



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3944 OF 2000

by
HUSENBASHA
RAHAMAN
NADAF
Date:
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1. ~~Mr. Jamshed Nusserwanji Guzder~~)
2. ~~Mr. Minoo Rustomji Shroff~~)
3. ~~Mrs. Silloo Kaikhushroo Kavarana~~)
4. ~~Mr. Dinshaw Rusi Mehta~~)
5. ~~Mr. Dadi Bejonji Engineer~~)
6. ~~Mr. Rustom Sheriar Tirandaz~~)
7. ~~Mr. Dinshaw Tamboly~~)
- ~~all Trustees of the Pari~~)
- ~~Punchayet Funds and Properties,~~)
- ~~Bombay having its Office at 209,~~)
- ~~Dr.D.N.Road, Fort, Mumbai 400001.)~~

Parsi Punchayet Funds and Properties,))
Bombay having its Office at 209,))
Dr.D.N.Road, Fort, Mumbai 400 001.))
through its present Trustees))

1. Armaity Rustom Tirandaz))
Age 79 yrs))
2. Viraf Dinshaw Mehta))
Age 46 yrs))
3. Ervad Xerxes Vispi Dastur))
Age 53 yrs))
4. Anahita Yazdi Desai))
Age 58 yrs))
5. Hoshang J. B. Jal))
Age 65 yrs))
6. Maharukh Kobad Noble))
Age 65 yrs))
7. Adil Jiji Malia))
Age 65))

.... Petitioners

Versus

Ms.Katty J. Mistry))
residing at Flat No.2, 1st floor,))
Building known as Patel Building,))

782 Mancherji Joshi Road, Parsi)
Colony, Dadar, Bombay 400 014.) Respondent

Mr. Jamsheed Master a/w. Mr. Agnel Carneiro & Mr. Tushar Cooper
i/b Mulla & Mulla & CBC for Petitioners.

Mr. Tushar V. Dahibawkar i/b M/s Dahibawkar & Co. for the
Respondent.

CORAM : M.M. SATHAYE, J.
RESERVED ON : 27th JANUARY, 2026
PRONOUNCED ON : 10th JUNE, 2026

JUDGMENT :

1. The Petitioner is a trust duly represented by its Trustees. The Petitioner is landlord in respect of the suit premises, which is Flat No.2 situated on 1st Floor of building known as 'Patel Building' at 782 Mancherji Joshi Road, Parsi Colony, Dadar, Mumbai - 400 014. The Respondent is claiming to be tenant is tenant.

2. This petition is filed under Articles 226 and 227 of the Constitution of India challenging impugned judgment and order dated 30.09.1999 passed in Appeal No. 407 of 1998 by the Appellate Bench of the Small Causes Court at Mumbai, thereby dismissing the appeal filed by the Petitioner, thereby confirming the judgment and order dated 16.12.1997 passed by Small Causes Court at Mumbai in R.A.N. No. 52/Misc. Of 1993 ('the said Application' for short), thereby declaring the Respondent as tenant in respect of the suit premises.

3. The Respondent filed the said Application under section 5(11)

(c)(i) of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 ('Bombay Rent Act', for short) for being recognized as tenant of the suit premises and for direction to transfer rent receipt in her name. The case of the Respondent, in short, is as under.

3.1. That one Mr. Baji B. Patel is cousin of the Respondent who was residing in the suit premises as tenant of the Petitioner. That rent receipt stands in the name of said Baji. That said Baji expired on 23.04.1993. That the Respondent is Baji's mother's sister's daughter (*mausi-ki-ladki*) who was residing with said Baji and other family members in the suit premises, during his lifetime up to his death. That she has become entitled to be recognized as tenant in respect of suit premises.

3.2. That after the death of said Baji, when she contacted the office in charge of the Petitioner to accept rent from her, she was asked to meet one Mr. Aibara, who gave application form to the Respondent for signing, which was meant to be filled by 'new allottee' who wanted to have accommodation in the Petitioner's building. However, since the Respondent claimed to have become tenant on the death of said Baji, she asked for proper application which was not entertained.

3.3. That the Respondent thereafter sought legal advice and filed the said application for declaration that she is tenant in respect of suit premises and for direction to Petitioner trust to transfer the rent receipt in her name.

