

(2010) 12 GUJ CK 0159

In the Gujarat High Court

Case No : Civil Revision Application No. 211 of 1988

Ahmedabad Roadways (Pvt.) Ltd. and Others

APPELLANT

Vs

Samir Rajnikant and Others

RESPONDENT

Date of Decision : 03-12-2010

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 15, 15(1), 28, 29(2)

Transfer of Property Act, 1882 — Section 108

Citation : (2011) 52 GLR 615

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Nisha Thakore, for Arun H. Mehta, for the Appellant; R.R. Vyas, for Vijay H. Patel, for Respondent 2 and Manan A. Shah, for Respondent Nos. 3, 5, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Puj, J.

1 The Petitioners - original Defendants have filed this Civil Revision Application u/s 29(2) of the Bombay Rent Control Act challenging the judgment and decree passed by the Small Causes Court at Ahmedabad in HRP Suit No. 5615 of 1976 and confirmed by the Appellate Bench of the Small Causes Court at Ahmedabad in Civil Appeal No. 241 of 1981.

2. The Civil Revision Application was admitted and rule was issued on 17.03.1988. Interim relief was granted in terms of paragraph 5 (B) whereby the execution, operation and further proceedings pursuant to the judgment and decree passed by the Small Causes Court at Ahmedabad in HRP Suit No. 5615 of 1976 and confirmed by the Appellate Bench of the Small Causes Court at Ahmedabad in Civil Appeal No. 241 of 1981 were stayed.

3. It is the case of the Petitioners that the Plaintiff had filed HRP Suit No. 5615 of

1976 claiming possession of the suit premises together with an amount of Rs. 6176.37 ps. towards rent, mesne profits and tax etc. The Plaintiffs had averred that they have purchased the suit premises along with other property from its original owners on 17.02.1973 under a Regd. Sale Deed and since then, they have become the owners of the suit premises. The suit premises was let out to the Defendant Nos. 1 to 6 in the name of the Defendant No. 1 i.e. M/s. Ahmedabad Roadways Private Limited at monthly rent of Rs. 85 plus tax. It was agreed by them that they would not sublet, assign or transfer the suit premises to anybody else and would pay the rent regularly. The Defendant Nos. 1 to 6 have paid the rent up to 31.03.1973 and they were in arrears of the rent from 01.04.1973 and have also not paid the taxes for the year 1973 - 74 to 1976 - 77. The Plaintiffs, therefore, claimed Rs. 3570 towards rent from 01.04.1973 to 30.09.1976 and also claimed Rs. 1362.47 towards municipal taxes and Rs. 803.90 towards education cess, total amounting to Rs. 5736.37 ps. The Defendants have become tenants in arrears for a period of more than six months and hence, they were served with the notice dated 19.10.1976 whereby their tenancy was terminated and they were called upon to hand over the possession of the suit premises. But they did not act on the same and hence, the suit was filed.

4. The Plaintiffs had further averred in the plaint that the Defendant Nos. 1 to 6 did not require the suit premises for their own use and that they have unlawfully sublet, assigned or transferred the suit premises to the Defendant Nos. 7, 8 & 9 and the said Defendant Nos. 7, 8 & 9 were in exclusive possession of the suit premises. The Defendant Nos. 1 to 6 were thereby profiteering. The Defendant Nos. 7 to 9 are not entitled to continue in possession of the suit premises and they are liable to hand over possession of the suit premises to the Plaintiffs.

5. On service of summons, the Defendants have filed their written statement and denied the averments and allegations made in the plaint. The Defendant No. 5 has filed the written statement at Exh.37 whereas the Defendant Nos. 7 to 9, the real contesting parties, of the suit filed their written statement at Exh.46 contending that the Plaintiffs have no right to file the suit. One of the major contentions raised on behalf of Defendant Nos. 7 to 9 in the written statement was that Dinkarbhai B. Raval, one of the Directors of the Defendant No. 7 Private Limited Company is the sole owner of the Defendant Nos. 8 & 9 and he was carrying on the business in the name of Defendant Nos. 7 & 9 in the suit premises since 1962 - 63 and since then, he is in exclusive and independent possession of the suit premises. It is further contended that originally, the suit premises were hired by one Shri Champalal Misrimal at monthly rent of Rs. 60/- who was running Champalal Jain Transport Company in the suit premises. In the beginning of 1959, Champalal transferred business with all rights to Dinkarbhai Raval and also sublet the suit premises to him and put him into possession. Since then Dinkarbhai was paying monthly rent @ Rs. 60/- to the original landlord - Ramzanbhai who used to pass regular rent receipts to him. But all the rent receipts were burnt in the riots of 1969 in the suit premises. Thus, the original

landlord had accepted Dinkarbhai as their tenant right from the beginning of 1959.

