

**(1997) 12 MAD CK 0164**  
**In the Madras High Court**

|                                                     |            |
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| Mohammed alias Bawa Sahib and Another               | APPELLANT  |
| Vs                                                  |            |
| B. Vimalchand as Manager and kartha of joint family | RESPONDENT |

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**Date of Decision :** 22-12-1997

**Acts Referred:**

**Citation :** (1998) 2 MLJ 619

**Hon'ble Judges :** K. Govindarajan, J

**Bench :** Division Bench

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**Judgement**

K. Govindarajan, J.—The landlord filed R.C.O.P.Nos.2679 and 2680 of 1985 on the file of the XI Judge, Court of Small Causes, Madras to evict the tenants from the respective premises u/s 10(3)(a)(iii) of the Act 18 of 1960 as amended by Act 23 of 1973. One Vimal Chand claiming as manager and kartha of the joint family filed the above R.C.O.Ps. In the petition he is the kartha of joint family consisting of himself, his brother and mother. The petitioner in C.R.P. No. 58 of 1994 who is the respondent in R.C.O.P.No.2679 of 1985, is the tenant in shop No. 64-B (Old No) New No. 27, Jones Road, Saidapet, Madras 15. The petitioner in C.R.P.No.213 of 1994, who is the respondent in R.C.O.P.No.2680 of 1985, is the tenant with respect to shop No. 64-A, (old No.) New No. 27, Jones Road, Saidapet, Madras-15. The said shops, now in the occupation of the tenants are required for the purpose of whole sale business in medicines, for the brother of Vimal Chand, namely, Mr. Rajendrakumar, who is carrying on the said business under the name and style of "Sayar Pharma Distributors", in the rented shop at No. 2, Alandur Road, Saidapet, Madras-15. It is also stated in the petition that in the partition of the premises in shop No. 65, the brother of Vimal Chand, namely, Normal Chand was carrying on the retail medical business. According to the landlord, his brother, Rajendrakumar is not occupying any shop of his own in the City of Madras. The respective tenants contested the petitions by filing counters. They disputed the capacity of the petitioner to act as a kartha of the joint family. It is also stated that the requirement of the petitioner's brother is false, frivolous and mala fide. It is further stated that since the petitioner himself is in occupation of the two shops, in the premises in question, the petitions filed on

the ground that the premises required for owner's occupation are not maintainable, and the petitioner and his family members are owning number of buildings, both residential and non-residential. It is also the case of the tenants that the two other big shop portions situate on the rear side (eastern side) of the petition building which are vacant are in possession of the petitioner. The tenants filed additional counter statements stating that the petitioner is not the kartha of the joint family. Therefore, the eviction sought for on the ground of owner's occupation as a kartha by the landlord is unsustainable. In R.C.O.P.No.2679 of 1985, in addition to the defence taken by the other tenant in the other R.C.O.P., it is stated that the petition u/s 10(3)(a)(iii) of the Act is not maintainable, and the same can be maintained only u/s 10(3)(c) of the Act. The learned Rent Controller in his common order dated 13.7.1990 accepting the case of the landlord, allowed the petitions. Aggrieved against the same, the tenants filed appeal in R.C.Nos.724 of 1990 and 291 of 1991, on the file of the learned VII Judge, Court of Small Causes, Madras. The Appellate Authority also in his order dated 25.11.1992 concurred with the findings of the Rent Controller, dismissed the appeals. Aggrieved against the same, the tenants have filed the above revisions.

2. The grandfather of the petitioner left the property in question, and after his death, his father inherited along with his brothers, and a partition was effected between them. His father died in 1966 leaving his sons and wife.

3. There are seven sons with respect to 7/8 share, the sons are enjoying the property as co-parceners and with respect to 1/8 share devolved on the sons and the wife, the same should be treated as tenancy-in-common because they inherited the said portion of the property only u/s 8 of the Hindu Succession Act. So, with respect to major portion of the share, they are enjoying as co-parceners and with respect to 1/8 share of the father, the sons and their mother have been enjoying as co-owners, in their words, as tenancy in common. The abovesaid facts are not disputed.

