IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO. 143 OF 2002

1. **Shantaram Ganpat Gujar**)
And
2. **Mrs. Kirti Shantaram Gujar**)
Both of Mumbai, Indian Inhabitants,)
Both residing at Shanker Bhavan, Flat No.5,)
French Bridge, Mumbai – 400 007.)...**Appellants/ Respondents (Org. Defendants)**

Vs.

1. **Mrs. Sarla Jaysen Rele,**)
2. **Dilip Jaysen Rele,**)
3. **Ulhas Jaysen Rele,**)
4. **Mrs. Latika Anil Hatkar,**)
5. **Mrs. Pratima Ratnadeep Karnik**,)
All Nos. 1 to 5 of Mumbai, Indian Inhabitants,)
residing at Shanker Bhavan, French Bridge,)
Mumbai – 400 007.)...**Respondent Nos.1 to 5/ heirs of deceased org. Appellant/Plaintiff No.1**

6. **Mrs. Nirmala Bhalchandra Rele,**)
7. **Ashok Bhalchandra Rele,**)
since deceased legal heirs respondent nos.15 & 16)
8. **Jagdish Bhalchandra Rele**,)
9. **Mrs. Minal Ashok Kale**,)
10. **Mrs. Tejoshini Prakash Malwankar**,)
All Nos. 6 to 10 of Mumbai, Indian Inhabitants,)
residing at Shanker Bhavan, 34 floor,)
French Bridge, Mumbai – 400 007.)...**Respondent Nos.6 to 10/heirs of deceased org. Appellant/Plaintiff No.2**

11. **Prashant Raghunandan Rele,**)
And)
12. **Mrs. Anjali Raghunandan Rele,**)
Both of Mumbai, Indian Inhabitants,)

residing at Shanker Bhavan, French Bridge,)
Mumbai – 400 007.)..Respondent Nos.11 and 12/heirs of deceased org.Appellant/Plaintiff No.3

13. Mrs. Sheela Chandrakumar Rele,)
And
14. Shankar Chandrakumar Rele,)
Both of Mumbai, Indian Inhabitants,)
residing at Shanker Bhavan, French Bridge,)
Mumbai – 400 007.)
15. Mr. Amit Ashok Rele,)
Shankar Bhavan French Bridge, Mumbai-400 007)
16. Devika Ashok Rele,)
Shankar Bhavan French Bridge, Mumbai-400 007)..Respondent Nos.13 and 14/Org. Appellant Nos. 4 & 5/Plaintiff Nos.4&5.

Mr. Brijesh Upadhyay i/b. Mr. Jash B. Vyas for the Appellants.

Mr. Sanjeev Gorwadkar, Senior Advocate, with Ms. Swati Sagvekar for the Respondents.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.
RESERVED ON: 23 MARCH 2026.
PRONOUNCED ON : 20 APRIL 2026.

Judgment (Per G. S. Kulkarni, J.):-

1. This Letters Patent Appeal is directed against the judgment and order dated 04 March 2002 rendered by the learned Single Judge on First Appeal No. 490 of 1996. By the impugned judgment, the appeal filed by the respondents stands allowed, thereby setting aside the judgment and the order passed by the learned Judge, Bombay City Civil Court, decreeing Suit

No. 5393 of 1985 filed by the respondents, *inter alia* holding that the appellant is a trespasser and liable to eviction from the suit flat.

2. At the outset, we may observe that the issue involved in the appeal is whether the appellants, in law were entitled to assert rights of tenancy sought to be derived by them from the original tenant, one Shri. P. S. Athwankar in respect of the premises being Flat No.5 situated at 1st Floor, Shankar Bhavan, French Bridge, Mumbai – 400 007 (for short, "**the suit flat**").

3. The respondents/owners are in Court for more than four decades i.e. about 41 years asserting that the appellants are the trespassers qua the suit flat having no legal rights to continue to occupy the suit flat, merely because they had good relations with the original tenant Shri. P. S. Athwankar (hereinafter referred to as "**the tenant**") or merely as the appellant was residing along with the original tenant, asserted by the respondents in the capacity as a domestic servant.

4. Briefly the facts are:- The respondents/plaintiffs (for short, described as "**the owners**") filed the Civil Suit in question before the City Civil Court at Bombay praying for a mandatory injunction against the appellants (original defendants) to remove themselves from the suit flat and for an order and decree to deliver peaceful, and vacant possession of the suit flat to the owners. Four substantive reliefs were prayed for in the suit in question

which are required to be noted which read thus:-

> "(a) That the Defendants may be ordered by a mandatory injunction of this Hon'ble Court to remove themselves from Flat No. 5 on the 1st Floor of Shankar Bhavan situated at French Bridge, Bombay 400007, forthwith;
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> (b) That the Defendants may be ordered and decreed to deliver to the Plaintiffs peaceful, quit and vacant possession of the said flat forthwith;
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> (c) That the Defendants may be ordered and decreed to pay to the Plaintiffs a sum of Rs. 600/- by way of damage or compensation with interest thereon at the rate of 24 per cent annum from the date of filling of this suit till payment;
>
> (d) That the Defendants may be ordered or decreed to pay to the Plaintiffs future damaged or compensation or mesne profits for the wrongful and illegal use and occupation of the said flat at the rate of Rs. 50/- per day or at such other rate as this Hon'ble Court may deem fit from the date of filling of this suit till vacant possession of the said flat is decreed to the Plaintiffs."

5. In supporting the aforesaid prayers, the case of the owners was to the effect that one Shri. P. S. Athwankar was the monthly tenant in respect of the suit premises for rent of Rs. 112.80 per month fixed prior to the month of November, 1965. The owners contended that the tenancy was terminated by the advocate's letter dated 25 November 1965 addressed to the appellant. However, the appellants continued to wrongfully and illegally occupy the suit flat even after the termination of the tenancy. In August 1982, wife of the tenant/P.S. Athwankar expired and thereafter he was residing alone in the suit flat. Appellant no.1-Shantaram Ganpat Gujar was brought to the suit premises being employed as a domestic servant

along with his family i.e. appellant no.2-Mrs. Kirti Gujar, and they were permitted to stay in the suit flat in the capacity as domestic servants. It was the owners' case that without prejudice to the termination of the said tenancy of the tenant, another notice dated 12 August 1985 was addressed by the owner to the tenant/P.S. Athwankar, calling upon him to vacate the suit flat and hand over vacant possession thereof to the owners. Such letter of the owners was replied by the letter of the tenant's/P.S. Athwankar's advocate *inter alia* recording that appellant nos.1 and 2 were looking after him and his wife (although expired in August 1982) and that appellant nos.1 and 2 were members of his family. This letter was responded by the letter of the owners' advocate dated 31 August 1985 that appellant nos.1 and 2 were not related in any manner to the tenant. The owners further denied that appellant nos.1 and 2 were the members of the family of the tenant or that appellant nos.1 and 2 were residing in the suit flat as alleged members of the family of the tenant-Athwankar. The owners stated that appellant nos. 1 and/or 2 were trespassers upon the suit flat. The owners accordingly called upon the tenant as also appellants to remove themselves from the suit flat and hand over possession thereof to the landlords.

