

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
BENCH AT AURANGABAD**

WRIT PETITION NO.5356 OF 2012

1. Rupchand s/o Bhaulal Kasliwal,  
Age 65 years, Occu. Business
2. Bhagchand s/o Bhaulal Kasliwal,  
Age 57 years, Occu. Business

Both r/o Ramchandra Tower,  
Newasa road, Shrirampur,  
District Ahmednagar

..Petitioners

Versus

- Rajesh s/o Surajmal Dakale,  
Age 45 years, Occu. Business,  
Through G.P.A.,  
Madanlal s/o Chunilal Dakale,  
Age 60 years, Occu. Business,  
R/o Ward No.5, Shrirampur,  
Taluka Shrirampur,  
District Ahmednagar

..Respondent

Mr V.S. Bedre, Advocate for petitioners  
Mr S.S. Kulkarni, Advocate for respondent

**CORAM : N.W. SAMBRE, J.**

**DATE : 31st March 2015**

**PER COURT**

1. This petition is by the original defendants - tenants, questioning the order passed by the appellate Court i.e. District Judge-2, Shrirampur in Regular Civil Appeal No.99/2004 on 19<sup>th</sup> July 2011, Shrirampur whereby the judgment and decree of eviction, delivered by the 3<sup>rd</sup> Joint Civil Judge, Junior Division, Shrirampur in Regular Civil Suit No.134/2002 on 27<sup>th</sup> August 2004 came to be confirmed.

2. The respondent herein – original plaintiff claimed to be owner of Block Nos.81 and 82, situated at C.T.S. No.1988 A/1, old Municipal House No.3230/1, new Municipal House No.7406. It was claimed by the respondent-landlord in the plaint that on 2<sup>nd</sup> October 1997, his father had leased out the property in question in favour of the defendants and granted licence to them to use the property for a fixed tenure of 36 months.

3. Admittedly, property in question was occupied by the petitioners as gratuitous occupants, as no compensation was paid by them to the landlord.

4. The respondent-plaintiff, in view thereof sought possession of the property which was objected by the petitioners-defendants by filing written statement at Exh.10.

5. It was the case of the defendants-petitioners herein that since they were tenants in possession of the other property of the plaintiff bearing Municipal House No.7372/1 and since they surrendered the same, the property in question was given to them. They would urge that the suit property was not given to them on rent but they are occupiers of the said property in lieu of the property bearing Municipal House No.7372/1 earlier in their possession.

6. Learned trial Court, having regard to the pleadings of the parties framed issues and answered the same accordingly at Exh.12 which read thus :

ISSUESFINDINGS

- |    |                                                                                            |                                     |
|----|--------------------------------------------------------------------------------------------|-------------------------------------|
| 1. | Does plaintiff prove that the defendants are in possession of suit property as a licency ? | In the affirmative                  |
| 2. | Do the defendants prove that they are in possession of suit property as a tenant ?         | In the negative                     |
| 3. | What is the nature of document dated 2.10.1997 ?                                           | The nature of document is agreement |
| 4. | Does the plaintiff prove that the licence of the defendants is terminated ?                | In the affirmative                  |
| 5. | Does the plaintiff prove that they are entitled to the possession of suit property ?       | In the affirmative                  |
7. Learned trial Court, as such decreed the suit.
8. The petitioners-tenants, feeling aggrieved thereby preferred an appeal before the learned Additional District Judge, Shrirampur bearing Regular Civil Appeal No.99/2004 which came to be dismissed by the learned District Judge-2, Shrirampur by judgment and order dated 19<sup>th</sup> July 2011, as such the present petition.

9. Mr Bedre, learned Counsel for the petitioners, while assailing the above referred concurrent findings has strenuously urged that the agreement in question, i.e. the basis on which possession was sought, was not a registered document and as such, according to him, the acceptance of such agreement as an evidence in the suit has caused legal damage to the rights of the present petitioners, as such, agreement is not admissible in law. In support of his contentions, he has relied upon the judgment of the Apex Court in the matter of **Ahmedsaheb (dead) by L.Rs. and ors. Vs. Sayed Ismail**, reported in **(2012) 8 Supreme Court Cases 516** so as to canvass that an unregistered agreement between the landlord and tenant cannot be accepted as an evidence for passing the decree for possession. Mr Bedre would urge that the suit was entertained by the civil Court without jurisdiction, as according to him, the competent authority to entertain the suit under the Bombay Rents, Hotel and Lodging Houses Rates Control Act, 1947 was notified by the State Government on 27<sup>th</sup> January 1988 and the concerned Sub Divisional Officer was the competent authority to entertain the suit. In support of his contention, he has invited attention of this Court to the said Government Resolution dated 27<sup>th</sup> January 1988. He would further urge that the provisions of Section 33 of the above referred Act is worth referring to so as to infer that the civil Court lies jurisdiction in the matter in question. In addition to above, he has pressed into service the ground on which eviction was ordered so as to canvass that no specific ground or evidence in support thereof was brought on

record. Based on above, he has prayed for quashing the impugned judgment and decree.