4. The learned Senior Counsel appearing for the petitioner has submitted that with respect to 1/8 share devolved on the parties, the said Vimalchand cannot be a kartha. Further, the learned Senior Counsel has submitted that some of the sons have been carrying on business in the property and so the landlord cannot ask the premises in question for the purpose of establishing the business in the name of another co-parcener. In support of his submission, the learned Senior Counsel has relied on the decision in Super Forgings and Steels (Sales) Pvt. Ltd. Vs. Thyabally Rasuljee (Dead) through Lrs., , wherein the Apex Court while construing the right of the co-owner to ask for the eviction of a tenant, has held as follows:

If a landlord is a co-owner of a non-residential building in the city, town or village concerned, which he is occupying for purposes of carrying on his business, will he not be occupying therefore a non-residential building of his own envisaged in the above Section 10(3)(a)(iii), as would disentitle him to the ground of eviction

available thereunder being the real question needing our answer in the light of the aforesaid plea of learned Counsel for respondents urged in questioning the sustainability of the contention raised on behalf of the appellant-tenant, we have to find the answer therefor.

The answer to the said question, in our view, cannot be anything other than that a non-residential building in occupation of landlord which is "his own" envisaged in Section 10(3)(a)(iii) above, is not only that of which he is an absolute owner, but also that of which he is a co-owner, for a co-owner of a building who is its landlord is regarded under Rent Control laws of our tenant for his bona fide requirement.

From the abovesaid decision it is manifestly clear that a co-owner of a property is also an absolute owner and if he is doing business in a building, for which also he is a co-owner, he cannot maintain a petition u/s 10(3)(a)(iii) of the Act for evicting a tenant for a premises in which he is having right as co-owner. But in the present case that is not the position. Admittedly, the said Rajendrakumar is doing business only in a rented premises not in the premises belonging to the family.

(a) In the present case the major share of the property belongs to joint family. While dealing with the incidents of the co-parcenership, the Apex Court has held, in *State Bank of India Vs. Ghamandi Ram (Dead) through Gurbax Rai*, , as follows:

First, the lineal male descendants of a person up to the third generation, acquire on birth ownership in the ancestral properties of such person, secondly that such documents can at any time work out their rights by asking for partition; thirdly, that till partition each member has got ownership extending over the entire property conjointly with the rest; fourthly, that as a result of such co-ownership the possession and enjoyment of the properties is common; fifthly that no alienation of the property is possible unless it be for necessity, without the concurrence of the co-parceners, and sixthly, that the interest of a deceased member lapses on his death to the survivors. A coparcenary under the Mitakshara school is a creature of law and cannot arise by act of parties except in so far that on adoption the adopted son becomes a co-parcener with his adoptive father as regards the ancestral properties of the latter.

In the above said decision, the Apex Court has come to the conclusion that the Hindu Joint Family has to be treated as a firm, a body of individuals.

5. The question as to whether the kartha of the joint family can ask for the benefit of a member of a family has been dealt with in number of decisions in *R.M.V. Seshasayana Rao and Others Vs. Manuri Venkatesa Rao and Others*, , *Venkatarama Ayyar, J.*, as he then was, has held as follows:

I am unable to agree with this contention. Though it may be possible to regard a Hindu joint family as a juristic person for some purposes, it cannot, in my

