

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5608 OF 2005
WITH
INTERIM APPLICATION (STAMP) NO. 1394 OF 2026

SNEHA
NITIN
CHAVAN

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by SNEHA
NITIN CHAVAN
Date: 2026.06.09
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M/S. Sharan Builders

A firm registered under the Provisions of Indian Partnership Act, 1935 And presently carrying on business At 71/72 Atlanta, Nariman Point, Mumbai 400 021.

Through it's partners R.L. Ramchandani since deceased through LR's

1. Mrs. Saroj Rewachand Ramchandani,
Age: Adult, Occu. Housewife.

2. Mr. Sharan Rewachand Ramchandani,
Age: 50 Years, Occu. Business
No. 1 and 2 R/at Golden Rock, C748, Perry Cross Road, Bandra, Mumbai 400 050.

And Through Partner of Sharan Builders

3. Mr. Chandru Thawardas Chandiramani
Age: 65, Occu. Business,
Address: 71/72, Atlanta, Nariman Point,
Mumbai 411 021.

...Petitioners/
Applicants
(Original
Plaintiff No.1)

Versus

1. Smt. Pushpa Narain Kanugo,
(Widow & LR of Narain B. Kanugo Since deceased),
Adult, R/o 1 Pushp Vihar, Bhagat Singh Road,
Mumbai – 400 005.

2. Vijay Narain Kanugo,
(Son & LR of Narain B. Kanugo Since deceased),
Adult, R/o 128, Nethkalal Parikh Marg,
Mumbai – 400 005.

3.Mr. Ajay Narain Kanugo,
Son & LR of Narain B. Kanugo Since deceased),
Adult, R/o Flat No. 4, 1st floor, C-Block, Cozi
Home Co-op. Housing Society Limited, 251, Pali
Hill, Nargis Dutt Road, Bandra (West),
Mumbai – 400 050.

4. Mrs. Seema S. Joglekar,
Vijay Narain Kanugo, Son & LR of Narain B.
Kanugo since deceased),
Adult, R/o 1 C/o Mrs. Pushpa Narain Kanugo - ...Respondents
Respondent No.1 Pushp Vihar, Bhagat Singh (Original
Road, Mumbai – 400 005. Defendants)

Mr. Jaydeep S. Deo a/w Mr. Onkar Gawade for the Petitioner.
Mr. Bernardo Reis a/w Mr. Pratik Dixit i/b Mr. Prashant Dingrani for
Respondent No.3.

CORAM : M.M. SATHAYE, J.
RESERVED ON : 23rd JANUARY, 2026
PRONOUNCED ON : 09th JUNE, 2026

JUDGMENT :

1. The Petitioner is Original Plaintiff No.1/licensor and Respondents are legal heirs of original Defendant / licensee. The Petition is filed challenging impugned judgment and decree dated 08.04.2005 passed by the Appellate Bench of the Small Causes Court at Mumbai, at Bandra in Appeal No. 166 of 2002. By this judgment and decree, the Appeal filed by the Petitioner is dismissed, thereby confirming the judgment and decree dated 30.04.2002 passed by the Small Causes Court at Mumbai in L.E. & C. Suit No. 247/338 of 1978. The Trial Court has dismissed the suit for eviction and compensation and the dismissal is confirmed in the Appeal.

2. The Petitioner and one of its partners Mr. T. M. Chandiramani

filed the said suit under Section 41 of the Presidency Small Cause Courts Act, 1882, ('PSCC Act' for short). The suit is filed seeking vacant and peaceful possession of the suit premises as well as for compensation from original Defendant-licensee.

3. The case of the Plaintiffs is as under. That, Plaintiffs are owners of suit flat bearing No. 14/C, on the First Floor, of Cozihom Co-operative Housing Society Limited, Pali Hill, Bandra Mumbai- 400 050. That Plaintiff No.1 is a registered partnership firm and Plaintiff No.2 was a partner at the relevant time. That Defendant approached one of the partners of Plaintiff No.1 (R. L. Ramchandani) to allow him to occupy the suit flat for short period because the Defendant's flat - C/81 in the same building, was in occupation of tenant. Defendant informed Mr. Ramchandani that he was taking steps to get his flat - C/81 vacated and assured Mr. Ramchandani that Defendant wanted the suit flat only for temporary accommodation for a short period and he will vacate the same on a short notice. Relying on such assurances, the partnership firm -Plaintiff No.1 along with its partner Plaintiff No. 2 allowed the Defendant to occupy the suit flat as a licensee. Initially the said flat was given to one Mr. T. Kiyosi at the request of the Defendant on leave and licence for monthly licence fee of Rs. 950/- for a period of 11 months. The said Mr. T. Kiyosi handed over the possession of the flat before expiry of licence period and thereafter, at the request of the Defendant, the licence fee was reduced from Rs.950/- to Rs.600 /-per month and it was given on leave and licence basis to Defendant. An agreement dated 01.11.1975 was executed between Plaintiff No.2 (Mr. T. M. Chandiramani) and the Defendant and under the said agreement both the Plaintiffs i.e. the partnership firm and its partner Mr. T. M. Chandiramani permitted the Defendant to occupy the suit flat on leave

