

BOMBAY HIGH COURT

Dattatraya Krishna Jangam

Vs.

Jairam Ganesh Gore

A.F.O.D. No. 434 of 1963 with C. A. Nos. 416 of 1964, 1798 of 1963, A.O. Nos. 166 of 1963, 1560 of 1963 and 170 of 1963 and C.A. No. 1592 of 1963, against decision of Judge, City Civil Court at Bombay, in S.C. Suit No. 2539 of 1961

(Chainani, C.J. Tambe and Chandrachud, JJ.)

04.09.1964

JUDGMENT

Chainani, C. J.

1. This is a reference made by Naik, J. in First Appeal No. 434 of 1963 and Appeals from Orders Nos. 166 and 170 of 1963, which were placed for hearing before him, he was of the opinion that the decisions of this Court on questions, which arose in these appeals were conflicting. These decisions are *Abdul Kayum v. Ebrahim*¹, *Ranjil Patiraj v. Beharam*², and *Ramkishore v. Vijaya Bahadursingh*³, Mr. Justice Naik, therefore, directed that the papers may be placed before the Chief Justice to enable him to refer the matter to a Full Bench. Mr. Justice Naik has not formulated the questions, which have to be considered by the Full Bench. In consultation with, the learned advocates who appears for the parties and the Government Pleader, who has appeared in this reference to assist us, we have formulated the following questions for our consideration.

(1) Whether the City Civil Court, Bombay has jurisdiction to entertain a suit for a declaration that a sub-tenancy was created in favor of the plaintiff by the defendant tenant before the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959, and for an injunction restraining the defendant from interfering with his possession as a sub-tenant ? and

(2) Whether the City Civil Court, Bombay has jurisdiction to entertain a suit for a declaration that the plaintiff is a tenant or sub-tenant of the defendant and for an injunction restraining the defendant from proceeding with or from obtaining an order for eviction of the plaintiff in the application made by the defendant under Section 41 of the Presidency Small Cause Courts Act or from executing the order for eviction obtained by him in such application ?

2. In order to answer these questions it is necessary to refer to the relevant provisions of law. These are contained in the Bombay Rents, Hotel and Lodging House Rates Control

¹61 Bom. LR 1223 : (AIR 1960 Bom 338)

³65 Bom. LR 712 : (AIR 1964 Bom 85)

²65 Bom. LR 464

Act, 1947, referred to in the judgment hereafter as the Rent Act, and the Presidency Small Cause Courts Act. The Rent Act was enacted in 1947 and came into force on 13th January 1948. The object of this Act as stated in the preamble is to amend and consolidate the law relating to the control of rents and repairs of certain premises, of rates of hotels and lodging houses and of evictions. One of the objects of the Act therefore is to control the evictions of tenants. The terms "landlord" and "tenant" have been defined in clauses (3) and (11) of Section 5 of the Act and have given wider meanings than they bear under the ordinary law. The term "landlord" as defined means any person who is for the time being receiving, or entitled to receive, rent in respect of any premises whether on his own account or on account of or on behalf of any other person. The term "tenant" has been defined as meaning any person by whom or on whose account rent is payable for any premises and includes (a) such sub-tenants and other persons as have derived title under a tenant before the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance 1959, (aa) any person to whom interest in premises has been transferred under the proviso to Sub-Section (1) of Section 15, and (b) any person remaining, after the determination of the lease, in possession with or without the assent of the landlord, of the premises leased to such person or his predecessor who has derived title before the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance 1959. It is not necessary to refer to the other parts of the definitions of these terms. Sections 6 to 31 are contained in Part I of the Act, which applies to residential and other premises. Section 7 lays down that it shall not be lawful for any landlord to claim or receive on account of rent for any premises any increase above the standard rent, except in certain circumstances specified in the Section. Sub-Section (1) of Section 12 provides that a landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays or is ready and willing to pay the standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisions of this Act. Sub-Section (2) of this Section states that no suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non-payment of the standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in Section 106 of the Transfer of Property Act. Section 12 therefore imposes restrictions on the right of a landlord to obtain possession of any premises from his tenant. Section 13 specifies the grounds which entitle a landlord to recover possession of any premises. Section 14 provides that where the interest of a tenant of any premises is determined for any reason, any sub-tenant to whom the premises or any part thereof have been lawfully sublet before the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959 shall be deemed to become the tenant of the landlord on the same terms and conditions as he would have held from the tenant if the tenancy had continued. Section 16