opinion, be held to be a landlord for purposes of Section 7(3)(a)(i) of the Act. That section enacts that the landlord may apply for possession of a residential building, if he requires it for his own occupation, provided he is not occupying a residential building of his own in the same place. Now, a juristic person cannot, in the context, be aptly described as occupying a residential building; it is only in the case of a natural person that the question of residence can arise. A joint family regarded as a juristic entity can, therefore, have, as such, no residence. It is only its members that can reside in a building. This is further made clear by the use of the word "he" in the section; a joint family as juristic person is neither "he" nor a "she". The true position is, that when a building belonging to a joint family is leased, the landlord is not an abstract juristic entity called "joint family", but the members who constitute that family. When a coparcener, therefore, applies for possession u/s 7(3)(a)(i), he will be entitled to an order, if he establishes that he requires the house for his own occupation; and he is not disentitled to that relied by reason of the fact that the family owns another house and members of the family are residing therein, if he is himself not in occupation of it. The contention that he must be deemed to be in constructive possession of that house because other members of the family are in occupation thereof must fail, when once it is held that the joint family as a juristic person is not the landlord for purposes of Section 7(3)(a)(1). The policy of the Act, clearly, is to prevent rack-renting and to secure to tenants possession of the premises on payment of reasonable rent. The Act is therefore concerned with actual and physical possession and not with notional and constructive possession; and it will be foreign to the scheme of the Act to hold that occupation by one member should be construed as occupation by another when that other is not in fact in occupation.

6. In *Kolandaivelu Chettiar v. Koolayna Chettiar* (1961)1 M.L.J. 184, Venkatadri, J., has held as follows:

If entirely agree with Mr. N. Raghavachariar, the learned Counsel for the respondent, because it is well-settled under the Hindu Law that no coparcener is entitled to separate possession of the coparcenary estate. The actual possession and management thereof must vest in a manager. He is the protector of the household and can prevent by obtaining an injunction a riotous member thereof from entering the family house without his permission to disturb its peace and tranquility. It is also well-settled that all the coparceners have a community of interest and unity of possession in the coparcenary or joint family property. A coparcener cannot, while the family is undivided, predicate at any given moment that he, the particular coparcener, has a definite share in the coparcenary property. Applying these principles the learned Counsel for the petitioner is not correct in saying that the petitioner's second son is in occupation of a residential building of his own.

7. In *Raju Vs. A. Ponnammal*, , K.A. Swami, Chief Justice, as he then was, has held as follows:

The decision in *Jagannatha Chettiar v. Swarnambal* 97 L.W. 182 is not applicable to a case where the joint family is the owner of several residential premises and one of the premises is in their occupation and seeks possession of another premises for the use and occupation of one of the coparceners.

8. Recently, in *Keval Chand and Anr. v. Karuppanna Mudaliar and Ors.* (1997)1 L.W. 335, S.S. Subramani, J., has held as follows:

The landlords contended that they have no residential building of their own and, therefore, they want to demolish the schedule building and put up a new building. The claim is mainly for own occupation after remodelling the building. To substantiate that, they have no other building of their own, they must be asked to lead negative evidence. In the evidence of the second petitioner, he has said that they are residing in a building known as "Ambika Textiles", wherein they are doing business, as well as residing there. It is also alleged by them that the building does not belong to them and it belongs to the undivided joint family, of which they are members. When this was the case put forward, Rent Controller as well as the Appellate Authority took only one portion of that evidence and said that the petitioners have a building of their own. When a statement of a witness is taken into consideration, the statement must be taken as a whole. In his deposition, it was said that they are residing in their own building, and the building belongs to the undivided joint family. Only the first portion of the sentence was taken into consideration by the authorities below. It was also said that there are more than 30 members in the family and they cannot continue their residence in that place. Rent Controller was of the view that the ownership of "Ambika Textiles" has not been proved and how many members/persons are residing in that building, is also not proved, and, therefore, the claim is lacking in good faith. When the tenant contended that "Ambika Textiles" belonged to the landlords exclusively, or that they have other alternative accommodation, it was for the tenant to prove the same. No evidence was let in by them in that regard. No circumstance has also been made out why the evidence of the landlords should not be believed. The prohibition under the statute for getting the tenant evicted in respect of a residential building is only when the land-lord is having another building of his own. When that disqualification is not there disentitling the landlord from getting possession treating the joint family building as their own, cannot be correct. In this connection, decision of the Supreme Court reported in *Super Forgings and Steels (Sales) Pvt. Ltd. Vs. Thyabally Rasuljee (Dead) through Lrs.*, was also brought to my notice. That is a case in respect of a non-residential building. During the pendency of the proceedings, the owner died and that right devolved on the respondents in that case. The respondents therein became co-owners so far as another non-residential building was concerned and the same was also in their occupation. While considering the case, the Supreme Court said that a co-owner is also a owner for the purpose of Rent Control Act, and if a co-owner is in occupation of a non-residential building, he is disentitled to get possession of the tenanted premises. In the case of residential buildings also, the wordings are the same, and we can say that the same

