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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO.1369 OF 2010
WITH
CIVIL APPLICATION NO.1690 OF 2010
WITH
CIVIL APPLICATION NO. 355 OF 2012**

1.Mrs. Shahida Sharrieff
Age 46 years old

2.Ms. Yasmin Hashmatullah
Age 42 years old

3.Mrs. Fabiha Ahmed
Age 40 years old

4.Mrs. Nahida Uraziee
Age 37 years old

5.Ms.Shabana Hashmatullah
Age 34 years old
All residing at 6 Crescent House,
27, S.B. Singh Road, Mumbai-400011

..Appellants.
(Org. Defendants)

V/s.

1.Amanullah s/o Hasmatullah
Salamatullah, Age 35 years old

2.Mrs. Shama Amanullah
Age 27 years old
Both residing at 6 Crescent House,
27, S.B. Singh Road, Mumbai-400011

..Respondents.
(Org. Defendants)

Mr. Faran M. Khan h/f Mr. Simil Purohit i/b
M/s Khaitan & Co., for the Appellants.
Mr. Ruben A. Fernandes for Respondents.

Coram: Anoop V. Mohta, J.
Judgment Reserved on: 12 November 2013
Judgment Pronounced on: 29 November 2013

JUDGMENT:

Heard the learned Counsel appearing for the parties.

2 The Appellants-Original Plaintiffs have challenged order dated 15 October 2013 passed by the learned Judge of City Civil Court, Greater Mumbai, thereby returned the plaint for its presentation in the Small Causes Court, Mumbai by invoking the Order 7 Rule 10(2) of the Code of Civil Procedure, 1908 (CPC).

3 The Appellants are the sisters and Respondent No.2 is the wife of Respondent No.1. The Suit was filed in the year 2010 before the City Civil Court at Mumbai for declaration that the Respondents should not disturb the joint possession of the Appellants along with Respondents in the suit premises. The Suit was not for recovery of possession and/or relating to the recovery and/or rent and/or

licence fee. There was no relationship of landlord and licensor and/or licensee between the parties. All the legal heirs of the deceased-tenant (the father of Defendant No.1 and the Plaintiffs). The Plaintiffs therefore claiming equal rights and interest in the tenanted premises.

4 The landlord is not party to the suit. There is no bar to file such suit and to entertain the same by the City Civil Court. The Court ultimately will pass final order, in accordance with law. We are, at this stage, concerned with the impugned order of return of the plaint. The learned Judge, in my view, is wrong in passing the impugned order merely because the subject matter is tenanted premises and claim therein. There is nothing on record to show that the landlord has accepted and/or declared and/or treated Defendant No.1 as the legal tenant of the premises. The prayer is only for the entitlement and interest in the joint possession on the basis of relationship. This, in my view, do not fall within the scope and the ambit of Section 28 of the Bombay Rents, Hotels and Lodging House Rates Control Act, 1947, now Section 33 of Maharashtra Rent

Control Act. Section 41 of the Presidency Small Causes Courts Act, 1882, therefore, may not be invoked at this stage of the proceedings in such fashion.

5 The private rights or disputes between the legal heirs of the of the deceased tenant, and specifically when the landlord is not party and/or involved, the Small Causes Court has no jurisdiction. The City Civil Court, at least, is not debarred from dealing with the suit so filed. The declaration even if any as prayed, in no way disentitles and/or prevents the landlord to take appropriate steps and/or decision in this regard.

6 The declaration is not to treat them as the statutory tenants, but is for the right and interest in the tenanted property of the deceased-father between the legal heirs. The Suit if filed by the landlord, the situation would be different to deal with if there is dispute with regard to the tenancy right. But at this stage in the present facts and circumstances and the prayers so raised, the decision that Small Causes Court has jurisdiction is incorrect.

7 Both the parties have cited various judgments in support of their rival contentions. The learned Judge has also read and referred the same.

8 I have, in judgment in Arun Bhaskar Adarkar Vs. Mrs. Mina Srinivasan Krishnan & Anr.¹ observed as under:

“11 Any proceedings, even if any, initiated by the Defendants for claiming tenancy rights over the suit property cannot decide the jurisdiction of this Court. The tagging of the Suit is not a issue. Both the parties have been making allegations and counter allegations of trespassing against each others and claiming rights accordingly over the flat. The Court will decide it after due trial. The Suit is not between the landlord and tenant/ licensor or licensee. The same is not initiated by the landlord. The landlord is not a party to this proceeding, initiated by the heirs of the deceased tenant to protect their respective rights and the possession. It nowhere related to the recovery of rent or possession of the tenanted premises.

9 For the above reasons, the impugned Order dated 15.10.2013 is set aside. The Appeal from Order is allowed. The plaint/suit is restored to file. The same to be considered by the Trial Court in accordance with law.

1 2012(3) ALL MR 879, 2012(3) DCR 17, 2012(3) AIR Bom.Repo. 516

10 Appeal from Order, so also both the Civil Applications are disposed of. No costs.

(ANOOP V. MOHTA, J.)