

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

**CIVIL APPLICATION NO. 690 OF 2014
IN
FIRST APPEAL NO. 1625 OF 2013**

Sandip Ranjit Atit	.. Applicant.
V/s.	
Pravin Moreshwar Desai (deceased)	
through his legal heirs and ors.	... Respondents

Mr. S. P. Dalal i/b M/s. Dalal & Co. for the applicant.
Mr. P. P. Chavan with Mansai Joshi i/b Sharmila Deshmukh for the
respondent nos. 1A & 1B.

**CORAM : K. K. TATED, J.
DATED : 08/04/2015.**

P.C.:

. Heard learned Counsel for the parties.

2 The learned Counsel for the applicant submits that applicant is not pressing the present Civil Application against the respondent nos. 2 and 3. The statement is recorded.

3 This application is preferred by plaintiff restraining the respondent no.1A and 1B by order of injunction from taking possession of, entering into or remaining upon the suit premises i.e. Room no. 14, 1st floor, Prakash Chambers, 77, Nagindas Master Road, Fort, Mumbai - 400 023.

4 The learned Counsel for the applicant submits that the original

defendant no.1 specifically stated in the complaint before the Small Causes Court as well as in written statement that he was in exclusive possession of the suit premises.

5 The learned Counsel for the applicant submits that after the death of defendant no.1, respondent no.1A and 1B preferred Civil Application no. 2137 of 2013 for joining them as respondents in the present First Appeal being the legal heirs of deceased defendant no.1.

6 The learned Counsel for the applicant relies on the correspondence placed on record by the respondent nos. 1 and 2 in their affidavit-in-reply to show that the respondent nos. 1 and 2 are not in possession of the suit premises. On the basis of these submissions, the learned Counsel for the applicant submits that the respondent nos. 1A & 1B be restrained by an order of injunction from entering into suit premises.

7 On the other hand, the learned Counsel for the respondent nos.1A and 1B vehemently opposed the present Civil Application. He submits that being the legal heirs of defendant no.1, they are entitled to occupy the suit premises. He further submits that the defendant no.1 executed the Will dated 29.01.2013. As per said Will, the respondent no.1A & 1B are the beneficiary thereunder. Therefore, there is no question of restraining these two respondents from entering into the suit premises.

8 I heard both the sides at length. In the present proceeding, the

applicant plaintiff filed S.C. Suit No. 493 of 2009 in Bombay City Civil Court at Bombay for declaration that the defendant no.1 is trespasser in the suit premises and he may be ordered to handover the vacant and peaceful possession of the same to the plaintiff. In paragraph no.1 of the plaint, the plaintiff stated that “defendant no.1 is in unlawful occupation of the suit premises as more particularly set out hereinafter”. On the basis of pleading the Trial Court decided the suit by Judgment and Decree dated 19.10.2012 and dismissed the same. The Trial Court in paragraphs 17 and 18 held that the defendant no.1 was in possession of the suit premises. Paragraphs 17 and 18 of the said Judgment read thus:

“17. The complaint to the police dated 3rd July, 2008 shows that Defendant No.1 had already trespassed in the suit premise, whereas according to the plaint, soon after lodging this complaint, Defendant No.1 had trespassed into the suit premises. Thus, there is substantial variance in the document and pleading. Moreover, the plaint does not specify the particulars regarding the alleged trespass, as to in what manner and on what date Defendant No.1 trespassed in the suit premises. In my view, it was incumbent upon the Plaintiff to clearly set out these facts in order to prove his case.

18. Conversely, if the documents that have been placed by Defendant No.1 are taken into consideration, it would be quite apparent that Advocate Vijaykar was in occupation of the suit premises from 60s and Defendant No.1 was in occupation of the suit premises from 70s continuously till date. Thus, it cannot be said that Defendant No.1 entered the suit premises forcibly and unauthorizedly and committed trespass as has been alleged by the Plaintiff and it is apparent that since last several years prior to even creation of the alleged tenancy in favour of the Plaintiff's father, Defendant No.1 was occupying the suit premises.”

9 It is to be noted that the respondent nos.1A and 1B are added in

the present First Appeal being the legal heirs of defendant no.1. The Trial Court specifically held that defendant no.1 was in possession of the suit premises. Being the legal heirs of defendant no.1, they are entitled to occupy the suit premises.

10 Considering this fact and paragraphs 17 and 18 of the impugned Judgment and Decree dated 19.10.2012, I do not find any substance in the present Civil Application.

11 Hence, Civil Application stands rejected.

(K.K.TATED, J.)