principle will apply for residential building also. But, even then, I do not think, the said case has got any bearing to the facts of this case. A coparcener of a joint Hindu family is never treated as a owner, nor has he got any definite alienable right. He is also not entitled to sue when the manager is alive, nor has he got a definite share to say that the property is his own. A co-owner cannot be equated with a member of joint family, where the share is always fluctuating.

Once it is found that the landlords have no building of their own, and when they say that they want to have separate residence of their own, the same cannot be said as unjust. To a certain extent Rent Control Law recognises the discretion in favour of the landlord, and he is the matter in taking a decision as to where he should reside.

9. The abovesaid decisions clearly go to show that courts have taken the view consistently regarding the right of the coparcener with respect to the provisions of the Rent Control Act that a coparcener cannot be construed as an absolute owner of a joint family property. In view of the decisions on the issue, the decision of the Apex Court stated in *Super Forgings and Steels (Sales) Pvt. Ltd. Vs. Thyabally Rasuljee (Dead) through Lrs.*, , which only deals with the right of a co-owner, cannot be made applicable to the facts of the present case.

10. The learned senior counsel has further submitted that some of the members of the joint family are in possession of shops in the same property and the said Rajendrakumar, for whose benefit the shops are sought to be evicted is also admittedly doing retail business in medicine in the same premises. So, the landlord cannot go on asking the tenants to vacate the same for the purpose of developing the business. In aid of his submission, the learned senior Counsel has relied on the decision in *Easwaran Chettiar v. Subbarayan* 84 L. W. 696 wherein the Division Bench of this Court while construing the scope of Section 10(3)(a) (iii) of the Act in relation to the requirement of the member of a family, has held as follows:

The trend of the majority view of the learned Judges of our court starting from the decision of the Division Bench in *Kota Ananda Krishna Chetty Vs. M.K. and Company alias Mahomed Kasim and Company and Another*, appears to be in way. It is that if a landlord is in possession of a nonresidential building of his own for purposes of carrying on a business, then he cannot ask for another non-residential building of his own in the occupation of tenant. Similarly, because the purpose for which the application for eviction is made is founded on the fact that the intended business proposed to be continued in the non-residential building in the occupation of the tenant is different from the trade or business engaged in by the landlord in his own premises, that would not matter at all. The legislature has clearly laid down the same principle even in the case of a residential building. If therefore a landlord residing in a residential building of his own cannot ask for another building of his in the occupation of his tenant, merely because he wants a comfortable or a convenient living, then with equal force it can be said that the owner of a non-residential building is not in any way the better. If the Legislature

intended that owners of non-residential buildings should be placed in a different and should be treated differently, it should have said so in so many words. On the other hand, Section 10(3)(a)(iii) which cannot be invoked for interpreting Section 7(3)(s)(iii), provides a guideline and an answer to the problem before us. It is only in cases where additional accommodation is asked for, a landlord can seek for another residential building in the occupation of the tenant. That is not the case here. Where the landlord is occupying an independent non-residential building of his own and the tenant is in occupation of a portion of such a building, then only Section 7(3)(c) would operate on its force and might help the landlord; but in case the tenant is in occupation of a completely different premises then the landlord cannot take advantage of either Section 10(3)(a)(iii) or the said section read with Section 10(3)(c)

The Division Bench has given illustration to explain their view as follows:

