

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

**SECOND APPEAL NO.813 OF 2017
WITH
CIVIL APPLICATION NO.1605 OF 2017
IN
SECOND APPEAL NO.813 OF 2017**

Shri Satish Vishwas Jadhav

... Appellant

vs.

Shri Tukaram Gopalrao Ghatge
(since deceased through L.Rs.) & Ors.

... Respondents

Mr. Mithun Mahajan for the Appellant.

Mr. Girish Agarwal I/b Mr. P.D. Dalvi for the Respondents.

Coram : **A.A. Sayed, J.**

Date : 07 November 2017

P.C. :

1 The above Second Appeal is filed under section 100 of the Code of Civil Procedure impugning the judgment and order 12 April 2017 of the lower Appellate Court dismissing the Appeal of the Appellants (heirs of the original Defendant No.1). By the impugned judgment and order of the lower Appellate Court, the judgment and order dated 2 August 2011 of the Trial Court decreeing the Suit of the original Plaintiff-Shri Tukaram Gopalrao Ghatge and inter alia, directing the Defendant No.1 to handover possession of the suit property to the Plaintiff, came to be confirmed, There is thus concurrent findings by the Trial Court as well as the lower Appellate Court. During the pendency of the suit, the heirs

of the original Plaintiff were brought on record.

2 The subject matter of suit is 25 ft x 30 ft shed in the southern portion of CTS No.2632/C-1 situated in B-Ward, Kolhapur. The suit was filed by the original Plaintiff who was the owner of the suit property claiming that the Defendant No.1 was in possession of the suit property as licensee. The original Plaintiff had terminated the license of the Defendant No.1 by notice dated 4 February 1995 and claimed possession of the suit property and also sought reliefs of mesne profits, etc.

3 The Defendant No.1 claimed that he is the tenant of the suit property since 1968 and that in the year 1986 part of the premises was handed over to the original Plaintiff. The Defendant No.1 had earlier filed Regular Civil Suit No.1211 of 1994 in respect of the suit property seeking relief of perpetual injunction on the basis of possession and the trial Court decreed that suit. So far as the suit in the present case is concerned, the same is filed after termination of licence and the earlier decree in the suit of the Defendant No.1 would not be a hindrance in granting the reliefs in the suit. The trial Court held that there was no document on record to show the relationship of the original Plaintiff and the Defendant No.1 as tenant and landlord and that the Defendant No.1 was a licensee without consideration and the user was only a permissive one and that the Defendant No.1 has failed to prove that he

was tenant of the suit property. The trial Court accordingly decreed the suit.

4 In the Appeal preferred by the Defendant No.1, after reappreciating the evidence on record the Appellate Court observed that nowhere in the pleadings it is mentioned when agreement of tenancy has taken place and how much rent was agreed and whether the tenancy was monthly or yearly tenancy and in absence of specific pleadings and proof it was hard to accept the case of the Defendant No.1 that he was tenant of the suit property. The lower Appellate Court accordingly dismissed the Appeal. It may be mentioned here that during the pendency of the Appeal, the heirs of the Defendant No.1 have been brought on record.

5 Before this Court it is sought to be contended by the learned Counsel for the Appellant (heir of the Defendant No.1) that the Defendant No.1 was the tenant of the suit property and was paying Rs.15/- per month. Learned Counsel for the Appellant has relied upon the case of **Mani Nariman Daruwala and Bharucha (Deceased) through L.Rs. And others vs. Phiroz N. Bhatena**, AIR 1991 SC 1494, to contend that admittedly the Defendant No.1 was a licensee and by virtue of the provisions of section 15A of the Bombay Rent Act, 1947, the Defendant No.1 is deemed to have become a tenant on

1 February 1973 as the licensee was subsisting on that date. This contention however cannot be accepted. It is seen that there was no such contention raised before the Courts below and no such ground has been taken even in the present Second Appeal. Even otherwise, it is required to be noted that at the highest the Defendant No.1 was in permissive use of the suit property and he was only a gratuitous licensee and he has not been able to prove that any rent was paid in respect of the suit property. In these circumstances, the aforesaid judgment is of an avail to the Appellant.

6. Learned Counsel for the Respondents relied upon the judgment in the case of **Praful Manohar Rele vs. Krishnabai Narayan Ghosalkar & Ors.**, (2014) 11 SCC 316. The Apex Court has observed in paragraphs 12, 13 and 14 as follows:

“12. The case of the plaintiff-appellant herein primarily was that the original defendant and even his legal representatives were occupying the suit premises as gratuitous licensees upon termination whereof the plaintiff was entitled to a decree for possession. While the Trial Court found that the defendants were tenants and not licensees as alleged by the plaintiff, the First Appellate Court had recorded a clear finding to the contrary holding that the defendants were indeed occupying the premises as licensees whose license was validly terminated by the plaintiff.

13. Whether or not the defendants were licensees as alleged by the plaintiff was essentially a

question of fact and had to be answered on the basis of the evidence on record which the First Appellate Court had reappraised to hold that the defendants were let into the suit property by the plaintiff on humanitarian grounds and as gratuitous licensees. Absence of any rent note evidencing payment of rent or any other material or circumstance to suggest that the relationship between the parties was that of landlord and tenant, abundantly supported the conclusion of the First Appellate Court. That finding also negated the defence of the respondents-defendants that they were occupying the premises as tenants, which assertion of the respondent-defendant was held not proved by the First Appellate Court.

14 It cannot be gainsaid that while considering the question whether the relationship between the parties was that of licensor and licensee as alleged by the plaintiff or of landlord and tenant as asserted by the defendants, the First Appellate Court took into consideration the totality of the evidence on record with a view to finding out as to which of the two versions was factually correct. That doubtless was the correct approach to adopt in a suit based on an alleged license where the defendant's logical defence was bound to be that he is in occupation not as a licensee but as a tenant. There was, in that view, nothing special or novel about the plea raised in defence by the respondent-defendants. What is important is that the First Appellate Court on facts found that the defendants and even their predecessor were licensees in the premises which stood validly terminated. The High Court could not have interfered with that finding of fact leave alone on the

ground that since the alternative case set up by the plaintiff in the plaint was contradictory to the primary case pleaded by him, he was entitled to relief even on proof of the primary case. “

7 The Courts below had clearly rendered findings of fact that the Defendant No.1 has not proved tenancy and was at the highest a gratuitous licensee. This finding of the Courts below is a finding of fact as held in the case of **Mani Nariman Daruwala and Bharucha (Deceased)** (supra). Mere long user of the premises did not confer any right on the Defendant No.1. No other contention has been urged before the Court. In my view no substantial question of law arises in the present Appeal. Hence, the Second Appeal is dismissed. There shall be no orders as to costs.

8 Learned Counsel for the Appellant seeks protection of his possession of the suit property for a period of ten weeks from today. Since the execution proceedings are pending it is directed that no final order shall be passed in the execution proceedings for a period of ten weeks from today.

9 The Civil Application does not survive and to stand disposed of accordingly.

(A.A. Sayed, J.)