provides for an application by the tenant for being placed in occupation of the premises or part thereof of which he has given possession to the landlord in order to enable the landlord to carry out repairs. Section 17 provides for an application by a tenant for restoration of possession to the tenant. If after taking possession of the premises on the ground that he requires them *bona fide* for occupation by himself or by any person for whose benefit the premises were held or for the purpose of erecting a new building the landlord keeps the premises unoccupied or relates them or does not commence the work of erection within a period of one month from the date on which he recovered possession. Similarly Section 17A enables a tenant to make an application for restoration of possession if the landlord has obtained possession of the premises for the purpose of demolishing them and fails to commence the work of demolishing within the period specified in clause (b) of Sub-Section (3A) of this Section. Sub-Section (1) of Section 28 is in the following terms;

"(1). Notwithstanding anything contained in any law and notwithstanding that by reason of the amount of the claim or for any other reason the suit or proceeding would not, but for this provision, be within its jurisdiction,

(a) in Greater Bombay, the Court of Small Causes, Bombay, shall have jurisdiction to entertain and try any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of this Part apply and to decide any application made under this Act and to deal with any claim or question arising out of this Act or any of its provisions and subject to the provisions of Sub-Section (2), no other court shall have jurisdiction to entertain any such suit, proceeding or application or to deal with such claim or question."

This Sub-Section makes provision for three classes of matters : (1) Any suit or procee Act containing Sections 41 to 49 provides a summary procedure for obtaining expeditious possession from a tenant whose tenancy had been terminated or from a licensee whose license had been revoked. Section 41 states that when any person has had possession of any immovaion between a landlord and a tenant, no application can now lie under this Section against a tenant foion between a landlord and a tenant, no application can now lie under this Section against a tenant for possession of premises to which Part II of the Rent Act applies. For the same reason the application made under this Section must be dismissed, if the opponent proves that he is a tenant of the premises. Section 43 provides for an order on the application made under Section 41. Section 46 states that nothing herein contained shall be deemed to protect any applicant obtaining possession of any property under Chapter VII from a suit by any person deeming himself aggrieved thereby, when such applicant was not at the time of applying for such order entitled to the possession of such property. The latter part of this Section states that when the applicant was not at the time of applying for such order entitled to the possession of such property, the application for such order, though no possession is taken thereunder, shall be deemed to be an act of trespass committed by the applicant against the occ taken thereunder, shall be deemed to be an act of trespass committed by the applicant against the occupant. Mere filing of an application for

possession by a person not entitled to it is therefore deemed to be an act of trespass, even if possession is not actually taken. Section 47 states that where on an application being made under Section 41 the occupant binds himself to institute without delay a suit in the High Court or the Bombay City Civil Court against the applicant for compensation for trespass and to pay all the costs of such suit in case he does not prosecute the same or in case judgment therein is given for the applicant, the Small Cause Court shall stay the proceedings on such application until such suit is disposed of and that if the occupant obtains a decree in any such suit against the applicant, such decree shall supersede the order made under Section 43. Section 49 provides that recovery of the possession of any immovable property under this chapter shall be no bar to the institution of a suit in the Bombay City Civil Court or the High Court as the case may be for trying the title thereto. The occupant is therefore given two options under this chapter. He may apply for a stay of the hearing of the application under Section 41 on his executing a bond to file a suit in the City Civil Court or in the High Court under Section 47 or he may file a suit on title in case the application under Section 41 is decided against him.

4. These are the provisions of law which have to be considered in deciding questions which we have formulated for our consideration. The first question which arises in this connection is whether the jurisdiction of the Special Court depends on the plaintiff's case as made out in the plaint or whether the contentions raised by the defendant are also to be taken into consideration. This question has been finally settled by the Supreme Court in two cases, *Kaizuda Topandas v. Gorakhram*⁴, and *Vasudev v. Board of Liquidators*⁵, in the former case the Supreme Court approved the view taken by this Court in *Govindram Salamatrai v. Dharampal*⁶ and *Jaswantlal v. Western Co. India*⁷, that the jurisdiction of the Court should ordinarily be determined at the time of the institution of a suit when the plaint is filed, that the plea of the defendant a tenant or a landlord and the question is one which is referred to in Section 28. Where the person so invoking does not set up the claim that the other party is a tenant or a landlord, the defendant is not entitled to displace the jurisdiction of the ordinary Court by an allegation that he stands in that relation qua the other and on that ground the Court has no jurisdiction to try the suit or proceeding or an application.

