the City Civil Court, Mumbai, where the Plaintiff claimed joint ownership of the suit premises. That family arrangement is executed on 17.12.1994, while Power of Attorney is executed in August 1993 when the Plaintiff had no right in law as a landlady. That the suit is filed by the Constituted Attorney. That Defendant No. 1 is Joint Secretary of the Tenants' Association. That Plaintiff with ulterior motive has filed the said suit. That suit premises is in the same condition as it was let out originally. That no notice under Section 351 of the Bombay Municipal Corporation Act (as it then was) has been issued. That portion of the wall on the western side of the

premises was demolished using influence with corporation officials. That Defendants have filed L.C. Suit No. 3214 of 1995. That one Chandmal Lodha was original landlord whose wife was Bhuridevi who had no issues from the marriage and present Plaintiff No. 1 Manohardevi is daughter of Bhuridevi's sister. That Plaintiff No. 1 is also having a sister by name Suryadevi who is residing at Palghar and therefore family settlement if at all arrived at has no legal force. That the family arrangement is not registered. That suit building is not transferred in the name of Plaintiff. Thus, title of the Plaintiff was denied. The allegations in respect of change of user, non-user, committing waste and damage to the suit premises are denied. That derivative title of Plaintiff is defective. That there is no landlord - tenant relationship. That R.A.D. Suit No. 1012 of 1995 filed by Defendants with other 5 tenants for declaration of relationship is pending. That Constituted Attorney of Plaintiff who is alleged partner of Plaintiff No. 2-firm has no authority to file the suit.

2.8. The learned Trial Judge framed various issues holding that the grounds of erection of permanent structure and defendants committing acts contrary to Section 108(o) of the TP Act are proved. Learned Trial Court held that suit is maintainable and the Court has jurisdiction to try the suit. Learned Trial Court held that the ground of change of user and non-user without reasonable cause are not proved. That ultimately suit came to be decreed directing the Defendants to hand over vacant and peaceful possession of suit premises to the landlord.

2.9. The Defendants filed the said appeal. The Appellate Bench held

that the Court has jurisdiction to try the suit. That the suit is maintainable. That ground of erection of permanent structure and acts contrary to provisions of Section 108(o) of the TP Act are proved. The Appellant Bench also held that the grounds of change of user and non-user are not proved. Thus, concurring with the finding of the learned Trial Court about erection of permanent structure and acts contrary to section 108(o) of TP Act, as provided under Section 13(1)(a) and 13(1)(b) of Bombay Rent Act, the appeal came to be dismissed there by confirming the decree of eviction.

2.10. On 21.08.2013, Revision Application was admitted and the impugned degree of eviction was stayed and the Applicants were directed not to create third party interest. During pendency of the civil revision application, Applicant No.2 expired and his legal heirs are brought on record.

SUBMISSIONS

3. Learned Counsel Mr. Kanade, appearing for the Applicants submitted that when the title/ownership of the Plaintiff-Manohardevi is challenged in the beginning, as to how she derived title in 1995 from Bhuridevi who died in 2002, it was incumbent upon Manohardevi to prove how she has become landlady or co-owner. That in the cross-examination, witness of the landlord has admitted that Lodha and Mehta families are different and there is no document between Bhuridevi and Manohardevi. That suit property belonged to Chandmal Lodha and Bhuridevi who were issue-less and when Bhuridevi died in 2002, how Manohardevi could file suit in 1995

claiming ownership on the basis of family arrangement with plaint signed by her son Girish Mehta as Constituted Attorney? That Manohardevi had no occasion to file a suit in 1995. That neither family arrangement of 1994 nor power of attorney in favour of Girish Mehta has been produced in evidence. How Manohardevi became owner is the question. That the legal position about 'derivative title' of the Plaintiff is not properly considered by the Courts below. That if Manohardevi was owner in 1995, there was no reason for conveyance to be executed in 2001 by Bhuridevi alone. That alleged addition and alteration in the suit premises is not proved. That suits in respect of alleged illegal structure against Municipal Corporation or challenging the notice issued by Municipal Corporation (L.C. Suit No.3214 of 1995, Suit No.1663 of 2001 and C.C. No. 562 of 2003) are pending in first appeals. That entries in the property cards cannot be taken as conclusive proof of transfer of ownership. He relied on the judgment of **Vinay Eknath Lad Vs. Chiu Mao Chen (2019) 20 SCC 182** in support of his case that derivative title of the landlord can be challenged by the tenant.

