
(2013) 03 BOM CK 0205
In the Bombay High Court
Case No : Writ Petition No. 777 of 2011

Vinayak Ranum D.P. Loundo	Vs	APPELLANT
Amira A. Razaq and Others		RESPONDENT

Date of Decision : 05-03-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Constitution of India, 1950 — Article 227

Citation : (2013) 4 BomCR 469

Hon'ble Judges : Reis F.M., J

Bench : Single Bench

Advocate : S.G. Desai, V.R. Tamba WITH D. Zaveri, for the Appellant; J.E. Coelho Pereira, with V. Korgaonkar, for the Respondent

Final Decision : Disposed Off

Judgement

Reis F.M., J.—Heard Shri S.G. Desai, learned Senior Counsel appearing for the petitioner and Shri J.E. Coelho Pereira, learned Senior appearing for the respondents. The above petition seeks to quash and set aside the judgment and order dated 21.3.2011 passed in Eviction Appeal No. 10/2007 and also the order dated 16.11.2011 passed in Review Application No. 8/11.

2. Briefly, the facts of the case are that the respondents filed an application for eviction under sections 22(2)(a), (b), (c), (f) and 23(b) of the Goa, Daman and Diu Building (Lease, Rent and Eviction) Control Act, 1968 before the Rent Controller at Panaji. The petitioner filed his written statement disputing the claim put forward by the respondents. The ground for eviction on which the respondents sought the eviction of the petitioner is essentially on the ground that the premises which is consisted of a garage was leased to Shri R.D.P. Loundo situated on the ground floor of the building known as "Yasin Manzil" situated facing Dr. Dada Vaidya Road at Panaji. It is the contention of the respondents that the suit premises were given on lease pursuant to an agreement dated 5.7.1956 by the grandfather of the respondents to late R.D. Porobo Loundo on

rent of Rs. 30/- per month. It is further their case that the rent in respect of the suit premises was paid from 1.4.1991 to 30.6.2001 at the said rate. It is further their contention that the said R.D.P. Loundo illegally and unauthorized sub-let the suit premises without written consent of the respondents and as such the petitioner was liable to be evicted in terms of the provisions of section 22(2)(b) (i) of the said Rent Control Act. It is also their case that the petitioner also has his own place where he parks his vehicles and therefore he is liable for eviction u/s 22(2)(i) of the said Rent Control Act. The contention of the respondents essentially was upon the fact that the petitioner had sub-let the suit premises in favour of the partnership firm M/s. R.D.P. Loundo. It is further their contention that in view of the fact that no written consent was obtained on account of such sub-letting on the part of the petitioner, they are liable for eviction under the said provisions of the Rent Control Act. Though the respondents also sought an eviction on the other ground referred to above, nevertheless, the said ground would not be relevant taking note of the fact that the eviction on such ground came to be rejected by the Authorities below. The petitioner disputed case of the respondents on the ground that he had not sub-let the suit premises and disputed that there was any sub-letting on the part of the said R.D.P. Loundo in respect of the disputed premises. It is further his case that the rent in respect of the disputed premises was always paid by the said partnership firm M/s. R.D.P. Loundo & Co. It is further his case that after the death of the said R.D.P. Loundo in the year 1975, the rent in respect of the disputed premises was being paid by the partnership firm known as M/s. R.D.P. Loundo & Co. and the same was duly accepted by the landlord. It is also his contention that the notice was issued by the respondents through their Advocate calling upon the said partnership firm M/s. R.D.P. Loundo & Co. to pay the arrears of the rent and it is also their contention that the said partnership firm M/s. R.D.P. Loundo & Co. is the tenant of the disputed premises.

3. On the basis of the averments put forward by the parties, the learned Rent Controller upon recording of evidence by judgment and order dated 27.6.2007 directed the eviction of the petitioner from the disputed premises u/s 22(2)(i) of the said Rent Control Act. Being aggrieved by the said judgment and order, the petitioner has preferred an appeal before the Administrative Tribunal being Eviction Appeal No. 10/2007 which came to be disposed of by judgment dated 21.3.2011 whereby the appeal came to be dismissed. In the meanwhile, it appears that the petitioner had also filed a review application before the learned Tribunal which also came to be rejected by order dated 16.11.2011. Being aggrieved by the judgment and orders passed by the Authorities below, the petitioner has preferred the present writ petition.

