

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

SECOND APPEAL NO. 441 OF 2011

Mr.Somnath Dattatray Jagtap & Ors. ...Appellants / Orig.Defendants

vs.

Mr.Shantaram Yashwant Dharwadkar ...Respondent / Orig.Plaintiff

None for Appellants.

Mr.R.R. Salvi I/b. Suvarna Telegote for Respondent.

CORAM : S.C. GUPTE, J.

9 MARCH 2017

P.C.:

Heard learned Counsel for the Respondent. The Appellants are absent, though represented by an advocate. Even on the last three occasions, the Appellants were absent. The appeal was called out on 6 March 2017 and was kept back. Even today when the matter is called out, none appears for the Appellants.

2 The Respondent is the original Plaintiff. He had filed the present suit for recovery of possession of the suit property from the Appellants herein, who are original Defendants to the suit. The suit property consists of two rooms admeasuring 10 x 8 feet each in a property bearing House No.809-C situated at Shukrawar Peth, Pune, which is owned by the Plaintiff. It is the Plaintiff's case that the Defendants are trespassers over these two rooms. On the other hand, it was the Defendants' case that they were tenants in respect of these rooms. Both the trial court and the lower appellate court came to concurrent findings of fact that the Plaintiff had proved that the Defendants were trespassers in respect of the suit premises and the Defendants had failed to establish that they were tenants

of the suit premises. Both the courts, accordingly, held the issue of jurisdiction of civil court in favour of the Plaintiff and decreed the Plaintiff's claim. No substantial question of law arises out of these findings.

3 The second appeal was, however, admitted on a substantial question of law as to whether jurisdiction of the civil court was barred in view of the provision of Section 26 of the Provincial Small Cause Courts Act, 1887 as applicable in the State of Maharashtra. Sub-section (1) of Section 26 provides that notwithstanding anything contained elsewhere in the Act, but subject to the provisions of sub-section (2), the Court of Small Causes shall have jurisdiction to entertain and try all suits and proceedings *inter alia* between licensors and licensees relating to recovery of possession of any immovable property situated in the area within the local limits of jurisdiction of the Court of Small Causes. It is the Plaintiff's case in his suit that the Defendants' father, late Dattatraya Jagtap, was a tenant in respect of one room, which was between the two rooms forming the suit property. This room was in occupation of late Dattatraya as a tenant. When the suit property was in the process of being developed and services of a builder by the name of Arihant Builders were engaged by the Plaintiff for the purpose, late Dattatraya was merely allowed to shift his goods to the two adjoining rooms forming the suit property so as to avoid damage to his goods. The courts below found in favour of the Plaintiff. This, as I have noted above, is a pure finding of fact. Late Dattatraya did not have any permission generally to use or occupy the suit property. On the basis of this finding, both courts below have come to a unanimous conclusion that the Defendants had trespassed upon the suit property without having any right to use or occupy the same. The relationship between the Plaintiff and late Dattatraya Jagtap cannot be termed as a relationship between licensor and

licensee covered within the meaning of Section 26 of the Provincial Small Cause Courts Act, 1887. There is, accordingly, no error of law in the two courts below entertaining the Plaintiff's suit.

4 Accordingly, there is no merit in the second appeal. The second appeal is dismissed. In view of the dismissal of the appeal, the interim order operating in the appeal is vacated forthwith. No order as to costs.

(S.C. GUPTE, J.)