

(1988) 09 BOM CK 0053

In the Bombay High Court

Case No : Writ Petition No's. 2603 and 2604 of 1986

Suhas Prabhakar Nagarnath and Others

APPELLANT

Vs

B.T. Gangal and Another

RESPONDENT

Date of Decision : 29-09-1988

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1949 —
Section 13(1)

Citation : (1989) 1 BomCR 309

Hon'ble Judges : Sharad Manohar, J

Bench : Single Bench

Advocate : Ajit P. Shah, for the Appellant; K.J. Abhyankar in Writ Petition No. 2603 of 1986, V.A. Gangal and S.R. Borulkar, in Writ Petition No. 2604 of 1986, for the Respondent

Judgement

Sharad Manohar, J.—Interpretation of the word "family" in the context of the provisions of section 13(1)(I) of the Rent Act is the main question calling for the decision of this Court in these writ petitions.

The question involved is common in both the petitions. Landlords are the same, viz., the present petitioners. Only the tenant are different. The defendants (present respondent) will be referred to by their names in the subsequent portion of this judgment.

2. One of the tenants is Gangal. He was tenant in respect of a room admeasuring 210 sq. ft. He is the respondent in Writ Petition No. 2603 of 1986. The other tenant is one Mejari. He is also in possession of one room tenement admeasuring identical area of 210 sq.ft. In fact, these are just one-room tenements held by these two respective tenants. Each is partitioned into two parts for the sake of convenience. Essentially, they are one-room tenements. Rent of the premises is also identical Rs. 58.25 per month. In the case of Gangal, he became a tenant of the suit premises in the year 1962. In the case of Mejari, the letting in his favour was from the year 1961. There is no dispute at least in this Court that both the

tenants acquired other accommodation for their residence during the course of time, before the instant suit. Gangal acquired a flat in his own name in the year 1977. According to the landlord of the suit premises, the area of the newly acquired flat in a nearby co-operative housing society is 625 sq.ft. Neither party has led any independent evidence about the area of the new flat.

Meraji acquired the new flat in Jeevan Shree Society which is at a distance of about two minutes' walk from the suit premises. It is the plaintiff's contention that the area acquired by him is 550 sq.ft. According to Meraji, the area of the newly acquired flat is 500 sq.ft. Normally speaking, the Court would have expected the tenant to prove the area occupied by him in the new flat because it is a fact exclusively within his own knowledge. He has remained satisfied by his own interested evidence to prove the area. Normally speaking, the Court should feel that if it was an error, it would be an error in his own favour and normally, the Court should draw adverse inference against the tenant for not producing document of title describing the area occupied by him. Fact, however, remains that the Lower Courts have not paid much of attention to this aspect of the case and the Lower Court have accepted that uncorroborated evidence of both the tenants viz. that the area of the flats is 500 sq.ft. But I am prepared to assume that the area of both the newly acquired flats is 500 sq.ft and for that purpose, I will ignore the arguments of Mr. Shah appearing for the petitioners' landlords that the area must be larger.

4-A Point is that the crucial fact, viz., that after the coming into operation of the Rent Act and after they took on rent the suit premises, both the tenants have acquired other accommodation for residence was never in dispute at all. This is the context in which the question involved in the suit filed by the landlord (present petitioner) against the tenants has got to be examined. The petitioners' landlords filed R.A.E. Suit No. 4876 of 1979 against Meraji for possession of the suit premises. The said suit was filed by them against the tenant Gangal. Grounds for eviction urged in the suit were identical :

(a) That the tenant had failed to use the premises for the purposes for which they were let out for a period exceeding six months, thus entitling the landlords to claim possession u/s 13(1)(k) of the Rent Act. The contention was that the premises was just kept locked for a period exceeding six months;

(b) That the tenant had acquired suitable alternate accommodation for residence as per the particulars mentioned above, thus entitling the landlords to recover possession of the suit premises u/s 13(1)(I) of the Rent Act.