4. Shri S.G. Desai, learned Senior Counsel appearing for the petitioner has raised three contentions assailing the impugned judgments passed by the Authorities below. It is his first contention that admittedly, when the eviction proceedings were initiated in the year 2001, the original tenant R.D.P. Loundo had already expired and as such, the tenancy rights have devolved upon his children in terms

of the provisions of Rent Control Act and consequently, the eviction application filed by the respondents deserves to be rejected for non-joinder of all the legal heirs of the deceased tenant. The learned Senior Counsel further pointed out that the petitioner is being sued as a representative of the legal heirs of the deceased R.D.P. Loundo when according to him, such exercise is not permissible as nothing has been brought on record to suggest that the petitioner was representing interest of the legal heirs of the said Loundo. The learned Senior Counsel thereafter has pointed out that in terms of the definition of tenant under the Rent Control Act upon the death of the original tenant, the rights devolved upon his legal heirs as referred to therein. The learned Senior Counsel as such submits that non-joinder of all the legal heirs of the deceased tenant has itself vitiate the proceedings initiated by the respondents and as such on this ground alone the impugned judgments passed by the Authorities below deserve to be quashed and set aside. Next contention of the learned Senior Counsel is that according to the respondents such sub-tenancy if at all created was during the life time of R.D.P. Loundo who admittedly had expired in the year 1975. Taking into consideration the provisions of the Mamlatdar Court Act which are applicable to the proceedings under the Rent Control Act and any proceedings under the said Act are to be filed within one year. Next contention of Shri S.G. Desai, learned Senior Counsel appearing for the petitioner is that in terms of Article 137 of the Limitation Act, 1963 any proceedings or suit or Misc. proceedings are to be filed within a period of three years from the date of the cause of action and taking note of the fact that the contention of the respondents is that the alleged sub-tenancy was created during the life time of the said R.D.P. Loundo who had admittedly expired in the year 1975, the proceedings initiated in the year 2001 are hopelessly barred by limitation and as such the impugned judgments passed by the Authorities below deserve to be quashed and set aside on this ground alone. The learned Senior Counsel has further pointed out that on the basis of the allegations made by the respondents themselves, it is evident that the proceedings are barred by limitation and as such the impugned judgments passed by the Authorities below on this ground alone deserve to be set aside. The last contention of Shri S.G. Desai, learned Senior Counsel appearing for the petitioner is that the respondents have failed to establish that the said R.D.P. Loundo has sub-let the suit premises in favour of the partnership firm M/s. R.D.P. Loundo & Co. The learned Senior Counsel has further pointed out that merely because the partnership firm has been created with R.D.P. Loundo as one of the partners by itself cannot establish the claim of the respondents that there was sub-letting of the suit premises. The learned Senior Counsel further pointed out that the burden to establish the sub-tenancy is on the respondents/landlord and on the basis of the material on record the respondents have miserably failed to establish the so called sub-tenancy in favour of the said partnership firm. The learned Senior Counsel further pointed out that the original partnership firm which was in existence during the life time of the said R.D.P. Loundo consisted of partners namely the said R.D.P. Loundo and his two sons. The learned Senior Counsel further pointed out that upon the death of said R.D.P. Loundo, a new

