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

CIVIL REVN. APPLICATION NO. 13 OF 2017

Mr. Anant Madhav Limaye and Anr. ... Applicants.

V/s.

Sou. Anuradha Prabhakar Gole. ... Respondent.

Mr. Prasad Kulkarni for the Applicants.

Mr. Nikhil Patil i/b. Rupesh Geete for the Respondent.

CORAM : N.M. Jamdar, J.

23 February, 2017.

Oral Order :-

The Applicants have challenge the concurrent judgment and orders passed by the learned Small Causes Court Judge, Pune and the learned District Judge, Pune decreeing the suit filed by the Respondent – landlady.

2. The Respondent is the aunt of the Applicant No.1. The Applicant No.2 is the wife of Applicant No.1. The Respondent filed a Suit bearing No. 447 of 2009 on the ground that since the parties were related and since the Applicants were in need of the premises, possession of the suit premises was given to the Applicants. It was

stated that the Applicants are gratuitous licensees. Since the Applicants started quarreling and threatening the Respondent, the license was terminated and the suit was filed for recovery of possession. The Applicant took a stand that the Applicant was living in the suit premises since the time of his grand father and the Will by which the Respondent claimed to be owner of the suit property, was disputed.

3. Both the learned trial Judge and the Appellate Court assessed the evidence on record and came to the conclusion that the Applicants were not staying since the time of the grand father and they were given the suit premises to occupy on gratuitous basis by the Respondent – landlady some time in the year 1990, and since the Applicant did not hand over the possession of the premises, the suit had to be decreed. Accordingly, the learned Small Causes Court Judge decreed the Suit bearing No.447 of 2009 by judgment and order dated 16 March 2011. The Appeal bearing No. 363 of 2011 filed by the Applicant was dismissed by the learned District Judge on 11 July 2016.

4. As far as the contention of the learned Counsel for the Applicants that the Will relied upon by the Respondent is disputed, no steps have been taken by the Applicant except stating that the Will is disputed. Both the Courts have considered this aspect of the

matter and have held that the Respondent – Plaintiff has become owner of the suit property. No proceedings have been taken by the Applicant in any competent court in respect of the Will. Both the courts after assessing the evidence on record have rendered a finding that the Applicants were not in long standing possession and was merely put in possession by the Respondent – landlady. No documentary evidence is shown to hold that the finding is perverse

5. Considering the relationship, it was put to the learned Counsel for the parties whether any amicable resolution of dispute is possible. The learned Counsel for the parties had taken time. The matter was adjourned till today. The learned Counsel for the respondent has placed on record the First Information Reports filed by the Respondent against the Applicants on the ground that she was being harassed. The First Information Reports have been filed some time in the year 2008. Whatever may be the veracity of the assertions therein, it is clear that the relationship between the parties is strained, therefore an amicable resolution of the dispute does not appear to be possible.

6. On the facts that have been established on record, the Applicant is clearly a gratuitous licensee. After his licence have been terminated, he has not handed over the possession of the suit premises.

7. In these circumstances, there is no error in the view taken by both the Courts neither there is any perversity in appreciation of evidence. In the circumstances, the Revision Application cannot be considered and is rejected.

8. At this stage, the learned Counsel for the Applicants seeks time to vacate the suit premises. If the Applicants file an affidavits/undertakings with the copy to the other side, that they are alone in possession, they will not create third party rights neither they create any law and order situation in the suit premises, within period of two weeks from today, then the decree will not be executed against them for period of eight weeks from today. If the affidavits are not filed within period of two weeks from today, the decree will stand executed forthwith.

(N.M. Jamdar, J.)