


**Judgment, RCA No. 57/2015**

MHAH070004742015 	Presented on	:	26/06/2015
	Registered on	:	03/07/2015
	Decided on	:	02/04/2026
	Duration	:	Y. M. D.

**IN THE COURT OF DISTRICT JUDGE-2, SANGAMNER,**  
**AT-SANGAMNER, DIST. AHMEDNAGAR.**

(Presided over by : Dhananjay A. Deshpande)

**Regular Civil Appeal No. 57/2015**

**Exh.No.29**

**Dinkar Balkrushna Kedari,**

Age- 59 Years, Occu.- Pensioner,

R/o. Ghulewadi, Tal.Sangamner,

Dist.Ahmednagar

...(Appellant)

.....(Original plaintiff )

**Versus**

**1. Sharad Dattatraya Saraf- (Dead),**

Legal-heirs

**1A) Prashant Sharad Saraf,**

Age- 60 Years, Occu. Pensioner,

R/o. E-42, Sona Optima Co-Op. Housing Society,

Manikbaug, Sinhgad road, Pune.

**1B) Santosh Sharad Saraf,**

Age- 56 Years, Occu. Business,

R/o. 504/2 Narendra Complex, SP. Road,

near Vaishalinagar, Dahisar East, Mumbai

**1C) Neelima Vijayanad Bhat,**

Age- 63 Years, Occu. Pensioner,  
R./o. 102, Devprayag Co-op Housing Society,  
Bhakti Mandir road, near Hariniwas Circle,  
Pachpakhadi, Thane (West).

**1D) Rutuja Avadhoot Deshpande,**

Age- 59 Years, Occu. Service,  
R./o. B/8 Amodvan Housing Society, 409  
Narayan Peth, Pune.

**2. Girish Dattatraya Saraf-(Deleted as per order below Exh.20)**

Age- 60 Years,  
R/o. Room No. 526, Pansare Lane,  
Naral Bazar, Nehuru Chowk, Sangamner,  
Tal.- Sangamner, Dist.Ahmednagar.

**3. Narayan Balkrushna Kedari,**

Age- 61 Years, Occu. Electricals,  
R/o. Bhausahab Patil Nagar,  
behind Sahyadri High-school, Sangamner,  
Tal.- Sangamner, Dist.Ahmednagar.

**4. Vimal Prabhakar Kokate,**

Age- 63 Years, Occu. Pensioner,  
R/o. Indiranagar, Lane No.1. Sangamner,  
Tal.- Sangamner, Dist.Ahmednagar.

5. **Nanda Prabhakar Kokate,**  
Age- 43 Years, Occu.- Service,  
R/o. Indiranagar, Lane No.1. Sangamner,  
Tal.- Sangamner, Dist.Ahmednagar

...(Respondent)

.....(Original defendant )

**Appearance :-**

=====  
Adv. Shri. Y.B. Hase, for the appellent.

Adv. Shri. S.G. Saraf, the respondent nos. 1A to 1D.

Appeal proceeded ex-parte against respondent Nos. 3 to 5.

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**: JUDGMENT :**

(Delivered on 02/04/2026)

01. The plaintiff being aggrieved with the dismissal of his suit for relief of declaration of his status as a tenant and further declaration that judgment and decree in R.C.S. No. 287/2005 being not binding upon him, has preferred this appeal.

**Plaintiffs' case :**

02. Plaintiff alleged that suit property was in possession of the plaintiff and defendant No.3 to 5 from their forefather. One Dattatraya i.e father of defendant No.1 and 2 had given the suit property on yearly rent to Balkrushna in the year 1960. On the death of Balkrushna, defendant No.3 to 5 succeeded him. Deceased Dattatraya was succeeded by defendant No.1 and 2 and 5 daughters. However, defendant No.1

**Judgment, RCA No. 57/2015**

purported himself to be the sole owner and filed suit for eviction which is the subject matter of the subsequent litigation. Deceased Balkrushna, conducted tailoring business in the suit property and later on started business of electrical therein. Upon his death the tenancy rights devolved upon plaintiff and defendant No.3 to 5 and they are accordingly in possession of the suit premises in their capacity as tenant thereof. After Balkrushna's death plaintiff and defendant No.3 to 5 paid rent through defendant No.3 to defendant No.1. Defendant No.1 by keeping defendant No.2, 4 and 5 in dark and without issuing any statutory notice to plaintiff, defendant no. 4 and 5, in connivance with defendant No.3 and portraying that defendant No.3 alone is the tenant issued notice to defendant No.3. Defendant No.1 filed R.C.S.No. 287/20005 for the relief of possession and arrears of rent against defendant No.3 alone, without impleading plaintiff or the other defendants or even his other five sisters who had interest in the suit property. The decree so obtained by defendant No.1 being obtained by suppressing material facts is liable to be dismissed and set aside. Though R.C.A No. 44/2009 was preferred against the same by defendant No.3 and that as been dismissed, yet the same being without impleadment of the plaintiff and defendant No. 4 and 5, the same is not binding upon them. The defendant No.3 having wrongly suffered decree for eviction, and apprehending dispossession on the basis of decree obtained unlawfully, the plaintiff was constrained to file the suit for the said relief.

