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

CIVIL REVISION APPLICATION NO. 710 OF 2016

Mrs Vasanti Keshav Khatur & Ors. ...Applicants
vs
Mr Harischandra Balaram Thakur ...Respondent.
.....
Mr Ajay Bhise i/b Ms Smita B. Ajinkya for the Applicants
Mr Narendra M. Vaidya for the Respondent.

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CORAM : **B.P.COLABAWALLA, J.**
JUNE 20, 2017.

P.C.:

Even though the matter was shown on board for circulation, by consent of parties this Civil Revision Application ("CRA") was taken up for admission.

2 This CRA filed under Section 115 of the Code of Civil Procedure, 1908 ("CPC") takes exception to the impugned judgment and order dated 2nd May, 2016 passed by the Trial Court in L.E. Suit No.32/42 of 2009 as well as the judgment and order of the learned Appellate Court dated 8th November, 2016 passed in Appeal No.11 of 2016. The Trial Court by its impugned judgment and order dated 2nd May, 2016 decreed the suit against the applicants herein who were the original

defendants before the Trial Court. The appeal from this decree was also dismissed by the Appellate Court on 8th November, 2016. This is how the original Defendants are before me in my revisional jurisdiction. For the sake of convenience, I shall refer to the parties as they were arrayed before the Trial Court.

3 The brief facts of the case are that the Plaintiff (Respondent herein) claims to be the absolute owner of a building known as “**Om Sai Niwas**” situated at Ferry Road, Mandvi Gully, Varsova, Andheri (W) Bombay 400 061. In this building, Room No.104 on the first floor is the “suit premises”. The defendants are the legal representatives of one Mr Keshav Balaram Thakur who was the brother of the Plaintiff. According to the plaintiff, he allowed his brother Keshav Thakur to occupy the suit premises in 1992 as a gratuitous licensee without any compensation. Upon the death of Keshav Thakur, the defendants stepped into his shoes. Accordingly, they were requested to vacate the suit premises. Since they refused to do so, the plaintiff was constrained to terminate the licence granted by him in terms of his notice dated 22nd December, 2008 and asked for delivery of possession of the suit premises. This notice was replied to by the defendants by

their letter dated 21st January, 2009 wherein for the first time, they raised a plea that the brother of the plaintiff (namely Keshav Thakur) was occupying the suit premises as an owner thereof. Since the defendants refused to vacate the suit premises, the plaintiff filed L.E. Suit No. 32/42 of 2009 for possession and a permanent injunction restraining the defendants from creating third party interest in the suit premises.

4 This suit was contested by the defendants by filing their written statement. According to the defendants (and as pleaded in the written statement) they claimed that they are the co-owners of the suit premises. The defendants specifically pleaded that the property was developed out of the joint funds of the plaintiff and the deceased Keshav Thakur. It was the case of the defendants that the plaintiff had played a fraud and obtained municipal bills and the conveyance deed in his own name despite the fact that Keshav had equally contributed for acquiring the suit premises. It is in this light that they claimed that they were occupying the suit premises as co-owners, and therefore, prayed for dismissal of the suit.

5 On these pleadings, the Trial Court framed as many as five issues and allowed the parties to lead their respective evidence. After hearing the arguments the Trial Court decreed the suit in favour of the plaintiff vide its judgment and decree dated 2nd May, 2016. Being aggrieved by this judgment of the Trial Court, the defendants preferred an appeal being appeal No.11 of 2016 before the Appellate Bench of the Small Causes Court at Mumbai. The Appellate Bench also, after carefully considering the evidence led by the parties and the findings given by the Trial Court, confirmed the decree passed against the defendants. It is aggrieved by these two orders that the defendants are before me in my revisional jurisdiction under Section 115 of CPC.