6. The learned Trial Judge after framing issues and considering the evidence, oral as well as documentary on record, had come to the conclusion that the Defendant Nos. 1 to 6 being in arrears of rent and they have been unlawfully sublet or transferred the suit premises to Defendant Nos. 7 to 9 and consequently the Plaintiffs were entitled to have decree of eviction against all the Defendants. The Defendants were directed to hand over vacant and peaceful possession of the suit premises to the Plaintiffs on or before 19.09.1981.

7. This judgment and decree was challenged before the Appellate Bench of the Small Causes Court and while dismissing the said appeal, the Appellate Bench had come to the conclusion that Defendant Nos. 7 to 9 have failed to prove that they were the tenants of the suit premises. Shri Dinkarbhai had also failed to prove that he was the tenant of the suit premises. The Plaintiffs have rightly proved that Defendant No. 1 Navbharat Engineering Works was the tenant of the suit premises and that the suit was rightly filed against the Defendant Nos. 1 to 6. It was further held that the Defendant Nos. 1 to 6 had unlawfully sublet, assigned or transferred the possession of the suit premises to the Defendant Nos. 7 to 9 where Shri Dinkarbhai was running the business in the name of Defendant Nos. 7 to 9. The Appellate Bench has, therefore, fully agreed with the findings and reasonings given by the learned Trial Judge on all issues and hence, the said judgment and decree was confirmed by the Appellate Bench.

8. It is these two orders which are under challenge in the present Civil Revision Application.

9. Ms. Nisha Thakore, learned advocate appearing for Mr. Arun H. Mehta for the Petitioners has submitted that both the Courts below have failed to appreciate that Shri Dinkarbhai Raval was the tenant of the suit premises and he had purchased the running business carried on by one Shri Champalal Jain by an agreement dated 26.05.1962 and thereafter, the said Dinkarbhai Raval became the tenant of the Plaintiffs in respect of the suit premises. She has further submitted that the transfer of business with goodwill was permissible in law and substitutes the transferee in place of the transferor tenant so far as their landlord was concerned. She has further submitted that Shri Dinkarbhai Raval has purchased the property as a going concern vide Exh.128 from the said Champalal Jain and hence, there was no assignment or subletting or transfer within the meaning of Section 15 of the Act so as to justify an order of eviction. The notice given through Shri A. S. Shethwala under instructions from the Vahivatkartas of the landlord which was produced at Exh.177 and which was issued by the said Advocate on 19.04.1966, in no uncertain terms stated that the said Dinkarbhai Raval was the tenant. Not only the said notice Exh.177 was produced, but the said advocate Shri Shethwala was also examined at Exh.176 to prove the said notice. The evidence of the said Advocate Shri Shethwala and the notice at Exh.177 given by him establish beyond doubt that Shri Dinkarbhai was the

tenant. She has further submitted that once it was held that Dinkarbhai was the tenant on and w.e.f. 1962, if not from the beginning of 1959, even then the suit which was filed against various parties, but not against the said Shri Dinkarbhai was not maintainable at law because the basis of the suit was that it was the tenant who had assigned or transferred, who was profiteering and who was the tenant in arrears etc. There was no evidence on the record of the case to show that at any point of time, Shri Dinkarbhai had surrendered his possession to the landlords and that after such surrender, a new tenancy was created by the landlord in favour of the Defendant No. 1. Such a case was not even pleaded, much less, proved by the Plaintiffs with the result that in absence of Shri Dinkarbhai, the present suit was not maintainable.

