

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

***CIVIL REVN. APPLICATION NO. 768 OF 2014
ALONG WITH
CIVIL APPLICATION NO. 373 OF 2014***

Smt.Laxmi Raghavan & ors.

... Applicants
(Ori. Defendants)

v/s

Smt.Rajalakshmi S. Krishnan

... Respondent
(Ori. Plaintiff)

Mr.B.A. Singh for the applicants in both applications.

Mr.G.S. Bhat for the respondent.

CORAM: NITIN M. JAMDAR, J.

DATED : 18TH MARCH, 2015

P.C.:

Heard learned counsel for the parties.

2. By this revision application, the applicants challenge the order passed by the Division Bench of Small Causes Court, Mumbai, dated 8 April 2014 allowing the appeal filed by the respondent and directing the applicants to hand over the vacant and peaceful possession of the suit property.

3. The applicants are the heirs of the sister-in-law of the original defendant late S. Raghavan. Respondent – original plaintiff Smt.

Rajalakshmi S. Krishnan is the sister of the original defendant.

4. The respondent/plaintiff had filed a suit in the Small Causes Court, Mumbai, seeking possession of the residential premises being Flat No.4/64, Neo Shastri nagar Co-operative Housing Society Ltd., Mulund Colony, Mulund (W), Mumbai-400 082. The suit was filed by the respondent contending that the original defendant, the brother of the respondent/plaintiff, was not having any accommodation and since the respondent had gone to Bangalore and the premises were vacant, the brother was allowed to occupy the suit premises on gratuitous basis. It was contended by the respondent that the brother had promised to vacate the premises and pay all the charges of the Housing Society, etc. According to the respondent, since the original defendant did not pay the charges neither vacated the premises, the respondent was constrained to file the suit. The applicants contested the suit contending that the original defendant had purchased the suit premises by an agreement dated 5 May 1980 and that he had filed the suit for specific performance. It was submitted that the original defendant was residing in the suit premises since 1977, and that the finding that the applicants were gratuitous licensees, was not correct.

5. The learned Small Causes Court held that there was no relationship of licensor-licensee or landlord-tenant between the parties and the Court had no jurisdiction to entertain the suit in

respect of a gratuitous licensee. Accordingly, the suit was dismissed by an order dated 15 April 2006. The Appellate Bench of the Small Causes Court accepted the case of the respondent and held that the Court has jurisdiction to entertain the suit. It further held that the original defendant had occupied as gratuitous licensee and by issuing the notice on 8 March 2000, the respondent had revoked the gratuitous license. The Appellate Bench also noted that the suit for specific performance was already dismissed. The Appellate Bench accordingly allowed the appeal by the judgment and order dated 8 April 2014, which is impugned in this revision application.

6. Mr.Singh, learned counsel for the applicants submitted that the suit was not conducted properly due to the fault of the advocate who was appearing in the suit. He submitted that the restoration application to set aside the order of dismissal of the suit for specific performance filed by the applicant was pending. He submitted that, since there is an agreement for sale, the applicant cannot be termed as a gratuitous licensee. He submitted that this is a fit case where the matter needs to be remanded back to the Small Causes Court for reconsideration.

7. The relationship between the parties is admitted. The applicants are the heirs of the original defendant who was the brother of the respondent/plaintiff. The original defendant is not put in the premises pursuant to the alleged agreement. It was purely on gratuitous basis. The suit for specific performance filed

by the applicant was dismissed at least 6 to 7 years ago, no steps were taken to challenge the dismissal or get it set aside and it is only after the appeal was allowed, the applicant has made an application for restoration. The litigation cannot be continued at the pace and manner determined by the applicant. The respondent is waiting for possession of the premises, which was parted by her as far back as in the year 1977, with an understanding that her brother will returned it back to her. No fault can be found with the view taken by the Appellate Bench that the gratuitous licensee was revoked and the applicants need to hand over the possession. The case of the applicants based on the agreement has not been taken to the logical conclusion by the applicant. That the advocate had not conducted the trial properly, is not even the ground taken in the application. It is merely an afterthought and some ground is sought to be made out by making allegations against the advocate who had conducted the case. There is no merit in this revision application and the application is rejected.

8. However, considering the facts and circumstance, I am of the opinion that, the applicants should be granted some time to vacate the premises. The learned counsel for the respondent is also not averse to this position. Accordingly, it is directed that the possession of the applicants will be protected for a period of six months from today, subject to usual undertakings filed by the applicants and/or adult members in the family residing in the suit premises that they will not create any third party rights in the suit

premises and hand over the vacant and peaceful possession of the premises to the respondent on 21 September 2015. This indulgence is granted on the condition that the applicants and /or adult members in the family will file their undertakings within a period of three weeks from today, failing which the decree shall stand executable forthwith.

9. In view of disposal of the revision application, the civil application does not survive and it is accordingly rejected.

(NITIN M. JAMDAR, J.)