10. Mr Kulkarni, learned Counsel for respondent-landlord would urge that both the Courts below have recorded findings of facts in favour of the respondent-landlord. He would further urge that earlier, objection raised by the present petitioners as regards jurisdiction was appropriately gone into and dealt with by the civil Court and in support thereof, he has placed reliance upon an application moved by the present petitioners Exh.30 at page 20 to the petition and the order passed thereon by the Civil Court on 15<sup>th</sup> June 2004 rejecting the objection as regards the jurisdiction. He would urge that the said order was neither challenged by the petitioners in any petition nor they have placed on record sufficient material so as to demonstrate that the civil Court's jurisdiction was ousted. He would further urge that the finding of fact that there was a leave and licence agreement in between the petitioners and the respondent, the finding of fact recorded thereto need not be interfered merely on the ground that the document was required to be registered. In addition to above, he would urge that the finding recorded to that effect i.e. the document dated 2<sup>nd</sup> October 1977 was looked into and interpreted by the Court below to the benefit of the respondent and to the detriment of the petitioners-tenants. He submits that there are enough reasons recorded by the Courts below and as such, according to him, the said contention of the petitioners is also liable to be rejected.

11. Having considered the rival contentions of the parties, so far as the first contention that is raised by learned Counsel for the petitioners about the status of the document i.e. the agreement is concerned, it is required to be noted that the said document was looked into and interpreted by the Courts below having regard to the contents thereof. The Courts below have proceeded to record findings, particularly having regard to the admission given by the present petitioners whereby the contents and the execution of the said agreement was admitted by them. Once the said issue and the contents thereof are admitted by the petitioners, in my opinion, the claim of the petitioners that just because the said document was not registered cannot be looked into, is required to be brushed aside. Appropriate support to that effect can be drawn by this Court in view of the law cited by learned Counsel for the petitioners in the matter of Ahmedsaheb (dead) by L.Rs. Vs. Sayed Ismail (cited supra), wherein the Apex Court, while dealing with such an eventuality has observed that the only exception for proving the contents of a document i.e. agreement of leave and licence or a lease, is admission given by the parties to the contents thereof. Appropriate support to that effect can be drawn from the observations made by the Apex Court in paragraph 12, which reads thus :

*“12. It is needless to emphasise that admission of a party in the proceedings either in the pleadings or oral is the best evidence and the same does not need any further corroboration. In our considered opinion, that vital aspect in the case viz. the admission of the*

*respondent in the written statement about the rate of rent and the further admission about its non-payment for the entire period for which the claim was made in the three suits was sufficient to support the suit claim. The High Court failed to note the said factor while deciding the second appeal which led to the dismissal of the appeals. Even while eschewing Exhibit 69 from consideration, the High Court should have noted that the relationship of landlord and tenant as between the plaintiffs and the defendants was an established factor and the rate of rent was admitted as Rs.800 per year."*

12. In view of the fact that the petitioners-tenants have, in clear terms accepted and admitted the contents of the agreement, the contention of the petitioners that the said agreement ought not to have been accepted in evidence, is liable to be rejected.

13. So far as the next contention of the petitioners that the civil Court lacs jurisdiction in entertaining the suit in question is concerned, though the petitioner has relied upon the Government Resolution dated 27<sup>th</sup> January 1988 wherein the State Government has notified the authorities under the said Act who are authorized to deal with the claim of eviction, it is required to be noted that the said authorities and their jurisdiction notified in the above referred document is restricted to the municipal limits of the respective Corporations. So far as the suit property is concerned, the same is located in Shrirampur and the perusal of the notification does not reflect that the Sub Divisional Officer, Shrirampur was authorized to entertain the suit in question with prayer for eviction. As such, the said contention of

the petitioners is also liable to be rejected, more particularly, having regard to the fact that the said issue was initially raised by the petitioners in the suit and was rejected to which, at the relevant time, the petitioners had not raised any challenge.

14. So far as the non raising of ground for eviction is concerned, it is required to be noted that the respondent-landlord has come out with a specific case that the licence in question was granted only for a period of 36 months. The petitioners were gratuitous occupants and were not paying any licence money to the respondent-landlord. Once the said ground was established before the Courts below, the contention of the petitioners that no specific ground for eviction was raised in the petition, is liable to be rejected.

15. In my opinion, the findings recorded by both the Courts below, particularly on the facts, do not call for interference, as they are based on sound evidence and reasoning.

16. As such, present petition which is against the concurrent findings fails, stands dismissed.

**( N.W. SAMBRE, J.)**