10. Ms. Thakore has further submitted that the rent receipt was obtained in the name of Defendant No. 1 only to enable him to obtain a Sales Tax License and for no other purpose, much less, for creation of a new tenancy in favour of the Defendant No. 1 after extinguishing the tenancy in favour of the Defendant No. 1. She has further submitted that since the original tenant Shri Champalal Jain and the original lessee was kept by the said Shri Champalal Jain, the landlord was issuing receipts in the name of the said Shri Champalal Jain. She has further submitted that Shri Dinkarbhai was the proprietor of the Defendant Nos. 8 & 9 and the Managing Director of the Defendant No. 7 with the result that for the internal purposes of various businesses carried on by the said person, the total amount of rent payable to the landlord was apportioned between the said three concerns, but it cannot be said that such apportionment of rent payable by the tenant created any subletting, transfer or assignment in favour of any of the three Defendants or the said Shri Dinkarbhai.

11. She has further submitted that simply because the letter Exh.81 was written on the letter-head of the Defendant No. 1, it cannot be said that the Defendant No. 1 must be the tenant and not Dinkarbhai overlooking the fact that it was Dinkarbhai who has written the said letter and admittedly, the said Dinkarbhai had no right, title or interest in or was in any way connected with the business carried on by the original Defendant Nos. 1 to 6. She has further submitted that the entire account books and all other documents which were lying in the shop were destroyed on account of the fire which took place with the result that Shri Dinkarbhai could not produce any evidence in support of his say. She has further submitted that both the Courts below have misread and misconstrued the rent receipt book at Exh.122 and the counterfoil of the rent receipts contained in the said book. The balance-sheets produced at Exh.137 to 148 were also misread and misconstrued. The sale deed at Exh.121 was also not properly construed. The witness Bibanbu has admitted that it was Dinkarbhai who used the floor of the premises after taking her permission and that Shri Dinkarbhai used to pay rent when Champalal Jain was the tenant. It was this witness Bibanbu who admitted that Dinkarbhai was served with notice Exh.177 through Advocate Shri Shethwala which admission together with the said notice and the evidence of the said advocate establish that it was Shri Dinkarbhai who was the tenant in the suit

premises. She has further submitted that the Courts below have even not referred to the evidence of various witnesses examined on behalf of Defendant Nos. 7 to 9. Considering the entire facts and circumstances of the case, she has submitted that there is no basis for the finding arrived at by the Courts below that the Defendant Nos. 1 to 6 were the tenants and they had unlawfully sublet, assigned or transferred the possession of the suit premises to the Defendant Nos. 7,8 & 9 where Dinkarbhai is running the business in the name of Defendant Nos. 7 to 9.

12. On the basis of the submissions made by Ms. Nisha Thakore for the Petitioner, a question is posed for consideration of the Court as to what are the rights and liabilities of the original contractual tenant in case the premises are assigned under proviso to Section 15(1) of the Bombay Rent Act. She has further raised the issue as to who is the original tenant whether Champalal Jain who took the premises on lease or Dinkarbhai who got assignment of the business of said Champalal on 01.06.1962, under the proviso to Section 15(1) of the Bombay Rent Act or Defendant Nos. 1 to 6 having regard to the evidence of Advocate Shri Shethwala at Exh.176 and the notice and fees book etc. at Exh.177, 178 and 179 calling upon Dinkarbhai as tenants to pay the arrears of rent etc. or Defendant Nos. 1 to 6 in whose name the rent receipts are from 29.03.1970 vide Exh.122 though there is no evidence of surrender of earlier tenancy by Champalal or Dinkarbhai. She has further submitted that contractual tenancy cannot be created in favour of Defendant Nos. 1 to 6 without Champalal or Dinkarbhai surrendering their contractual tenancy. The lower Courts have failed to appreciate that it was never contended by the Plaintiffs that the original tenancy was surrendered either by Champalal or by Dinkarbhai so that new tenancy rights can be created by the landlord in favour of Defendant Nos. 1 to 6. She has further submitted that no notice terminating the tenancy was given either to Champalal or Dinkarbhai and hence, the suit as filed was not maintainable. The Small Causes Court had no jurisdiction to try the suit in as much as, if Champalal is the original tenant, had not surrendered his tenancy, was not party to the suit and having regard to the provisions of Section 28 of the Bombay Rent Act, Small Causes Court will have no jurisdiction to entertain and try the suit if it was not between landlord and tenant. In view of the evidence that Champalal is the contractual tenant first in point of time and Champalal never surrendered his contractual tenancy rights, Defendant Nos. 1 to 6 could not be given contractual tenancy rights in absence of such surrender, Champalal was not given statutory notice terminating his contractual tenancy and hence, continued to be tenant, Champalal was not party to the suit, but in absence of Champalal, the suit as filed cannot be said to be a suit between landlord and tenant within the meaning of Section 28 of the Bombay Rent Act. The Small Causes Court had, therefore, no jurisdiction to entertain and try such suit and the decree passed would be void-ab-initio and without basic jurisdiction.