3. The defence of the suit is of some relevance. So far as Gangal is concerned, the plea by way of defence was that since the time when he took the suit premises on rent, the family had grown up; the needs of the family had enlarged and that was the reason why he acquired additional accommodation in the building of the co-operative society referred to in the plaint. The defence further submitted that he and his family are residing at both the premises.

Naturally, he denied also the allegation that the premises were not used for a period exceeding six months.

As will be presently pointed out, the plea that the defendant and his family were residing in both the places is a blatant lie. In the evidence, it is clearly admitted that only one of the sons has been residing in the suit premises and not the entire family since the date of the acquisition of the other premises.

Even in the case of the Mejari, the fact that alternate accommodation for residence was acquired was admitted. But the plea was that the family continued to reside also in the suit premises.

Just as in the case of the suit filed against Gangal, likewise, in the case of the suit filed against Mejari, it is set out that his entire family was residing in the suit premises also is a blatant lie. That contention is not adhered to in the evidence at all and a separate contention is raised, viz., that the petitioner's married son is residing there with his earning wife.

4. On these pleadings, issues were framed by the learned Judge in consonance with the provisions of section 13(1)(k) and 13(1)(I) of the Rent Act and parties went to trial.

5. In the case of Gangal, the contention that the entire family was staying in both the places was completely given up. A novel contention was raised during the course of the evidence that Satish was an obstinate son and was not seeing eye to eye with his mother. A deed purporting to be a deed of partition was furnished to the Court by Gangal when he was in the witness-box giving his evidence in examination-in-chief. There was no reference whatsoever to that document in the Written Statement nor any plea based upon that document was as much as murmured in the Written Statement; but this document was sought to be produced and relied upon for the first time during the course of the evidence. The learned Judge admitted the document. In my opinion, the document is of extremely suspicious character, it is also an extremely anomalous document; but for the sake of this judgment, I assume that it is a genuine document. By that document it is specifically averred that the tenant of the suit premises was none other than defendant Gangal himself; but the document states further that the tenant Gangal had acquired additional accommodation in Doodh Nagar Co-operative Housing Society at Goregaon itself. It is further stated that Gangal's son Satish was taking education in the college and was also earning and making his own living. It was further stated that Satish had no desire to continue living with the tenant's family. It was stated that he is of an obstinate and whimsical type and had modern views, the result of which was that there was constant friction between himself and his mother and in spite of the best efforts on their part, there was no improvement in his conduct. It was further stated that later on he would be married and that at that time, the suit premises would not be enough for the family. Various reasons, have been given justifying the separation of the father and his family from the son and it is stated

that Satish should live separately in the suit premise, should complete his education and should "look after" his job. It is further stated that the father, the mother, the brother and sisters of Satish should stay in the Doodh Nagar Co-operative Housing Society flat. It is further stated that even the ration card should be made separate and all other matters (vyavhar) should be dealt with separately and independently. Further, it is stated in the document that the renant of the premises should be paid by Satish. The water charges and electricity charges should be paid by Satish regularly. But it is also stated that if he requires any help from the parents, he could rely upon their help. It is further specifically stated that Satish should make arrangement for his meals, residence, etc. in the suit premises only and that his father, i.e., the tenant, and the members of his family should not be in any way burdened by Satish's liability. A condition is put that Satish should not bring any sub-tenant in the suit premises or should not bring anybody else even on account of friendliness and that he should do nothing which will affect the tenancy rights in respect of the suit premises.

As will be presently pointed out, even without this document, there is enough evidence to show that the son Satish had separated from the tenant. There was a separation by mutual agreement; but this document clinches that conclusion. The document leaves no room for doubt that at least from the date of the document, Satish ceased to be the member of the defendant-tenant's family. He was allowed to stay in the suit premises and the tenant and the members of his family shifted to the new residence.

As regards the question of keeping the premises closed for a period exceeding six month's, the plea was that the defendant's son, who was living away from the family, was residing in the suit premises. The learned trial Judge accepted the pleas of the plaintiff under both the sections 13(1)(k) and 13(1)(I). He help that the defendant had acquired suitable alternative residence in the nearby building of Doodh Nagar Co-operative Housing Society. He also held that the suit premises were kept unused for a period exceeding six months. A decree for eviction was, therefore, passed by him against the tenant Gangal.