We could illustrate our view thus : A landlord has given non-residential buildings belonging to him and he has let them out differently to independent tenants and he himself occupies a sixth non-residential building and is carrying on a maligai business there. He wants to expand the same and sets up grain business. If Section 10(3)(a)(iii) is understood to be not a bar, then he would be entitled to possession of one more residential building for his grain business, After setting up the grain business, he slowly introduces in it patent medicines, and he thinks of expanding his trade in medicines and desires to open a chemists and druggists shop. On the same principle, he would be entitled to get third non-residential premises from his own tenant. After setting up a chemists and druggists shop, as is now common, he sets up an almirah containing picturesque textile goods and intends starting a textile business of his own. Therefore, he could get a fourth shop as well. After securing the fourth shop, he would like to expand his retail textile business and set up a whole sale one and for that purpose he could ask the other shop and so on. Thus, a landlord who is occupying a non-residential business premises of his own can by fortuitous circumstances or bona fide intention to expand his business in all ways, successfully throw out 4 or 5 other tenants, who were inducted into his other premises for purposes of traders and can overcome the statutory bar set up in Section 10(3)(a)(iii) and completely demolish the statutory immunity vested in the tenants by virtue of the provisions in the Act. We do not think that there is any scope common sense, equity and convenience playing any part in the matter of the interpretation of Section 10(3)(a)(iii) of Madras Act 18 of 1960.

11. In the evidence it is admitted by P.W.1 that the said Rajendrakumar has become the owner of Sayar Pharmacy which is being run in one of the shops in the same premises, which situates next to the shop of the petitioner in C.R.P.No.58 of 1994. Now the tenants are sought to be vacated for the purpose of doing whole-sale business in medicine by the said Rajendrakumar. So, the above said decision will squarely apply to the facts of the present case.

12. Per contra, the learned Counsel for the respondent has relied on the decision

in J.N. Gulamali and Others Vs. Howrah Casting Company and Another, and the decision in Indian Plywood Manufacturing Co. v. Balaramiah Chetty 99 L. W. 49.

13. In the decision in J.N. Gulamali and Others Vs. Howrah Casting Company and Another, , Mohan, J., as he then was, while discussing the scope of the decision reported in Easwaran Chettiar v. Subbarayan 83 L. W. 697 has held in the said decision that the landlord asked for wholesale business while he was doing retail business in the portion of the premises and so the learned Judges have correctly laid down the law in that decision. The learned Judge, with respect to the facts of the said case before him, has held as follows:

The observation of a Division Bench of this Court in Easwaran Chettiar's case (1950)1 M.L.J. (N.R.C.), that the letter "a" in Section 10(3)(a)(iii). would mean any" that would be its plain meaning has also to be understood on the facts on that case. If the landlord is carrying on the particular business in his own building, he cannot be heard to say, that he required the premises in the occupation of the tenant for shifting that business. The mere fact that in the building belonging to the landlord not only the particular business but another business was also being carried on would not mean that the landlord would be entitled to relief u/s 10(3)(a)(iii) of the Act. But on a plain meaning the said provision, if the landlord is carrying on business in a building not his own, he would certainly be entitled to relief under the said provision although he is carrying on another business in a different building which is his own. The only limitation is the claim to the landlord should be bona fide and under the said provision the landlord can obtain possession of only one building.

14. The learned Counsel appearing for the respondent has further relied on the decision in M/s. Indian Plywood Manufacturing Co. v. Balaramiah Chetty 99 L. W. 49 cited supra in support of his submission that the landlord who is in occupation of non-residential building of his and is also entitled to apply for eviction of tenant occupying another non-residential building for the purpose of the business carrying on by any member of the family, provided such member is not already in occupation of a non-residential building of his own. M.N. Chandurkar, Chief Justice, as he then was, in the said decision has held as follows:

Now this decision has taken the considered view on a construction of Section 10(3)(a)(iii) of the Act, that if a landlord is to be disentitled from claiming non-residential premises on the ground that members of his family require the said premises for their own use, then this can be done only if the members of the family are also in occupation of a non-residential building of their own.

But the decision of the Division Bench cited supra was not brought to the notice of the learned Judge and in the abovesaid case the member for whom the building is sought for is not in occupation of any other premises of his own. In view of the abovesaid decision of the learned Judges of the Division Bench, the decisions, cited by the learned Counsel appearing for the respondent cannot be pressed into service to the facts of the present case.