5. The position therefore is that in order to determine which Court has jurisdiction to try a suit, the Court should read the plaint as a whole and ascertain the real nature of the suit and what in substance the plaintiff has asked for. Whatever may be the form of relief claimed, if on a fair reading of the plaint it becomes apparent that the plaintiff has alleged the relationship of landlord and tenant between him and the defendant and the relief claimed in substance relates to reconveyance of rent or possession or raises a claim or question arising out of the Rent Act or any of its provisions, then it is the special Court alone that will lay jurisdiction to decide the suit. If a dispute is subsequently raised by the defendant about the existence of relationship of landlord and tenant, the continuance of the suit in the Special Court will depend on the decision of the Court on that issue. Similarly if the plaintiff does not allege the relationship of landlord and tenant and no claim or question arises out of the Act or any of its provisions, then it will be the ordinary

civil Court and not the special Court that will have jurisdiction to entertain the suit.

6. One of the matters in respect of which exclusive jurisdiction is conferred on the special court is any suit or proceeding between a landlord and a tenant relating to the recovery of rent or possession of any premises to which any of the provisions of Part II of the Act apply. Three conditions must be satisfied before a suit or proceeding can be said to be of this nature. It must be a suit or proceeding between a landlord and a tenant. The suit or proceeding may be instituted either by a landlord or by a tenant, but it must be in his capacity as the landlord or the tenant as the case may be. It must also be against the tenant or landlord, though persons deriving title through or under him may also be made parties to the suit. The suit or proceeding must also be in respect of premises to which any of the provisions of Part VI of the Act apply. The third condition which is to be satisfied is that the suit or proceeding must relate to recovery of rent or possession of such premises.

⁴66 Bom LR 106 : AIR 1964 SC 1348

⁶53 Bom LR 386 : (AIR 1951 Bom 390)

⁵66 Bom.L.R. 205 (SC)

⁷61 Bom. LR 1087

7. The words used are "relating to recovery of rent or possession" and not "for recovery of rent or possession." The words "relating to" are very wide and would include any suit or proceeding in connection with or having a direct bearing on the question of possession of the premises. Even if, therefore, the suit is not for possession, if the relief claimed in the suit is in regard to or in respect of recovery of possession, it will come within the ambit of this section. Thus a suit, in which the plaintiff seeks to get rid of an order of his eviction by an injunction restraining the defendant from interfering with his possession, will also be covered by this section.

8. Section 28 confers jurisdiction upon the special Court not only to decide questions referred to in the section, but also all matters which are incidental or ancillary to the determination of these questions, see *Meharsingh Sethi v. Khurshed. Nadirshaw Satarwalu*⁸, and *Importers and Manufacturers Ltd. v. Pheroze F. Taraporewala*⁹, in which the Supreme Court observed :

"Once there is a suit between the landlord and a tenant relating to the recovery of rent or possession of the premises, the Small Cause Court acquires the jurisdiction not only to entertain that suit but also to deal with any claim or question arising out of the Act or any of its provisions which may properly be raised in such a suit."

It was held in this case that the Court of Small Causes has jurisdiction not only to decide the dispute between the plaintiff landlord and the tenant but also a question raised between the plaintiff and the sub-lessee.

9. It was urged that Section 28 applies to suits or proceeding: which are contemplated by other provisions of the Act such as Sections 12 and 13 in the case of suits by landlords and Sections 16, and 17 and 17A in the case of applications by tenant and that suits in which rights are claimed under the agreements or contracts between the parties and not under the provisions of the Act are outside the scope of Section 28. A suit for possession may be brought either by a

landlord or by a tenant. The only grounds on which a landlord is permitted by the Rent Act to sue for possession of the premises leased by him are nonpayment of rent as mentioned in Section 12 on one or more of the grounds specified in Section 13. He cannot, however, ask for possession so long as the contractual tenancy is in existence. He must terminate it before he can institute a suit for possession. This view has been taken by the Supreme Court in regard to a suit under Section 12 for possession on the ground of defaults in the payment of rent in *Punjatal v. Bhagwatprasad*¹⁰, The same will be the position in regard to a suit under Section 13, Consequently, a landlord will not be able to sue for possession while the contract of tenancy is still subsisting.