4. On the other hand, Mr. Pattabiraman, appearing for the Respondent-landlord submitted as under. That the argument about derivative title has no merit because the Respondent-landlord has sufficiently proved status as landlady in the form of property cards and registered conveyance deed dated 05.11.2001 (Exhibit-53) which records that the Plaintiff-Manohardevi was granted leasehold rights by Bhuridevi. That the Applicants are not disputing that Chandmal Lodha & Bhuridevi were the landlords and therefore argument of

derivative title must fail. That in a declaratory suit filed by Applicants (R.A.D No. 1012 of 1995) seeking declaration of tenancy raising similar challenge of derivative title Manohardevi (who was Defendant No. 2 therein) was raised and said suit has been dismissed. That the Applicants are estopped from raising alleged defense of derivative title by virtue of Section 116 of Indian Evidence Act, 1872 because the Applicant tenant, in the present case, has attorned to the Plaintiff-Manohardevi. That evidence on record is considered by the Courts below in detail including the manner in which tenant's witness has avoided to answer the suggestions about paying rent to Manohardevi. That there is correspondence on record indicating that the Applicants were paying rent to Manohardevi and therefore in view of proved attornment, the argument of derivative title must fail. That both the Courts below have concurrently held on appreciation of evidence that the grounds of illegal permanent structure and acts contrary to section 108(o) of TP Act are concurrently held in favour of landlady and therefore no interference is required in the revisional jurisdiction. That the Applicants have received notices from Municipal Corporation in 1995 as well as in 2000 with regard to unauthorized construction which were challenged by filing suits and admittedly the suits are dismissed. That the fact of Municipal Corporation demolishing the unauthorized construction has been admitted by tenant's witness. That the judgment of **Vinay Eknath Lad (Supra)** is clearly distinguishable. He relied on following judgments in support of his case.

i. Boorugu Mahadev and Sons and Anr. Vs. Sirigiri Narasing Rao and

Ors.(2016) 3 SCC 343.

ii. Apollo Zipper India Limited Vs. W. Newman and Company Limited
(2018) 6 SCC 744.

REASONS AND CONCLUSION

5. I have carefully considered the submissions and perused the record.

6. At the outset, it is necessary to note that in an eviction suit filed by landlord against a tenant, under rent laws, the issue of title over tenanted premises raised, the landlord is not expected to prove his title like what he is required to prove in a title suit and therefore the burden of proving ownership in an eviction suit is not the same like title suit. Also, tenant's right to challenge derivative title of landlord's assignee is subject to caveat of 'attornment'. This has been clearly held by the Hon'ble Supreme Court in **Boorugu Mahadev (Supra)** as under:

"18. It is also now a settled principle of law that the concept of ownership in a landlord-tenant litigation governed by rent control laws has to be distinguished from the one in a title suit. Indeed, ownership is a relative term, the import whereof depends on the context in which it is used. In rent control legislation, the landlord can be said to be the owner if he is entitled in his own legal right, as distinguished from for and on behalf of someone else to evict the tenant and then to retain control, hold and use the premises for himself. What may suffice and hold good

as proof of ownership in landlord-tenant litigation probably may or may not be enough to successfully sustain a claim for ownership in a title suit. (Vide *Sheela v. Firm Prahlad Rai Prem Prakash.*)”

7. The same position is reiterated by Hon’ble Supreme Court in **Apollo Zipper India Limited (Supra)**, as under:

“40. It is a settled principle of law laid down by this Court that in an eviction suit filed by the landlord against the tenant under the rent laws, when the issue of title over the tenanted premises is raised, the landlord is not expected to prove his title like what he is required to prove in a title suit.