6. It so transpired that on 23 August 1985, the tenant (Shri. P. S. Athwankar) expired. It was the owners' case, as set out in the plaint of the civil suit in question, that upon the death of the tenant/P.S. Athwankar,

appellant nos.1 and 2 became liable to remove themselves from the suit flat forthwith, as they had no authority to use or to continue to occupy the suit flat in the absence of any independent legal right or any right which could be recognized in law, as appellant nos.1 and 2 were trespassers on the suit flat. The relevant averments in the plaint are required to be noted which read thus:-

> "6 The Plaintiffs say that said Athwankar died in Bombay on or about 23rd August, 1985. The Plaintiffs say that upon the death of the said Athwankar, the Defendants become liable to remove themselves from the said flat forthwith thereafter. The Plaintiffs say that the Defendants have wrongfully and illegally continued to remain in occupation of the said Flat. The Plaintiffs deny that the Defendants or any of them have any legal right or authority to use or to continue to remain in occupation of the said Flat on any part thereof from and after the date of the death of the said Athwankar. The Plaintiffs submit that the Defendants have become trespassers upon the said flat. The Plaintiffs therefore submit that the Defendants should be ordered by a Mandatory Injunction of this Hon'ble Court to remove themselves, their servants and agents and all their belongings, articles and things from the said flat forthwith."

7. The suit was resisted by the appellants by filing a written statement in which quite peculiarly a defence was taken that the suit was filed by the owners to deprive appellant nos.1 and 2 of their tenancy rights in the suit flat and hence, there was no cause of action to maintain the civil suit. Without prejudice to such primary contention of asserting tenancy rights, it was next contended that the Court had no jurisdiction to entertain and try the suit, as the appellants were the protected licencees in respect of the suit flat, hence the Small Causes Court would have jurisdiction to try and

entertain the suit. Hence, the suit needs to be transferred to the proper Court for adjudication. The next defence of the appellants was quite vague when the appellants without prejudice to the first two pleas, contended that appellant no.1 had been in occupation of the suit flat since the year 1948, it was hence contended that he had derived right in respect of the suit flat and, therefore, was deemed to be a tenant and accordingly, entitled to protection under the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short, "**Rent Act**"). Such were the basic pleas taken in the written statement.

8. In support of the said plea that appellant no.1was residing in the suit flat since 1948, it was stated that he began residing in the suit flat in 1948 when he was 7 years old and, by the date of filing of the suit, his occupation of the suit flat had extended over a period of 37 years. Appellant no.1 also contended that he and his two brothers were brought up by the tenant (Mr. Athwankar) and after the marriage of plaintiff no.1, his two brothers Kashinath and Madhav took up residence elsewhere and appellant no.1 continued to reside in the suit flat. He contended that the tenant and his wife had always treated, cared and brought up appellant no.1 as his own son since they did not have any issue of their own. Thus, the following statements as made in the written statement are quite significant:-

> "*Since 1948 the Defendant no. 1 looked after and took care of Mr. and Mrs. Athavankar as his own father and mother. The Defendants used to run the household and they took over the entire responsibility, both materially and*

emotionally including all the medical expenses in maintaining and treating the said deceased Mr. Athavankar. The Defendant also regularly paid the monthly rent in respect of the suit premises. The Defendant shared the weals and woes of Athavankar since they were always a member of one family who lived and messed with one another as members of one household. The Defendant states that the bond that existed between them was greater and stronger that that of consanguinity and as a result the Defendant No. 1was brought up by Mr. Athavankar as his own son, so much so, that Mr. Athavankar had complete borned and met the entire marriage expenses of the Defendant. The Defendant therefore says, that he is one of the heirs and member of the family residing with the late Mr. Athavankar at the time of his death and he is therefore entitled to continue to stay in the premises and is further entitled to the tenancy at the suit premises.

Without prejudice to the above and in the alternative the Defendant No. 1 state and submit that he had been residing in the suit premises since 1948 and since Mr. Athavankar was seriously bed ridden the Defendant No. 1 had been regularly paying the monthly rent or compensation in respect of the Suit Premises to the said Mr. Athavankar as licensee thereof. Hence the Defendant No. 1 state and submit that in view of his occupation of the suit premises since the year 1948 to this date as licensee thereof he is deemed to be the tenant of the suit premises under the provisions of the Rent Act.

Without prejudice to the above and in the alternative this Defendant submit that in view off his residence and occupation of the suit premises since the year 1948 he has derived the necessary title to the suit premises and hence he is deemed to be a tenant of the suit premises and entitled to the protection under the provisions of Bombay Rent Act."

9. Quite peculiarly, qua the record of the suit it is clear that the appellants (defendants) being trespassers was pleaded by the respondent in the plaint, and when a clear defence was taken by the appellants that they have become tenant or protected tenant. In such context, Section 28 of the Rent Act being a provision in relation to the jurisdiction of the Court in the present case could have been applied, which provides that in Greater Bombay, the Court of Small Causes, Bombay, shall have jurisdiction to entertain and try any suit or proceedings between the landlord and the tenant in relation to the recovery of rent or possession of any premises. Nonetheless the Civil Court proceeded to adjudicate

the suit on several issues to which we would advert to hereafter. However, before the issues as framed are stated, it would be imperative to note the provisions of Section 28, being a provision touching the jurisdiction of the Civil Court in adjudicating the suit in question. Section 28 of the Rent Act reads thus:

> "28. Jurisdiction of Courts. (1)] Notwithstanding anything contained in any law and notwithstanding that by reason of the amount of the claim or for any other reason, the suit of proceeding would not, but for this provision, be within its jurisdiction.-
>
> (a) in Greater Bombay, the Court of Small Causes, Bombay, (as) in any area for which, a Court of Small Causes is established under the Provincial Small Cause Courts Act, 1887, such Court and]
>
> (b) elsewhere, the Court of the Civil Judge (Junior Division) having jurisdiction in the area in which the premises are situate or, if there is no such Civil Judge, the Court of the Civil Judge (Senior Division) having ordinary jurisdiction, shall have jurisdiction to entertain and try any suit or proceeding between a land-lord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of this Part apply for between a licensor and a licensee relating to the recovery of the licence fee or charge] and to decide any application made under this Act and to deal with any claim or question arising out of this Act or any of its provisions and [subject to the provisions of sub-section (2),] no other court shall have jurisdiction to entertain any such suit, proceeding or application or to deal with such claim or question.
>
> (2) (a) Notwithstanding anything contained in clause (aa) of sub-section (1), the District Court may at any stage withdraw any such suit, proceeding or application pending in a Court of Small Causes established for any area under the Provincial Small Cause Courts Act, 1887, and transfer the same for trial or disposal to the DX Court of the Civil Judge (Senior Division) having ordinary jurisdiction in such (8) Where any suit, proceeding or application has been withdrawn under clause (a), the Court of the Civil Judge (Senior Division) which thereafter tries such suit, proceeding or application, as the case may be, may either re-try it to proceed from the stage at which it was withdrawn.
>
> (c) The Court of the Civil Judge trying any suit, proceeding or application with-drawn under clause (a) from the Court of Small Causes, shall, for purposes of such suit, proceeding or application, as the case may be, deemed to be the Court of Small Causes.]
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> Explanation. In this section "proceeding" does not include an execution proceeding arising out of a decree passed before the coming into operation of this Act."