and licence basis. That licence period expired on 01.10.1976 and the Plaintiffs by their Advocate's letter/notice dated 12.01.1978 terminated the licence and called upon the Defendant to handover vacant and peaceful possession of the suit flat and pay arrears of compensation. That the Defendant by its Advocate's letter/reply dated 12.04.1978 raised false grounds contending that he and his wife are in possession of the suit flat as joint tenants since prior to 01.11.1975. By Advocate's letter dated 24.04.1978, the Plaintiffs again called upon the Defendant to handover vacant possession and pay arrears of compensation. In such circumstances, the said suit was filed seeking declaration that Defendant is a trespasser in respect of the said suit flat, seeking decree of eviction directing Defendant and his family members to vacate the suit flat, seeking arrears of compensation, seeking direction to Defendant for continuous payment of compensation for use and occupation of the suit flat.

4. The Defendant filed written statement contending *inter-alia* as under. Defendant admitted that Petitioner -Plaintiff No. 1 firm is the owner of suit flat and Plaintiff No.1 firm has let out suit flat to Defendant and his wife in December, 1974 for rent of Rs. 600/- per month. That Defendant and his wife are joint tenants of Petitioner-Plaintiff No.1 firm in respect of suit flat. That, Petitioner-Plaintiff No.1 -partnership firm made the Defendant to sign the licence agreement in favour of Petitioner-Plaintiff No.1-partnership firm. That the real intention was to let out the suit flat to Defendant on rent as tenant. That Defendant and his wife are in exclusive possession of suit flat. Case of leave and licence was denied. That, Petitioner- Plaintiff No.1-partnership firm has assured that the said agreement will not be acted upon and terms and conditions of the agreement are not binding on

him. That since Defendant and his wife are tenants, there is no question of licence period getting over. That Defendant had filed suit against its tenant M/s Hindustan Lever Limited, but since the litigation was to take long time and since M/s. Hindustan Lever Limited offered to purchase his flat (not suit flat), the Defendant had to withdraw the suit and settle the matter out of Court and his flat was purchased by M/s. Hindustan Lever Limited. He denied that he is a trespasser. That Defendant and his wife are joint tenants duly protected by the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947 ('Bombay Rent Act' for short). That, Defendant is not liable to pay compensation or damages for use and occupation of the suit flat. Arrears of rent / compensation of Rs. 7,800/- is denied.

5. Mr. Chandru T. Chandiramani, who had signed the plaint on behalf of the Petitioner-Plaintiff No.1-Partnership firm, entered witness box as P.W.-1 and led evidence in support of the plaint. The sole Defendant Mr. Narain Bhagwan Kanuga entered into witness box as D.W.-1 as a witness in support for his claim.

6. On 19.06.1999, consent terms were filed by the parties in the Court; however the consent terms were not complied with and Defendant did not give possession of the suit flat.

7. The Learned Judge of the Small Causes Court, Mumbai who heard and tried the said suit held that the Defendant could not prove that he was made to sign the leave and licence agreement as alleged. The Trial Court also held that the Defendant could not prove that he and his wife are tenants in respect of suit flat. However, holding that Petitioner- Plaintiff No.1-partnership firm has 'no locus' to continue with the suit after the death of the Plaintiff No.2 (partner Mr. T. M. Chandiramani), the suit came to be dismissed.

8. The Petitioner-Plaintiff No.1-partnership firm filed the said appeal. The Appellate Bench of the Small Cause Court, Mumbai held that Petitioner-Plaintiff No.1-partnership firm is not the owner of the suit premises and licensor. It further held that when Plaintiff No.2 died during the pendency of the suit and his legal heirs are not brought on record. When suit is abated against Plaintiff No.2, the Plaintiff No.1-partnership firm cannot proceed with the suit. It is held that the dismissal of the suit is proper and therefore the appeal came to dismissed.

9. It is in these circumstances that Petitioner-Plaintiff No.1 partnership firm is before this Court challenging the dismissal of its suit. During the pendency of the petition, the partners of Petitioner – Plaintiff No.1 firm, including Mr. Chandru T. Chandiramani has been brought on record as Petitioner Nos. 1, 2 and 3.

10. Respondent No.3 has filed affidavit dated 13.11.2024 contending *inter alia* that the petition is filed by the partnership firm which is not the owner of the suit flat and therefore, the petition is not maintainable. It is contended that Petitioner-Plaintiff No.1-partnership firm is a third party to entire transaction and has no *locus standi* to file the petition.

11. Respondent No.3 has produced on record copies of society repair bills and society maintenance bill which stand in the name of Respondent No. 2 - Mr. T. M. Chandiramani.

SUBMISSIONS

12. Learned Counsel Mr. Jaydeep S. Deo appearing for the Petitioners submitted as under:

12.1. That since the Trial Court has answered the issue as to whether

Defendant is a tenant, in negative, and the said finding is not challenged by the Defendant in appeal, it has attained finality and therefore, only issue before Court is whether Petitioner-Plaintiff No.1-partnership firm is entitled to recover possession of the suit flat.