partnership firm known as M/s. R.D.P. Loundo & Co. was formed which consists of partners namely some of the legal heirs of the deceased R.D.P. Loundo. The learned Senior Counsel as such submits that the question of contending that there is sub-letting of the disputed premises by the respondents is totally misplaced. The learned Senior Counsel further pointed out that the respondents had not even produced the deed of partnership in respect of the said partnership firm and according to him, in case the learned Tribunal or the Authorities below wanted to verify the names of the partners of the said partnership firm, it was always open to the Court in terms of Order 41, Rule 27 of CPC to call for additional evidence with that respect. The learned Senior Counsel further pointed out that in any event, even this Court can call for the registration certificate of the said partnership firm to ascertain the names of the partners of the said partnership firm to verify whether any third parties are the partners thereof. Next contention of Shri Desai, learned Senior Counsel is that the respondents have failed to establish that there was any transfer of the disputed premises in favour of any third party. The learned Senior Counsel further pointed out that there is nothing adduced by the respondents to establish that the said partnership firm was created for any oblique reason and as such, unless such material is established, the question of holding that the partnership firm is only a front to camouflage of interested party cannot be accepted. The learned Senior Counsel has thereafter taken me through some of the portions of the evidence of AW 1 and pointed out that there is enough admission therein to suggest that the respondents were aware that the partnership firm M/s. R.D.P. Loundo was consisting of the said deceased R.D.P. Loundo along with his two sons. The learned Senior Counsel as such submits that the Authorities below have misconstrued the provisions of law and erroneously come to the conclusion that the respondents have established their case of alleged sub-tenancy.

5. On the other hand, Shri J.E. Coelho Pereira, learned Senior Counsel appearing for the respondents has supported the impugned judgments passed by the Authorities below. The learned Senior Counsel has pointed out that both the courts below upon appreciation of evidence on record have concurrently found that the respondents have established their claim of sub-tenancy as claimed by the respondents therein. The learned Senior Counsel has further pointed out that such concurrent findings of fact cannot be re-appreciated by this Court in exercise of jurisdiction under Article 227 of the constitution of India even assuming a contrary view is taken by this Court on appreciating of such evidence. The learned Senior Counsel thereafter has taken me through the judgment of the Apex Court to contend that such exercise by this Court is not permissible. With regard to the contention of Shri Desai, learned Senior Counsel appearing for the petitioner to the effect that all the legal heirs of the deceased R.D.P. Loundo had to be made parties to the proceedings, the learned Senior Counsel has pointed out that other legal heirs have not raised any challenge nor got themselves impleaded in the proceedings to get their alleged right protected. The learned Senior Counsel further pointed out that the Decree of eviction which

has been ordered by the Authorities below is operating only against the petitioner and in case any of the legal heirs have any independent right to the disputed premises they are free to get their right agitated. The learned Senior Counsel further pointed out that though upon the death of the tenant, the tenancy devolved in joint tenancy in favour of the legal heirs nevertheless, it is well settled by the Division Bench of this Court that a notice issued to one of such joint tenants would hold good to all the other joint tenants. The learned Senior Counsel as such submits that having filed the proceedings against one of the joint tenants, there is no defect in the proceedings initiated by the respondents and as such the contention of Shri Desai on that count deserves to be rejected. With regard to the next contention of Shri Desai, the learned Senior Counsel appearing for the petitioner, Shri Coelho Pereira, learned Senior Counsel appearing for the respondents has pointed out that the provisions of Limitation Act 1963 namely Article 137 is applicable to the suit and not to the proceedings under the Rent Control Act. The learned Senior Counsel as such submits that the question of invoking Article 137 of the Limitation Act and the contention that the application filed by the respondents is time barred is totally misconceived. The learned Senior Counsel in support of his contention has relied upon the judgment of the learned Single Judge of this Court to inter alia point out that the provisions of Article 137 of the Limitation Act are not applicable to the proceedings under the Rent Control Act. With regard to the last contention of Shri Desai, learned Senior Counsel appearing for the petitioner, Shri Coelho Pereira, learned Senior Counsel appearing for the respondents has pointed out that once the petitioner himself has admitted that the disputed premises are in possession of the said partnership" firm, it was incumbent upon the petitioner to establish by cogent evidence that there was no transfer in favour of such partnership firm. The learned Senior Counsel has further pointed out that the petitioner has admitted that the possession is being given to the said partnership firm which would itself imply that the deceased R.D.P. Loundo had in fact sub-let the disputed premises in favour of the said partnership firm. The learned Senior Counsel further pointed out that the petitioner has not led any evidence to show the basis in which the said partnership firm is holding the possession of the disputed premises. The learned Senior Counsel has also pointed out that the disputed premises is a garage and as such the question of carrying out any business activity by the partnership firm would not arise. The learned Senior Counsel further pointed out that the Apex Court in the recent judgment reported in Ms. Celina Coelho Pereira and Others Vs. Ulhas Mahabaleshwar Kholkar and Others, , has clearly held that the question of sub-tenancy which has been camouflagely accepted by the party cannot be interfered with by this Court in exercise of jurisdiction under Article 227 of the Constitution of India. The learned Senior Counsel further pointed out that in the said judgment of the Apex Court, it has been held that once the possession has been given to the partnership firm, it is always open to the authorities to lift the veil of the firm to ascertain the correct intention of the parties. The learned Senior Counsel further pointed out that the said judgment of the Apex Court is applicable in all force to the facts and circumstances of the

