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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 367 OF 2017
WITH
CIVIL APPLICATION NO. 472 OF 2017

Ravind R Kurup & Anr	...Appellants
<i>Versus</i>	
Leena Nana Hadkar & Ors	...Respondents

Mr A Tripathi, *i/b Legal Point for the Appellants.*

CORAM: G.S. PATEL, J
DATED: 3rd July 2017

PC:-

1. The Plaintiff is in Appeal, aggrieved by an order of 9th July 2014 rejecting his Notice of Motion. In my view, he has no reason to feel aggrieved. The order is correct. It calls for no interference whatsoever.

2. The Plaintiff sought an injunction saying that he was in possession of Room No. 45/96, CTS No. 86, Dadasaheb Phalke Road, Dadar (East), Mumbai. He said he was dispossessed on 14th January 2014 when others fixed a lock on the room. The 3rd Defendant, one Amit Bhagat said the Plaintiffs had no concern with these premises. It was the 1st Defendant who was the owner. The

1st Defendant is the 1st Plaintiff's deceased's wife's brother's wife. She delivered possession to Defendant No. 3 and in fact Defendants Nos. 1 and 3 exchanged their personal accommodations. The entire building was projected for demolition and this is what caused the Plaintiff to file a Suit and bring a Notice of Motion seeking to create evidence.

3. The Plaintiff also filed another Notice of Motion No. 4473 of 2017 for an injunction restraining the Defendants from obstructing dispossession. The same Judge concluded that the Plaintiffs were not in possession at all. In the present Notice of Motion they sought direction for a site inspection, measurements and a local investigation to verify that their belongings were in the suit premises. The learned Judge refused to accept this application holding that it was nothing but an attempt to create evidence.

4. There is a long and convoluted story told with much emotion by the Plaintiff and in this he tries to describe how in a manner that is decidedly peculiar, on the death of his wife, to whom, according to the 1st Plaintiff the premises belong, he negotiated with the 2nd Plaintiff, an Advocate, to give him these premises on leave and license. Apart from anything else, the leave and license agreements produced are exceedingly peculiar and inspire no confidence. The license is open-ended and is supposedly given from the date of the agreement till the destruction of the building. The license is deemed to have commenced from 1st February 2004. None of this lends any credence to the theory of the Plaintiffs being in possession. The essence of a leave and license agreement is actual use and actual possession.

5. *Prima facie* it does not appear that the Plaintiff were able to make out any case. The impugned order calls for no interference.

6. The Appeal is dismissed with no order as to costs.

7. The Civil Application does not survive and is disposed of as infructuous.

(G. S. PATEL, J)