6. Let me now deal with the evidence led by Mejari. As mentioned above his plea also was that the tenant and his family continued to live in the premises. But in evidence, the tenant Mejari admitted that after the acquisition of the new premises admeasuring 500 sq.ft in the adjacent co-operative housing society building, Jeevan-Shree, the entire family of the defendant had shifted to the new premises; but that his elder son Dattatray had married a girl of a different caste and as his family was not pulling on with Dattatray and his wife, he therefore, gave evidence and stated that right from the time when the new premises were acquired, his son Dattatray and his wife were staying separately in the suit premises and that the tenant and his family had shifted to the new premises. He admitted that the gas-connection was shifted to the new premises. He admitted that the rent and electricity charges were being paid by Dattatray. Not only that,

but even the ration card was separated. There is no dispute that for every family, one ratio card is given. From the date when the family shifted to the new premises, two ration cards were prepared. For the family of the tenant, there was independent ratio-card on the address of the newly acquired premises. For the family of Dattatray, there was a separate ration card showing the address of the suit premises. It was admitted that the daughter-in-law had never stayed with the tenant defendant and his family in the new premises. So much was the rift between the two families.

It was in the context of these facts that the learned Judge held that the tenant was liable for eviction u/s 13(1)(k) and 13(1)(I) of the Rent Act, and passed decree for possession against them.

7. I will now deal with the judgment of the Appellate Bench of the Small Causes Court which has set aside the finding of the trial Court not only in respect of plea u/s 13(1)(k) of the Rent Act but also u/s 13(1)(I).

In the case of tenant Gangal, the learned Judge held that the newly acquired flat in the Doodh Nagar Co-operative Housing Society was 500 sq.ft. On what evidence, he arrived at that conclusion is not stated by him. The tenant has not produced the document of title showing the area of flat in his possession. The plaintiff's contention was that it was of larger area of 650 sq.ft. Of course, he could not have the first hand knowledge about the same; but the point is that it was within the exclusive knowledge of the defendant tenant. Beyond making a statement that it admeasures 500 sw.ft. he made no other evidence for proving that area. Normally, I would not have paid much of attention to this aspect; but I have noticed that this tenant has made positively false statement in the Written Statement and in addition to that has produced, at the eleventh hour, for the first time when his evidence-in-chief was going on, a document which appears to be of quite a suspicious character. I for one would have been very slow to place reliance upon tenant's uncorroborated word that the area of the premises is 500 sq.ft. There is adverse inference against him for not producing the relevant document for proving the area of the newly acquired flat. All the same, I am prepared to proceed upon the assumption that the area of the flat is 500 sq.f.t. What the learned Judge observed further was that the defendant-tenant was the Regional Accountant; his wife was also employed, his eldest son was a Diploma Holder in Plastic Engineering and his daughter was studying in college whereas the second son was in business. According to the learned Judge, therefore, the family required much larger and much better accommodation. It was on this ground that the learned Judge arrived at the conclusion that a newly acquired premises do not constitute suitable residence within the meaning of section 13(1) (I) of the Rent Act. The facts that the premises were much larger and much better than the suit premises and that it was almost in the vicinity of the suit premises were the circumstances which, according to the learned Judge, are not of any relevance in this matter. The needs of the family are much higher and these newly acquired premises do not cope with the needs and, hence, the old

suit premises must be retained by them; that is the approach of the Lower Court. With this approach, the learned Judges negated the finding of the Trial Court as regards the position u/s 13(1)(I) of the Rent Act.

So far as section 13(1)(k) is concerned, the learned Judges held that the tenant had not ceased to use the premises for a period over six months.

The appeal was, therefore, allowed and the plaintiff's suit for eviction was dismissed.