41. In other words, the burden of proving the ownership in an eviction suit is not the same like a title suit. (See *Sheela v. Firm Prahlad Rai Prem Prakash*, para 10 at SCC p. 383 and also *Boorugu Mahadev & Sons v. Sirigiri Narasing Rao*, para 18 at SCC p. 349.)

42. Similarly, the law relating to derivative title to the landlord and when the tenant challenges it during subsistence of his tenancy in relation to the demised property is also fairly well settled. Though by virtue of Section 116 of the Evidence Act, the tenant is estopped from challenging the title of his landlord, yet the tenant is entitled to challenge the derivative title of an assignee of the original landlord of the demised property in an action brought by the assignee against the tenant for his eviction under the rent laws. However, this right of a tenant is

subject to one caveat that the tenant has not attorned to the assignee. If the tenant pays rent to the assignee or otherwise accepts the assignee's title over the demised property, then it results in creation of the attornment which, in turn, deprives the tenant to challenge the derivative title of the landlord. (See *Bismillah Be v. Majeed Shah*, para 24.)”

8. With such settled legal position, when the order of the Trial Court as well as Appeal Court is perused, it is seen that, the Courts have considered certified copies of property cards (Exhibit-24 collectively) showing that original landlord acquired leasehold right of the structure standing on the suit property and it is mutated in the name of Plaintiff-Manohardevi under entry dated 17.01.1981 indicating both Bhuridevi and Manohardevi having leasehold right. It is settled position of law that one co-owner can file a suit on behalf of all the other co-owners. Even the rent collector can maintain a suit for eviction against tenant. The Applicants / tenants have not disputed the ownership of Chandmal Lodha and his wife Bhuridevi. Tenants’ witness DW-1 has admitted that he is regularly paying rent of the suit premises to present Plaintiffs and prior to Plaintiffs he used to pay rent to Smt. Bhuridevi. He has further admitted that he has not inquired with Bhuridevi how Manohardevi filed the suit against him. He has also admitted that no case is filed challenging conveyance deed in favour of Respondent No.2. He has also admitted that he never inquired with Bhuridevi how Sitaram Enterprises became owner of the suit premises.

9. The correspondence between Advocate of the Plaintiff-

Manohardevi and Advocate of the Applicant-tenant is also on record (Exhibit-28 collectively), which makes reference to Applicants paying rent to Manohardevi. The Appeal Court has considered that tenants' witness DW-1 has not denied the suggestion of landlord that he has tendered the rent to Manohardevi and has also found that DW-1 has cleverly avoided to give answer to suggestions of Plaintiff, by simply stating that he does not remember that he paid rent to Manohardevi from August 1996 to August 1997. On being confronted with rent receipts (Exhibit-25 collectively), DW-1 has avoided to give answers. DW-1 has also stated in evidence that Chandmal Lodha was the landlord and the Constituted Attorney Mr. Girish Mehta (through whom suit has been filed by Manohardevi) was 'rent collector'. The Courts below have also considered rent receipts having signs of Girish Kumar Mehta as rent collector. In the teeth of all this evidence, the settled legal position has to be applied.

10. In **Vinay Eknath Lad (Supra)**, relied upon by Applicants themselves, the Hon'ble Supreme Court has observed as under:

"12. It has been held by a two-Judge Bench of this Court in *Bismillah Be v. Majeed Shah* : (SCC p. 278, para24)

"24. Law relating to derivative title of the landlord (lessor) and challenge, if made, to such title by the tenant (lessee) during subsistence of tenancy in relation to demised property is fairly well settled. Though by virtue of Section 116 of the Evidence Act, 1872, the tenant is estopped from challenging the title of his landlord during continuance of the tenancy, yet the

tenant/lessee is entitled to challenge the derivative title of an assignee/vendee of the original landlord (lessor) of the demised property in an action brought by the assignee/vendee against the tenant for his eviction from the demised property under the rent laws. This right of a tenant is, however, subject to one caveat that the tenant/lessee has not attorned to the assignee/vendee. In other words, if the tenant/lessee pays rent to the assignee/vendee of the tenanted property then it results in creation of an attornment between the parties which, in turn, deprives the tenant/lessee to challenge the derivative title of an assignee/vendee in the proceedings."