10. A suit in regard to possession on the basis of contract may, however, be brought by a tenant. This will generally be the case when the tenant has lost in an application made against him under Section 41 of the Presidency Small Cause Courts Act. The case of the applicant in such an application being that the occupant was his licensee and not his tenant, it is not likely that he would have terminated the alleged tenancy. It has been

⁸56 Bom. LR 540

¹⁰ AIR 1963 SC 120

⁹1953 SCR 226 : AIR 1953 SC 73

contended that in a suit on contract the tenant claims his rights under the contract. He does not claim any rights under the Act. No claim or question therefore arises under the Act or any of its provisions. The suit is under the general law and will consequently be outside the purview of Section 28. We have given our anxious consideration to these arguments, but we do not think that we can uphold them. Section 28 refers to any suit or proceeding between a landlord and a tenant relating to recovery of possession of any premises to which any of the provisions of Part II apply. These words are wide enough to include every suit between a landlord and a tenant, whether the tenancy is contractual or is continued by reason of the provisions of the Act, provided the relief asked for relates to possession. There is nothing in this Section or in any other section of the Rent Act which would justify cutting down the scope of Section 28 or holding that suits on contract were intended to be excluded from the purview of this Section. The arguments advanced virtually amount to that a tenant holding the premises on a contract as contradistinguished from a tenant holding the premises by reason of the provisions of the Act would be entitled to the benefits under the Act, but would enforce his rights not in a Court of exclusive jurisdiction provided by the Act but in the ordinary Court. There is no reasonable ground for giving such an interpretation to the Section. It is not in dispute that in cases of contractual tenancies a landlord will not be able to recover rent in a Court other than the special Court. There is no reason to hold that even though that may be the case, suits relating to recovery of premises alleged to be held on contractual tenancies would lie in Courts other than special Courts. A suit on a contract will therefore also attract the provisions of Section 28. Being a suit under Section 28 it will be a suit under the Act and will have to be disposed of in conformity with the provisions of the Act.

11. On behalf of the tenants reliance was placed on the decisions of this Court in *Shiavax Cambata v. Sunderdas Ebbi*¹¹, and *Madhavprasad Kalkaprasad v. Indirabai*¹², In *Shiavax*

Cambata's case, 52 Bom. LR 381 : (AIR 1950 Bombay 343) it was held that a suit by a tenant to recover possession of demised premises from his landlord brought under Section 9 of the Specific Relief Act does not fall within the purview of Section 28 of the Rent Act. Chagla, C.J pointed out in his judgment that the object of Section 9 of the Specific Relief Act is to protect possession without regard to the title or origin of possession, that although the plaintiff might have set out his title in the plaint those averments were entirely unnecessary and irrelevant, that the defendants could not have contested the position that the plaintiff was not entitled to possession because he was not a tenant, that they could only have contested the plaintiff's claim on the one simple and short ground, viz., that the plaintiff was not in possession within six months of the filing of the suit, that therefore the issue as to landlord and tenant could never have arisen in the suit, and that consequently the suit was outside the scope of Section 28. The learned Chief Justice also observed :

"In our opinion it is only when a landlord or a tenant files a suit for possession as a landlord or a tenant and in his capacity as a landlord or a tenant and relying on his title as a landlord or a tenant that it becomes a suit of the description mentioned in Section 28 of the Act." With respect we agree with this observation. Where, therefore, a claim to possession is based on the plaintiff being a landlord or a tenant, the suit will be a suit of the description mentioned in Section 28.