15. Moreover, the said Rajendrakumar is doing business in a portion of the premises in question which has been admitted by P.W.1, citing this fact, the learned senior counsel appearing for the petitioner has submitted that the petition filed u/s 10(3)(a)(iii) of the Act cannot be maintained. The petition can be maintained only u/s 10(3)(c) of the Act. In support of his submission, the learned senior counsel has relied on the following decisions:

16. In *Bengal Trading Co. v. G.M. Natarajan and three Ors.* (1991)2 L. W. 277 Venataswami, J., as he then was, following the judgment of the Apex Court reported in *Shri Balaganesan Metals Vs. M.N. Shanmugham Chetty and Others*, , has held as follows:

On the facts, it is not in dispute that the landlord was in occupation of a portion of the suit premises, and, therefore, the contention that the application if at all will have to be only u/s 10(3)(c) of the Act cannot be disputed. In the circumstances, the application filed u/s 10(3)(a)(iii) of the Act is not maintainable.

17. In *Nataraja Trading Company and Others Vs. K. Manohar*, , Thanikkachalam, J, as he then was, has held as follows:

The fact remains that the tenant is in occupation of the ground floor of the premises at No. 36, Subramani Mudali Street, Madras-79. The upstairs portion is in the occupation of the landlords. According to the landlords they are using the upstairs portion for their residential purpose and the tenant is using the downstairs portion as a godown. It means the upstairs portion is being used by the landlords as their residential portion and the ground floor is being used as godown, i.e., for non-residential purpose by the tenant. According to the landlords they are carrying on their oil cake selling business in a rented premises at No. 3, Thatha Muthiappan Street, Madras-1 and they wanted the petition premises to conduct their business. It is the contention of the landlords that since the portion under the occupation of the tenant is a non-residential one and since the upstairs portion is being used by them for residential purpose they cannot file a petition u/s 10(3)(c) of the Act. According to the landlords since they are carrying on their business in a rented premises and inasmuch as they wanted the petition premises to conduct their business which they are carrying on in a rented premises the petition for eviction can be filed u/s 10(3)(a)(iii) of the Act. Admittedly in the premises at No. 36, Subramani Mudali Street, Madras-79, the upstairs portion is being used by the landlords for their residential purpose and the downstairs portion is being used by the tenant for non-residential purpose as a godown. Therefore, the downstairs portion is part of a building situate at No. 36, Subramani Mudali Street, Madras-79. According to the landlords since they require the nonresidential premises under the occupation of the tenant for the purpose of conducting their business which they are carrying on in a rented premises at No. 3, Thatha Muthiappan Street, the petition for eviction can be filed u/s 10(3)(a)(iii) of the Act. This contention cannot be accepted because Section 10(3)(c) of the Act states as under:

A landlord who is occupying only a part of a building whether residential or non-residential may, notwithstanding anything in Clause (a) apply to the Rent Controller for an order directing any tenant occupying a whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he requires additional accommodation.

In the present case, admittedly the landlords are in occupation of the upstairs portion. They require the downstairs portion of the building, which is used for non-residential purpose by the tenant. In such a case irrespective of the fact, that tenant is using the downstairs portion for non-residential purpose or for residential purpose, if the landlords want the downstairs portion for non-residential purpose they can file a petition for eviction only u/s 10(3)(c) of the Act and the provisions of Section 10(3)(a)(iii) of the Act will not be applicable to the facts of the case.