10. Having noted the provisions of Section 28, the issues as framed by the

learned Trial Judge are required to be noted which read thus:

> "(1) Whether Hon'ble Court this has jurisdiction to entertain the suit as alleged ?
>
> (2) Whether the suit is properly valued ?
>
> (3) Whether the 1st Defendant was employed as a domestic servant by the said Mr. Athavankar, as alleged in paragraph 4 of the Plaint ?
>
> (4) Whether the Plaintiffs prove that the Defendants are tresspassers and have got no right, title or interest in the suit premises?
>
> (5) Whether the 1" Defendant is an heir or a member of the family of Athavankar as alleged in paras Nos. 3 and 4 of the Written Statement?
>
> (6) Whether the 1 Defendant is a tenant or protected licencee of the suit premises under provisions of the Bombau Rent Act, as alleged in paragraphs Nos. 4 and 5 of the Written Statement?
>
> (7) Whether the said Athavankar left a will dated 2nd October, 1982, as alleged in para 7 of the written Statement?
>
> (8) Whether the said Mr. Athavankar bequeathed the right of tenancy in respect of the suit premises to the 1 Defendant as alleged in paragraph 7 of the Written Statement?
>
> (9) Whether the Plaintiffs are entitled to any future damages, compensation or mesne profits and if so, what amount?
>
> (10) Whether the Plaintiffs are entitled to any reliefs, and if so, what reliefs?"

11. The learned Trial Judge having conducted a full fledge trial of the suit on the aforesaid issues, and most importantly, on the issues on tenancy, in regard to which it would be difficult to accept that the Civil Court had jurisdiction to adjudicate the dispute, as such jurisdiction to decide any dispute of the nature, considering the contention as urged on behalf of the appellant/defendant would fall within the jurisdiction of the Small Causes Court. The learned trial judge dismissed the suit by judgment and order dated 09 January 1996.

12. The respondent being aggrieved by the judgment and order passed by the learned Trial Judge filed a first appeal under Section 96 of the Code of Civil

Procedure before this Court, which has been allowed by the learned Single Judge, by the impugned judgment and order dated 4 March 2002. The first appeal filed by the owners/respondents has been decreed in terms of prayer clause (c) and (d). The operative portion of the order is required to be noted which reads thus:

> "23. I therefore quash and set aside the impugned judgment and order of the city civil court and decree the suit in terms of prayer clauses (a) and (b) I am however in the given circumstances not inclined to grant any other relief prayed for by the plaintiffs in terms of prayer clauses (c) and (d). If the defendants would vacate the suit premises and deliver to the plaintiffs peaceful, quiet and vacant possession of the suit flat on or before 51.5.2002, if they do not comply with this order in that case the suit would also stand decree in terms of prayer clauses (c) and (d) also The Appeal is allowed with no order as to costs. Certified copy is expedited."

13. In passing the aforesaid order, the learned Single Judge did not accept the plea of the appellant/defendant that they being the members of the tenant's family, they would be entitled to benefit under the provisions of Section 5(11)(c) of the Rent Act, which defines the word 'tenant' *inter alia* qua the position of the members of the family who would be entitled, after the tenants dies. The provision ordains that any member of the tenant's family residing with the tenant at the time of his death and in the absence of such member, any heir of the deceased tenant, as may be decided in default of agreement by the Court, would be recognized as a tenant. The relevant observations as made by the learned Single Judge in such context are required to be noted which read thus:

> 13. It is very pertinent to note that inspite of the catena of judgments interpreting and constructing the words "member of a family of the tenant and a family", the legislature has not budged from its position and has not moved to amend section 5(11) (c) of the Act to reflect the précis of the judicial pronouncements in the Act in any manner. The Section 5(11) (c) has remained as it is though the Act has undergone surgery by way of amendments on a number of occasions at the hands of the Legislature to meet off-arising problematic situations. It is far more pertinent to note that even in the present Maharashtra Rent Act which has replaced the earlier Bombay Rents Act the

Legislature has not taken cognizance of the Interpretation of the words in Section 5(11) (c) and the Legislature has not taken cognizance of the interpretation of the words in Section 5 (11) (c) and the Legislature has not enlarged the words "family and the member of a family ". It would have been very easy for the Legislature to have removed all the doubts and difficulties which have created innumerable disputes giving rise to innumerable judgments_by replacing the words "any member of the tenant's family" by "any Person……. residing with the tenant at the time of his death." The Legislature has not enlarged the term used in the original sub-section 5(11) (c) i.e. "any member of the tenant's family". The Legislature could have deleted the aforesaid words and could have put only does not intend to give a wider meaning to the concept of family to include even a stranger as a one word "Person" in place of "member of the tenant's family" to resolve all the so called construction and interpretation difficulties. The intention of the Legislature therefore is absolutely clear to retain the present construction in the sub-section 5(11) (c) in the form in existence i.e. "any member of the tenant's family". It did not and it member of the family. The Legislature did not and does not intend to depart from the ordinary meaning of the word "family" as understood in common parlance. We understand a family as consisting of father, mother, sons, daughters, sisters and all such blood relations and other relations arising from lawful marriages in the family. We don't include in the concept of family any one who is not related by blood and that is the whole purpose and intention of the Legislature not to remove the word "family" from the said provisions. If it wanted to enlarge the meaning of the family it would have expressly said so. The Legislature wants to protect only the members of the family, who are bound by the blood relations and never any stranger howsoever near he or she might be and how so ever near he or she might be and howsoever thick the love and affection bonds might exists. In my opinion the Legislature has not given any importance to such emotional and sentimental ideas in the Rent control Act, which regulates relationship between the landlord and the tenants and their families and not to create any rights 8 in favour of strangers who have no blood relations with the tenant or his family. The Legislature never intended to wide open the umbrella relationship. A tenant cannot be heard to say that the person residing with him is like his father or like only those who were readly blood relations of the tenant. The Legislature has not allowed any provision in respect of the relationship. The present protection is to the tenant and his family members with whom he has blood relations. The Legislature has been reasonable and moderate to grant protection to the tenant and extend the protection to the members of the family in the ordinary parlance as commonly understood in the society. The Legislature is fully conscious of the fact that it cannot fly at tangent to give protection at the cost of the landlord and the valuable property rights of the owners of the tenanted premises at the cost of the landlord and the valuable property rights of the owners of the premises. The landlord rents out his the owners of the premises. The landlord rents out his premises to a tenant on certain terms and conditions which the tenant must observe and if such terms and conditions are observed by the tenant the landlord cannot evict him at his sweet will and in contravention of the provisions of the Rent Act. The Act protects the tenants at the same time controls the property rights of the landlords by imposing reasonable restrictions on them within the four corners of the Act. The rights of the landlords are not given a complete go by and are not extinguished altogether. If the Legislature intended that a tenant and all those who claim through him should be granted protection from eviction at any cost that would result in total extinguishment of the rights of the landlords and that would mean that the landlord has to write - off his property forever, as the tenants and all such

> strangers who would claim to be the members of their families talking love and affection would have grabbed the property forever and the same would be bequeathed for such love and affection at the cost of the landlord.
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> 14. The Legislature has not given up the concept of protection to the family is permanent and basic structure in the scheme of protection of tenant. There is no departure from the scheme though there are hundreds of the judgments under this Act construing the provisions of Section 5(11) (c). The Legislature has not budged even by changing a coma. It could have very well incorporated the judicial liberal pronouncements in the newly enacted Rent Act. The Legislature wants to maintain the legitimate balance and equilibrium between the rights if the landlord and the protection to be given to the lawful tenants tenants within the frame work of the Act."

14. It is on the aforesaid backdrop, we have heard learned counsel for the parties.

15. Learned counsel for appellant has made submissions assailing the impugned judgment and order, that the same deserves to be quashed and set aside, primarily for the reason that the appellant was required to be held to be a 'tenant' within the meaning of Section 5(11)(c) of the Rent Act. It is submitted that in the present case, admittedly, P.S. Athwankar was the tenant, and the appellants were staying with the tenant since the age of seven years i.e., since the year 1948, and therefore, necessarily when P.S. Athwankar/tenant passed away on 23 August 1985, appellant No.1 was residing with the tenant, and was considered to be a member of the tenants family at the time of his death, he was therefore entitled to the protection of the Rent Act, and hence could not be held to be a trespasser.