¹¹52 Bom. L.R. 381 : (AIR 1950 Bom 343)

¹²55 Bom. L.R. 21 : (AIR 1953 Bom 192)

12. The facts in Madhavprasad Kalkaprasad's case 55 Bom. LR 21 : (AIR 1953 Bombay 192) were that the plaintiff alleged that he was a sub-tenant of the defendant. The defendant had filed a suit in the Small Cause Court against one Patil alleging that Patil was his sub-tenant. An order was made by the Small Cause Court ordering Patil to vacate the premises. The defendant obtained a warrant of possession and the plaintiff offered obstruction. The defendant took out an obstructionist notice and the plaintiff was ordered to hand over possession to the defendant. The plaintiff thereupon filed a suit for a declaration that he was a tenant of the defendant and as such a tenant entitled to remain in possession of the premises. During the pendency of the suit he was dispossessed. The plaintiff therefore amended the plaint and prayed that possession should be restored in him. It was held that Section 28 did not apply to this suit and that the suit could be tried by the High Court. The judgment shows that the primary reason why the learned Judges came to this conclusion was that they regarded the suit as a suit substantially on title and not as a suit for possession. At p. 29 (of Bom LR) : (at page 193 of AIR} it is specifically stated that it was not a suit for possession, This case was distinguished by Chagla, C.J. himself in *Harswarup Khannmal v. Nandram*¹³, At p. 294 (of Bom. LR): (at p. 659 of AIR) he has pointed out that that it was a suit under Order 21 Rule 103 Civil Procedure Code, under which a party not being a judgment-debtor may institute a suit to establish the right which he claims to the present possession of the property of which the possession is sought to be taken. In the opinion of the learned Judges, such a suit could only be filed in a civil Court and not in Special Court set up under Section 28. We are inclined to take a different view on this point. It seems to us that if the plaintiff alleges its relationship of tenant and landlord between him and the defendant and if he

seeks relief relating to the recovery of possession, then the suit must be filed in the Special Court under Section 28.

13. Section 47 of the Presidency Small Cause Courts Act provides for a stay of the proceedings in the application under Section 41, if the occupant executes a bond to file a suit in the Bombay City Civil Court or in the High Court. Section 49 permits a suit on title being filed in the Bombay City Civil Court or in the High Court after the application under Section 41 has been decided. It has therefore been contended that as such suits can only be filed in the Bombay City Civil Court or in the High Court, the Special Court cannot be said to have exclusive jurisdiction to try these suits, even if they are of the nature specified in Section 28. There does undoubtedly appear to be a conflict between these Sections and Section 28 of the Rent Act. But Section 28, which was enacted long after the passing of the Small Cause Courts Act, specifically provides for this Section being applicable, notwithstanding anything contained in any law and notwithstanding that by reason of the amount of the claim or for any other reason a suit or proceeding would not but for this provision be within the jurisdiction of the Special Court. This Section must therefore prevail over Sections 47 and 49. The title in respect of which a suit may be filed under Section 47 or 49 may be a title or a right to possession or a title in the nature of ownership. The claim to possession in a suit between a landlord and a tenant can only be adjudicated upon by the special Court under Section 28 and the suit in regard to it must be filed under Section 28 in the Small Cause Court. A suit to establish any other title may, however be filed either in the High Court or in the City Civil Court.

14. It was argued that in a suit under Section 47 of the Presidency Small Cause Courts

¹³⁵⁸Bom. L.R. 288 : (AIR 1956 Bom 656)

Act the relief is claimed on the basis that the defendant landlord has committed trespass and that consequently such a suit will not fall under Section 28. There is not much force in this argument. In substance the relief which the plaintiff seeks in such a suit is that the defendant was not entitled to make an application for possession against him and that the plaintiff is entitled to continue in possession. The relief claimed therefore, relates to the recovery of possession. The suit also purports to be a suit between a landlord and a tenant. It will therefore be a suit of the nature specified in Section 28.

15. The next question to be considered is about the scope of Section 29A. Assuming that a claim to a tenancy of premises is a question of title, what is the title which Section 29A permits a party to establish in a competent Court other than the special Court ? Section 28 confers exclusive jurisdiction on the special Court in respect of three classes of matters specified therein. It also ousts the jurisdiction of any other Court to deal with these matters. It is not possible to believe that after specifically taking away the jurisdiction of all other Courts the Legislature could have intended that there should be a second round of litigation and that the same question should be agitated again in a suit under Section 29A. It is a well settled rule of construction that different provisions of an Act must so far as possible be so read as to bring about harmony between them.