13. Ms. Thakore relied on the decision of the Bombay High Court in the case of Treasurer of Charitable Endowments v. F. B. Tyabji AIR 1948 BOMBAY 349

wherein the rights and liabilities of a contractual tenant are considered. The Court held that the contractual lessee cannot unilaterally by assigning his interest under the lease put an end to his obligations undertaken under the contract or under Transfer of Property Act. It is further held that under privity of contract, such tenant will continue to be liable to the lessor in respect of all covenants by reason of privity of contract which still continues to subsist between the lessee and the lessor. In case of assignment, there is no privity of contract between the assignee and the lessor, but the assignee is liable only by reason of privity of estate. Even in absence of contract, Section 108 of the Transfer of Property Act will step in and the result will be as stated above. Even if the lessor accepts assignment, the result will be that the assignee will be liable to pay the rent and the lessee would be freed from obligation to pay rent. So far covenant which run with the land is concerned, lessor can proceed both against the lessee and the assignee. The obligation to hand over possession to the lessor is of the lessee, on termination of tenancy and not of the assignee. The lessee is the proper person to whom notice terminating tenancy should be given.

14. With regard to jurisdiction of the Small Causes Court, reliance is placed on the decision of the Bombay High Court in the case of Balmukund and Co. Vs. Mangaldas Tribhovandas, wherein it is held that the suit must be between landlord and the tenant. She also placed reliance on the decision of the Apex Court in the case of Balvant N. Viswamitra and Others Vs. Yadav Sadashiv Mule (dead) through Lrs. and Others, which brings out the distinction between a void decree and an irregular decree. The decree in the present case would be void as contractual tenant Champalal was not a party to the suit nor any notice was given to him.

15. Based on the aforesaid legal position as well as factual matrix of the case, Ms. Thakore has submitted that the impugned judgments and decrees passed by the Courts below deserve to be quashed and set aside.

16. Ms. R. R. Vyas, learned advocate on behalf of Mr. Vijay H. Patel for the Respondent - landlord, on the other hand, has submitted that both the Courts have given a concurrent finding of facts and law which cannot be interfered with by exercising the revisional jurisdiction u/s 29(2) of the Bombay Rent Act. She has further submitted that merely from the notice Exh.177, it cannot be said that Dinkarbhai was the tenant of the suit premises or has continued to be the tenant of the suit premises. It is an admitted fact that the rent receipts are issued in the name of the Defendant No. 1 from 1966 to 1973. It is also admitted by Shri Dinkarbhai that the rent was paid by Shri Pravinbhai and then by Defendant No. 1 on his behalf. But the rent receipts were issued first in the name of Shri Pravinbhai and then in the name of the Defendant No. 1. If the rent was paid by those persons and rent receipts were issued in their name, it cannot be said that Dinkarbhai or Defendant Nos. 7,8 & 9 continued to be the tenants of the suit premises. The Courts below have come to the conclusion that Shri Dinkarbhai has come with totally a false case that he is the tenant of the suit premises and