12.2. That PW.1 Mr. Chandru T. Chadiramani was also partner of Petitioner – Plaintiff No.1-partnership firm who had signed on the original plaint and who is also son of Plaintiff No. 2. That the partnership is registered and its deed is already on record. Therefore, objection that ‘suit is abated for Plaintiff No. 2 and therefore, Plaintiff No. 1-partnership firm alone has no locus to proceed’ is hyper technical approach adopted by the Courts below.

12.3. That leave and licence agreement dated 01.11.1975 is signed by Plaintiff No.2 Mr. T. M. Chandiramani and rubber stamp of Sharan Builders is duly put with his signature which shows that he has signed the agreement as partner of Petitioner- Plaintiff No.1 firm.

12.4. That Mr. C. T. Chandiramani who happens to be son of Plaintiff No.2 has deposed that the agreement is not executed by his father in individual capacity but as a partner of Petitioner -Plaintiff No.1-partnership firm and he has clearly denied the suggestion that rubber stamp of ‘Sharan Builders’ is put subsequently; therefore testimony of Mr. C. T. Chandiramani is unshaken.

12.5. That the Courts below had taken the statement of P.W.-1 Mr. C. T. Chandiramani about ‘copy of agreement not bearing stamp of Sharam Builders’ as admission without taking judicial note of the fact that in the year 1978, photocopy machines were not easily available and ordinary typed copy was annexed to the plaint, which obviously did not have rubber stamp.

12.6. That overwhelming evidence about Plaintiff No.1-partnership firm being competent to maintain suit has been overlooked, such as, Petitioner-Plaintiff No.1-partnership firm issuing termination notice, Defendant in reply not raising any dispute with respect to locus of Petitioner – Plaintiff-No.1-partnership firm. If Mr. T. M. Chandiramani was licensor in his individual capacity, the first objection would have been taken regarding locus of Plaintiff No.1-partnership firm; however, no such objection is raised in the notice reply. Only stand taken is Defendant No.1 is joint tenant with his wife.

12.7. That the real case of Respondent is that he is not licensee but a joint tenant with his wife.

12.8. That Defendant in his written statement has admitted that Petitioner -Plaintiff No.1-partnership firm is owner of suit, who let out the suit flat to Defendant and his wife. That cheques were issued in favour of the Petitioner-Plaintiff No.1-partnership firm. That the stand is taken by Defendant in written statement that Petitioner -Plaintiff No.1-partnership firm has inducted the Defendant in possession of suit flat. That there was not a whisper in the written statement that Petitioner-Plaintiff- No.1-partnership firm has no right to file suit or locus to continue it.

12.9. That Plaintiff No.2 (Mr. T. M. Chandiramani) passed away in December, 2003 and the evidence of parties was recorded in August, 2001 and therefore, challenge to the title/locus of Petitioner-Plaintiff No.1-partnership firm is only an after-thought. That there is no defence about challenge to title/ locus in the written statement.

12.10. That the question as to who is owner of the suit flat and whose names stands in the society's register etc. cannot be gone into by this Court, by hair-splitting exercise about title. That this is not a title suit.

12.11. That it has been perversely held that the rubber stamp of the firm is inserted later on.

12.12. That challenge to the locus is hit by Section 116 of the Indian Evidence Act, 1872, which bars the Defendant from objecting to the title – locus of Petitioner-Plaintiff No.1-partnership because the Defendant has accepted that Petitioner-Plaintiff No.1-partnership firm has inducted him in possession of suit premises and therefore, he is estopped from raising such objection.

12.13. That though after passing away of Petitioner No.2, his legal heirs have not been brought on record and suit has been abated, one of his sons, Mr. C. T. Chandiramani was already on record in the capacity of partner of Plaintiff No.1-partnership firm who has in fact signed on the plaint; therefore, since the partnership firm does not have an independent legal entity by itself, since Mr. C. T. Chandiramani is already on record as partner of Plaintiff No.1-partnership firm, the Plaintiff No.1-partnership firm has full locus to maintain the suit and the suit could not have been dismissed for that reason.

12.14. That according to the settled law, one of the co-owners can file suit on behalf of other co-owners and all the co-owners are not necessary parties. Therefore, if one of the sons of Plaintiff No.2 is already on record in the capacity of the partner of Petitioner-Plaintiff No.1-partnership firm, the suit is very much maintainable.

12.15. That admissions given by the Defendant both in notice reply and written statement are ignored.

12.16. That the Defendant and his legal heirs have enjoyed valuable suit flat for over a period of 48 years without payment of licence fees or compensation, which has caused serious hardship to the Petitioner-firm

and this injustice has to be addressed by exercise of extraordinary jurisdiction under Article 227 of the Constitution of India.

12.17. That the findings of the Courts below about locus of Petitioner–Plaintiff No.1-partnership firm is perverse requiring interference by this Court.