4. The Petitioner filed reply contending *inter alia* as under.

4.1. That there is no privity of contract between the Petitioner and

the Respondent. That the Respondent is neither tenant nor statutory tenant in respect of suit premises.

4.2. That there are other legal heirs and representatives of deceased Baji who are not joined as party and therefore the application must be dismissed for non-joinder of necessary parties.

4.3. It is admitted that said Baji was tenant in respect of suit premises, however, it is contended that he was residing alone and it is denied that the Respondent is in any manner related to the deceased tenant. It is also denied that Respondent was staying with said Baji at the time of his death.

4.4. That on the death of said Baji the Petitioner's representative visited the suit premises and locked it by putting a padlock. That notice inviting claims from the heirs was pasted on the door. That this was done with a view to safeguard the suit premises and also the furniture and things lying inside suit premises. That after about one and a half hour, when the Petitioner's representative once again visited the suit premises, he found that the padlock on the door of the premises was broken open and about four persons were found in the premises. That on confronting said persons, no proper reply was received. That therefore the matter was reported to the local police station.

4.5. It is denied that there is any relationship between original tenant Baji and the Respondent. It is further denied that the Respondent was residing with deceased tenant Baji during his lifetime or at the time of his death. It is contended that the

Respondent is a rank trespasser who is trying to unlawfully usurp the suit premises. It is denied that the Respondent has made any attempt to pay rent in respect of suit premises. That the Court has no jurisdiction to entertain the application.

4.6. On these and other grounds, the said Application was opposed.

5. The Respondent examined herself in support of the application. The Petitioner-trust examined one Mr. Yezdi A. Pesuna in support of its case. Documentary evidence was produced in support of rival claims. The learned Judge of the Small Causes Court Mumbai who heard and tried the said Application, by its judgment and order dated 16.12.1997, allowed the application declaring the Respondent as tenant in respect of the suit premises and directed the Petitioner to issue rent receipt in her name. The Petitioner filed said appeal challenging the above order. The Appellate Bench of the Small Causes Court, Mumbai, by impugned judgment and order dated 30.09.1999, dismissed the said appeal, confirming order of the Trial Court. However, the finding of Trial Court that 'Respondent was staying with said Baji in suit premises' is set aside.

6. In these circumstances, the Petitioner has filed present petition. The petition was admitted on 16.08.2000. During pendency of the petition, the trustees of the Petitioner trust have changed and accordingly, amendment is carried out.

SUBMISSIONS

7. Learned counsel Mr. Master submitted that the Respondent has admitted that she has not produced any documents to establish her

relationship with deceased tenant – said Baji. That she has further admitted that after the death of said Baji, her brother and cousin were called by Matunga Police Station for breaking of lock. That she has further admitted that she has not produced any document in support of occupation of Cooper family in the suit premises. Drawing attention of the Court to a copy of ration card, it is submitted that name of only said Baji appeared and name of the Respondent did not appear in the ration card. Drawing attention of the Court to a Municipal Election slip, it is pointed out that name of the Respondent along with her family members is shown to be at the address of ground floor of the said building and not the first floor where suit premises is situated. Drawing attention of the Court to a letter dated 31.10.1991 written by said Baji (requesting transfer of rent receipt) to the Joint Secretary of Petitioner Trust, it is contended that said Baji had asserted that he is the only son and legal heir of earlier tenant Mr. Byramji Burjorji Patel (his father) and had not mentioned the Respondent as a family member. He further submitted that name of the Respondent does not appear in the obituary note given on death of deceased Baji's father. He further submitted that while giving details of the family in the form, deceased Baji had only given his own name and no other family member was mentioned. He further submitted that in the voters list extract, the name of the Respondent appears as a separate entry residing at ground floor and not first floor where the suit premises are situated. He then submitted that in view of the evidence indicated above, it could not have been held that the Respondent was 'heir' of said Baji or that she was residing with said Baji at the time of his death in the suit premises. He contended that

the Respondent was only a neighbour of said Baji and not relative. He submitted that without substantive declaratory relief, the party cannot be declared as tenant and such issue cannot be gone into under section 5(11)(c) of Bombay Rent Act. That a far-fetched relationship has been accepted for holding that the Respondent is heir of the deceased tenant - Baji. He relied on following judgments in support of his case.