**Defendants' case :**

03. Defendant No.1 filed written statement at Exh.20, strongly opposing the suit contentions. It was averred that the suit as framed was

not tenable and reliefs if any as third party could be claimed by the plaintiff by filing appropriate proceeding under Order 21 Rule 97 or 21 Rule 99 of the Code of Civil Procedure, 1908 (CPC for the sake of brevity) in the pending Reg.Darkhast No. 49/2008. A separate suit seeking those reliefs was not tenable and liable to be dismissed on this sole count. It was further averred that against the decree in R.C.S.No. 287/2005 an appeal in the district court and further proceeding in the Hon'ble High Court of Bombay at Aurangabad Bench have culminated in favour of the defendant No.1 and as such the averments as to the non-joinder of sisters of defendant No.1 or defendant No.2, 4 and 5 to R.C.S.No. 287/2005 had no basis. The plaintiff had already preferred an application under Order 21 Rule 97 of the C.P.C. in connivance with the defendant No.3 in Reg. Darkhast No. 49/2008 and that the defendants are deliberately precluding the defendant No.1 from enjoying the fruits of the decree. Plaintiff as well as defendant No.3 to 5 were well aware of the adverse adjudication, of the filing of Reg. Darkhast and have maliciously preferred the suit which is liable to be dismissed with exemplary costs.

04. The suit was dismissed against the defendant No.2 for want of steps and proceeded ex-parte against the defendant Nos. 3 to 5.

**Evidence :**

05. The plaintiff examined himself and filed documentary evidence like property card of the suit property, assessment extract, certified copy of Exh.9 in R.D. No. 49/2008, certified copy of Exh.1 in

**Judgment, RCA No. 57/2015**

R.D. No. 49/2008, certified copy of judgment and decree in R.C.S. No. 287/2005, certified copy of judgment and decree in R.C.A.No. 44/2009.

06. As against his defendant No.1 only filed documentary evidence like certified copy of Exh.-1 in R.C.S. No. 287/2005, certified copy of W.S. given by defendant No.3 in R.C.S.No. 287/2005, certified copies of Exh.25, 27, 47, 69, 48, 49, 52, 53, 72, 74, 75 in Regular Darkhast No. 49/2008, certified copy of Exh.1 in M.A. No. 8/2012, certified copy of W.S. (Exh.13) in M.A. No. 8/2012, certified copy of appeal memo in M.A. 8/2012.

07. The trial court held that the suit filed by the plaintiff was not maintainable and that though the defendant No.3 to 5 are tenants in the suit property they have no independent tenancy rights. It negated claim of the plaintiff that the decree passed in R.C.S. No. 287/2005 was not binding on the plaintiff and defendant no. 3 to 5. It also returned an adverse finding that the suit was not false and vexatious, hence, the appeal.

08. I have heard Advocate Mr. Y. B. Hase for the appellant/plaintiff and Advocate Mr. S.G. Saraf for the legal-heirs of respondent No.1. Name of respondent no.2 (original defendant no.2) was deleted from the array of the parties. Respondent nos.3 to 5 i.e. original defendant no.3 to 5 failed to appear and contest the appeal. Hence, appeal proceeded ex-parte against them. Perused the record together with the written notes of arguments Exh.22, filed by the plaintiff. Following points arise for my determination and I have answered them for the reasons that follow:

<b>POINTS</b>	<b>FINDINGS</b>
1. Whether the suit is maintainable?	Negative.
2. Whether the plaintiff and defendant No.4 and 5 are tenants in the suit property ?	Negative.
3. Whether the plaintiff is entitled for the relief of declaration and injunction as prayed for?	Negative.
4. Whether the plaintiff has filed vexatious suit ?	Affirmative.
5. Whether the judgment and order calls for interference ?	Partly affirmative.
6. What order?	...As per final order.

**REASONS**

**Point No.1 (Maintainability) -**

09. Advocate Mr. Hase submitted that plaintiff and defendant nos. 4 and 5 were not arrayed as party in the earlier proceeding, though tenancy rights devolved upon them. The adjudication being adverse to their interest, they ought to have been heard. The decree so obtained behind their back was not binding upon them and therefore, they have every right to file suit to challenge the adverse adjudication and protect their tenancy rights.