12.18. Mr. Deo also prayed for payment of compensation of arrears of licence fees, as the Defendant and his legal heirs enjoyed the suit flat for more than 48 years after termination of the licence. He pressed the above Interim Application for amending the prayer of the plaint about mesne profits. He relied on following judgments in support of his case

1. S. Thangappan Vs. P. Padmavathy - (1999) 7 SCC 474.
2. Bansraj Laltaprasad Mishra Vs. Stanley Parker Jones - (2006) 3 SCC 91.
3. Mohinder Prasad Jain Vs. Manohar Lal Jain-(2006) 2 SCC 724.
4. India Umbrella Manufacturing Co. and Ors. Vs. Bhagabandei Agarwalla (dead) By LRS. Savitri Agarwalla (Smt) and Ors. - (2004) 3 SCC 178.

13. On the other hand, Mr. Reis, learned Counsel appearing for the Respondent No.3, who is stated to be in possession of the suit flat submitted as under:

13.1. That under provisions of Bombay Rent Act, only a landlord is entitled to recover possession of the suit premises. The licence agreement on record is executed between the Plaintiff No.2 (who is no more) as licensor and Original Defendant as Licensee. That Plaintiff No.2 inducted the Defendant in the suit premises and there is no ambiguity that suit flat belongs to Plaintiff No.2 and not to Plaintiff No. 1-partnership firm. That it cannot be accepted that the agreement was

executed by Plaintiff No.2 in the capacity as partner of Petitioner-Plaintiff No.1-partnership firm. That even share certificate of the suit flat stands in the name of Plaintiff No.2 -Licensor which shows that Plaintiff No.2 was sole owner of the suit flat. Therefore suit at the instance of Plaintiff no. 1-partnership firm alone can not continue. That ownership or landlordship only vested with Plaintiff No.2 Licensor; therefore Petitioner-Plaintiff No.1-partnership firm has no locus for filing and prosecuting the suit.

13.2. He relied on Sections 13(1), 13(2A) and 13(2)(b) of the Bombay Rent Act and Section 5 of Indian Evidence Act, 1872 in support of his case.

13.3. He submitted that once the legislature by explanation (b) of Section 13A2 of the Bombay Rent Act, provides that written agreement of licensee shall be conclusive evidence of the facts stated therein, a special rule of evidence is provided that therefore other evidence is shut out of consideration. That therefore, Court cannot go beyond the document to find the intention of the parties.

13.4. That under provisions of Bombay Rent Act, only licensor is entitled for possession of the suit premises and since Petitioner-Plaintiff No.1 is not licensor, it does not have locus to continue suit and cannot go beyond the license agreement.

13.5. He further submitted that statements in the written statement made by Defendant cannot be relied upon and no evidentiary value can be given to admissions given by the Defendant, in view of the express dis-entitlement for the licensee under Section 116 of the Indian Evidence Act, 1872. That, under Section 116 of the Evidence Act, 1872 no licence of immovable property can deny the title to such possession when licence was given.

13.6. That although Defendant or his legal heirs could not dispute title of Plaintiff No.2, the suit has been abated against Plaintiff No.2.

13.7. He further contended that this Court in exercise of its power under Article 227 of the Constitution of India, being a supervisory Court, cannot act as Appellate Authority to re-appreciate the evidence unless it is found that the decision by the fact finding courts is perverse, erroneous on account of non-consideration of material evidence or based on conclusions contrary to evidence or based on inferences impermissible in law. He relied upon following judgments in support of his case :

1. Amit B. Dalal Vs. Rajesh K. Doctor - 2010 SCC OnLine Bom 683 :
2. Ramesh Ramrao Hate Vs. Parvez B. Bhesania - 1996 SCC OnLine Bom 444.
3. Deepak S. Kavadiya Vs. Additional Divisional Commissioner, Konkan Division and Ors., (WP-14856 of 2024 Judgment dated 12.11.2024 Bombay High Court).
4. Ram Shankar Sinha Vs. Ritesh V. Patel and Anr. - 2025 SCC OnLine Bom 2379.

REASONS AND CONCLUSION

14. I have carefully considered the rival submissions and perused the record.

15. At the outset, it must be noted that this is a rather peculiar case where, in my considered view, the Courts below have proceeded on a completely misconceived notion about locus to maintain a suit. Let me demonstrate how.

16. In this case, a suit for eviction is filed by a registered partnership firm along with one of its partners, who are arrayed as Plaintiff No. 1 and Plaintiff No. 2. It is their specific case in the plaint that both the

Plaintiffs i.e. the partnership firm and one of its partners, have inducted the Defendant as licensee in the suit flat. It is clearly pleaded that for the purpose of such induction, Plaintiff No. 2, who was one of the partners, executed a licence agreement in favour of the Defendant. It is their specific case that under this document, both the firm and one of its partners, have inducted the Defendant as licensee. It is also their specific case that on expiry of license period, both the Plaintiffs i.e. the firm and one of its partners, by their advocate's letter / notice dated 12.01.1978, terminated the licence and called upon Defendant to hand over vacant possession of suit flat as also to pay the arrears of compensation.