- i. Kailasbhai Shukaram Tiwari Vs. Jostna Laxmidas Pujara and Another (2006) 1 SCC 524.
- ii. Jaysen Jayant Rele and others Vs. Shantaram Ganpat Gujar and others 2002 SCC OnLine Bom 218.
- iii. Mrs. Rati Cyrus Havewala & Anr. Vs. Minoo Shroff & Ors. Writ Petition No.3663 of 2006 decided on 10.07.2006 (Bombay High Court).
- iv. Rajaram Brindavan Upadhyaya Vs. Ramraj Raghunath Upadhyaya 1977 SCC OnLine Bom 73.
- v. Pradeep Kumar Lalit Kumar Pandya Vs. Harisingh J. Kapadia, (through Legal Heirs and Representatives) Ruxmani Harisingh Kapadia and others 2024 SCC OnLine Bom 3766.

8. On the other hand, Mr. Dahibawkar, learned counsel appearing for the Respondent supported the impudent judgment and order. He submitted as under.

8.1. At the outset, he submitted that in the year 2000 itself, this petition has become infructuous because the Petitioner Trust filed a Rent Act Eviction suit (R.A.E Suit No.515 of 2000) against the Respondent. He further submitted that if the Petitioner treated the Respondent as 'a trespasser', there was no reason to file Rent Act eviction suit, treating her as tenant. He submitted that said suit has been recently dismissed on 06.12.2025. He submitted that the

Petitioner trust had sought possession from the Respondent on the grounds provided under Bombay Rent Act and this itself shows that the Petitioner treated the Respondent as tenant.

8.2. Mr. Dahibawkar, inviting attention of the Court to paragraph No. 4 of the said Application, contended that the Respondent has come with a clear case that she is claiming her right both as 'a member of family of deceased tenant Baji' and also as 'his heir under provisions of the Indian Succession Act applicable to Parsis'. He therefore submitted that the case cannot be restricted to the first part of section 5(11)(c) of the Bombay Rent Act and second part must also be considered and applied.

8.3. That though the application is filed under Section 5(11)(c)(i) of the Bombay Rent Act, it is a proceeding with substantive prayer about declaration of tenancy and it has been contested with full force, even by Petitioner. He submitted that the Respondent is deceased Baji's mother's sister's daughter (*mausi-ki-ladki*) and as such, they are first cousins and closely related. That there is no cross-examination about the relationship asserted by the Respondent. That there is also no evidence brought on record by the Petitioner that anybody else or any other family member or heir was staying with deceased Baji at the time of his death. He submitted that there is no dispute amongst the heirs as nobody has come forward claiming heirship of deceased Baji and therefore the Courts below have accepted the Respondent as an heir of deceased Baji and therefore rightly allowed the application.

8.4. He submitted that the Petitioner in its reply has admitted that a

notice inviting claims from heirs was pasted. However, nobody has come forward and therefore there is no dispute between other heirs. He submitted that the pedigree/genealogy is produced on record by the Respondent, duly supported by her evidence which is unshaken in the cross examination. He submitted that even if the Court has held that the Respondent was not staying with deceased Baji, since heirship is held as proved under concurrent finding, the impugned order requires no interference.

9. In answer, Mr. Master submitted that that suit itself is filed subject to outcome of this writ petition and therefore this writ petition has not become infructuous by mere filing of a Rent Act eviction suit. He submitted that the test is whether the suit premises was the Respondent's home and she was residing therein as such with said Baji.

REASONS AND CONCLUSION

10. Having carefully considered the rival submissions of the parties and after going through the record, in my considered view, this is not a fit case to interfere in the writ jurisdiction for the reasons given below.

11. At the outset, let us see the case made out by the Respondent. Perusal of the said Application clearly shows that in paragraph no. 4 and 8, she has clearly pleaded that she is entitled to be recognised as a tenant under section 5(11)(c)(i) of Bombay Rent Act as a member of the family of said Baji and also as his heir under provisions of Indian Succession Act applicable to Parsis. It is therefore clear that

the case under consideration is both under first part of section 5(11) (c)(i) and the second part.

12. It must be noted that the Appellate Court, while passing the impugned order, has clarified that the Respondent has failed to prove that she was staying/residing in the suit premises as 'family member' of deceased Baji. This observation in the imputed order is not challenged by the Respondent and therefore it stands accepted.