13. This authority has been followed in a later case, *Apollo Zipper (India) Ltd. v. W. Newman & Co. Ltd.* It has been held in this case: (SCC p. 754, para 42)

"42. ... Similarly, the law relating to derivative title to the landlord and when the tenant challenges it during subsistence of his tenancy in relation to the demised property is also fairly well settled. Though by virtue of Section 116 of the Evidence Act, the tenant is estopped from challenging the title of his landlord, yet the tenant is entitled to challenge the derivative title of an assignee of the original landlord of the demised property in an action brought by the assignee against the tenant for his eviction under the rent laws. However, this right of a tenant is subject to one caveat that the tenant has not attorned to the assignee. If the tenant pays rent to the assignee or otherwise accepts

the assignee's title over the demised property, then it results in creation of the attornment which, in turn, deprives the tenant to challenge the derivative title of the landlord."

11. It is therefore clear that the right of the tenant to challenge derivative title of landlord's assignee is subject to caveat that tenant has not attorned to the assignee and if the tenant pays rent to assignee, then it results creation of attornment, which bars the tenant from challenging the derivative title.

12. In the present case, as discussed above, there is sufficient evidence to indicate that the Applicants had paid rent to the Plaintiff-Manohardevi and Girish Mehta was 'rent collector'. Therefore there was attornment between the parties. In that view of the matter, the argument about derivative title has no merit. It is rejected.

13. So far as the argument about erection of permanent structure/addition and alteration in permanent nature and acts contrary to Section 108(o) of the TP Act is concerned, those grounds are held to be proved concurrently by the Courts below on appreciation of Evidence. Applicants were required to file suits against Municipal Corporation about notices regarding unauthorised construction in suit premises. Those suits are dismissed. Even if appeals are pending there is sufficient indication that unauthorised construction was raised. In any case tenants' witness DW-1 has admitted that the Municipal Corporation had demolished part of the suit premises twice on the ground that it was unauthorized. Therefore, there is no perversity in the concurrent findings arrived at

by the Courts below.

14. In the limited revisional jurisdiction of this Court under Section 115 of Civil Procedure Code, 1908 re-appreciation of evidence (for coming to contrary finding) is not possible.

15. The argument about non-availability of family arrangement of 1994 or earlier Power of Attorney in favour of Mr. Girish Mehta or about Bhuridevi expiring later in 2002, are in the nature of roving inquiry by the tenant about the internal arrangement of the landlord's family, which cannot be permitted under the guise of challenge to derivative title. It is because it is sufficiently established that there was attornment. Since name of Plaintiff-Manohardevi is appearing in the property cards along with Bhuridevi from 1981 and since her Constituted Attorney Mr. Girish Mehta has been admitted as 'rent collector' by the tenant, challenge to title of Plaintiff-Manohardevi for the purpose of maintaining suit under Bombay Rent Act, must fail.

16. For the aforesaid reasons, the findings arrived at by the Courts below are neither based on perverse appreciation of evidence nor on misreading of pleadings and evidence. The concurrent findings are most probable ones. Therefore the same are not being interfered with, following principles laid down about 'revisional jurisdiction' in paragraph 10 of the Judgment of the Hon'ble Supreme Court in **Pandurang Dhondi Chougule Vs. Maruti Hari Jadhav [1965 SCC OnLine SC 83]** and paragraph 43 of the Judgment of the Hon'ble Supreme Court in **HPCL Vs. Dilbahar Singh [(2014) 9 SCC 78]**.

17. The revision application is accordingly dismissed. Decree of

eviction in favour of the Respondent-landlord is confirmed.

18. The Applicants are granted 6 weeks time to handover vacant and peaceful possession of the suit premises to the Respondent-landlord, subject to the Applicants and their adult family members filing undertaking in this Court, within 2 weeks from today, stating that they shall not create third party interest or induct third party in the suit premises.

19. The Applicants are directed to clear the arrears as per the order dated 21.08.2013, from June 2025 till end of May, 2026.

20. In view of the disposal of the Revision Application, pending Interim Applications are also disposed of in above terms.

21. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)