present case. The learned Senior Counsel has also submitted that the petitioner has in fact failed to establish their case that the said partnership firm M/s. R.D.P. Loundo & Co. is the tenant of the disputed premises and as such the defence of the petitioner has not been established and the Authorities below are justified to pass the impugned judgments. The learned Senior Counsel further pointed out that the question of calling upon the petitioner to produce the registration certificate from the Registrar of Firm at this stage cannot be adhered to. The learned Senior Counsel further pointed out that it was incumbent upon the petitioner to establish by cogent evidence the colour of the occupation of the said partnership firm of the disputed premises. The learned Senior Counsel has taken me through the evidence of the petitioner and pointed out that there is nothing on record to suggest that the suit premises were not sub-letted by R.D.P. Loundo in favour of the said partnership firm. The learned Senior Counsel has thereafter taken me through the judgment of the learned Tribunal and pointed out that the learned Tribunal has considered all the material on record as well as the evidence and appreciated the evidence and correctly come to the conclusion that the respondents have established that they are entitled for the eviction of the petitioner for breach under the provisions of section 22(2)(c) of the Rent Control Act. The learned Senior Counsel further pointed out that in the written statement filed by the petitioner, there is no plea taken with regard to the manner in which the partnership firm is in occupation of the suit premises when on the contrary it is their contention that M/s. R.D.P. Loundo & Co. is the tenant of the disputed premises. The learned Senior Counsel as such submits that the petition be rejected.

6. I have carefully considered the submissions of the learned Senior Counsel appearing for the respective parties and I have also gone through the records. Before I proceed to ascertain as to whether there is any case is made out for interference by this Court in the impugned judgments passed by the Authorities below, it would be appropriate to note the observations of the Apex Court in the judgment in the case of Celina Coelho Pereira (supra). The Apex Court in the said judgment has inter alia held that in order to prove the mischief of sub-letting as a ground for eviction under Rent Control laws, two ingredients have to be established, (1) parting with possession of tenancy or part of it by the tenant in favour of a third party with exclusive right of possession, and (2) that such parting with possession has been done without the consent of the landlord and in lieu of compensation or rent. The Apex Court has also held therein that inducing a partner or partners in the business or profession by a tenant by itself does not amount to subletting. However, if the purpose of such partnership is ostensible and a deed of partnership is drawn to conceal the real transaction of sub-letting, the Court may tear the veil of partnership to find out the real nature of transaction entered into by the tenant. The Apex Court has also held that if the tenant is actively associated with the partnership business and retains the control over the tenancy premises with him, may be along with partners, the tenant may not be said to have parted with possession. In the back ground of the said

observations of the Apex Court, I shall proceed to consider the submissions of the learned Senior Counsel appearing for the respective parties.