18. The learned Counsel appearing for the landlord has submitted that even if he has been carrying on the business in a portion of the premises it cannot be said that the landlord is not entitled to ask for eviction of the shops in question for the benefit of the said Rajendrakumar. In support of his submission, the learned Counsel has relied on the decision in K.S. Shantilal v. E. Benny Biber 1980 T.L.N.J. 286 wherein the learned Judge has held as follows:

Then, the question which arises for consideration is that, assuming that the landlord owns the building which is in his occupation along with his father, can his case u/s 10(3)(a)(i) of the Act be negatived on the ground that he is in occupation of residential building "of his own". Unless it can be stated that the landlord is the sole and exclusive owner of the building stated to be in his occupation, it is not possible to discountenance his claim for evicting the tenant from the premises occupied by the tenant, u/s 10(3)(a)(i) of the Act. The ownership contemplated under the provisions must be exclusive and it cannot be equated to joint ownership, which will leave the matter nebulous and one cannot predict either the quantum or the quality of his rights with reference to the said premises, so as to negative his claim for occupation of another building which, admittedly, belongs to him exclusively. That could not be the intendment of the statute. The landlord must be in a position to command the full benefits of ownership by being in or able to be in exclusive possession and enjoyment of the building.

In the decision in Mani v. Ramalingam (1985)1 M.L.J. 329 the learned Judge, following the abovesaid decision, has held as follows:

From a reading of the above decisions, it is manifest that the expression "is not occupying a residential building of his own" should be limited to the situation where the landlord is not occupying a residential building of which he is the sole owner thereof. Viewed in this angle, the petition by the landlord u/s 10(3)(a)(i) of the Act is perfectly maintainable.

In the abovesaid decisions, the learned Judges have come to such a conclusion

because in those cases the members of the family for whom the building was asked for were not occupying any of the premises of their own. So, the said decisions cannot be relied on to the facts of the present case. In this case the said Rajendrakumar for whom the building is sought for is admittedly in occupation of the shop in the same premises. It is not the case of the landlord that he is occupying the shop as a tenant or in permissive possession of the joint family. To some extent his occupation of the shop in the same premises has to be construed only as a owner of the same. Even in the decision in *State Bank of India Vs. Ghamandi Ram (Dead) through Gurbax Rai*, , it is observed that till partition each member has got ownership extending over the entire property, conjointly with the rest and as a result of such co-ownership, the possession and enjoyment of the property is common. So the petition u/s 10(3)(a)(iii) of the Act is not maintainable.

19. The Rent Controller proceeds only on the ground that the landlord has proved that the said Rajendrakumar has been doing whole-sale business in a rented premises and so, the intention of the landlord is a bona fide and the tenant should be vacated. Even the Appellate Authority has proceeded on the same line and in spite of the evidence of P.W.1 the Appellate Authority proceeded on the basis that the said Rajendrakumar is not occupying any of the premises of his own. So, in view of the non-application of mind by the Appellate Authority with respect to the evidence of P.W.1 he came to the conclusion that the landlord can maintain the petition for the purpose of the occupation of the premises by his brother Rajendrakumar. The authorities below have not dealt with the matter in a proper perspective which is necessary for this case, and they have not looked into certain important aspects of the matter regarding the maintainability of the petition itself. Hence, the orders of the authorities below cannot be sustained.

20. It is settled that though the petition is maintainable, the landlord has to prove that his requirement of the petition premises is a bona fide one. In the petition, nothing has been stated as to why the said Rajendrakumar wants to shift the whole-sale business to the present premises. On the other hand, P.W.2 Rajendrakumar himself has accepted in his evidence that Nyniappa Naicken Street is a business place while so many wholesale shops in medicine are there. Relying on this evidence, the learned Counsel appearing for the tenants had submitted that no prudent businessman would vacate a premises of doing business, wherein he can do better business. In support of the same, they relied on the decision in *Gajendra Sha v. Govindarajan* (1996)2 M.L.J. 564, wherein it is held as follows:

As has been indicated by the Supreme Court, what is necessary is that there should be a bona fide need. But we have found earlier that the business of the petitioners, namely, electrical goods business is flourishing one in a street which is well-known for such business. It is highly impossible to appreciate that such a flourishing business will be shifted to a narrow lane, especially when there is no thread of evidence and the accommodation is much more than what the landlord

is going to get in the petition building. Hence, in my opinion there is no bona fide in the claim of the petitioners for eviction. Hence this revision petition is dismissed. However, there will be no order as to costs.