8. Let me now turn to the position in Mejarir's case.

The evidence admittedly shows that he acquired the additional premises, viz., a flat in the building of Jeevan Shree Society which is almost adjacent to the suit premises the defendant has stated in the evidence that it is at two minutes, walk. The petitioner stated that it is check by joil to the building in which the suit premises are situate. According to the landlord's evidence, the area admeasures 550 sq.ft. The tenant has stated that the area of the new premises is 500 sq.ft. Once again, no document of title describing the area is produced. Normally, adverse inference should have been raised against him on this account; but I am prepared to proceed upon the assumption that the area is only 500 sq.ft. Admittedly, again, the tenant and his entire family, excepting their son, have shifted to the newly acquired premises in the year 1977 itself. The case of the tenant was that there was no love lost between himself and his family on the one hand and the son Dattatraya and his wife on the other. According to the defendant, his son Dattatraya married a girl of another caste which was the cause of rift between the son and wife on the one hand and the parents on the other. The evidence goes to show that the defendant tenant is staying smugly and happily in the newly acquired premises since 1977 and the son and his wife have been staying in the suit premises separately from each other. The evidence further goes to show that after they shifted to the new place. Dattatraya's wife did not even visit her parents-in-law so much is the rift. Even in this case, the ration cared is different. The electricity bill is not being paid by the original tenant. The rent is being paid also by Dattatraya. If this is not a case of separation between the father and son, it is next to impossible to conceive of any circumstances which will be constructed as evidence of separation between the father and the son.

Having regard to this nature of the evidence, the trial Court upheld the plaintiff's plea that the tenant had acquired residence, and hence, passed a decree against the tenant u/s 13(1)(I) of the Rent Act. The plaintiffs plea for possession u/s 13(1)(k) was, however, negated.

In appeal, identical view as the one by him in Gangal's case is taken by the learned Additional District Judge. He has stated as to how great the need of the defendant and the other members of the family is having regard to the earning being made by them and education had by them. The long and short of his view is that the defendant needs both the premises for himself and the members of

his family and that, hence, the newly acquired premises would not be "suitable" all by themselves. The appeal was, therefore, allowed and the plaintiffs suit was dismissed by the learned Judge.

9. In my opinion, the entire question falls under a narrow compass and, further, the decree of the trial Court cannot be sustained at all.

Before analysing the question, I may state here about the consensus regarding one legal position. Both Mr. Abhayankar, the learned Advocate for the tenant Gangal, and Mr. Gangal, the learned Advocate for the tenant Mejari, were one with the Court as regards the view that while considering the suitability of the alternate premises newly acquired by the tenant, the needs of a tenant have to be considered, but that the tenant's needs would mean the needs of the tenant and of the members of his family. After all, when tenant "A" takes on lease premises from landlord "B" for residence, he does not take them for himself alone. No doubt, the tenancy vests in him but, from the very nature of things, he takes it for himself and for the members of his family. As to who would be the members of the family may differ time-wise and region-wise, his torically and geographically. It may also differ having regard to the purpose of the tenancy. But one legal position cannot be gain said viz. that the word "tenant" includes, for the purposes of provisions such as sections 13(1)(g), 13(1)(k) or 13(1)(I) of the Rent Act, the members of his family. By the expression "members of the family", what is connoted are the persons recognized by common expectation and understanding as the members of the family. Normally speaking, the man, his wife and his children are members of the family undisputedly; but the law has progressed further; it has broadened itself and even other relations are taken by it in the fold of this expression "members of the family". But for this purpose, one vital and crucial circumstance must exist. The circumstance is that all those persons who claim to be the members of the family must be residing together as one unit as member family. As will be presently pointed out, this requirement is a postule for becoming the member of the family which position is emphasized by the English Courts whose decisions relating to the Rent Act are followed by our Courts. In fact, the decision in this behalf which I propose to point out are self-same decisions which have been relied upon by another learned Judge of this Court for the purpose of coming to the conclusion exactly contrary to the one which has been arrived at by the English Courts. I will not point out presently that according to the English courts, it is a well-settled law that a person, even a nephew or adopted child or a person who is treated as a member of the family by all the other members of the family, does partake the status of being a part and parcel of the family, in other words of being a member of the family, but only subject to one crucial condition. The condition is that he must be living with the family as a member member of the family. He must be living together physically with the family as a member of the family. This requirement of living together is writ large upon and is an indispensable postulate of membership of the family. Thus, even an adopted son (in cases where adoption is not conventional) or even a nephew or cousin, or even a

somewhat distant relative for the matter of that, may have been brought up by the family as a member of the family. He shares the high and low tides in the fortunes of the family. He is a part and parcel of the family. Thus, he is a member of the family.