7. In the present case, it is not in dispute that the original tenancy was in favour of R.D.P. Loundo. The tenancy with regard to the garage was for parking of the vehicles. On going through the judgment of the Rent Controller dated 27.6.2007, I find that the learned Rent Controller has noted on going through the Agreement in respect of the disputed premises that the grandfather of the respondents represented by Shri Abdul Razaq, who is the father of the Applicant on one hand and Ranum D.P. Loundo on the other hand vide Clause No. 5, sub-letting was not permissible. The learned Rent Controller has also noted at para 29, there is an averment that the legal representatives of late Ranum had sub-let the suit premises to a firm by name Ranum D.P. Loundo and Company unauthorisedly and without the knowledge or consent of the respondents and that it was in violation of the contract dated 15.7.1956. The learned Rent Controller also noted that the said firm M/s. Ranum D.P. Loundo had filed a case u/s 18 of the Rent Control Act wherein the respondents were made parties on the ground of bona fide dispute as to who is the landlord. The learned Rent Controller also noted that in cross of AW 1, she had stated that the rent was received from the tenant and not from the firm. The learned Rent Controller also noted that the respondents in the cross has stated that she learnt from the written statement that even during his lifetime, Ranum D.P. Loundo withdrew himself and ceased to be a partner of the firm M/s. Ranum D.P. Loundo and that he had sub-let the suit premises. The learned Rent Controller found that this aspect is very important to prove the case of the respondents of sub-letting of the suit premises by the original lessee. The learned Rent Controller also noted that after the death of said Ranum D.P. Loundo, the rent was being sent by the said firm but the receipts were issued in the name of the said Ranum D.P. Loundo. The learned Rent Controller further found that in the deposition of RW 1 - Vinayak has stated that Shri Ranum D.P. Loundo and the said Vinayak were not partners of the firm and, as such, the Rent Controller held that Ranum D.P. Loundo violated the conditions by sub-letting the suit premises and, as such, the petitioners are liable for eviction from the suit premises u/s 22(2)(b)(i) of the Rent Control Act.

8. The learned Tribunal whilst disposing of the appeal preferred by the petitioner herein and dealing with the ground for eviction on account of sub-letting, has noted that it is pleaded by the respondents that the suit premises had been sub-let to the firms by name M/s. Ranum D.P. Loundo without the consent of the landlord. The learned Tribunal has also noted that at para 7 of the written statement, the petitioner has admitted the contentions of para 10 of the application therein admitting that the premises were tenanted to Ranum D.P. Loundo and that the agreement prohibited the sub lease with an exception that the father of the respondents had admitted that M/s. R.D.P. Loundo is a tenant of the suit premises. It is further noted that the rents were received by the landlord from the firm M/s. Ranum D.P. Loundo Co., and late Shri Ranum D.P. Loundo who was a partner of the said premises. The learned Tribunal also noted that in the

cross-examination of the petitioner/RW. 1 that the firm M/s. R.D.P. Loundo was first established in the year 1950 and that it proves that the firm M/s. Ranum D. Loundo was in existence prior to the execution of the agreement. The learned Tribunal also noted that the landlord has not admitted the firms as a tenant of the suit premises even during the lifetime of the tenant. Learned Tribunal further held that the evidence establishes that Ranum D.P. Loundo had parted with exclusive possession and control of the premises to M/s. Ranum D.P. Loundo and Co., in which he was not a partner. The learned Tribunal as such found that the original tenant had sublet the suit premises to the firm.

