

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

CIVIL REVISION APPLICATION NO. 502 OF 2015

Sou. Kailasi Dharmsingh Yadav	... Applicant.
V/s.	
Shri. Rajesh K. Misra & Anr.	... Respondent

Mr. Prasanna Dadpe i/b Tejesh Dande & Asso. for the Applicant

**CORAM : K. K. TATED, J.
DATED : 31/03/2016**

P.C.:

. Heard learned Counsel for the applicant.

2 This Civil Revision Application is preferred by defendant challenging the concurrent findings of facts recorded by both the Courts below.

3 In the present proceeding, the respondent/plaintiff purchased the suit property admeasuring 157.92 sq. meters (1695 sq. ft.) having construction upon it admeasuring 96.48 sq. mtrs. situated at Survey No. 49/1/4 Pot Hissa No. 40, Wadgaon Sheri, Pune – 411014, by registered Sale Deed dated 20.04.2006 for consideration of Rs.9 lacs from applicant/defendant. The suit property was handed over to the plaintiff at the time of execution of sale deed. However, defendant requested the plaintiff to allow her to use suit property for few more days because marriage of her daughter was to be performed. Because of good relations between the plaintiff and defendant, the plaintiff on humanity ground allowed the defendant to use suit property for two

months. After two months the defendant failed to handover the vacant and peaceful possession to the plaintiff. Hence, the plaintiff filed Civil Suit No. 635 of 2007 in the Small Causes Court, Pune at Pune for vacant and peaceful possession of the suit property. The said suit was decreed by the Trial Court by judgment and decree dated 20.07.2009 holding that plaintiff purchased the suit property by registered Sale Deed dated 20.04.2006 and allowed the defendant to use the same for two months.

4 Being aggrieved by the said judgment and decree, the applicant defendant preferred Civil Appeal No. 494 of 2009. The Appellate Court framed the following points for the consideration.

Points	Findings
1. Do the respondents prove that appellant is in possession of the suit premises as a licensee?	Yes, as a gratuitous licensee.
2. Do the respondents prove that the said license agreement has expired after two months of registration of Sale Deed dated 20.04.2006?	In the affirmative.
3. Whether the respondents are entitled to decree of possession?	In the affirmative.
4. What order?	As per final order.

5 The Appellate Court also held that the plaintiff purchased the suit property by registered Sale Deed dated 20.04.2006 from the defendant and allowed the defendant to occupy the same for some more period. The Appellate Court dismissed the Appeal preferred by the defendant. Hence, the present Civil Revision Application.

6 The learned counsel for the defendant submits that both the Courts erred in coming to the conclusion that the defendants by sale deed dated 20.04.2006 sold the suit property to the plaintiff. He submits that the defendant was in need of money, hence she approached to the plaintiff for friendly loan. At that time, the plaintiff suggested the defendant to execute the document for loan transaction and in the name of loan transaction, the plaintiff obtained the sale deed from the defendant. The learned counsel for the defendant submits that actually the defendant received sum of Rs.4,50,000/- only. That also by loan transaction and not for consideration of suit property as stated in the sale deed dated 20.04.2006.

7 The learned Counsel for the defendant submits that both the courts below ought to have appreciated that the suit filed by the plaintiff was actually for specific performance of contract and therefore, the Small Causes Court have no jurisdiction to entertain the same. He further submits that both the Courts below erred in coming to the conclusion that possession of the defendant was permissive and it comes under the gratuitous licence. Whereas, it should have been held that the defendant was in possession of the suit property in her own right as owner. On the basis of these submissions, the learned counsel for the defendant submits that though there is concurrent findings of facts recorded by both the courts below, same is required to be set aside. He submits that if the revision application is not allowed, irreparable loss will be caused to the defendant. He submits that facts were not considered by both the courts below properly. Hence, judgment and decree passed by both the courts is required to be set aside.

8 I heard learned counsel for the applicant at length. I have also gone through the judgment and decree passed by both the Courts as well as copy of plaint, Sale deed and other relevant documents placed on record by the defendant. Bare reading of the Sale Deed dated 20.04.2006 shows that the defendant sold her suit property to the plaintiff for sum of Rs.9 lacs. The Agreement for Sale was duly registered in the office of Sub-Registrar, Haveli. The sale deed specifically shows that defendant after accepting the full consideration sold the suit property to the plaintiff and handover the possession. The plaintiff allowed the defendant to occupy the suit property for some period because there was marriage in the family of the defendant. This itself shows that the defendant was occupying the suit premises after the sale deed as a gratuitous licensee. After the period of two months, when she failed and neglected to handover the possession, the plaintiff filed the suit for possession. Hence, Small Causes Court has jurisdiction to entertain the same.

9 Both the Courts, categorically held that defendant sold the suit premises to the plaintiff for consideration of Rs.9 lacs. Hence, there is no question of accepting the contentions made by the learned counsel for the defendant that she was occupying the suit premises in a capacity as owner. This being the revision and there is concurrent findings of facts recored by both the courts, I do not find any substance in the present Civil Revision Application.

10 Hence, Civil Revision Application stands rejected.

(K.K.TATED, J.)