13. However, both the Courts below have held that the Respondent has proved that she is a heir of deceased tenant Baji being first cousin, in as much as, mother of deceased tenant Baji (Ms. Najoo Byramji Patel) and mother of the Respondent (Ms. Frenny Jalejar Patel) were real sisters (being daughters of Munchersha Jeevanji Patel). It is important to note that there is no cross examination of the Respondent about this relationship asserted along with the genealogy. The Petitioner in their affidavit-in-reply though contended that there are other heirs and legal representatives of deceased tenant Baji, Petitioner has failed to establish that any other person was the heir or legal representative of deceased tenant.

14. The Respondent has produced on record three Unit Trust Certificates dated 31.07.1988, 17.07.1992 and 11.03.1992 showing that the name of the Respondent appeared as a joint-holder with the deceased tenant Baji. The Respondent has not been cross-examined on this aspect. Said Baji expired on 23.04.1993 and as such these investments reflected in the certificates from July 1988 till March 1992 cannot be said to have been prepared only for the purpose of establishing Respondent's claim on the suit premises. The Courts

below have concurrently held that the Respondent is a relative/heir of the deceased tenant Baji. In this respect, the Appellate Court has even considered section 50 and 55 of the Indian Succession Act, 1925 with Schedule – II, (Part II)- clause 4 thereof and has held that Respondent is covered as a legal heir of said Baji.

15. The Courts below have also considered the ration card, obituary note, application by said Baji for transfer of tenancy, voters list, election slip. The aspect of ration card or voter list or election slip has bearing on the residence of the Respondent with the deceased tenant Baji. The Appeal Court has already held/clarified that she has not proved that she was staying with the deceased tenant Baji. Therefore, those documents need not be considered further.

16. So far as said Baji's application dated 31.10.1991 to Petitioner is concerned, assuming that it is written by said Baji, the same only indicates that he asserted that he is the only son and legal heir of his father - deceased Byramji. This has nothing to do with the relationship of the Respondent with deceased Baji. The Respondent is not claiming that she is legal heir of deceased Byramji. Though Baji can be only son and legal heir of his father – Byramji, in the absence of any other legal heir brought on record of deceased Baji himself, the relationship and claim as made by the Respondent that she is first cousin seems to be rightly accepted by the Courts below. There is no perversity in the said finding.

17. The form filled by said Baji apparently is a list/details of persons staying with tenant as family members. Admittedly in this form only Baji's name is given. The Appellate Court has already held

that the Respondent was not staying with the deceased tenant Baji. Therefore, this document need not be considered any further.

18. At this stage, it will be apposite to reproduce the said section below :

“5. Definitions -

xxxx.

11. “tenant” means and includes any person by whom or on whose account rent is payable for any premises and includes-

xxxx

(c)(i) in relation to any premises let for residence, when the tenant dies, whether the death has occurred before or after the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1978, any member of the tenant’s family residing with the tenant at the time of his death or, in the absence of such member, any heir of the deceased tenant, as may be decided in default of agreement by the Court;”

(emphasis supplied)

19. It is therefore clear that section 5(11)(c)(i) of the Bombay Rent Act has two parts. First part deals with family member residing with tenant at the time of tenant’s death. But the second part applies in the absence of such member and in that case, ‘any heir of deceased tenant’ can be decided by the Court as tenant. The ‘or’ separating the second part of 5(11)(c)(i) will have to be read as disjunctive, thereby separating ‘any heir of deceased tenant’ from earlier ‘family member residing with tenant at the time of tenant’s death’. The legislature has not qualified the ‘any heir of deceased tenant’ with any condition of ‘residing with tenant at the time of tenant’s death’. Therefore in absence of family member of tenant residing with tenant at the time

of tenant's death, any heir of tenant is not required to be residing with tenant at the time of tenant's death, to be included in tenant's definition.

20. In the present case, nobody is found to have been residing with deceased tenant at the time of his death. Therefore, second part of 5(11)(c)(i) will apply. Nobody except the Respondent has claimed to be the heir of deceased's tenant Baji. The only person is the Respondent who has explained genealogy and led oral evidence about her relationship as his first cousin. Therefore, in absence of any other heir coming forward or found out by the Petitioner landlord, Respondent has been held as tenant by the Court.

21. The argument that since the Respondent's name is not appearing in the obituary note given in the newspaper on the death of deceased Baji's father and therefore she is not relative or family member, is a weak and far-fetched argument having no merit. An obituary note can be given in the newspaper after death of a person by any of his relatives and mere non-inclusion of name in the obituary note will not take away a person's relationship.