17. The Defendant replied to this advocate's letter/notice by issuing an advocate's reply dated 12.04.1978, only contending that Defendant and his wife are joint tenants of both the Plaintiffs in respect of suit flat. The Defendant has denied the case of being licensee and also denied that he was inducted on temporary basis for short period. He has contended that the licence agreement was not to be acted upon. That he has paid rent upto February 1978.

18. It is most important to note that this notice reply does not make a whisper about Petitioner-Plaintiff No. 1-partnership firm not having locus to issue the notice or terminate licence or demand possession.

19. Now coming to the written statement filed by the Defendant. It is the most interesting one. The Defendant has given following admissions in his written statement (reproduced verbatim):

"1) xxxx The defendant says that the plaintiffs No. 1 are the owners of the said flat No. 14/C, being the suit flat.

2) xxxx

3) xxxx The defendant says that the plaintiffs No. 1 had let out the suit flat to

the defendant and his wife, Mrs. Pushpa N. Kanuga, in the month of December 1974 on the rental of Rs.600/- per month.

The defendant says that the rent of the said flat was paid by the defendants to the plaintiffs No. 1 by cheques issued by the defendant and his wife in the favour of the plaintiffs No.1.

The said cheques have been duly cashed by plaintiffs No. 1. However, the plaintiffs No. 1 was not issuing any rent receipts in respect of the said amount as the rent was being paid by cheques drawn in the favour of the plaintiffs No.1.

xxxx The defendant says that as stated hereinabove, he and his wife Mrs. Pushpa N. Kanuga, are the joint tenants of plaintiffs No. 1 in respect of the suit flat. xxxx.

4) xxxx The defendant says that plaintiffs No. 1 had made the defendant to sign an agreement in favour of the plaintiff No.2. xxxx

The defendant says that he was assured by the plaintiffs No.1 that the said agreement would not be acted upon. xxxx.

However, as stated hereinabove as a matter of fact the suit flat was given by the plaintiffs No.1 to the defendant and his wife in the month of December 1974 on rental basis on the rental of Rs.600/- per month and since then till today the defendant and his wife are in the exclusive possession of the suit flat. xxxx

5) xxxx

6) xxxx The defendant says that the plaintiffs No.1 had dishonestly sent to the defendant the said letter dated 12.1.1978 through his advocate. xxxx.

The defendant says by the said letter he had brought to the notice of the plaintiffs No.1 that he had paid the rent of the said flat upto February 1978 and the defendant alongwith the said letter sent to the advocate for the plaintiffs No.1, the cheque for Rs.600/- being the rent for the month of March 1978. xxxx.

The defendant says that he did not reply to the letter dated 24.4.78 sent by

the advocate for the Plaintiff No.1 as the allegations therein were repeated and whatever the Defendant had to say he had already stated in the aforesaid letter dated 12.4.78.

7) xxxx

8) xxxx

9) xxxx

10) xxxx The Defendant says that the Plaintiff No.1 had put the Defendant and his wife in the exclusive possession of the suit flat in the month of December 1974.

11) xxxx

12) xxxx The Defendant further says that they have filed application being R.A. N. No. 580/SR of 1978 against the Plaintiffs No.1 herein in this Honourable Court, for the fixation of the Standard Rent in respect of the flat involved in the above suit. xxxx”

20. From the aforesaid clear statements made in the written statement it is obvious and beyond doubt that the Defendant treated both the Plaintiffs i.e. the firm and Plaintiff No. 2 partner as an entity who inducted him in the suit flat. Therefore, the estoppel under section 116 of the Evidence Act clearly bars him from raising any dispute about defect in the title/locus of the Petitioner/Plaintiff No. 1-partnership firm, including defect in title to immovable property or title to possession thereof.

21. This position is clearly supported by the judgments in the case of **S. Thangappan (Supra)** and **Bansraj Laltaprasad Mishra (Supra)**.

22. It is also settled position of law that in an eviction suit under rent control laws, when the issue of title over suit premises is raised, the Plaintiff 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. This has been clearly held by the Hon'ble Supreme Court in **Boorugu Mahadev and sons and Anr. v/s. Srigiri Narasing Rao and Ors. - (2016) 3 SCC 343**, 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*.)"

23. The same position is reiterated by Hon'ble Supreme Court in **Apollo Zipper India Limited v/s. W. Newman and Company Limited – (2018) 6 SCC 744** 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)".

24. In the teeth of aforesaid legal position, the exercise by the

Trial Court as well as Appellate Court of going into whether the Petitioner-Plaintiff No. 1-partnership firm had 'title' of the suit flat, is beyond the scope of inquiry permitted under law. This is not a case where the partners are *inter se* fighting about title of the suit flat and therefore, the title must be verified as belonging to either firm or an individual partner. This is a case where both the partnership firm and one of its partners have sued together, based on a document of licence executed by Plaintiff No.2 partner, and the plaint was signed by one of the other partners who happens to be the son of Plaintiff No. 2. There is no dispute *inter se* partners about title of the suit flat. Therefore, there was no occasion for the Courts below (exercising jurisdiction under Section 41 of the PSCC Act) to enter into an inquiry as to whether Plaintiff No. 2 alone was owner/title holder.