10. As against this Advocate Mr. Saraf submitted that the plaintiff and defendant Nos. 4 and 5 had no independent right. Their rights qua the suit property have been adjudicated in the earlier round of litigation which had attend finality till the Hon'ble High Court. The defendant No.3 had not at all raised any objection about the non-joinder of parties in the earlier round of litigation and now that plea cannot be raised by filing separate suit. He further submitted that the plaintiff

**Judgment, RCA No. 57/2015**

being third party can file an application in the Executing Court, which the plaintiff has already done. Not only that the application under Order 21 Rule 97 of C.P.C. has been considered on merits by the Executing Court and the same has been dismissed. The plaintiff has also filed appeal against the same. Thus, the suit itself is not tenable. For that he relied on *Prasantha Banerji Vs. Pushpa Ashoke Chandani and Others* [AIR 2000 Supreme Court 3567 (2)] and *Maqsood @ Md. Maqsood Vs. Md. Salim and others (Jharkhand 2012 (1) Civil LJ 743.)*

11. Admittedly, the defendant No.1 had filed R.C.S. No. 287/2005. It was decreed and decree of possession was passed against the defendant No.3 and in favour of defendant No.1. An appeal bearing No. R.C.A. no. 44/209 was dismissed and even proceeding in the High Court came to be dismissed. Thus, the decree of possession in R.C.S No. 287/2005 has attained finality. It is equally admitted that defendant No.1 has filed Regular Darkhast No. 49/2008 for execution of said decree. The rights claimed by the plaintiff being with respect to 'execution, satisfaction and discharge' of the decree in question, the bar against separate suit as per Section 47 of the CPC would come into picture. The plaintiff not only has remedy of an 'obstructionist proceedings' but the plaintiff has actually availed the same. Not only that the Executing Court while dealing with the objection raised by the plaintiff has held his obstruction proceeding to be maintainable and decided it on its own merits. Thus, the plaintiff having invoked and exhausted the remedy under order 21 Rule 97 of the CPC, cannot fall back on the remedy of separate substantive suit. The defendant No.1 has rightly relied on *Prasantha Banerji (supra)* wherein the Hon'ble Supreme Court has held that suit in respect of same subject matter of

property filed by a person who is not party to the decree and that to after filing of execution proceeding to be not maintainable. Assuming without admitting that plaintiff is a stranger and has some independent rights yet separate suit would not be maintainable in view of *Maqsood @ Md, Maqsood (supra)* . Thus, I hold that the suit is not maintainable and I answer point No.1 in the negative.

**Point No.2 (Tenancy rights) –**

12. In fact having held that the suit itself is not tenable, the appeal is liable to be dismissed on the sole count. However, in order to avoid multiplicity of litigation, I deem it fit to render findings on the points as framed.

13. Relations between plaintiff and defendant No. 3 to 5 are admitted. Admittedly, their predecessor in title- Balkrushna was a tenant, who initially conducted tailoring business and later on business of electrical from the suit property. Plaintiff and defendant Nos. 3 to 5 are admittedly, his legal-heirs. The question is whether like any other immovable property or rights therein, tenancy rights would devolve upon on the legal-heirs of deceased Balkrushna.

14. In this regard the provisions of Section 7(15) of the Maharashtra Rent Control Act which reads as under are material :

*(15)"tenant" means any person by whom or on whose account rent is payable for any premises and includes,-(a)such person,-*

*(i) who is a tenant, or*

*(ii) who is a deemed tenant, or*

*(iii) who is a sub-tenant as permitted*

*under a contract or by the permission or consent of the landlord, or*

*(iv) who has derived title under a tenant, or*

*(v) to whom interest in premises has been assigned or transferred as permitted, by virtue of, or under the provisions of, any of the repealed Acts;*

*(b) a person who is deemed to be a tenant under section 25;*

*(c) a person to whom interest in premises has been assigned or transferred as permitted under section 26;*

*(d) in relation to any premises, when the tenant dies, whether the death occurred before or after the commencement of this Act, any member of the tenant's family, who, -*

*(i) where they are let for residence, is residing, or*

*(ii) where they are let for education, business, trade or storage, is using the premises for any such purpose,*

*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 the absence of agreement, by the court.*