9. On going through the eviction application filed by the respondents, at para 29 thereof, the averments of the respondents is that the petitioner has sub-let the suit premises to the firm by name M/s. Ranum D.P. Loundo unauthorisedly and without the knowledge and the consent of the respondents. Hence, though the learned Tribunal has noted that the existence of two firms namely M/s. Ranum D.P. Loundo and M/s. Ranum D.P. Loundo & Co., nevertheless, the ground for eviction on account of sub-letting is to the firm M/s. R.D.P. Loundo and not to M/s. Ranum D.P. Loundo and Co. This aspect become material in the context of the findings of the Courts below that the deceased Ranum D.P. Loundo was not a partner of M/s. Ranum D.P. Loundo & Co. The Tribunal also found that the partnership was in existence in the year 1950 without noting that the partnership firm is stated to be a partnership firm duly registered under the Indian Partnership Act, 1932 as can be found from the cause title in Case No. Rent/ARC/5/1994. It is common knowledge that the said Act was not in force in the year 1950. Though the Tribunal has noted that in the cross-examination of AW. 1, she has accepted the situation that Shri R.D.P. Loundo was a partner of the firm M/s. R.D.P. Loundo, nevertheless, he had surrendered the premises to the firm, the inference of such evidence has not duly been considered by the authorities below. At para 3 of the affidavit in evidence of RW 1, there is a specific averment that during the lifetime of R.D.P. Loundo, the rent was being sent in the name of the firm M/s. Ranum D.P. Loundo of which he was a partner. At para 14 of his cross-examination, RW. 1 has also stated that Shri Ranum Loundo was also a partner of the said firm i.e. M/s. Ranum, D.P. Loundo and that the other partners of the firm were himself and his brothers and no outsiders and that it was established in the year 1950. Hence, the inference drawn on the basis of the admission that RW. 1 and his late father Ranum D.P. Loundo were not the partners of M/s. Ranum D.P. Loundo & Co., are immaterial for the purpose of deciding the above proceedings. The findings arrived at by the Authorities below are that the said R.D.P. Loundo was not parking his private vehicles but the vehicles of the partnership firm M/s. R.D.P. Loundo was parking in the disputed premises. In such circumstances, it was incumbent upon the Authorities below to ascertain as to whether the parking of the vehicles of the partnership firm M/s. R.D.P. Loundo would result in sub-letting within the meaning of section 22(2)(b) (i) of the Rent Control Act.

10. In the judgment reported in Helper Girdharbhai Vs. Saiyed Mohmad

Mirasaheb Kadri and Others, , it has been held that the tenant becoming a partner of a partnership firm and allowing the firm to carry on business in the demised premises while himself retaining legal possession does not amount to sub-letting. In the present case, the only material on record adduced by the respondents prima facie suggests that the partnership firm was using the suit premises for the purpose of parking their vehicles. There is nothing on record brought by the respondents to show that the said partnership firm was in fact created to camouflage the real intention of the party and as such the Authorities below have not given any finding to the effect that the partnership firm was created by the deceased R.D.P. Loundo for any oblique reason. Shri Coelho Pereira, learned Senior Counsel appearing for the respondents has pointed out that there is no material on record to suggest that R.D.P. Loundo was a partner of the said partnership firm of M/s. R.D.P. Loundo Co. On going through the evidence of AW 1 referred to herein above, wherein she has stated that she learnt that R.D.P. Loundo and his two sons were partners of the said firm and as such the contention of the learned Senior Counsel appearing for the respondents cannot be accepted. Apart from that, RW 1 in his affidavit has clearly stated that the deceased R.D.P. Loundo was a partner of the firm M/s. R.D.P. Loundo. As such, the findings of the authorities below based on admission of RW 1 that the deceased R.D.P. Loundo and RW 1 were not partners of M/s. R.D.P. Loundo and Co. is immaterial considering that the eviction application has been filed by the respondents on the ground that the suit premises were sub-let to the firm M/s. R.D.P. Loundo. Hence, prima facie, material on record suggest that the deceased R.D.P. Loundo was a partner of the said partnership firm M/s. R.D.P. Loundo besides his two sons. Thus, merely because the partnership firm was created by the tenant along with his two sons by itself cannot constitute to be sub-letting within the meaning of the provisions u/s 22(2)(b)(i) of the Rent Control Act considering the judgment of the Apex Court in the case of Helper Girdharbhai (supra) unless such firm has been constituted to camouflage the real intention of the tenant of the factual situation to part with the possession of the suit premises and create sub-tenancy.

11. The Apex Court in another judgment reported in G.K. Bhatnagar (D) by Lrs. Vs. Abdul Alim, , has observed at paras 7 and 9 thus:

7. The learned Rent Controller and the High Court have believed the testimony of the respondent tenant and Jagdish Chander, the alleged sub-tenant. So far as the landlord himself is concerned, his testimony is practically of no assistance. He admitted during the course of his deposition that he had not made any inquiries of himself to find out who were the partners in the business and how and in what manner the business was being carried on in the suit premises. He stated that it was from the wife of the respondent that he had learnt about the respondent tenant having left India for going abroad and then having returned. No inference relevant to the issue arising in the suit, could have been drawn from the statement of the landlord.

