

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

CIVIL REVN. APPLICATION NO. 26 OF 2015

Devidas @ Dewan Ramchand Khithani ... Applicant

v/s

Shriram Dinkar Jadhav ... Respondent

Mr.R.M. Haridas for the applicant.

Mr.Nachiket Dattatraya Jaywant for the respondent.

CORAM: N. M. JAMDAR, J.

DATED : 13TH APRIL, 2015

ORAL ORDER:

Heard learned counsel for the parties.

2. By this revision application, the applicant challenges the judgment and decree passed by the Small Causes Court, Mumbai, dated 10 May 2013 and the Appellate Bench of the Small Causes Court, Mumbai, dated 25 November 2014, directing the eviction of the applicant from the suit premises.

3. The applicant is occupying ground floor on Shivram Hybat Jadhav Chawl, 120, Borla Road, Wadavali Village, Chembur, Mumbai – 400 074, admeasuring 8' x 10' sq. ft. The respondent

filed a suit bearing No.83 of 2010 contending that the grandfather of the applicant was the owner of the chawl in question in which the premises is situated and also the plot of land. It was contended that, after the death of the grandfather, the grandmother became the owner of the suit premises. Thereafter, father of the respondent became owner and thereafter the respondent became owner of the premises. It was the case of the respondent that the father of the applicant was allowed by the respondent's grandfather to occupy the suit premises without any consideration and he was a gratuitous licensee. It was contended that, after the applicant's father expired in the year 1990, the premises were locked and no business was conducted therein. Thereafter, the applicant filed a civil suit in the City Civil Court and sought order of injunction and the respondent was given liberty to take steps as per law. It is pleaded by the respondent that the applicant's father was a gratuitous licensee and similarly the applicant was at best a gratuitous licensee having no right in the suit property. Accordingly, the respondent sought relief of possession of the premises. The applicant filed written statement and contended that the suit was not within limitation as it was not filed within the stipulated period after the death of the father of the applicant. As regard the contention that the premises were not used, it was contended that the applicant continued the business in the suit premises. It was also denied that the relationship between the applicant and the respondent is of gratuitous licensee, and it was asserted that the suit was not maintainable in the Small Causes

Court.

4. The Small Causes Court held that the respondent was the owner of the premises. The father of the applicant was gratuitous licensee and that the respondent was entitled to the possession of the premises and accordingly the suit was decreed by judgment and decree dated 2 May 2013. Thereafter the applicant filed an appeal bearing No.39 of 2013 before the Appellate Bench of the Small Causes Court, Mumbai. The Appellate Bench considered evidence on record and also the argument of both sides. The Appellate Bench held that both, the father of the applicant and the applicant, were mere personal gratuitous licensees and such license can be revoked at any time and accordingly dismissed the appeal by the judgment and order dated 25 November 2014. Thereafter the present civil revision application is filed.

5. The first contention raised by the learned counsel for the applicant is regarding the period of limitation. It is contended that, inspite of specifically taking the ground in the written statement and appeal memo, both the Courts below have not framed the issue as regard the limitation and there is no discussion in this regard. To appreciate the submission, one has to consider whether limitation is attracted in the first place. Both the Courts below have treated the applicant as a gratuitous licensee. The submission as regard the limitation is based on the fact that the suit is not filed within 12 years of the death of the father. Learned counsel for the

applicant placed reliance on the decision of the learned Single Judge of Madras High Court, reported in ***Ranganathan Pilla v/s Govindarajulu Naidu***¹, to contend that a license expires with the death of a licensee. Based on this proposition, it is contended that, if the license expired with the death of father of the applicant, the suit should have been filed within 12 years. The learned counsel for the respondent, on the other hand, has placed reliance on the decision of the Division Bench of the Allahabad High Court in ***Nand Gopal & ors. v/s Brij Mohan Lal***², in which view has been taken that, where license has been granted to a certain person, the licensee and other members residing in the house without objection from the licensor, will be in the same position as a licensee. It is however not necessary to go into this debate as the view taken by the Appellate Bench is that the applicant himself be treated as a gratuitous licensee. If this position is accepted, then there is no question of any limitation from the date when the father of the applicant expired.

6. Learned counsel for the applicant submitted that, it is not the case of the respondent that the applicant is a gratuitous licensee. In the plaint, however, the respondent has mentioned that the applicant can be treated as a gratuitous licensee, although this appears to be an alternate submission. Apart from this position, after the death of the father who was a gratuitous licensee, the continued occupation of the applicant of the premises which was

1 (1950) 2 Mad.L.J. Page 280

2 1966 A.L.J. 166.

tolerated by the respondent without any license fee or amount, would make the applicant a gratuitous licensee. The ingredients of treating the applicant as a gratuitous licensee, therefore, were sufficiently present in the plaint.

7. It was then contended the applicant is not a gratuitous licensee. If that be the argument, it was for the applicant to show some independent right in the premises. Admittedly, the applicant has failed to show any such right. Though the applicant had set up a case that the applicant's father had constructed the property and he is owner thereof, the applicant failed to substantiate the said case on evidence. Thus, the position then emerges is that the pleadings of the respondent show that the respondent treated the applicant as a gratuitous licensee. The applicant failed to show any right in the property and, therefore, the argument that the Court had no jurisdiction under Section 41 of the Presidency Small Causes Court Act cannot be accepted.

8. Learned counsel for the applicant thereafter submitted that even assuming the applicant was a gratuitous licensee, a notice terminating the license ought to have been issued. He relied on the decision of the learned Single Judge of this Court in the case of ***Prabhakar Balasa Saoji v/s Subhash Baburao Malode***³. The learned counsel for the respondent has rightly pointed out that this decision which speaks of necessity of giving a notice, has interpreted Section 41 of the Presidency Small Causes Court Act

3 2005(2) All.M.R. 127

before it was amended and after the amendment the requirement is dispensed with. Therefore, even on this ground, the applicant cannot succeed.

9. Considering the above aspects, therefore, though both the Courts did not frame issue of limitation, the judgments and decrees cannot be faulted with, as the question of limitation, since the applicant is considered as a gratuitous licensee will not arise for consideration. Secondly, since the respondent treated the applicant as a gratuitous licensee and the ingredient of gratuitous licensee were sufficiently pleaded in the plaint, the Court has jurisdiction under Section 41 of the Presidency Small Causes Court Act. The applicant has failed to show any right in the property. No perversity can be found with both the orders.

10. The civil revision application is accordingly rejected.

11. Mr.Haridas, learned counsel for the applicant, at this stage, seeks continuation of the ad-interim order for a period of eight weeks. I am inclined to grant a period of six weeks. However, in view of procedural compliances in respect of the copy of the order, it is directed that the ad-interim order will continue for a period of eight weeks, on the same terms and conditions. Learned counsel for the applicant states that the applicant alone is in possession. The applicant will not create any third party right and will continue to pay the compensation fixed by the Appellate Bench of the Small

Causes Court. After the expiry of the period of eight weeks, apart from the other reliefs that respondent may be entitled to, the respondent will be entitled to withdraw the amount deposited by the applicant in the Small Causes Court, Mumbai.

(N. M. JAMDAR, J.)