25. The Defendant/licensee has taken conveniently opposite stands. On one hand, the Defendant is admitting that Petitioner / Plaintiff No. 1-partnership firm has inducted him in the suit flat. However, on the other hand, he is raising objection to the locus of petitioner/ Plaintiff No.1-partnership firm to seek eviction. Such situation cannot be countenanced in the teeth of Section 116 of the Evidence Act.

26. Also, on one hand, he contended that the licence agreement was not supposed to be acted upon and on such assurance it was executed. On the other hand, it is contended that the licence document shows Plaintiff No. 2 alone as licensor and therefore, in absence of his legal heirs being brought on record, Plaintiff No. 1-partnership firm cannot continue with the suit.

27. If the document of licence is not to be acted upon, then the

Court must consider the pleadings of the parties. At the cost of repetition, it must be noted that the Plaintiffs, i.e. both partnership firm and one of its partners, have clearly pleaded that they have inducted the Defendant as licensee. Not only that, the Defendant has clearly admitted in the written statement that Plaintiff No.1-partnership firm is the entity who inducted him in the suit flat and that he was paying rent to Plaintiff No.1-partnership firm. In such situation, if the licence document is not to be acted upon, then on mere pleadings, the relationship between the parties will have to be considered. It was the specific defence of Defendant that he and his wife are joint-tenants of Plaintiff No.1-partnership firm. The Defendant has miserably failed to prove a landlord-tenant relationship or that he was a tenant. No rent receipts or rent-agreement are produced. If the Defendant is not tenant and the licence agreement is not to be acted upon, then it is for the Defendant to prove in what capacity he is occupying / continuing in the suit flat. The Defendant has miserably failed in proving any right, title and interest to continue the possession of the suit flat.

28. The Trial Court on appreciation of evidence, has held vide Issue Nos. 1 and 2 that Defendant has not proved that he was made to sign on the licence agreement and he has also not proved that he and his wife are tenants in respect of suit flat and that he has not proved that he and his wife are protected by Bombay Rent Act. In such circumstances, the Defendant apparently does not have any right, title and interest in the suit flat and he is nothing but a trespasser. Since, it is the case of the Petitioners that the licence has expired on 01.10.1976, the Defendant has become trespasser from that day.

29. I have perused the judgment of the Trial Court as well as

Appellate Court.

30. The Appellate Court has considered the recitals in the licence agreement and has considered the evidence of PW1 that in the record of the housing society, Plaintiff No. 2 is shown as member and share certificate stands in the name of Plaintiff No. 2 and has concluded that Plaintiff No. 2 was the owner of the suit flat and not Plaintiff no. 1. The Appellate Court has also considered cross-examination of PW-1, where he has admitted that 'copy' of the licence agreement does not bear the rubber stamp of Plaintiff No. 1 -partnership firm (Sharan Builders) and concluded that the rubber stamp was put subsequently. This conclusion is in the teeth of clear denial by PW-1, when it was suggested to him that the rubber stamp of Petitioner-Plaintiff No. 1-partnership firm was put subsequently. The absence of rubber stamp on 'typed copy' cannot be held as conclusive proof of such stamp being put subsequently. The Appellate Court has gone into the partnership deed to conclude that it does not mention assets of partnership firm and therefore it cannot be said that the Petitioner-Plaintiff No.1-partnership firm is owner of the suit flat. The Appellate Court was conscious of the admissions given by the Defendant in the written statement about the Defendant being inducted by Petitioner-Plaintiff No. 1-partnership firm as also the fact that the Defendant had filed standard rent application against Petitioner-Plaintiff No.1-partnership firm which indicated that Defendant accepted the position that he is inducted by Petitioner-Plaintiff No. 1-partnership firm. The Appellate Court was also conscious of the fact that in the written statement, there is no whisper about Plaintiff No. 1-partnership firm not being owner of suit premises. The Appellate Court was also conscious of the fact that according to written statement, rent was paid to Petitioner-Plaintiff No. 1-partnership firm by

cheque and even the license was revoked on behalf of both the Plaintiffs. The Appellate Court has ultimately held that despite the admissions in the written statement, it will not absolve the Plaintiffs from proving that Plaintiff No. 1-partnership firm is licensor in respect of the suit flat. The Appellate Court ultimately held that Petitioner-Plaintiff No. 1-partnership firm is not 'owner' of the suit flat, who has failed to establish relationship of licensor and licensee and therefore, it is not entitled to recover possession in the absence of legal heirs of Plaintiff No. 2 on record.

