

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

CIVIL REVISION APPLICATION NO.1092 OF 2014

Ratanlal Makhnallal Bagadia

.. Applicant

Versus

Vasudev Vishwanath Mandke and another

.. Respondents

Mr. S. R. Page, for the Applicant.

Mr. Parag K. Kale, for Respondents.

CORAM : R.M. SAVANT, J.

DATE : 09th FEBRUARY, 2015

PC.

1. The Revisionary Jurisdiction of this Court is invoked against the order dated 30th June, 2014 (wrongly mentioned as 30th April, 2014 on the first page of the impugned order) passed by the 5th Joint Civil Judge, Senior Division, Pune, by which order the application Exh.59 filed by the Defendant No.2 questioning the jurisdiction of the Trial Court to entertain the suit came to be rejected.

2. The suit in question being Special Civil Suit No.1003 of 2006 has been filed for the relief that the possession be taken from the Defendants No.1 and 2 and be handed over to the Plaintiffs. The suit premises in question it seems were allowed to be occupied by the

Defendant No.1 by the Plaintiff on the ground that the Defendant No.1 had requested the Plaintiff to permit him to occupy the suit premises as there was redevelopment of the building in which he was residing. The request of the Defendant No.1 that he may be permitted to occupy the suit premises for a period of 5 to 6 months and thereafter he would vacate had been acceded to by the Plaintiff who had accordingly permitted him to reside in the said premises. It is the case of the Plaintiffs that Defendant No.1 thereafter left the suit premises and the Defendant No.2 who is the father of the Defendant No.1 has entered into the said premises and presently in occupation. It is the case of the Plaintiffs that no authority was given by the Plaintiffs to the Defendant No.2 and therefore, Defendant No.2 is a trespasser. The Plaintiff has accordingly sought the eviction of the Defendant No.2 on the said basis.

3. The maintainability of the suit was questioned by the Defendant No.2 on the ground that the eviction is sought of a gratuitous licensee i.e. Defendant No.1 and in respect of the said contention reliance was placed on the judgment of the Court in **AIR 1998 Bombay 337** in the matter of **Kiritkumar Vallabhdas Gajaria and another etc Vs. Champaben N. Kapadia and others etc.** and the full bench judgment of this Court in **Civil Appeal No.6726-6727 of 2013** in the matter of **Prabhudas Damodar Kotecha and ors Vs. Manhabala Jeram Damodar**

and Anr., to contend that suit against the gratuitous licensee would not be maintainable and that the same would have to be filed before the Rent Court. The said application has been rejected on the ground that the eviction is sought of a trespasser from the suit premises i.e. the Defendant No.2 though eviction is also sought of the Defendant No.1 he is no more in possession. The Trial Court therefore held that the suit in question was maintainable for the eviction of a trespasser. It is also required to be noted that the suit is at the stage where the evidence of the Plaintiff's is being recorded. In my view, the exercise of the jurisdiction by the Trial Court in the matter of entertaining the suit cannot be found fault with. Hence, no case for exercise of Revisionary Jurisdiction of this Court is made out. The Civil Revision Application is accordingly dismissed.

[R.M. SAVANT, J]