22. Now let us consider various judgments relied upon by the learned counsel for the Petitioner.

23. In **Kailasbhai Shukaram Tiwari (supra)**, the person claiming tenancy was a cousin of the tenant residing with the tenant in the suit premises. From paragraph 11 of the said judgment, it is clear that it was not disputed that said cousin was residing in the suit premises. The question under consideration was 'whether a cousin can be

considered as a family member'. Therefore, the facts of the present case are clearly distinguishable, in as much as, in the present case, the case is based on both being family member residing with the tenant as also based on heirship under Indian Succession Act. In **Kailasbhai (supra)**, a case based on heirship was not under consideration and therefore, said judgment will not help the Petitioner.

24. In **Jaysen Jayant Rele (supra)**, the facts were totally different. The person claiming tenancy was a domestic servant of the original tenant, staying with tenant, who claimed that the relationship was almost like a son. In such peculiar facts, this Court held that the Bombay Rent Act cannot be construed so widely to give protection to strangers or outsiders who have absolutely no blood relation with the tenant or his family. In the present case, both the Courts have held that the relationship of Respondent is proved and therefore claim under heirship can be considered. Therefore, this judgment will also not help petitioners.

25. In **Rajaram Brindavan Upadhyaya (supra)**, the Court was considering a claim by nephew of the tenant who was admittedly staying in the suit premises. In that case, the dispute was between sons of original tenant and a nephew of original tenant. The question under consideration was whether provisions of section 5(11)(c) of Bombay Rent Act can supersede the right of inheritance to tenancy vested in the heir on the death of tenant. After considering various provisions of Bombay Rent Act, including section 29 thereof, it was held in concluding paragraph No. 36 that the provisions of section

5(11)(c) of Bombay impact are not meant to supersede the right of inheritance to tenancy vesting in the heir, on the death of tenant under the personal law. This judgment actually supports the Respondent as claiming she is also claiming to be heir of tenant Baji under Indian Succession Act. In the present case, it is concurrently held that the relationship is proved and the right of Respondent is recognised as nearest relative by Trial Court and as an heir of tenant Baji by the Appellate Court. For this reason, the judgment of **Rajaram Upadhyaya (Supra)** supports the Respondent

26. Lastly, in **Pradeep Kumar Lalit Kumar Pandya (supra)**, tenancy was claimed under section 7(15)(d) of the Maharashtra Rent Control Act, 1999 ('MRC Act' for short), which is *pari materia* with section 5(11)(d) of the Bombay Rent Act. He was son of sister-in-law of the tenant, which is similar to the present case. In the facts of that case, admittedly, the consideration was whether a person can be said to be family member of the tenant. In paragraph 19 of the judgment it is clearly recorded that 'plaintiff never claimed tenancy on the basis of heirship and the claim was made solely as being family member, residing with the tenant at the time of death'. In that view of the matter, the issue under consideration in this case, is different being claim under 5(11)(c) based on heirship. Therefore, the said judgment would also not help the Petitioner.

27. Learned counsel for the Respondent has placed on record the judgment dated 06.12.2025 passed by learned Judge of the Small Causes Court, Mumbai in R.A.E. Suit No. 515 of 2000 which was filed by the Petitioner trust seeking eviction of the Respondent under the

grounds of Bombay Rent Act including non-user, *bona fide* requirement, breach of terms of tenancy and unlawful subletting. Perusal of paragraph 7 of the plaint in R.A.E. Suit No. 515 of 2000 shows that it is filed subject to final outcome of this petition. Therefore, the present petition cannot be considered to have become infructuous. The learned Judge of the Small Causes Court has dismissed the eviction suit on merits. However, that is an independent subject matter to be decided on its own merits. Therefore, I am not commenting anything about the merits of the said eviction suit R.A.E. Suit No. 515 of 2000 which shall take its own course in accordance with law. Rival contentions of both sides in that regard are kept open.

28. In the aforesaid facts and circumstances and for reasons indicated above, the findings of the Trial Court as well as Appellate Court do not suffer from any perversity. The view taken is the most probable view and conclusion drawn by the Courts below is based on material available on record. As such, there is no reason to interfere in the limited jurisdiction of this Court.

29. **The writ petition is accordingly dismissed.** Rule is discharged. No order as to costs.

30. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)