31. In this respect, the Trial Court has considered that the suit flat stands in the name of Plaintiff No. 2 in the society's record and share certificates also stands in the name of Plaintiff No. 2 and therefore the suit flat belongs to Plaintiff No. 2 and not to Plaintiff No. 1-partnership firm. The Trial Court has considered the recitals in the licence agreement where Plaintiff No. 2 is shown as licensor in his individual capacity. The Trial Court was also conscious of the fact that the Defendant has filed standard rent application and declaratory suit against the Petitioner-Plaintiff No. 1-partnership firm admitting it to be the entity inducting Defendant in the suit flat. The Trial Court was also conscious of the admissions given by Defendant in the written statement about the status of the Petitioner-Plaintiff No. 1-partnership firm. The Trial Court considered that PW-1 admitted that on 'copy of the licence agreement' there is no rubber stamp of the Petitioner-Plaintiff No. 1-partnership firm. The Trial Court therefore did not accept that the agreement was executed by Plaintiff No. 2 in the capacity as partner of Plaintiff No. 1-partnership firm. The Trial Court has held that even though Defendant has admitted accepting the Petitioner-Plaintiff No. 1 firm as owner/landlord of the suit flat, actual facts indicate ownership

with Plaintiff No. 2 and therefore, the Plaintiff No. 1-partnership firm alone has no locus to file and continue to the suit.

32. From the aforesaid, it is clear that both the Courts have gone into the issue of title of the Petitioner-Plaintiff No. 1-partnership firm over suit flat as if the title suit is being decided, which is contrary to the settled position of law narrated above. What was necessary to be seen was that the Defendant has admitted that the Petitioner-Plaintiff No. 1-partnership firm had inducted him in the suit flat and therefore he was estopped from disputing/denying the title of Petitioner-Plaintiff No. 1 firm or its locus.

33. The Courts below have clearly overlooked that the rubber stamp is available on the original document and not on the copy which was produced at the time of filing of suit. The suit is filed in 1978 when xerox machines were not readily available and an ordinary typed copy was filed along with the plaint, which obviously did not have the rubber stamp. Perusal of the record and proceedings shows that the original licence agreement is produced on record, which bears the signature of Plaintiff No.2-T. M. Chandiramani with the stamp of the Petitioner-Plaintiff No.1-partnership firm, who has signed as its partner. Be that as it may. Since the Defendant himself has admitted in a written statement that he was inducted by the Petitioner-Plaintiff No. 1-partnership firm, he is estopped from challenging its title/locus to proceed with the suit.

34. Now let us consider the judgments relied upon by the Respondents.

35. The first judgment of **Amit B. Dalal (supra)** is rendered by learned single Judge of this Court while considering eviction

proceedings under Section 24 of the Maharashtra Rent Control Act, 1999 ('MRC Act' for short). This provision is made for recovery of possession from the licensee on expiry of licence under the MRC Act. It is held that it will not be open for licensee to lead any evidence contrary to the terms and conditions provided in the licence agreement owing to explanation (b) to Section 24, which provides that an agreement of licence in writing shall be conclusive evidence of the facts stated therein.

36. The next judgment relied upon by the counsel for the Respondents is **Ramesh Ramrao Hate (Supra)**, where the learned single Judge of this Court was considering the application by the licensor before the Competent Authority for eviction of licensee under Section 13A2 of the Bombay Rent Act where there is similar explanation (b) to the said Section. Section 24 of the MRC Act and Section 13A2 of the Bombay Rent Act are similar provisions. While dealing with eviction proceedings under Section 13A2 of the Bombay Rent Act, in the said judgment, this Court held that explanation (b) prescribes special rule of evidence making written agreement of licence conclusive evidence prohibiting other evidence to be led which may affect the conclusiveness of such evidence.

37. The next judgment relied upon by learned counsel for the Respondents is **Deepak S. Kavadiya (Supra)**. In this judgment once again, learned single Judge of this Court was dealing with proceedings initiated under Section 24 of the MRC Act for eviction of the licensee. Here, it was contended on behalf of the licensee that licence agreements are unregistered and therefore terms and conditions suggested by licensee would prevail as per provision of Section 55 of the MRC Act. In

this case, the learned Single Judge has held that the Competent Authority had jurisdiction under Section 24 of the MRC Act in the facts of that case, where the licensed premises was a residential flat and was being actually used for residence.

38. The next judgment relied upon by learned counsel for the Respondents is **Ram Shankar Sinha (Supra)**, where learned Single Judge of this Court was considering the scope of explanation (b) to Section 24 of MRC Act vis-a-vis Section 43(4) of the MRC Act, which provides for application for leave to defend before the Competent Authority. It is held that notwithstanding non-registration of agreement of licence, when application under Section 24 of the MRC Act is made, explanation (b) will apply and it will not open for the licensee to lead any evidence contrary to terms and conditions provided in the agreement. It was further held that even while considering leave application under Section 43 of the MRC Act, the special rule of evidence as per explanation (b) to Section 24 is required to be considered and applied.

39. Reliance placed on all the aforesaid judgments, in essence centers around the explanation (b) of Section 24 of MRC Act or explanation (b) of Section 13A2 of the Bombay Rent Act, which are similar. The essence of argument is that an agreement of licence in writing shall be conclusive evidence and licensee cannot be permitted to lead any other contrary evidence.