that he had transferred the suit premises to the Defendant No. 1 in 1966 and the Defendant No. 1 was accepted as the tenant by the landlord and in his name, rent receipts were issued upto 1973 and that the Defendant Nos. 7, 8 & 9 were allowed to sit in the suit premises as subject tenants which is proved from the facts of the admission of Shri Dinkarbhai. The Courts below have further come to the conclusion that the agreement Exh.128 executed by Shri Champalal in favour of Dinkarbhai Raval did not help Defendant Nos. 7, 8 & 9 or Dinkarbhai Raval in any way. In his cross-examination, Shri Dinkarbhai has deposed that he was a partner of Champalal Jain in the business of Champalal Jain Transport while this agreement speaks that the business of Champalal Jain was transferred to Dinkarbhai Raval on payment of goodwill of Rs. 7,000/-which means that Shri Dinkarbhai became the proprietor of the business of Champalal Jain Transport from 01.06.1962. The agreement further states that Champalal Jain is the sole proprietor of the firm of Champalal Jain dealing as commission and clearing agent which fact belies the say of Shri Dinkarbhai Raval. He has not been able to show any rent receipts having been issued either in his own name or in the name of Defendant No. 7 from 1962, 1965 or 1966. Merely to say that everything is burnt in the suit premises in the year 1969 does not absolve Shri Dinkarbhai Raval from proving the fact that he was the tenant of the suit premises and he used to pay rent to the landlord. The Courts below were of the view that Shri Dinkarbhai could have even produced the secondary evidence that he was the tenant of the suit premises and paid the rent. But no such evidence was produced by him on record. The Courts below had also discussed the evidence of Bibanbu Exh.120 which is very material. It was deposed that Defendant No. 1 was a tenant and she used to collect rent. Upto 1965, Champalal Jain was the tenant of the suit premises and thereafter one Pravinbhai was the tenant of the suit premises for about six months. The suit premises was thereafter let out to the Defendant No. 1. She has admitted that the suit premises was sold to the Plaintiff vide Sale Deed Exh.121 and at that time, she had handed over all the documentary evidence which she had to the Plaintiffs. Her evidence clearly goes to the root of the case when she deposes that Dinkarbhai Raval was never the tenant of the suit premises and that he was not in possession of the suit premises as a tenant at any time.

17. The Courts below have also examined several witnesses at the behest of Defendant Nos. 7,8 & 9. However, none of the witnesses examined by them have directly proved that either the Defendant Nos. 7,8 & 9 or Dinkarbhai were the tenants of the suit premises from 1966 onwards. The notice given by advocate Shri Shethwala would not bring the case of the Defendants any further. The evidence of Shri Shethwala does not help to prove that Dinkarbhai was accepted as the tenant of the suit premises. The evidence of Bibanbu has contradicted the version of Shri Shethwala when she deposes that she has accepted the Defendant No. 1 as the tenant in whose favour the rent receipts were issued. After discussing various evidence and examination of the witnesses, the Court came to the conclusion that the Defendant Nos. 7,8 & 9 have failed to prove that

they are the tenants of the suit premises. Shri Dinkarbhai has also failed to prove that he was the tenant of the suit premises. On the other hand, the Plaintiffs have proved that Defendant No. 1 i.e. Navbharat Engineering Works was the tenant of the suit premises and the suit was rightly filed against the Defendant Nos. 1 to 6. They have also proved that Defendant Nos. 1 to 6 had unlawfully sublet, assigned or transferred the possession of the suit premises to the Defendant Nos. 7,8 & 9 where Dinkarbhai was running business in the name of Defendant Nos. 7,8 & 9.

18. In this view of the matter, the learned Trial Judge has rightly come to the conclusion that the suit premises were unlawfully sublet, assigned or transferred to the Defendant Nos. 7,8 & 9. The appellate Bench of the Small Causes Court has fully agreed with the findings and reasonings given by the learned Trial Judge of the Small Causes Court on all these issues and accordingly, dismissed the appeal filed by the Petitioners. She has, therefore, submitted that the impugned judgments and decrees passed by the Courts below deserve to be confirmed and the present Civil Revision Application deserves to be dismissed.

19. Having heard learned advocates appearing for the parties and having considered their rival submissions in light of the relevant statutory provisions and decided case law on the subject and having also gone through the impugned judgments and orders passed by the Courts below, the Court is of the view that both the Courts below have given a specific finding that the Defendant Nos. 1 to 6 are the tenants of the suit premises and they have illegally sublet, assigned or transferred the suit premises to the Defendant Nos. 7 to 9 and hence, they are liable to be evicted. This finding is arrived at by the Courts below after proper appreciation of facts and evidence on record and after considering all the relevant aspects of the matter. The factual finding recorded by the Courts below, that too, after proper application of mind to the facts and circumstances of the case, should not be and cannot be interfered with by the Court while exercising its revisional jurisdiction u/s 29(2) of the Bombay Rent Act.