10. But on the other hand, even the son will cease to be a member of the family by physical separation from the family. This is a position of usual occurrence. The children grow, they complete their education, they are on the threshold of their own independent career. Because of the paucity of residential accommodation, they are required to stay with the parents, families but they are always choosing their own opportunity to have their own separate nest, once they get the opportunity, they spring at it and catch it with both the hands. From that date, the son is separated from the father. There may be exception to cases where the son will start living separately and still will be a member of the family. That would be so in the cases of joint family where the joint family's property has not been partitioned. That will be particularly so in the case of a joint family where the tenancy is taken in the name of the joint family. One of the members of the joint family who has taken the premises on rent might stay in the rented premises whereas the other members might stay in some other premises. The continuance of the joint family will not be, in such case, imperilled by the fact that one of the members of the joint family stays in premises taken on rent by the joint family. This is a peculiarity of the Hindu Law and of the Hindu joint family. The position in the present case is not of that character at all. Admittedly and undisputedly, in both the cases, that of Gangal and Mejari the tenancy was taken by Gangal and Mejari themselves. It was not joint family tenancy. It is nobody's case that they had any joint family property which was to be partitioned amongst various members of the joint family. The admitted fact is that the moment the new premises were acquired, one of the sons in each of the cases separated himself and chose to reside in the suit premises and brought about a complete separation in the eyes of law from his parents. In the case of Gangal, the father and son went to the extent of executing a writing of separation. It is a suspicious document. Probably sham one. But the very fact that it was produced shows that complete separation came into existence between the son on the one hand and the father and other members of his family on the other. This means unequivocally that this son in question ceased to be a member of the family of the tenant of the suit premises when the tenant and other members of his family shifted to the new premises. In the case of Mejari, the evidence is unequivocal on the point that the parents and the son could not see eye to eye. We need not go into the reasons why it was so. Fact remains that the daughter-in-law was not even on visiting terms with the tenant. If this is not separation between the father and the son, it defies understanding as to what circumstances brought about a separation between the two. I repeatedly inquired of both, Mr. Abhyankar and Mr. Gangal, as to whether there could be any separation between father and son. In fairness to both of them, I must say that they would not go to the extent of saying that separation between the father and son is not

inconceivable. The next question that was posed by me, therefore, was as to which circumstance would constitute separation if the circumstances mentioned above did not constitute separation. Eloquent reticence was the only reply. But they insisted on contending that a son cannot be said to be separated from the father, merely because he is living separately. The question is not whether he is merely residing separately. The point is that he is of his own living separately earning separately, spending separately leading his own life separately along with his wife. They are separated from each other. This inevitably spells the position that in the case of Gangal, Satish is no more a member of the defendant's family and in the case of Mejari, Dattatraya is no more and no longer a member of defendant-Mejari's family.

11. If this is the position it follows that the entire family is living in the newly acquired premises in the case of both the tenants Gangal and Mejari. Their families do not need the suit premises at all. Their families have acquired the new premises where they are happily ensconced.