40. In my view, reliance placed on these judgments by learned counsel for the Respondents is completely misconceived, because explanation (b) in fact prohibits the Defendant himself from contending anything contrary to what has been stated in the agreement. The licence

agreement contemplated 'licence' (not tenancy) for 11 months and it is the Defendant who is contending that the relationship was that of landlord-tenant. Therefore, in principle, explanation (b) to Section 24 of the MRC Act or explanation (b) to Section 13A2 of the Bombay Rent Act will prohibit the Defendant from contending contrary to licence agreement.

41. Additionally, it is important to note that Section 13A2 of the Bombay Rent Act was introduced on the statute book w.e.f. 01.10.1987 and Section 24 was introduced under the MRC Act w.e.f. 31.03.2000. Therefore, both these Sections and their explanation (b) were not available when the present proceedings were filed under Section 41 of PSCC Act, sometime in 1978. Therefore, explanation (b) as relied upon by learned counsel for Respondents is not applicable in strict sense. In any case, the Defendant has not led any evidence to prove his case of tenancy. Even otherwise, and as per his own argument, he cannot lead any evidence contrary to what is stated in the licence agreement. In that view of the matter, all the judgments relied upon by the Respondents will not help them in principle, in the peculiar facts of this case.

42. The suit in the present matter has remained pending for a very long time from 1978 till April 2002 when it was decided. The evidence of the parties was recorded from August 2001. By that time, Plaintiff no. 2 had died long ago sometime in 1983 and therefore it is obvious that the challenge raised to the locus and title of the Petitioner-Plaintiff No. 1-partnership firm is nothing but an after-thought, because no such defence was raised either in the notice-reply or in the written statement.

43. The judgments of **S. Thangappan (Supra)** as well as **Bansraj Laltaprasad Mishra (Supra)** support the case of the Petitioners in respect

of estoppel against Defendant from disputing the title/locus of the Petitioner-Plaintiff No. 1-partnership firm. It is settled position of law that partnership firm is not a separate legal entity apart from its partners. The plaint is signed by Mr. C. T. Chandiramani in the capacity as a partner of the Petitioner-Plaintiff No. 1-partnership firm. Mr. C. T. Chandiramani happens to be the son of Plaintiff No. 2 who has deposed in support of the plaint. This circumstance, in my view, is additional reason for to hold that the Petitioner-Plaintiff No. 1-partnership firm does have locus to continue with the suit seeking eviction.

44. In the aforesaid facts and circumstances, the finding of the Courts below in respect of locus of the Petitioner-Plaintiff No. 1-partnership firm, is perverse and requires interference. The finding is rendered in ignorance of settled position of law and therefore, if allowed to stand, would result in miscarriage of justice. Since the main defence of the Defendant that 'he and his wife were joint tenants' is not proved, the suit ought to have been decreed, granting eviction. Admittedly, the Defendant and on his death, the present Respondents, who are legal heirs of the Defendant are prosecuting the petition. The Respondent No. 3 claims to be in possession of the suit flat as on today. This Court is not concerned whether other Respondents are also in possession or not. Suffice to observe that in any case, after the demise of the Defendant, the present Respondents are his legal heirs and therefore responsible for the outcome of this litigation. The licence was issued way back in November 1975 for 11 months which has come to an end long long ago, thereby making their possession wrongful. The Defendant and thereafter, his legal heirs have continued to enjoy the possession to the detriment of Petitioner's right. The possession of the Defendant and his legal heirs has become wrongful after expiry of the

licence and therefore, it is necessary that inquiry into mesne profits is made in accordance with law. The Petitioners have filed and pressed the above Interim Application (St) No. 1394 of 2026 seeking permission to amend and add a prayer seeking payment of mesne profits from 12.01.1978. Considering the facts and circumstances narrated above, the prayer is required to be considered in accordance with law. In that view of the matter, separate inquiry into mesne profits is necessary.

45. In the result, the writ petition succeeds. Rule is made absolute and Writ Petition is disposed of by passing following order :

(A) The impugned judgment and decree dated 08.04.2005 passed in Appeal No. 166 of 2002 is quashed and set aside and Appeal No. 166 of 2002 filed by Petitioner- partnership firm is allowed.

(B) The judgment and decree dated 30.04.2002 passed in L.E. & C. Suit No. 247/338 of 1978 is quashed and set aside. The said suit is decreed.

(C) The Respondents are directed to hand over vacant and peaceful possession of the suit flat to the Petitioners within a period of 10 weeks from today. This time of 10 weeks is granted subject to the Respondents and all their adult family members, filing an undertaking in this Court within 2 weeks from today, stating that they shall not induct third party in the suit flat and shall vacate the same within a period of 10 weeks from today.

(D) The Petitioners are entitled to initiate inquiry into mesne profits. Rival contentions of the parties on merits in that regard are kept open, to be decided in accordance with law.

(E) In view of disposal of the petition, the interim application is also disposed of in above terms.

(F) No order as to costs.

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

(M.M. SATHAYE, J.)