It follows that no suit will be under Section 29A in respect of matters in regard to which jurisdiction vests only in the special Court under Section 28. It may of Course happen that for the purpose of deciding these matters the Court may decide incidentally certain questions of title. For instance, in a suit by a landlord, a tenant may contend that the plaintiff has sold the premises to him and that consequently he has no right to sue. If such a contention is raised, it will be necessary for the special Court to decide it for the purpose of determining whether any relief should be granted to the plaintiff. But as the question of ownership is not one of the questions which the special Court is called upon to decide, its decision on this question will not bar a suit under Section 29A. But no suit will He under Section 29A in respect of a matter in regard to which exclusive jurisdiction is vested in the special Court under Section 28. This was so held in 58 Bom LR 288 : (AIR 1956 Bombay 656). In that case it was decided that sub-tenants, who had been found not to be lawful sub-tenants by the special Court in a suit under Section 28, could not maintain a suit under Section 29A for a declaration that they were lawful sub-tenants and as such entitled to the possession of the premises. It was observed that the title contemplated by Section 29A is a title de hors the Act, but that where the decision of the special Court is direct, where the decision is on the very question which has been left to the special Court to decide, such a question cannot be reargued under Section 29A of the Act.

16. It was contended that in a suit on a contract no relief is claimed under the Rent Act. The rights claimed do not flow from the Act but are rights which accrue under the Transfer of Property Act and the general law. These rights are de hors the Act and consequently the decision in such a suit will not operate as a bar to suit under Section 29A. Support for these arguments was sought in the observation of the Supreme Court in *Babulal Bhurmal v. Nandram Shivram*¹⁴ that a title de hors the Act may be determined in any other Court of competent jurisdiction. The sentence in the judgment of the Supreme Court is followed/by the following observations :

"The Act purported to amend and consolidate the law relating to the control of

¹⁴60 Bom LR 954 at p. 959 : (AIR 1958 SC 677 at p. 681)

rents of certain premises and of evictions. It defined 'landlord' and 'tenant' to have a meaning wider in scope and concept than those words have under the ordinary law. Any one who was a landlord or a tenant defined in the Act would have to conform to the provisions of the Act and all claims to such a status would have to be determined under the provisions of the Act as they would be claims arising out of it."

Similar observations occur at p. 958 (of Bom. LR) : (at p. 681 of AIR) :

"On a proper interpretation of the provisions of Section 28, the suit contemplated in that Section is not only a suit between a landlord and a tenant in which that relationship is admitted, but also a suit in which it is claimed that the relationship of a landlord and tenant within the meaning of the Act subsists between the parties. The Courts which have jurisdiction to entertain and try such a suit are the Courts specified in Section 28 and no

other".

17. A tenant or a sub-tenant who claims his rights under the contract with his landlord is also a tenant within the meaning of the Act. His Landlord is also a landlord within the meaning of the Act. The dispute between them in regard to possession must also be decided in conformity with the provisions of the Act. Even in a suit brought by a tenant on the basis of his contract, the matters which will be directly and substantially in issue will be (1) whether the plaintiff is a tenant and whether the suit is between a tenant and the landlord as alleged, and (2) whether the plaintiff is entitled to relief in regard to possession. These will be the principal issues which the special Court will have to adjudicate upon. It will have to decide these issues directly and not incidentally. Consequently these issues cannot be the subject matter of a fresh suit under Section 29A.

18. This view is in accordance with the decision of the Supreme Court in Babulal Bhurmal's case, (SC) Bom LR 954 : AIR 1958 Supreme Court 677. At p. 959 (of Bom LR) : at (P. 681 of AIR) the Supreme Court has observed :