16. It is next submitted that as appellant No.1 was like a son of the tenant – P.S. Athwankar, and therefore, even otherwise the appellant's case fell within the definition of tenant as defined under Section 5(11)(c) of the Rent Act, as the said

provision includes heir of the deceased tenants. Also by virtue of the will of the tenant, the appellant had become the legal heir.

17. It is submitted that only blood relations cannot be regarded to be the heirs and/or it is not a *sine qua non* that blood relation can only be the heirs. It is submitted that there was substantial evidence as recorded by the trial Court, that the appellants were residing with the tenant and who had conferred all love and affection on him, and for such reason, also a Will was executed (although not probated) as the law would mandate under which appellant No.1 would be required to be recognized as a tenant.

18. On the other hand, Mr. Gorwadkar, learned senior counsel for the respondent has opposed this appeal by making the following submissions:-

(i) It is submitted that the impugned judgment and order passed by learned Single Judge would not warrant interference. It has been rightly held by the learned Single Judge that appellant No.1 could not be held to be a tenant within the meaning of Section 5(11)(c) of the Rent Act, as he was neither a member of the tenants family nor he was a heir of the deceased tenants, as the law would accept. As rightly held, the appellants were trespassers, as contended by the respondents/owners in the plaint.

(ii) It is next submitted that the case of the appellant of any tenancy being conferred on the appellant on the death of the tenant, in the context of requirement of Section 5(11)(c) of the Act in no manner whatsoever has been proved.

(iii) In any event, it was not relevant for the learned Trial Judge and/or

the requirement to undertake any inquiry to decide any issue on tenancy including under Section 5(11)(c) of the Rent Act, considering the provisions of Section 28 of the Rent Act (supra), which conferred the exclusive jurisdiction to adjudicate the issues under the Rent Act with the Small Causes Court, i.e., to decide any dispute between the respondent and tenant.

(iv) In such context, it is submitted that at no point of time appellant No.1 asserted any rights of tenancy by filing a declaratory suit, in as much as appellant No.1 could have established tenancy in proceedings by approaching the Small Causes Court, and therefore, had sought to take such defence in the eviction suit as filed by the respondent.

(v) This is also clear from the fact that appellant never raised a preliminary objections under the provisions of Section 9A of the Code of Civil Procedure on the maintainability of the suit, however, asserted all issues of tenancy before the Civil Court which was not permissible, and in fact, against the provisions of Section 28 of the Rent Act.

(vi) The consequence of such plea being raised, and even if it was so decided by the Civil Court, such adjudication can only take place before the Small Causes Court. The suit in question as filed by the owners/respondents was thus maintainable, considering the averments as made in the plaint wherein a clear case that the appellant was a trespasser of the suit flat, were asserted.

(vii) It is submitted that as held by the Supreme Court in **Raidas**

Topandas and Another Vs. M/s. Gorakhram Gokalchand[1], the defendant cannot force the plaintiff to go to a forum, discarding the averments in the plaint. For such reason, the suit filed by the respondents before the City Civil Court was maintainable. Further considering the averments in the plaint, the decisions as relied on behalf of the appellants are wholly not applicable in the facts of the present case.

Analysis:-

19. On the aforesaid backdrop, we have heard learned counsel for the parties, we have also perused the record.

20. At the outset, we may observe that the case of the plaintiffs as pleaded in the plaint was a clear case of the appellants/defendants being trespassers upon the suit flat, on the basis that no legal right whatsoever in respect of the suit flat could be claimed by the defendant in a manner as recognized by law. Contesting such contentions as asserted by the plaintiff, the appellants/defendants have taken inconsistent pleas, however, the same are quite consistent to any plea which would fall under the Rent Act, namely, the appellants/defendants asserting rights of tenancy. The following discussion would throw more light on the issue:-

21. The appellants/defendants at the first instance asserted that they have become the tenants of the suit flat after the demise of the original tenant/P.S. Athwankar on the ground that the appellants/defendants were residing along with P.S. Athwankar, at the time of his death. However, the appellants were

1 AIR 1964 SC 1348

residing with the tenant in what capacity, becomes relevant in the context of Section 5(11)(c) of the Rent Act, under which the defendant is asserting rights as noted hereinabove, provides that any member of the tenants 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.

22. Thus, the defence to the respondents/plaintiffs plea, of the defendants being the trespassers, could have been of a protection under Section 5(11)(c) that is the appellants/defendants asserting that they were recognized as the members of the tenant's family as they were residing with the tenant at the time of his death or the defendants establishing that they were the legal heirs of the deceased tenant.

23. In our opinion, the appellants/defendants however miserably failed to satisfy both the conditions in asserting tenancy under Section 5(11)(c) for the reason that as defendant No.1 was neither a member of the tenant's/P.S. Athwankar's family nor he was a heir of the deceased tenant as the law would accept. It is well settled that the word 'family' is susceptible to varied meanings and interpretation.

24. In **Ramubai Vs. Jayram Sharma**[2], this Court held that the word 'family' includes all those who are connected by blood relation or by marriage with each other, and in that sense, and that the requirement of blood relationship is essential and that a stranger is excluded. In **Baldev Sahay Vs. R. C. Bhasin**, the

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2 AIR 1964 Bom 96

Supreme Court included all members or descendants from the common ancestor, who are normally and actually living with the head of the family. In **Ross Vs. Collins**[3], an unpaid housekeeper caring for and nursing the tenant as a devoted friend was held not to be a member of the family of the tenant as there was no relationship. Thus, the defendant asserting that he was a member of the tenant's family, itself was untenable.

25. The next contention of the appellants whether they were the heirs of the deceased tenant also cannot be accepted considering the settled position in law. The definition of the word 'heir' is required to be understood in the context of a person who is entitled to succeed to the property of the deceased. The meaning attributed to the word 'heir' in the context of Section 5(11)(c)(1) is no more *res integra* in view of the authoritative pronouncements.

26. A Division Bench of this Court in **Dr. Anant T. Sabnis vs. Vasant Pratap Pandit**[4] has found approval of the Supreme Court as discussed hereafter. The question which had fell for consideration of this Court was whether the words 'assign' and 'transfer' in Section 15 of the Rent Act include 'bequest', so as to render disposal of tenancy rights, in any premises under a Will, ineffective? In deciding the said question, the Division Bench held that relations between landlord and tenant are ordinarily the creatures of contract and are regulated by the Transfer of Property Act, 1882. It was observed that prohibition against transfer of tenancy rights by the tenants is just a corollary to the restrictions on the land lords and is aimed at protecting them, in turn, by preventing the tenants

3 (1964) 1 W.L.R. 425
4 AIR 1980 Bom 69

from abusing these protections by thrusting uncontemplated strangers as tenants on the landlords, willy nilly, for monetary gain or favouring any friend or relative of theirs, and thus ensuring, that the immunity against eviction is not expanded into licence to dispose of premises as if it were their own and landlords rights are not invaded beyond what is strictly necessary. It was observed that the contemplated protection is intended for the benefit of the tenants inducted by the landlords voluntarily and the members of his family residing with them and not for their unauthorised as signs, transferees or favourite strangers. The Division Bench further elaborated that even all his lawful heirs are not included within the sweep of this protection. It was held that such prohibition appears to have been aimed at the very disposing power of the tenant over his tenancy rights and includes every voluntary transfer, contractual or otherwise. The relevant observations as made by the Court are required to be noted with read thus:-