15. As per the said definition, where tenant dies, succession to tenancy rights would be determined on the basis of who was residing or carry on business in the suit premises along with deceased tenant. In the present case, as per plaintiff's own pleading the suit property was rented for business purpose and as such the provisions of Section 7(15)(d)(ii) would apply. It says that any member of the tenant's family who was using the premises for the purpose of business with the tenant at the

time of his death would be the tenant. On this back drop, cross-examination of defendant no.1, is material wherein he has admitted that since 1977 to 2014 he was serving in the Irrigation Department and salary and pension alone have been his source of earning. Business income is the source of earning for defendant No.3 and that defendant Nos. 4 and 5 who are his married sisters are happily residing with their in-laws. The plaintiff nowhere whispers that at the time of Balkrushna's death the plaintiff himself or any other legal-heirs of deceased Balkrushna apart from defendant No.3 was carrying on the business which was conducted by the deceased Balkrushna in the suit property. Rather he categorically admits he was gainfully employed as Government Servant while his married sisters were at their respective marital houses. Thus, only defendant No.3 who carried out the business with deceased Balkrushna and continued the same would therefore be the tenant within the meaning of Section 7(15) of the Maharashtra Rent Control Act. This being the position plaintiff or defendant no. 4 and 5 cannot be said to be tenant qua the suit property and accordingly I answer point No.2 in the negative.

**Point No.3 (Entitlement) –**

16. The plaintiff has claimed relief on the pleading that defendant No. 4 and 5 alongwith him and defendant no.3, succeeded as tenants of the suit property and eviction decree with respect to the tenanted premises without so impleading them as a party was not binding upon them. I have already held that plaintiff and defendant No. 4 and 5 did not answer the description of 'tenant' as per Section 7(15) of the Maharashtra Rent Control Act. In absence of they being 'tenant'

**Judgment, RCA No. 57/2015**

within the meaning of the said Act, they are not at all entitled for any relief and there was no question of impleading them as party to the eviction proceeding along with defendant No.3. Eviction proceeding being initiated by original defendant no.1 as one of the legal-heirs of the original landlord, did not suffer from the vice of non-joinder of one of his brother (defendant No.2) or his other five married sisters. Plaintiff's claim thus being without any basis, it cannot be said that the decree in R.C.S. No. 287/2005 is not binding upon him or that he is entitled to protect his so called tenancy rights. Accordingly I answer point No.3 in the negative.

**Point No.4 (Vexatious claim)-**

17. Advocate Mr. Saraf submitted that the plaintiff deliberately filed multiple proceedings only to prevent the defendant No.1, from enjoying the fruits of decree. Learned trial court erred in rejecting the request for grant of exemplary costs and to that extent the decree needs to be modified. As against this, Advocate Mr. Hase submitted that the plaintiff was prosecuting his legal remedy and it cannot be said to be malicious or vexatious.

18. As stated earlier, from the plaintiff's own pleading it is clear that he had no right to claim tenancy rights in the suit property. The cross-examination reflects that the plaintiff was residing within Sangamner and could have easily gathered knowledge about the pending eviction proceeding and it having attained finality up to the High Court. The plaintiff having admittedly secured certified copies and filing obstructionist proceeding in the Regular Darkhast No. 49/2008, feigned ignorance about it in the cross-examination. He not only filed

obstructionist proceeding but upon its dismissal on merit has preferred an appeal against it. Simultaneously, he filed the suit which on face of it was not maintainable and had no basis to proceed with. All these circumstances taken together leads to the conclusion that the suit as filed by the plaintiff was vexatious and the defendant No.1 i.e original decree holder (now his legal-heirs) are certainly entitled for certain compensatory costs. The costs are quantified as Rs.3,000/-. Accordingly I answer point no.4 in the affirmative.

**Point No.5 (Interference)–**

19. On the issues of maintainability of suit and plaintiff's entitlement are concerned, I have reached same conclusions as that of trial court but for different reasons. Hence, no interference is called for on those aspects. However, the learned Trial Court has erred in appreciating the pleading of the plaintiff, his attempts to file multiple proceedings and his claim being without basis to his own knowledge, while assessing entitlement of compensatory costs. It is, therefore, to this limited extent that interference is called for and accordingly I answer point no.5 partly in the affirmative. Having so determined the points, I proceed to pass following order.

**ORDER**

- A. Regular Civil Appeal No.57/2015, preferred against judgment and decree rendered by the then 2<sup>nd</sup> Jt. Civil Judge, Senior Division, Sangamner, in R.C.S. No. 389/2011 is dismissed with costs throughout.
- B. Plaintiff to pay total compensatory costs of Rs.3,000/-

**Judgment, RCA No. 57/2015**

(Rupees Three Thousand only) to the legal-heirs of defendant No.1, within thirty days from the date of judgment.

C Inform the Trial Court accordingly.

Sangamner.  
Date : 02/04/2026.

( Dhananjay A. Deshpande)  
District Judge-2 & Additional  
Sessions Judge, Sangamner.  
(MH-02722)