9. It is true that an appeal u/s 39(2) of the Act before the High Court lies only on the substantial question of law. However, the Appellate Authority in this case reversed the well-considered and well reasoned judgment of the Rent controller by resorting to conjectures and surmises. There is no material available to hold the partnership a sham or nominal one and to hold that the partnership was brought into existence for disguising a sub-letting in reality. A substantial question of law, therefore, arose before the High Court justifying interference in second appeal with the judgment of reversal recorded by the Appellate Authority. In addition, the case involved interpretation of the partnership deed and general power of attorney so as to see whether on a totality of the interpretation of recitals contained therein, read in the light of the other facts and circumstances, a case of sub-letting disguised as partnership was made out and needless to say, such interpretation of deeds is a question of law a substantial one in the facts and circumstances of the case.

12. In the judgment of the Apex Court in the case of Celina Coelho Pereira (supra), there is enough material on record to come to the conclusion that the partnership firm was in possession of the disputed premises which was formed for ostensible reason. Hence, the observations of the Apex Court referred to herein above in the case of Celina Coelho Pereira (supra) clearly demonstrate that to establish sub-tenancy the essential ingredient is to find out whether there was any parting of any possession to third party. Merely contending that the partnership firm is parking the vehicles would not by itself amount to parting of possession when the material on record suggest that the deceased R.D.P. Loundo was also a partner of the said firm M/s. R.D.P. Loundo. The authorities below have found that the possession has been parted on the basis of the admission of RW 1 that he and the deceased R.D.P. Loundo were not partners of the firm M/s. R.D.P. Loundo and Co. without considering that the firm M/s. R.D.P. Loundo and Co. is alleged to have been formed after the death of R.D.P. Loundo, as can be ascertained from the evidence of RW 1. Hence, as the authorities below have failed to consider whether the deceased R.D.P. Loundo has surrendered the exclusive possession by creating the said partnership firm M/s. R.D.P. Loundo for any ostensible reason, I find that the authorities below have not appreciated the material on record in its true perspective.

13. In fact, the learned Single Judge of this Court in the judgment reported in Smt. Parvatibai @ Hansabai Narayan Sawant (since deceased through her heir and legal representative Smt. Sushila Mahadeo Mhamunkar) Vs. Subhash Vishwanath Todankar, Rajnikant Vishwanath Todankar and Vijay Vishwanath Todankar Heirs and legal representatives of deceased Shri Vishwanath Vitthal Todankar, , has observed that it is incumbent upon the landlord to establish that some consideration was received by the tenant to create such sub-tenancy. This aspect has not been considered by the authorities below while coming to the conclusion that the respondent/landlord has established that the suit premises were sub-let by the original landlord R.D.P. Loundo. The contention of Shri Coelho Pereira, learned Senior Counsel appearing for the respondents that in a

petition under Article 227 of the Constitution of India, this Court cannot re-appreciate the evidence cannot be disputed. But however, it cannot be disputed that when the authorities below have not considered the matter by following well settled principles of law, it is always open for this Court to consider whether the authorities below have come to the conclusion without any evidence or upon manifest misreading of the evidence thereby indulging in improper exercise of jurisdiction or if the conclusions are perverse. In the present case, as already noted herein above, the authorities below have erroneously considered the ground for sub-letting on the assumption that the deceased R.D.P. Loundo was not a partner of the firm M/s. R.D.P. Loundo and Co. when the claim of the respondent/landlord was that R.D.P. Loundo had sub-let the premises to M/s. R.D.P. Loundo wherein the said tenant was a partner. In such circumstances, the authorities below have failed to consider the ingredients of sub-letting which have to be established by the respondent/landlord to come to the conclusion that sub-tenancy has been proved. In the judgment reported in Resham Singh Vs. Raghubir Singh and Another, , has observed at paras 5 and 7 thus:

5. The question of sub-letting is a conclusion on a question of law derived from the findings on the materials on record as to the transfer of exclusive possession and as to the said transfer of possession being for consideration. While considering the said sub-section (5) the above view was also expressed by this Court in Dev Kumar (Died) through LRs. Vs. Smt. Swaran Lata and others, .

