

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

WRIT PETITION NO. 6548 OF 2011

Mr.Somnath Dattatray Jagtap & Ors. ...Petitioners
vs.
Mr.Shantaram Y. Dharwadkar ...Respondent

None for Petitioners.
Mr.R.R. Salvi I/b. Suvarna Telegote for Respondent.

CORAM : S.C. GUPTE, J.

9 MARCH 2017

P.C.:

This writ petition is clubbed with a companion second appeal, which is disposed of by a separate order passed today, under an order passed by the Hon'ble the Chief Justice.

2 The subject matter of this writ petition is a room admeasuring 10 ft. x 12.5 ft. situated on the ground floor in CTS No.809-C, Shukrawar Peth, Pune-2. The Respondent (original Plaintiff) is the owner of the suit property, whilst predecessor of the Petitioners herein was the original tenant of the suit premises. It is the case of the Plaintiff that in the month of December 2002, the Defendants trespassed upon two adjoining rooms to the suit premises and took illegal possession thereof. It is submitted that this civil trespass amounts to an act of annoyance and nuisance to the Plaintiff. It is also submitted that the Plaintiff requires the suit premises *bone fide* and reasonably for his personal use and occupation. The trial court held that the trespass committed by the Defendants on the two rooms adjoining the suit premises amounted to nuisance to the Plaintiff, entitling him to evict the Defendants from the suit premises. It also held that the

Plaintiff, had proved his *bona fide* and reasonable requirement as also the fact that greater hardship could be caused to the Plaintiff, if a decree for eviction was refused. The trial court, accordingly, decreed the Plaintiff's suit ordering eviction of the Defendants. When the matter was taken to the appeal court at the instance of the Defendants, by the impugned judgment and order it upheld the findings of the trial court that the Defendants were guilty of a conduct, which amounted to nuisance and annoyance to the Plaintiff and that Plaintiff was entitled to recover possession of the suit premises, though the grounds of *bone fide* requirement and comparative hardship were negatived. The order of the lower appellate court is challenged in the writ petition.

4 The main ground of challenge in the petition is that the conclusion regarding alleged encroachment made by the Petitioners on the two adjoining rooms was perverse and untenable. By an order passed in the companion second appeal, this court upheld the findings of the lower appellate court that there was trespass and encroachment upon the two rooms adjoining the suit premises on the part of the Petitioners herein (i.e. Defendants to the suit, out of which the companion second appeal arises). There is, accordingly, no substance in the writ petition and the same is dismissed. No order as to costs.

(S.C. GUPTE, J.)