> "10. The underlying object of Section 15 also militates against legislature having intended to import such a restricted concept of the words therein. Relations between landlord and tenant are ordinarily the creatures of contract and are regulated by the T. P. Act. The growing scarcity of accommodation needed some protection to the tenants against evictions and exorbitant rents. The Rent Act was enacted to meet these needs, as indicated in the preamble. Section 12 affords immunity to the tenants against evictions, notwithstanding any contract to the contrary. While Section 7 prevents the landlord from claiming anything in excess of the standard rent and permitted increases from the tenants, to ensure that the afforded immunity is not rendered illusory. Section 13 seeks to relax this immunity where landlord himself is the victim of the scarcity and needs the premises for his residence or for certain other relevant purposes or when the tenant renders himself unworthy of the extended protection due to his own acts or omissions, as indicated therein.
>
> 11. Prohibition against transfer of tenancy rights by the tenants is just a corollary to the restrictions on the land lords and is aimed at protecting them, in turn, by preventing the tenants from abusing these protections by thrusting uncontemplated strangers as tenants on the landlords, willy nilly, for monetary gain or favouring any friend or relative of theirs, and thus ensuring, that the immunity against eviction is

not expand ed into licence to dispose of premises as if it were their own and land lords rights are not invaded beyond what is strictly necessary. Contemplated protection is intend ed for the benefit of the tenants inducted by the landlords voluntarily and the members of his family residing with them and not for their unauthorised as signs, transferees or favourite strangers. Even all his lawful heirs are not included within the sweep of this protection. Prohibition appears to have been aimed at the very disposing power of the tenant over his tenancy rights and includes every voluntary transfer, contractual or otherwise. That the legislature legalised certain unlawful sub-leases, or made even licensees as tenants in an anxiety to eradicate the identical evils, is besides the point.

12. Request of tenancy rights in this context stands of the same footing as any other transfer by sub-lease, sale, assignment gift, volition of the tenant in inducting uncontemplated strangers in the premises and thrusting them on the landlord, being the common element of these dispositions. It makes little difference to the invasion on the landlord's right whether such uncontemplated stranger is so inducted by the tenant for gain or just as a favour-- invasion in either case having no nexus with the object underlying these protections. It is difficult to imagine why the legislature could have in- " tended to exclude such bequests from the sweep of the prohibited assignments and transfers under Section 15, when bequest is pregnant with the same evils as other transfers. The words 'transfer in any manner' in this context only go to signify inclusion of 'bequest' also therein,

13. It is not without significance that legatee is not included in the definition of the word 'tenant'. Section 5(11) of the Act defines it to mean 'a person who is liable to pay the rent or on whose account the rent is payable for any premises'. Under Sub-clauses (a) to (c) it is enlarged to include some others whom legislature considered it necessary to protect. Clause (c) provides for the succession to tenancy rights on the death of the tenant. Thus, this Sub-clause (c) by providing for the mode of succession, impliedly excludes successors from the purview of the width of the main clause. Secondly, it restricts the succession even by operation of law of inheritance to the persons and situations indicated therein and impliedly excluding all other heirs. In fact, all the heirs are liable to be excluded if any other member of the family was staying with the tenant at the time of his death. Thirdly and more importantly, legatee is not included either in this sub-clause or any other sub-clauses. This demonstrates legislative intent to prohibit testamentary disposition of the tenancy rights. There is no other express provision to this effect in the Rent Act. It shall have to be traced only in Section 15 thereof by interpreting the words 'assign' and 'transfer' in their generic sense. This also fortifies our interpretation of these words.

14. There was some doubt if this definition excludes the heirs otherwise entitled to succession under the law of inheritance concerned. It was held by this Court in the case of Rajaram v. Ramraja (1978) 80 BLR 12, and other cases cited therein that Clause (c) could not have any effect on the heritability of the tenancy rights by the law of succession concerned and title of such heirs is not intended to be affected. In some of the cases, Clause (c) is held to be applicable to statutory tenancies

> alone. In his commentary on the "Law of Rent Control" (1974 edition) at page 237, the learned Author Andhyarujina has relied on these cases in support of his view that bequests not being transfers, are not prohibited under Section 15 thereof. The legislature has, however, now nullified this judicial interpretation by substituting Sub-clauses (c-1) and (c-2) in place of the original Sub-clause (c), under the Amendment Act of 1978 with retrospective effect and declaring such interpretation to be contrary to its true intent. Legatees are excluded under new Sub-clauses (c-1) and (c-2) in the same manner as they were excluded under the original Sub-clause, (c). Amended provisions, however, declare unequivocally Sub-clauses (c-1) and (c-2) to be the only modes of succession to the tenancy rights."
>
> …..
> …..
>
> 23. The provision of the Will bequeathing the tenancy rights of Tarabai to Gopal Masurkar is, thus, hit by prohibition against transfers contained in Section 15 of the Rent Act and is, therefore, ineffective, inoperative and void. No probate could have been granted in respect of such tenancy rights and the plaintiff Executor can claim no legal right whatsoever in respect of the same. Consequently, the plaintiff cannot be held to have any right to claim eviction of the defendant from the said premises. To this extent, this suit is liable to be dismissed."

27. The aforesaid judgment finds approval of the Supreme Court in the case of **Vasant Pratap Pandit Vs. Dr. Anant T. Sabnis**[5]. In this case, one Tarabai who was the tenant of the premises died issue-less. She left behind a will bequeathing her properties including tenancy right in the said premises to her sister's son Gopal, by appointing the plaintiff/appellant, her brother's son as executor thereof. The respondent who happened to be the grandson of a sister of the legatee and his wife was staying with Tarabai in the disputed premises. After her death, the appellant called upon the respondent to vacate the premises and on his refusal, instituted a suit for eviction before the City Civil Court at Bombay. The respondent resisted the suit on the principal ground that the bequeath of the tenancy rights amounted to transfer, which was impermissible under Section 15 of the Rent Act. Consequently, the respondent urged that appellant could not

5 (1994) 3 SCC 481

claim his eviction. Such contention of the respondent was negatived by the Trial Court which decreed the suit. Aggrieved thereby, the respondent preferred an appeal before High Court. The appeal was allowed by the High Court resulting into the dismissal of the suit. The High Court held that the word "heir" appearing in Section 5(11)(c) of the Rent Act did not include legatee and that the word "assign" and transfer appearing in Section 15 of the Rent Act were used in a generic sense to include bequest. The High Court accordingly concluded that the appellant had no right to file a suit. It is in such context, the Supreme Court considering the definition of tenant as defined under Section 5(11)(c)(i) and on a survey of the legal procedures, held that the legatee of the Will was not the heir, and hence, not a tenant after the death of the original tenant. It was also observed that if the word 'heir' is to be interpreted to mean a legatee, even a stranger may have to be inducted as a tenant or there is no embargo upon a stranger being a legatee. The Supreme Court also negatived the contention as urged on behalf of the appellant that heir under a "Will" would remain confined to only the members of the family. Referring to Section 15 of the Rent Act, the Court also held that the word "assign" or 'transfer' appearing in Section 15 was qualified by the words "in any other manner" and that there was no reason why it should be restricted to be in only transfer inter vivos. It was held that the High Court was right in its conclusion that the Transfer of Property Act limited its operation to transfer inter vivos, and therefore, the meaning of the word "transfer as contained therein, cannot be brought in aid for the purpose of the Act. The Supreme Court also approved the earlier view as taken in **Bhavarlal L. Shah Vs. Kanaiyalal**