7. It is a settled position of law that to establish sub-letting the onus is on the landlord to prove through evidence that the sub-tenant was in exclusive possession of the property in question; that between the sub-tenant and the tenant there was a relationship of lessee and lessor and that possession of the premises in question was parted with exclusively by the tenant in favour of the sub-tenant (See Kala and Another Vs. Madho Parshad Vaidya, and Benjamin Premanand Rawade (Dead) by Lrs. Vs. Anil Joseph Rawade, .

14. Hence, for the reasons stated herein above, I find that the learned Tribunal has not considered the parameters established by law to ascertain whether the respondents are entitled to evict the petitioner from the disputed premises on the ground of sub-letting.

15. As the learned Tribunal has not considered the matter in appropriate manner to come to the conclusion that the respondents are entitled to seek eviction of the petitioner on the ground of sub-tenancy, it would be appropriate in the interest of justice that the matter be remanded to the learned Tribunal to decide the appeal preferred by the respondents afresh taking note of the observations made herein above. No doubt, the learned Tribunal would have to consider the appeal preferred by the petitioner on its own merits after hearing the parties in accordance with law. The learned Tribunal can also consider whether the document of partnership firm would assist the Court to arrive at such conclusion.

16. With regard to contention of Shri Desai, learned Senior Counsel appearing for

the petitioner that the claim put forward by the respondents is barred by limitation. I am afraid that the said contention cannot be accepted. This Court in the judgment reported in 1996 (2) G.L.T. 144 in the case of (Shri Premanand Rajadhyaksha & Ors. Vs. M/s. Menezes & Cia & Ors.), has observed at paras 2 and 3 thus:

2. The next point raised is pertaining to limitation as contained in the Mamlatdar's Court Act. A bare provision of the Goa, Daman and Diu Buildings (Lease, Rent and Eviction) Control Act, 1968 shows that cause of action to file proceedings would be in terms of section 22 of the Act. In other words, the applicant filing for eviction must have a cause of action on the date the application is filed.

3. The provisions of the Mamlatdar's Court Act cannot determine the period of limitation under the Rent Act. By virtue of Rule 9 of the Rules framed under the Rent Act, all that is contained is that the procedure under the Mamlatdar's Court Act will follow. There is no substance in this petition whatsoever and is accordingly dismissed.

17. This contention of Shri Desai, learned Senior Counsel appearing for the petitioner that the proceedings are barred under Article 137 of the Limitation Act, 1963 cannot also be accepted. The proceedings before the Rent Controller are not suit for the purpose of applying the said provisions to proceedings under the Rent Control Act. Hence, the said contention of the learned Senior Counsel deserves to be rejected.

18. With regard to the contention of Shri Desai, learned Senior Counsel appearing for the petitioner that the application for eviction has to be dismissed for non-joinder of legal heirs of the deceased R.D.P. Loundo, I find that taking note of the contention of Shri Coelho Pereira, learned Senior Counsel appearing for the respondents that the order passed in the eviction proceedings was binding only on the petitioner herein, the said contention raised by the petitioner cannot be accepted. The legal heirs may take independent measures if they are so advised in accordance with law. The question of dismissing the application for non-joinder of the legal heirs as such cannot be accepted. Hence, the said contention of Shri Desai, learned Senior Counsel appearing for the petitioner deserves to be rejected. In view of the above, I pass the following:

ORDER

(i) The impugned judgment dated 21.3.2011 passed by the learned Tribunal is quashed and set aside.

(ii) Eviction Appeal No. 10/2007 filed by the petitioner is restored to the file of the learned Tribunal.

(iii) The learned Tribunal is directed to decide the said appeal afresh after hearing the parties in the light of the observations made herein above in accordance with law.

- (iv) All contentions of both the parties on merits are left open.
- (v) Rule is made absolute in above terms.
- (vi) The petition stands disposed of accordingly.