12. In this connection it is somewhat illuminating seeing the present position of the family of each of the tenants.

In the case of defendant-Gangal, he had two sons (one of them Satish who was married) and one unmarried daughter on the date of the suit. It was the contention of Mr. Abhyankar himself that the courts, including the appeal courts and writ courts, are under a duty to take notice of even developments subsequent to the institution of suit with a view to mould the ultimate decree in consonance with the new developments. There can be no quarrel with that proposition. But then the factual position as on this date is (about which all the Counsel who were being instructed by their clients personally were agreed) that defendant-Gangal's daughter is also married and she had gone to stay happily with her husband. Satish is also married as mentioned above. In the newly acquired premises, only the father, the mother and the unmarried son are staying. Formerly, not in a very distant past, they, the father, the mother, the two sons and one daughter, were staying in the suit premises which were a one-room-tenement. Now, they are staying in the nearby tenement but only the father, the mother and one son. And still the plea is that the newly acquired accommodation is not sufficient for their residence. In my opinion, if such a view is taken then, as rightly argued by Mr. Shah, section 13(1)(I) will be deemed to have been wiped off the statute book. It is true that the tenant's reasonable needs have got to be taken into account while ascertaining the suitability of the alternate premises; but it has got to be borne in mind that the needs have no upper limit. As a matter of fact, there is hardly anything in the world that people do not think to be necessary for them, thanks to the luxuries presented to all of us by the movies and the televisions. If the necessity of acquisition of those luxuries is looked at as the test of the suitability, it is better to declare, once for all, that the provision contained in section 13(1)(I) is a dead letter.

In the case of defendant Mejari the present position, as stated by Mr, Boralkar

appearing for Mr. Gangal, Advocate, regarding the occupants of the newly acquired premises, is that defendant Mejari, his wife and two sons are staying in them and that one of the sons is married. Admittedly, the marriage of the second son took place during the pendency of this litigation, whereas the eldest son Dattatray was already married and his marriage had taken place almost at the time of the acquisition of the new premises. I, therefore, assume that in the new premises, the father (defendant), the mother, one married son and one more son stay in a one-bed-room flat consisting of one bed-room, a living room and a kitchen and balconies. Point is that the father, the mother and three sons were staying as late as till 1977 in a one room tenment with a mark-shift partition for the purpose of the kitchenette. One son Dattatraya has separated as mentioned above. Can it be said that the newly acquired premises are not suitable for them? Mr. Abhyankar argued that the second son is also likely to be married. Simple question that can be put to him is that he shall have to face the problem as to what is to be done about it. In every case where a tenant takes the premises on rent, his family grows by the lapse of time but for that purpose what is required to be done by the persons concerned is a proper planning. Incorrect interpretation of the Rent Act is not the solution. Difficulties are bound to be there in any premises and those difficulties will have to be overcome by the efforts of the tenant and their progeny. Mere fact that there are difficulties for the tenants does not mean that the alternate accommodation is not suitable for them in the eyes of law even if the accommodation is much larger than the suit accommodation and much better than the suit accommodation.

But the gist of the point is that Dattatraya has separated from the family. He is no longer a member of the family of defendant Mejari in any sense of the word. His case stands in the identical position as that of Satish in defendant-Gangal's case. Both of them have separated from their parents. Both of them have been leading their independent life. Their needs cannot, therefore, be taken into account for the purpose of ascertaining the suitability of the alternate premises because they are not staying and do not intend to stay in the alternate premises and do not have any truck with the alternate premises.

13. I do not wish to convey that in every case when one of the sons in the family starts residing in the old rented premises, he ceases to be a member of the family. We shall take just one example. The family has three sons. One of them is a bright student needing a study-room for himself. The one-room tenement is just not enough for his study. His father might acquire other premises and the other members of the family will settle in the acquired premises. The student-son will use the suit premises as the study-room. Sometimes, he might take his food in the old room itself, but sometimes he will be messing with his parents also. Most of all, he will be financially dependent on his father. It can never be stated in such a case that the son has separated from the father. What constitutes separation will depend on facts and facts of each case. The facts that have come on record in the instant case cry hoarse that Satish in the case of defendant-Gangal and Dattatraya in the case of defendant-Mejari had unequivocally

separated from their parents. They have ceased to be the members of the tenants families. Their needs, therefore, cannot be taken into account while considering whether the alternate accommodation is suitable for the family or not.