6 In this factual backdrop, the learned advocate appearing on behalf of the applicant (original defendants before the trial Court) submitted that the Courts below have not considered the evidence of the defendants in its correct perspective. He submitted that the evidence clearly establishes that the said Keshav was a co-owner along with the plaintiff, and therefore, the defendants, being the legal representatives of said

Keshav, were also co-owners thereof. He submitted that the said Keshav was an illiterate person and trusted the plaintiff completely, and hence, there was no account of any moneys being paid by said Keshav to the plaintiff. According to the learned advocate the evidence clearly shows that the conveyance of the suit property in the name of the plaintiff was obtained by fraud and by deliberately keeping out the said Keshav Thakur. He, therefore, submitted that looking to all these facts the Courts below were clearly in error in decreeing the suit in favour of the plaintiff.

7 On the other hand, the learned advocate appearing on behalf of the plaintiff (respondent herein), submitted that apart from making this bald assertion that the said Keshav, and therefore, in turn defendants, are the co-owners of the suit property in question, there was not a single shred of evidence to establish this fact. He submitted that the entire deposition of the defendant before the trial Court was only oral statements and the same was not backed up by a single document to show any link of ownership of the property either to Keshav Thakur or in turn to the defendants. It is after considering all the evidence

that was led by the respective parties that the Trial Court disbelieved the story of co-ownership as advanced by the defendants and hence decreed the suit. Learned advocate submitted that based on the evidence before the Trial Court it was fully justified in doing so.

8 Additionally the learned advocate for the plaintiff submitted that in any event the findings and conclusions arrived at by the trial Court and confirmed by the Appellate Bench, can by no stretch of the imagination, be termed as perverse or suffering from any error apparent on the face of the record requiring interference in my limited jurisdiction under Section 115 of the CPC. For all these reasons, he submitted that there is no merit in this Civil Revision Application and the same ought to be dismissed.

9 I have heard learned counsel for parties at length and have perused the papers and proceedings in CRA. I have also given my closed and anxious consideration to the impugned orders. I find considerable force in the arguments canvassed on behalf of the plaintiff (respondent herein). It is not in dispute

that the suit premises were purchased by the plaintiff vide a Deed of Conveyance dated 31st July, 1992. This Deed of Conveyance stands in the name of the plaintiff only and shows that he had purchased all the piece and parcel of land with structures standing thereon bearing Municipal House No. K-6656(2) 2/135 admeasuring 31.02 sq. meter situated at village Varsova, Mandvi Gally, Taluka - Andheri, District - Mumbai (sub-urban)- Mumbai 400 062. Though the defendants contend that this property is jointly acquired by Keshav and the plaintiff, this deed does not contain the name of Keshav as a joint owner. Even the property card bears only the plaintiff's name. Even the electricity and assessment bills stand exclusively in the name of the plaintiff. All these documents clearly show that the plaintiff was the owner of the suit premises. On the other hand the defendants have not been able to produce a single document to establish their claim that they are the co-owners thereof. The entire evidence has been discussed by the Trial Court from paragraph Nos. 6 to 10 of the impugned order. On carefully going through the impugned order I find that the Trial Court has correctly analyzed the evidence led before it and thereafter come to the conclusion that the defendants are unable to

establish that they are the co-owners of the suit property. Consequently I find that the trial Court has correctly decreed the suit in favour of the plaintiff. Even the judgment and decree of the Appellate Bench proceeds on the same basis. It has analyzed all the evidence that was led by the respective parties and thereafter come to the conclusion that the decree passed by the trial Court requires no interference. I find that both the Courts below have correctly applied their mind to the facts of the case and the evidence led before them. Even before me the learned advocate appearing on behalf of the defendants was unable to point out anything from the record that would even remotely indicate that the defendants are co-owners of the suit premises.

10 The trial Court as well as the Appellate Bench have given proper and cogent reasons for coming to the conclusions they have. I therefore find that no case for interference is made out. The CRA is accordingly dismissed. However, in the facts and circumstances of the case there shall be no order as to costs.

(B.P.COLABAWALLA,J.)