"If it is possible to avoid a conflict between the provisions of Section 28 and Section 29A on a proper construction thereof, then it is the duty of a Court to so construe them that they are in harmony with each other. It is possible to conceive of cases where in a suit under Section 28 a question of title to premises which does not arise out of the Act or any of its provisions may be determined incidentally. Any party to the suit aggrieved by the determination, would be free to sue in a competent court to establish his title to such premises by virtue of the provisions of Section 29A. On the other hand, in a suit where a question of title entirely arises out of the Act or any of its provisions, the jurisdiction to try such a suit was exclusively vested in the Courts specified in Section 28 and no other. That is to say, a title which could not be established outside the Act but which arose under the provisions of the Act by virtue of a claim made thereunder must be determined by a Court specified in Section 28 and a title de hors the Act may be determined in any other Court of competent jurisdiction The Act specially provided that the courts specified in Section 28 shall have the jurisdiction to deal with any claim or question arising out of the Act or any of its provisions and expressly excluded any other Court from having such jurisdiction. It is difficult to accept the suggestion that the Legislature intended, after setting up special Courts under Section 28 to deal with such matters, that the same should be re-agitated and re-determined in another suit by a Court not specified in Section 28. By enacting Section 29A the Legislature clearly intended that no finality should be attached to the decision of a Court trying a suit under Section 28 on a question of title de hors the Act. The provisions of the Act, on the other hand, clearly indicate that all claims or questions arising out of the Act or any of its provisions, even though they may be in the nature of a title to the premises, were to be determined by the Court specified in Section 28 and no other". These observations of the Supreme Court in terms apply to the third class of matter,- referred to in Section 28, viz. any claim or question

arising out of the Act or any of its provisions. On the same reasoning these observations will be equally applicable to the other two classes of matters mentioned in Section 28. This view finds support in the observations made by the Supreme Court in 66 Bom. L.R. 106 at p. 112 : (AIR 1961 Supreme Court 1348 at p. 1354) in regard to their earlier decision in Babulal Bhuramal's case 60 Bom. LR 954 : AIR 1958 Supreme Court 677. It was observed :

"The Supreme Court held in Babulal's case 130 Bom. LR 954 : AIR 1958 Supreme Court 677 that a suit which was competent to establish title under Section 29A was a suit to establish title de hors the Bombay Rent Act and not a suit which sought to establish title which required to be established under the Rent Act itself. It is obvious that in the suit before the Court of Small Causes it was open to the tenant to claim protection under the Act and by reason of Section 28 no other Court had jurisdiction to try that claim".

19. In our opinion, therefore, assuming that a claim to a tenancy or a sub-tenancy can be regarded as a question of title, the title in respect of which a suit will be under Section 29A must be a title de hors the Act, i.e. a title other than a title of a landlord, tenant or sub-tenant whether such title is acquired or is alleged to have been, acquired under a contract or under the provisions of the Act. If, therefore, in a suit or a proceeding under Section 28 a person's claim relating to possession on the basis of his being a tenant or a sub-tenant has been negatived, he cannot file a suit under Section 29A to again try and establish his rights as a tenant or a sub-tenant as the case may be.

20. The case in which the second question in this reference was directly decided is 61 Bom. LR 1223 : (AIR 1960 Bombay 338). It was held in that case that a suit brought to challenge the order of possession obtained by the defendant under Section 41 of the Small Cause Courts Act did not fall within the ambit of Section 28 of the Rent Act. The plaintiff in the suit had specifically claimed the protection of the Rent Act. The claim therefore arose out of the provisions of the Act and the suit was consequently triable exclusively by the Special Court. Abdul Kayum's case 61 Bom. LR 1223 : (AIR 1960 Bombay 338) was, therefore, in our opinion not correctly decided. We agree with the view taken in 65 Bom. L.R. 464 that after a decree for eviction has been passed against the plaintiff by the special Court under Section 28 on the basis that he was a tenant of the defendant, the plaintiff cannot file a suit under Section 29A for a declaration that he was not a tenant of the defendant and that he is entitled to remain in possession of the property. We also agree with the view taken in 65 Bom. L.R. 712 . (AIR 1964 Bombay 85), that a suit for a declaration that the plaintiff was a sub-tenant and for an injunction restraining the defendant from executing the order obtained by him under Section 41 of the Small Cause Courts Act, falls within the jurisdiction of the Special Court under Section 28 of the Rent Act and that the Bombay City Civil Court has no jurisdiction to entertain such a suit.

21. Our answers to two questions, which we have formulated for our decision, will therefore be in the negative.

22. The three appeals may now be placed before a single Judge for passing appropriate orders in the matter.

23. We may add that if in any case there appears to a Judge sitting singly to be a conflict between the decisions of the Division Benches, which in his opinion cannot be resolved, he should ordinarily refer the matter to a Division Bench, which will then decide whether the conflict can be resolved or whether the matter should be referred to a larger Bench.

Answered in negative.