14. The correctness of this view was questioned by Mr. Abhyankar and Mr. Gangal by placing strong reliance upon a judgment of a learned Single Judge (Vaidya, J.), of this Court reported in 76 Bom.L.R. p. 240, Prabhakar Raghunath Dixit v. B.S.. Kothare. In that case, the suit was filed by the petitioner-landlord against the tenant u/s 13(1)(g) (on the ground of bona fide requirement) and u/s 13(1) (I) (on the ground of acquisition of suitable residence). The trial Court decreed the suit; but the Appellate Bench allowed the appeal and dismissed the suit.

It so happened that during the pendency of the writ petition in this Court against the decree passed by the Appellate Bench, the tenant happened to acquire other premises consisting of two bed-rooms and admeasuring 670 sq.ft in a building belonging to a co-operative society. Having regard to the fact that the change of circumstance had to be taken into account by the Courts, Malvankar, J., who heard the writ petition framed an issue and called for a finding on the issue whether the tenant had acquired the above-mentioned premises as suitable residence. A concurrent finding was recorded by both the courts below that the tenant had acquired such premises which were suitable for the residence of himself and his family. The finding was forwarded to this Court; but even though is was a concurrent finding, Vaidya j., who happened to hear the writ petition, was persuaded to take the view that the lower Court had not considered the question whether the premises were "suitable" or not. The entire question turned upon the question as to whether the son of the sister of the tenant who was residing with the tenant and was brought up and was living as a member of that family was a member of the family in the eyes of the Rent Act or not. For examining this question Vaidya, J., relied upon the two judgments of the English Courts for coming to the conclusion that even a relative who is brought up by the tenant's family and who has been residing with the tenant must be regarded as a member of the family. Vaidya, J., was of the view that the need of the sister's son was not taken into account by the lower Court while recording the bona fide or suitability in favour of the landlord. It was on this ground that the writ petition was allowed and the decree passed by the lower Court was set aside and the plaintiff's suit for possession was dismissed.

15. I have examined those authorities on this point. viz., the judgment of Vaidya, J., in the case of Prabhakar Dixit and also the English decisions and I am of the view that the application of the English decisions to the facts of the present case is, with great respect, very much misplaced. I will, therefore, refer to both the English authorities. The first authority relied upon by the learned Judge is Standingford v. Probert 1950(1) K.B. 377. In that case, the defendant was the tenant of a dwelling house which was subject to the provisions of the Rent Restrictions Act. The house consisted of three bed-rooms the living room a

kitchen and a bath-room. With the defendant, who was a lady, were residing her daughter, two married sons, their respective wives and also a lodger. The landlord gave them a notice to quit but offered the tenant an alternate accommodation in the form of a flat comprising of two bed-rooms, one living room, a kitchenette and a bath-room as also two bed-rooms in other premises. The country Court held that what was offered by the landlord was suitable accommodation within the meaning of section 3 of the relevant English Act which section is more or less analogous with section 13(1)(I) of our Rent Act. In appeal, the question arose, while considering whether the alternate accommodation was suitable for the tenant's family or not and whether the relatives were members of the tenant's family or not. The answer given by Cohen, L.J., was that the word "family" could be extended beyond not merely children but even beyond the statutory next-of-kin. In this connection, he referred with approval to the observation of Wright, J., in an earlier case where Wright, J., had observed that the word "family" includes brothers and sisters of the deceased living with her at the time of her death, but the learned Judge observed further as follows :---

"...I think that that meaning is required by the ordinary acceptation of the word in this connection, and that the legislature has used the word "family" to introduce a flexible and wide term."

The learned Judge observed that the servants and lodgers will not be included in that term "family" because they are not regarded as members of the family by the admitted members of the family.

Point is that the process of living together is the basic postulate of the concept, of family. This living together must be both by intent and in fact, that is to say, physical as well as a matter of permanent intention. As mentioned above, a young son of the family may reside separately for certain purposes but may still continue, to be the member of the family inter alia, because he is depended upon the family. He is otherwise a part and parcel of the family, taking many times meals with the family; but if all these things are absent and if both by intent and by physical acts the father and his son have drifted away from each other, it is futile contending that the son continues to be the member of the father's family.