20. There is no dispute about the fact that the rent receipts are issued in the name of the Defendant No. 1 from 1966 to 1973. It is also revealed from the deposition of Shri Dinkarbhai that the rent was paid by Shri Pravinbhai and then by Defendant No. 1 on his behalf. But the fact still remains that the rent receipts were issued first in the name of Shri Pravinbhai and then in the name of the Defendant No. 1. A specific finding is recorded by the Courts below that the Agreement Exh.128 executed by Shri Champalal in favour of Dinkarbhai Raval did not help Defendant Nos. 7, 8 & 9 or Dinkarbhai Raval individually in any way. There is contradiction in the pleadings and the deposition of Shri Dinkarbhai. He has deposed that he was a partner of Champalal Jain in the business of Champalal Jain Transport while the agreement speaks that the business of Champalal Jain was transferred to Dinkarbhai Raval on payment of goodwill of Rs. 7,000/-. The agreement further states that Shri Champalal Jain is the sole proprietor of the firm of Champalal Jain Transport dealing as commission and

clearing agent. It is precisely for this reason, the learned Trial Judge has observed in his judgment that the story created by Shri Dinkarbhai Raval is of doubtful nature because in the written statement Exh.46 signed by Shri Dinkarbhai, there is a definite case that in 1958, Champalal Jain took the premises as tenant at the rent of Rs. 60/-and started his transport business therein and that in the beginning of 1959, Shri Champalal Jain assigned that business to Dinkarbhai and sublet the suit premises to him and since then, he paid rent at Rs. 60/-per month. By creating this story, an attempt was made to see that sub-tenancy theory so pleaded be believed and Shri Dinkarbhai to be found to be protected sub-tenant in view of the Ordinance of 1959. The learned Judge has thereafter observed that Shri Dinkarbhai did not succeed in the said attempt because it was not substantiated by an oral evidence. The same was also not suggested by the star witness Bibanbu and Shri Champalal was not examined for the reasons best known to the Defendants. The learned Trial Judge has also thread-bare discussed the evidence of the agreement dated 26.05.1962 at Exh.128. Under this agreement, the transfer of business and premises in earlier part of 1959 was alleged to have been taken place. This agreement was produced and relied upon by the Defendant Nos. 7 to 9 and to which Shri Dinkarbhai and Champalal were the parties. The agreement nowhere mentions anything transferred before that date, but only refers to Dinkarbhai getting the business only from 01.06.1962 against certain consideration. There was no reference regarding transfer of tenancy rights despite the fact that the liability to pay rent of the suit premises was put upon Shri Dinkarbhai.

21. Since the story of transfer of business under the agreement dated 26.05.1962 was not believed by the Courts below, there is no question of invoking the provisions contained in Section 15(1) of the Bombay Rent Act. Section 15(1) says that notwithstanding anything contained in any law, but subject to any contract to the contrary, it shall not be lawful after coming into operation of this Act for any tenant to sublet the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein. It is true that proviso to Section 15(1) carves out an exception. It says that the State Government may by notification in the Official Gazette, permit in any area the transfer of interest in premises held under such leases or class of leases and to such an extent, as may be specified in the notification. The person who wants to claim protection by exception under notification under proviso to Section 15(1) must prove (i) that there was a going concern (ii) that stock in trade and goodwill (iii) that whole interest of the tenant including the leasehold interest is transferred (iv) that the transferee is able to go on with running business and (v) it is done by a registered instrument. The person claiming benefit under the notification issued under proviso to Section 15(1) has to prove that his case strictly falls in it. Both the Courts below have found as a matter of fact that the Defendant Nos. 7,8 & 9 have failed to prove that the business was transferred as a going concern and that Shri Dinkarbhai has become the tenant by virtue of such transfer. The explanation offered by Defendant Nos. 7 to 9 for

