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

***SECOND APPEAL NO. 678 OF 2014
with
CIVIL APPLICATION NO. 1584 OF 2014***

Mr. Namdev Genuji Dhattore. ... Applicant/Appellant.

V/s.

Baban Bhau Daunde
(Since deceased through Legal Heirs)
1 A. Smt. Godabai Babanrao Daunde
(Since deceased through Heirs & L.Rs.)
1 B. Mr. Ashok Babanrao Daunde & Ors. ... Respondents.

Mr. Dilip Bodake a/w. Ms. Shraddha Pawar for the
Applicant/Appellant.
Mr. Tajpal Ingale a/w. Sanjay Dixit for Respondent 1-B, 1-D, 1-F.
Mr. Tejpal Ingale for Respondent 1-C, 1-E.
Mr. Sharad Bhosale for Respondent 1-G.

CORAM : N.M. Jamdar, J.

11 August, 2016.

Oral Order :-

Heard the learned Counsel for the parties. By consent of parties, the Appeal is taken up for disposal.

2. The Second Appeal is Admitted on the following question of law :-

“ Whether the learned Civil Judge had jurisdiction to entertain and decide the Suit in view of the assertion of the Respondent – Plaintiff that the Appellant was gratuitous licensee of the premises ? ”

3. The Suit was instituted by the Respondent – Plaintiff bearing No. 3931 of 2000 in the Court of Civil Judge, Senior Division, Pune for recovery of possession of the suit premises from the Appellant. The Suit was decreed by Judgment and Order dated 24 November 2008. The Appeal was filed by the Appellant bearing No. 42 of 2009 which was dismissed by the learned District Judge, by order dated 4 October 2014. Thereafter, the present Appeal is filed.

4. The Appeal had come on board on 27 July 2016 and following order was passed :-

“ Heard learned counsel for the parties.

2. The learned counsel for the Respondents-original Plaintiffs states that in view of the decision of this Court in the case of John Francis Anthony Gonsalves of Mumbai and anr Vs. Colin M.Rebello in Suit No.465 of 2011 with Notice of Motion No.787 of 2011, decided on

15 October 2013 and decision of the Full bench of this Court in the case of Prabhudas Damodar Kotecha & anr. Vs. Smt. Manharbala Jeram Damodar & ors. - 2007(4) ALL MR 651, the Suit ought to have been filed in Small Causes Court. He submits that therefore, instead of admitting the Appeal, the Respondents-Plaintiffs will institute a Suit in the Court of Small Causes where the Respondents-Plaintiffs will seek possession and also an order of compensation.

3. In the circumstances, in view of the stand taken by the learned counsel for the Respondents-Plaintiffs that the Suit was not maintainable and in view of the aforesaid decisions the Appeal will have to be allowed. The Appeal could have been allowed today itself, however all Respondents are not represented. The learned counsel for Respondents-Plaintiffs states that he will file vakalatnama on behalf of Respondents as well as the proposed heirs for whom Civil Applications have been filed. Stand over to 10 August 2016, for 'directions'."

5. Since appearance has now been filed on behalf of all the Respondents and the learned Counsel undertakes to file Vakalatnama during the course of the day, the Appeal is taken up for consideration. In the decisions of the Full Bench of this Court in *Prabhudas Damodar Kotecha & anr. Vs. Smt. Manharbala Jeram Damodar & ors. - 2007(4) ALL MR 651* and of the learned Single Judge in *John Francis Anthony Gonsalves of Mumbai and Anr. Vs.*

Colin M. Rebello in Suit No. 465 of 2011 with Notice of Motion No. 787 of 2011, the Suit ought to have been filed in the Small Causes Court. This is also the stand taken by the Respondents – Plaintiffs as recorded in the order dated 27 July 2016.

6. In the circumstances, the question of law as framed will have to be answered in favour of the Appellant. Accordingly, the Second Appeal is allowed. The judgment and decree passed by the III Joint Civil Judge, Senior Division, Pune and the learned District Judge-9, Pune are quashed and set aside. It will be open to the Respondents- Plaintiffs to institute a Suit in the appropriate Court which Suit will be considered on its own merits. All contentions of the parties on merits are kept open.

7. The learned Counsel for the Appellant states that the evidence which is led in the present Suit be permitted to be used in the Suit, which is proposed to be filed by the Respondents – Plaintiffs. Such directions cannot be given in the present Second Appeal. It is always open to the Respondents – Plaintiffs to make such request to the learned Court who would be hearing the proposed Suit, if such a request is permissible in law, which will be considered by the learned Civil Judge as per law.

8. Civil Application is disposed of accordingly.

(N.M. Jamdar, J.)