However, what is important to note in this case is that none of the members of the tenant family was to reside in the old premises. It was not as if that one member was to separate and was to reside in the suit premises whereas the others were to reside in the newly acquired premises. The suitability of the newly allotted alternate premises was, therefore, required to be considered for the family as a whole, including the relatives who were living with the family as the members of the family. The case with which Vaidya, J., was dealing or with which I am dealing does not involve this element at all. In the present case, both Dattatraya and Satish have separated from the family. They are not and were not going to stay in the alternate premises. If that is the position, then, with great respect, reliance upon these authorities for coming to the conclusion to the one

arrived by the learned Judge is unsupportable.

16. The second authority relied upon by the learned Judge is Brock & others v. Wollams 1949(2) K.B. 388. It will be seen that the ratio of this case is identical as that of the English case discussed earlier. In that case, "W" was adopted by the tenant "L" when he was a lad of 5 or 6 years of age and "W" resided with tenant "L" until the death of "L" except for about three years after her marriage in 1939. She lived with tenant "L" from 1912 to 1939 as a member of that family. Her husband died in 1942 when she returned to tenant "L" as a homing pigeon and continued to reside with tenant "L" as a member of the family. She was not adopted by tenant "L" in accordance with the provisions of the Adoption of Children Act, 1926; but the fact remains that she was, and treated as, an adopted child and was residing with the family of tenant "L" as a member of his family. Question arose whether she could be regarded as a tenant after the death of tenant "L". She could be a tenant if she was a member of the family. The Court of Appeal held that she was a member of the family and, hence, was entitled to be regarded as the tenant within the contemplation of the Rent legislation.

I plainly fail to see to how that analogy can be applied in this case. At no time, the adoptive daughter had separated from the family. Her three years separation was wiped off when she boomeranged back to the family and stayed with the family almost till the death of the tenant. She was, of course, considered to be a part and parcel of the family. But the point is that separation from the family was not as much as murmured in the case. To hold that this is a case having bearing upon the fact of the present case is, to my mind, a travesty of judicial reasoning.

17. Since that judgment of Vaidya, J., does not consider the effect of separation between the father and son and since the reliance placed by him upon the above-mentioned English authorities which have no bearing whatsoever on the question falling for decision in this case, in my opinion, the reliance upon the judgment of Vaidya, J., cannot help the defendant-tenants.

18. Mr. Shah wanted to urge certain other points. One of his pleas was that the true test should be on the basis of comparison between the suit premises and the newly acquired premises. He urged that if the newly acquired premises are better in every respect and have convenience more than that which is offered, then the alternate premises must be regarded as suitable. He conceded that the tenant residing in the tenanted premises in Bombay cannot be said to have acquired a suitable residence if he has constructed a bungalow, say, in Kolhapur, because residence in that bungalow will not be suitable for the purpose of avocation of the tenant. According to him, the comparison must be between the present premises and the newly acquired premises areawise, distance-wise and convenience-wise. His second plea was that the date relevant for considering the needs of the tenant is the date of the new acquisition or, at the most, the date of the suit. According to him, there is an implication arising out of the provision of section 13(1)(I) of the Rent Act that if at any time, the tenant acquires other

accommodation for residence which is fully comparable with the tenanted premises and is in fact better and larger than the tenanted premises, then he is under a duty to surrender the premises to the landlord because he incurs liability of eviction from that date, and the facts that his family would grow later on and the children in the family would have had better education later on are all facts not germane for the provision of section 13(1)(I).

Mr. Shah may or may not be right on this question. In my view, the above fact that the sons of both the tenants have separated from the family is enough to hold that they are no more members of the family and, hence their needs become irrelevant for the purpose of assessing the needs of the tenant's family vis-a-vis the newly acquired premises.

19. Both the petitions, therefore, succeed. The rule earlier issued is made absolute. The decrees passed by the Appellate Bench are set aside and the decrees passed by the trial Court are restored. However, there shall be no order as to costs.