Nathalal Intawala[6], while approving the findings recorded in the case of **Dr. Anant T. Sabnis Vs. Vasant Pratap Pandit** (supra). The following observations as made by the Supreme Court are required to be noted which read thus:-

> "9. Having given our anxious consideration to the contentions raised by Mr Sorabjee we are unable to accept the same.
>
> 10. In Partington's Landlord and Tenant at p. 80 (2nd Edn.) it is stated "Statutory tenants cannot assign their premises in any event."
>
> Again at p. 429 it is stated :
>
> "Statutory tenants cannot assign (Rent Act 1977, Section 2)."
>
> 13. Now, we may look at the meaning of the words heirs, heir at law and heir testamentary as stated in Black's Law Dictionary, 6th Edn. at pp. 723 and 724:
>
> "Heirs. At common law, the person appointed by law to succeed to the estate in case of intestacy. One who inherits property, whether real or personal. A person who succeeds, by the rules of law, to an estate in lands, tenements, or hereditaments, upon the death of his ancestor, by descent and right of relationship. One who would receive his estate under statute of descent and distribution. Faulkner's Guardian v. Faulkner4. Moreover, the term is frequently used in a popular sense to designate a successor to property either by will or by law.
>
> Heir at law. At common law, he who, after his ancestor dies intestate, has a right to all lands, tenements, and hereditaments which belonged to him or of which he was seised. The same as 'heir general'.
>
> A deceased person's 'heirs at law' are those who succeed to his estate of inheritance under statutes or descent and distribution, in absence of testamentary disposition, and not necessarily his heirs at common law, who are persons succeeding to deceased's realty in case of his intestacy.
>
> Heir testamentary. In the civil law, one who is named and appointed heir in the testament of the decedent. This name distinguishes him from a legal heir (one upon whom the law casts the succession), and from a conventional heir (one who takes it by virtue of a previous contract or settlement)."
>
> In the light of the above we may consider the object and scheme of the Act to ascertain in which sense the word 'heir' applies here.

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6 (1986) 1 SCC 571

14. From a plain reading of Section 5(11)(c)(i) it is obvious that the legislative prescription is first to give protection to members of the family of the tenant residing with him at the time of his death. The basis for such prescription seems to be that when a tenant is in occupation of premises the tenancy is taken by him not only for his own benefit but also for the benefit of the members of the family residing with him. Therefore, when the tenant dies, protection should be extended to the members of the family who were participants in the benefit of the tenancy and for whose needs as well the tenancy was originally taken by the tenant. It is for this avowed object, the legislature has, irrespective of the fact whether such members are 'heirs' in the strict sense of the term or not, given them the first priority to be treated as tenants. It is only when such members of the family are not there, the 'heirs' will be entitled to be treated as tenants as decided, in default of agreement, by the court. In other words, all the heirs are liable to be excluded if any other member of the family was staying with the tenant at the time of his death. When Section 15, which prohibits sub-letting, assignment or transfer, is read in juxtaposition with Section 5(11)(c)(i) it is patently clear that the legislature intends that in case no member of the family as referred to in the first part of the clause is there the 'heir', who under the ordinary mode of succession would necessarily be a relation of the deceased, should be treated as a tenant of the premises subject, however, to the decision by the court in default of agreement. The words "as may be decided in default of agreement by the Court" as appearing in Section 5(11)(c)(i) are not without significance. These words in our view have been incorporated to meet a situation where there are more than one heirs. In such an eventuality the landlord may or may not agree to one or the other of them being recognised as a 'tenant'. In case of such disagreement the court has to decide who is to be treated as 'tenant'. Therefore, if 'heir' is to include a legatee of the will then the above-quoted words cannot be applied in case of a tenant who leaves behind more than one legatee for in that case the wishes of the testator can get supplanted, on the landlord's unwillingness to respect the same, by the ultimate decision of the court. In other words, in case of a testamentary disposition, where the wish or will of the deceased has got to be respected a decision by the court will not arise and that would necessarily mean that the words quoted above will be rendered nugatory. What we want to emphasise is it is not the heirship but the nature of claim that is determinative. In our considered view the legislature could not have intended to confer such a right on the testamentary heir. Otherwise, the right of the landlord to recover possession will stand excluded even though the original party (the tenant) with whom the landlord had contracted is dead. Besides, a statutory tenancy is personal to the tenant. In certain contingencies as contemplated in Section 5(11)(c)(i) certain heirs are unable to succeed to such a tenancy. To this extent, a departure is made from the general law.

15. The matter may be viewed from another angle also. If the word 'heir' is to be interpreted to include a 'legatee' even a stranger may have to be inducted as a tenant for there is no embargo upon a stranger being a legatee.

The contention of Mr Sorabjee that 'heir' under a will may be confined to only members of the family cannot be accepted for there is no scope for

> giving such a restrictive meaning to that word in the context in which it appears in the Act as earlier noticed, unlike in other Rent Acts.
>
> 16. Coming now to the meaning of the words 'assign' or 'transfer' as appearing in Section 15 we find that 'transfer' has been qualified by the words 'in any other manner' and we see no reason why it should be restricted to mean only transfer inter vivos. As has been rightly pointed out by the High Court in the impugned judgment the Transfer of Property Act limits its operation to transfer inter vivos and, therefore, the meaning of the word 'transfer' as contained therein cannot be brought in aid for the purpose of the Act. On the contrary, the wide amplitude of the words 'in any other manner' clearly envisages that the word 'transfer' has been used therein in a generic sense so as to include transfer by testament also.
>
> 17. For the foregoing discussion we do not find any justification to take a view different from the view expressed by this Court in the case of Bhavarlal L. Shah while approving the findings recorded in the case of Anant T. Sabnis (Dr) v. Vasant Pratap Pandit which is under challenge before us (Civil Appeal No. 2584 of 1980). Incidentally, we may mention that while approving the above judgment this Court pointed out in Bhavarlal case that the reasons given therein were perfectly justified in the context of the object and scheme of the Act (emphasis supplied); and the question that is left open by this Court therein is to be considered in the light of the provisions of the Rent Act as in force in the State of Gujarat which has given a different meaning to the word 'tenant'.
>
> (emphasis supplied)

28. In **Ross and Another vs. Collins** (supra), the plaintiffs were the landlords of premises of which M. was the statutory tenant. Originally M. had sublet part of the premises to the defendant, but after the death of his wife, in 1950, when he was 80, the defendant had acted as his unpaid housekeeper, performing all household duties for him, nursing him and arranging his holidays, in consideration of which he remitted her rent and provided her with free accommodation. M. and the defendant never addressed each other by their Christian names nor had they passed themselves off, as father and daughter. She regarded him as an elder relative – partly as an elder brother, partly as a father. She wrote lively and affectionate letters to him when on holiday which he

cherished and retained in his possession until his death in 1962. On a claim for possession by the plaintiffs, the defendant relied on the protection given by Section 12(1)(g) of the "Increase of Rent and Mortgage Interest (Restrictions) Act, 1920", to a member of the deceased statutory tenant's family residing with him at the time of his death. It was held that she was not a member of M.'s family and made an order for possession. Dismissing the appeal, the Court of appeal held that there was no kind of family relationship between the defendant and M. (the deceased statutory tenant). It was held that she was not a member of his family within section 12(1)(g) of the "Increase of Rent and Mortgage Interest (Restrictions) Act, 1920", and accordingly, it was held that the plaintiffs were entitled to possession. In reaching such conclusion, the observations as made by the Court of Appeals in the majority judgment of Pearson L.J. held as under:-