non-production of account books, rent note, rent receipts in their favour by inviting the attention of the Court to communal riots in 1969, was not found to be acceptable. The Court observed that it is difficult to believe that every piece of document supporting their defense stands destroyed, especially when, neither Shri Dinkarbhai nor any one else on his behalf had filed any complaint. The evidence of Mr. Shethwala Exh.176 and notice issued by him at Exh.177 did not inspire any confidence in Court's below to take the view that the tenancy rights subsisted in favour of Shri Dinkarbhai or Defendant Nos. 7 to 9 after 1966 and after Defendant No. 1 was inducted as lawful tenant of suit premises. The Court observed that it has come on record that Shri Dinkarbhai took Defendant Nos. 3 to 4 to Bibanbu to accept them as tenant of suit premises, and Defendant No. 1 was then inducted by her as tenant therein at the rent of Rs. 85 per month. Shri Dinkarbhai and Defendant Nos. 7 to 9 remained silent even after receipt of suit notice clearly naming only Defendant No. 1 as the tenant in suit premises. The Court, therefore, came to the conclusion that the tenancy in favour of Defendant Nos. 1 to 6 subsisted on 01.06.1973 and it also continued to subsist till the date of the suit. It is also revealed from the evidence that the Defendant No. 1 stopped its business in 1973 and no one from Defendant Nos. 1 to 6 stated that they were in possession and enjoyment of the suit premises prior to the date of the suit. Thus, the possession of the Defendant Nos. 7 to 9 was proved. However, no legal right was established.

22. There is no substance in the submission canvassed on behalf of the Petitioners that no notice terminating the tenancy was given either to Champalal Jain or Dinkarbhai and hence, the suit as filed was not maintainable. The jurisdiction of the Small Causes Court to try the suit in as much as if the Champalal as the original tenant had not surrendered his tenancy was not party to the suit and considering the provisions of Section 28 of the Bombay Rent Act, Small Causes Court will have no jurisdiction to entertain and try the suit if it was not between the landlord and tenant. First of all, it is factually found on the basis of the evidence of Bibanbu Exh.128 that the Defendant was a tenant and she used to collect rent. Upto 1965, Champalal Jain was the tenant of the suit premises and thereafter one Pravinbhai was the tenant of the suit premises for about six months. The suit premises was thereafter let out to the Defendant No. 1. The suit premises was sold to the Plaintiff vide Sale Deed Exh.121 and at that time, she had handed over all the documentary evidence which she had to the Plaintiffs. From her evidence, it is clear that Shri Dinkarbhai Raval was never the tenant of the suit premises and that he was not in possession of the suit premises as a tenant at any time.

23. Even with regard to jurisdiction of the Small Causes Court, reliance is placed on behalf of the Respondent No. 1 - original Plaintiff on the decision of the Apex Court in the case of Importers and Manufacturers Ltd. Vs. Pheroze Framroze Taraporewala and Others, wherein it is held that where a landlord brings a suit for possession and rent against his tenant after giving a notice to quit and also impleads therein a sub-tenant to whom the premises were illegally sublet by the

tenant, the suit would nevertheless be one between a landlord and tenant within the meaning of Section 28 and the Small Causes Court would have jurisdiction to entertain the suit. The sub-tenant though not a necessary party to the suit is a proper party and his joinder cannot alter the nature of the suit.

24. Considering the entire facts and circumstances of the case and the evidence on record, the learned Trial Judge has rightly come to the conclusion that the suit premises was unlawfully sublet, assigned or transferred to the Defendant Nos. 7,8 & 9. The said finding was confirmed by the Appellate Bench of the Small Causes Court. In view of this concurrent finding arrived at by the Courts below, this Court finds itself unable to disturb the said finding and confirms the judgments and orders passed by the Courts below.

25. This Civil Revision Application is accordingly rejected without any order as to costs. Stay granted earlier by this Court is vacated. The Petitioners are directed to hand over the vacant possession of the suit premises to the Plaintiffs within six weeks from the date of receipt of the writ or certified copy of this order, whichever is earlier.

26. In view of the fact that Petitioners are directed to hand over the vacant possession of the suit premises within six weeks from today, request to grant stay against the operation and implementation of this judgment is rejected.