21. They have further brought to my notice that P. W.1 himself has admitted that the area of the shops mentioned by the landlord is only 180 sq.ft. and in the said shops the whole-sale business cannot be conducted. In view of the admitted fact, the intention, according to the learned Counsel, of the landlord cannot be said to be a bona fide one. Such a submission cannot be, in my opinion brushed aside.

22. In C.R.P.No.58 of 1994, the tenant has specifically raised the ground that the place in which the petitioner is doing the business is suitable for carrying on the same. Under Rule 64 of the Drugs and Cosmetics Rule 1945, for starting a whole-sale business, licence has to be obtained from the competent authority. Referring to the said provision, the learned Counsel for the tenants has submitted that there is no evidence available to show that the landlord has taken steps to get such licence. Though the said issue was raised specifically, the Appellate Authority has not considered the same at all. In the absence of such licence, they cannot carry on the business. So, the intention of the landlord to carry on the whole-sale business in question cannot be said to be a bona fide one.

23. The learned Counsel appearing for the tenants has submitted that subsequent to the filing of the petition, the landlord has constructed some portion in the backside of the premises in question and so he can occupy the said premises. The Rent Controller found that the said construction was not completed as alleged by the landlord. The Appellate Authority found on fact that the tenants have not proved such new construction. In view of the factual findings of the authorities below, I am not accepting the case of the tenants that other construction portions are available for occupation.

24. Per contra, the learned Counsel appearing for the landlord has submitted that it is for the landlord to choose the premises. The tenants have no say in the matter and they cannot dictate terms. The learned Counsel has cited a number of decisions on that aspect. As it is settled law, it is not necessary to deal with the same. To test the bona fide, the cumulative effect of the facts available on record has to be taken into consideration. In this case the location of the business area where he is doing business, space of the shops in question and the want of licence as stated by the tenants, would establish that the intention of the landlord that his brother Rajendrakumar wants to occupy the premises in question cannot be said to be a bona fide one. The authorities below have come to the conclusion that the requirement of the landlord is a bona fide one only on the ground that the said Rajendrakumar is carrying on his business in a rented premises. Such approach is contrary to the decisions of the Apex Court.

25. In Hameedia Hardware Stores, represented by its partner S. Peer Mohammed Vs. B. Mohan Lal Sowcar, , the Apex Court has categorically held as follows:

We are of the view that by merely proving that the premises in question is a non-

residential building and that the landlord or any member of his family is not occupying for the purpose of a business which he or any member of his family is carrying on any residential building in the city, town or village concerned which is his own, the landlord cannot in the context in which Section 10(3)(a)(iii) appears get a tenant evicted. He must show in view of Clause (e) of Section 10(3) that his claim is bona fide. The word "claim" means "a demand for something as due" or to seek or ask for on the ground of right" etc. In the context of Rent Control Law which is enacted for the purpose of giving protection to tenants against unreasonable evictions and for the purpose of making equitable distribution of buildings amongst persons who are in need of them in order to prove that his claim is bona fide a landlord should establish that he deserves to be put in possession of the premises which is in the occupation of a tenant. Any decision on the question whether a landlord deserves to be put in possession of a premises in the occupation of a tenant should naturally depend upon the bona fides of the landlords requirement or need. The word "claim" in Clause (e) of Section 10(3) of the Act should, therefore, be construed as "the requirement" of the landlord or his deservedness. "Deserve" means to have a rightful claim" or "a just claim". Since Clause (e) of Section 10(3) of the Act is also applicable to a petition filed under Sub-clause (iii) of Section 10(3)(a) of the Act it becomes necessary to examine whether the requirement of the landlord is bona fide. Otherwise, a landlord will be able to evict a tenant to satisfy his whim by merely proving the ingredients mentioned in Section 10(3)(a)(iii) of the Act.

26. In view of the above settled principles, mere desire is not enough and the landlord has to prove than the desire. In this case, the same is lacking.

27. In view of the above, the orders of the authorities below are set aside and the revisions are allowed. No costs. Consequently, C.M.P.Nos.455 and 1284 of 1994 are closed.