> "The question here is whether she was a member of McRae's family at the time of his death. The question arises under section 12(1)(g) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, as amended by subsequent Acts.
>
> In the present case, however, there was no family relationship of any kind and the defendant for that reason must fail to qualify as a member of McRae's family. She was in no sense his daughter, neither de jure nor de facto, nor in any other way; and no other family relationship can be suggested, except (as Mr. Lawson put it) something intermediate between a daughter and a sister, or, on the other side, something intermediate between a father and an elder brother. But, in my view, that is not a possible method of arriving at a decision in this case.
>
> I should add, to avoid any misunderstanding, that the existence of a family relationship is not always in itself enough to make the surviving person a member of the deceased person's family. The way in which the parties acted is also to be taken into account. The two elements of relationship and conduct are associated in a passage in the judgment of Lord Evershed M.R., in Jones v. Whitehill, where he said : "I am not suggesting necessarily that all nephews and nieces by marriage should be regarded as members of the tenant's family. But be it observed here that the defendant, a niece of the tenant's wife, assumed, as we were told, out of natural love and affection, the duties and offices peculiarly attributable

> to members of a family of going to live with her uncle and aunt to look after them in their declining years. On those facts I think that, if it were asked in ordinary conversation whether the defendant was a member "of the tenant's family, an affirmative answer would be given. Applying that test, I come to the conclusion that the defendant should be regarded on these facts as within the protection of the section."
>
> In my view, one has to have regard to each of the two elements in understanding that passage. There were the two elements present. The defendant was a niece of the tenant's wife; she also behaved in a certain way out of natural love and affection, implying that there was a pre-existing relationship between them; she "assumed the duties and offices peculiarly attributable to members of a family." It does not in the least follow that you can have similar protection afforded to a person who stood in no pre-existing relationship at all to a person who was deceased but yet behaved towards him in a filial character or some other family character.
>
> In my view, it is not necessary in this case to seek to limit with any precision the extent to which a de facto relationship might be sufficient. On the facts of this case there was no father and daughter relationship, de facto or otherwise; and, in my view, there is no other family relationship which can be suggested here.
>
> On these grounds I come to the conclusion that the judge's decision and reasoning were correct and that the appeal must fail.
>
> I would like to add that I fully share the judge's feeling of sorrow that we are unable to do anything to help the highly deserving defendant in this case."

29. Russell L. J. in his concurring judgment observed that what was necessary was broadly recognisable *de facto* familial nexus, which may be capable of being found and recognised as such by the ordinary man where the link would be strictly familial had there been a marriage, or where the link is through adoption of a minor, de jure or de facto, or where the link is "step", or where the link is "in-law" or by marriage. It was held that two strangers cannot ever establish artificially for the purposes of the statutory provision a familial nexus by acting as brothers or as sisters, even if they call each other such and consider their relationship to be tantamount to that. The observations are required to be noted

which read thus:-

> "RUSSELL L.J. I agree. The question in this ease is: was the defendant not only residing with McRae but also a member of his family so as to be entitled under the Act of 1920 to the continuance in her favour of his rights of occupation?
>
> Granted that" family" is not limited to cases of a strict legal familial nexus, I cannot agree that it extends to a case such as this. It still requires, it seems to me, at least a broadly recognisable de facto familial nexus. This may be capable of being found and recognised as such by the ordinary man where the link would be strictly familial had there been a marriage, or where the link is through adoption of a minor, de jure or de facto, or where the link is "step", or where the link is "in-law" or by marriage. But two strangers cannot, it seems to me, ever establish artificially for the purposes of this section a familial nexus by acting as brothers or as sisters, even if they call each other such and consider their relationship to be tantamount to that. Nor, in my view, can an adult man and woman who establish a platonic relationship establish a familial nexus by acting as a devoted brother and sister or father and daughter would act, even if they address each other as such and even if they refer to each other as such and regard their association as tantamount to such. Nor, in my view, would they indeed be recognised as familial links by the ordinary man."
>
> (emphasis supplied)

30. The aforesaid position in law, therefore, clearly establishes that even assuming that the Civil Court had the jurisdiction to decide any issue on tenancy, (which it did not) the appellants/defendants had miserably failed to prove that the appellants could substantiate their case of being members of the tenant's (Athwankar's) family.

31. Now coming to the second limb of the requirement as to whether merely because the appellant alleged that there was a Will made in his favour bequeathing the tenancy rights in his favour, would in any manner, assist the appellant. As held by the Division Bench of this Court in **Anant T. Sabnis vs. Vasant Pratap Pandit** (supra), in terms of Section 15 of the Rent Act, bequeathing

the tenancy rights under a Will is held to be hit by prohibition against transfers contained in Section 15 of the Rent Act and is, therefore, ineffective, inoperative and void. It is also held by the Division Bench that no probate could have been granted in respect of such tenancy rights and the executor can claim no legal right whatsoever in respect of the same. Thus, looked from any angle, the appellants could not have asserted that appellant no.1 had become a legal heir by virtue of the Will of the tenant (Athwankar), and on such ground would step into the shoes of the tenant (Athwankar) so as to claim any protection under the Rent Act.

32. Learned counsel for the appellants however has relied upon the Will of Mr. P.S. Athwankar. In such context, it is submitted on behalf of the appellants that although the said Will purports to bequeath tenancy rights in favour of the appellants, the reliance is not placed on the Will on the proposition that tenancy rights can at all be bequeathed under a Will as such a proposition would be contrary to the settled position in law. It is submitted that the Will was relied upon only to demonstrate that the testator, by executing the Will and recognizing the Appellant as a beneficiary, considered him to be a person closely associated with the testator/tenant. It is thus sought to be inferred that the Appellant was a member of the family.

33. There are a number of decisions being cited on behalf of the appellant which are wholly not applicable to the facts of the case. We do not intend to burden the judgment by discussing all such decisions, however, taking note of the

following decisions.

34. In ***Dyson Holdings Ltd v Fox***[7], the Court of Appeal was concerned with the interpretation of the expression "member of the tenant's family" under the Rent Act 1968 (UK), particularly in the context of succession after the tenant's death. The Court considered whether a woman, who was not the lawful wife of the tenant, could nonetheless claim protection. It was observed that the word "family" should not be construed in a narrow or technical sense, and a person who had been living with the tenant "as husband and wife" for a considerable period could be treated as part of the tenant's family, the emphasis being on a stable domestic relationship constituting a family unit.

35. In the present case, the appellants contend that they ought to be considered as members of the tenant's family, in the nature of a son or foster son of late Shri Athwankar (tenant). However, the facts are clearly distinguishable. In *Dyson Holdings*, the relationship was one of persons living together "as husband and wife", whereas in the present case, the appellants were permitted to reside in the suit flat only as domestic servants and for the purpose of looking after the tenant, which was purely for his personal convenience.

36. In these circumstances, the principle laid down in Dyson Holdings does not extend to the facts of the present case, and the appellants would not be assisted by the said decision.

37. In **Jagat Singh v. Karan Singh (Dead) by LRs & Ors**[8]., the issue before the

7 1975 1 Q. B. 503
8 (1987) 2 SCC 349

Supreme Court arose in the context of Section 6(4) of the Tehri Garhwal Bhumi Sambandhi Adhikar Niyam, where the appellant being a sapinda (close relative) of the deceased sub-tenant, had lived with him, shared food and shelter, besides assisting in cultivation and on that basis claimed succession to *khaikari* rights (sub-tenancy rights). In such context, the Supreme Court observed that it was not necessary for the appellant to be a formal member of a joint Hindu family, so long as he lived with the deceased as a member of the family. However, the said observations were made in the peculiar statutory framework where the existence of a sapinda relationship formed the foundational requirement. In the present case, the appellants are not relatives or sapindas of the tenant, but claim rights merely on the basis of residence or association as domestic servants. Hence, the said decision would not be applicable in the present case.

38. Reliance is placed on the decision of the learned Single Judge of Gujarat in **Karim Mohammed Fakir Mohammed v/s. Late Abdulmajid Fatehmohammed Thru Legal Heirs** (Civil Revision Application No. 6 of 2006). In such case, at the outset, it is required to be noted that the proceedings before the Court had arisen from the declaratory proceedings filed before the Small Causes Court whereby in the rent application, one Rehmatbibi Fakirmohamad Pirmohamad asserted to be a statutory tenant. It is in such context, the Court delved on the provisions of Section 5(11)(c)(i) of the Rent Act. The Court referring to the decision of the Supreme court in **Vasant Pratap Pandit Vs. Dr. Anant Trimbak Sabnis** (supra), held that the family link is not to be altogether alien or it cannot be totally overlooked in treating a person to be "a member of tenant's family".

However, in understanding the concept of 'tenant's family', one of the yardsticks to be applied was of nearness felt by the tenant with the "relatives" residing with him at the time of his death and in such context, an observation was made that the bond relationship determines the status and not merely the blood relationship. However, such observation is required to be understood on a holistic reading of the decision as referred by the Court and in the context of what would constitute to the 'tenant's family'. Certainly such observations can not in any manner be read to provide a different meaning to what has been held by the Supreme Court in **Vasant Pratap Pandit Vs. Dr. Anant Trimbak Sabnis** (supra). Thus, this judgment would not assist the appellants.

39. Further reliance is placed on the decision of the learned Single Judge of this Court in **Pandurang Narayan Mantri (By L. Rs) vs Anant Shankarrao Samuel**[9]. In this case, the appellants were the heirs of the original plaintiff whose suit for possession of the suit premises was dismissed by the City Civil Court. The suit flat was let out by the plaintiff to one Sitaram Tribhuvane sometime prior to 1941, Sitaram was living with his wife Sulochana. Sitaram died in or about November 1949, and after his death Sulochana continued to occupy the said flat. The plaintiff transferred the rent receipt in respect of the suit premises in her favour. Sulochana herself had become very old and more or less helpless. There was no one to look after her in that age. Hence Sulochana invited the defendant and his wife who was Sitaram's niece to come and stay with her and occupy the premises. By about January 1950, the defendant and his wife started living in the

9 AIR 1982 Bombay 115

suit premises along with Sulochana. The plaintiff by a letter dated 11 January 1950 called upon Sulochana to remove the defendant and his wife from the premises. He contended that they were her unlawful sub-tenants. A reply dated 17 January 1950 was sent by Sulochana to the said letter through her advocate stating that the defendant and his wife were staying with Sulochana in order to give her company and to give her help in her old age. It was denied that they were strangers or that they were sub-tenants. It is in such context, the Court has made observations as relied on behalf of the appellant that what is required to be seen is not the degree of the relationship but the nearness felt by the tenant for the relationship concerned and as a matter of fact in the instant case the relationship which is proved has got to be considered in conjunction with the special circumstances, namely, that Sulochana was a helpless and enfeebled person and she got help from the defendant and his wife, who were in her husband's relations. Thus, admittedly, the defendants were the family members of the plaintiff, which is not the case insofar as the appellant is concerned in the present case. Hence, this decision would not assist.

40. Learned counsel for the appellants has placed reliance on the decision in **Fitzpatrick Vs. Sterling Housing Association Limited**[10]. Considering the subject matter of consideration before the house of Lords, it is totally inapplicable in the Indian context. The Court was confronted with an issue as to whether the person (woman) who denied the assertion of the landlord that she was not the wife of the deceased tenant, and hence, not a member of the family could be recognized

10 1998 2 WLR 225

to be a member of the family of the deceased tenant as she was residing with the tenant at the time of his death, for the purposes of Section 5(11)(c) of the Rent Act. We thus wonder as to how this decision would in any manner assist the appellant.

41. In **K. V. Muthu Vs. Angamuthu Ammal**[11] the Court in this case was dealing with a definition of the member of the family as defined under Section 2(6)A of the Tamil Nadu Rent Act, which defined the member of the tenant's family in relation to a landlord means a spouse, son, daughter, grandchild or dependent parent. It is in such context, the observations as made by the Supreme Court are required to be considered. However, the appellants contention that the analogy be drawn that the appellant be considered to be the son, cannot be accepted for two reasons; firstly, the member of tenants family has not been defined akin to the definition as contained in the Tamil Nadu Act. The facts are also totally incomparable, and hence, this decision even remotely does not support the appellants case that he may either be considered as the son or foster son and would be entitled to protection under the Rent Act.

42. We find ourselves in complete agreement with the respondents case that the appellant could not have taken the position of asserting any protection under the provisions of Section 5(11)(c) of the Rent Act, as he was not the member of the family of the tenant (Mr. Athwankar) nor a legal heir as discussed hereinabove.

43. The respondents would also be correct in its contention that the appellants

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11 (1997) 2 SCC 53

resorted to inconsistent pleas in the written statement as on one hand they asserted statutory tenancy and/or of the licensee or becoming owner. All these were unsubstantiated defences, inasmuch as very consciously the appellants avoided to seek any substantive relief, asserting such position that they had become tenants of the suit flat, which could have been taken only in appropriate proceedings to be filed before the Small Causes Court, considering the clear provisions of Section 28 of the Bombay Rent Act read with the provisions of Section 18 & 19 of the Presidency Small Causes Court Act, 1882.

44. Thus, we clearly find that what was sought to be set up as a defence in the suit could purportedly be a right which was falling under the provisions of the Bombay Rent Act, being so asserted was required to be adjudicated not by the Civil Court, as per the mandate of the aforesaid statutory provisions. However, it was quite peculiar that not only the Civil Court but also the High Court had delved on such consideration, as rightly argued by Mr. Gorwadkar, learned Senior Counsel for respondent, any such finding to be rendered in the civil suit in question, would be without jurisdiction. In fact, the aforesaid discussion we have undertaken was not the requirement for the proceedings in hand, except for the fact that both the Courts have delved into such aspects of the matter, and therefore, obviously became a bone of contention in the present proceedings. We have, however, considered such contentions only in the context of examining whether such contentions would at all assist the appellant in non-suiting respondent-plaintiff, i.e. to establish that the appellants are not the trespassers. The appellant, however, having failed on all the counts necessarily not only

before the learned Single Judge but also in the present appeal the necessary consequence obviously would be that the appeal would deserve to be dismissed. It is accordingly dismissed.

45. The appellants shall vacate the suit premises within a period of eight weeks from the date a copy of this judgment is made available.

46. Before parting we may observe that for a long period of time i.e. from the date institution of the suit (1985), the respondents/owners of the suit flat have been deprived of the same. The respondents were right in their suit that the appellants were trespassers and had no legal right whatsoever to occupy the suit flat. The present appeal itself was dismissed on three earlier occasions for non-prosecution. This is the manner in which the appellant has pursued the present proceedings. We find that the learned Single Judge decided the first appeal by passing the impugned judgment and order dated 04 March 2002, it has been about 25 years that the present appeal had remained pending as also dismissed in default on earlier occasions. The plea under the Rent Act cannot be stretched to such an extent, as in the present proceedings so as to extinguish the rights of the land-lord in the premises. Such is never the intention of the beneficial legislation like the Rent Act.

(AARTI SATHE, J.) (G. S. KULKARNI, J.)