

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

***SECOND APPEAL NO. 163 OF 2017
WITH
CIVIL APPLICATION NO. 264 OF 2017***

Sarita Sandesh Akolkar ... Appellant

Versus

Virendra Mahendrabhai Netawala ... Respondents
and Ors.

Mr. Bhushan Mandlik I/by. S. S. Patwardhan for Appellant.
Mr. P. D. Dalvi for Respondent No.1.

***CORAM : N. M. Jamdar, J.
DATE : 16 January, 2018.***

ORAL ORDER

. By this Second Appeal the Appellant is challenging the concurrent judgments and orders passed by the learned Civil Judge, Junior Division, Kolhapur dated 18th November 2015 and judgment and order passed by the learned District Judge, Kolhapur dated 20th October 2016. Both the Courts have directed the Appellant to handover possession of the suit property.

2. The suit premises are situated at Ward No. “E” in Hind Co-operative Housing Society at Kolhapur. The suit premises are a Bungalow with six rooms, a varandah and open space around it. The suit property is belongs to the Respondents. Since the Respondents have 19 members in their family. They needed the property for the use of the Appellant. Possession was allowed for a temporary period, out of the friendship. Suit was filed by the Respondents/Plaintiffs in the Court of Civil Judge, Senior Division, Kolhapur for recovery of possession. The Appellant filed her written statement and contended that the assertion of the Respondents/Plaintiffs that the property was given for a temporary use was not correct and that the Appellant was paying rent towards the same. The Appellant accordingly sought dismissal of the suit.

3. The parties led their oral and documentary evidence. The learned Civil Judge, Junior Division, Kolhapur framed issue “*As to whether the Respondents have given the property to the Appellant for a temporary use for a limited period ?*” and answered the same in affirmative and directed the Appellant to handover the possession of the suit property. Regular Civil Appeal No. 404 of 2015 was filed by the Appellant in the District Court, Kolhapur. The learned District Judge-3, Kolhapur, by the judgment and order dated 20th October 2016 dismissed the Appeal.

4. The sole contention advanced by the learned Counsel for the Appellant is that in view of Section 47 of the Maharashtra Rent Control Act, 1999, the suit filed by the Respondents/Plaintiffs in the Court of Civil Judge, Junior Division, Kolhapur was not maintainable, in view of the fact that the Appellant was a *gratuitous licensee* that the Full Bench of this Court in the case of *Prabhudas Damodar Kotecha and another V/s Smt. Manharbala Jeram Damodar and others, reported in 2007(5) MH.L.J. 341* has held that *gratuitous licensee* is also comes under the term “*licensee*”.

5. The learned Counsel for the Respondents, on the other hand, submitted that no such contention was advanced in both the courts. He further submitted that the decision of the Full Bench was rendered in the context of proceedings under Presidency Small Cause Courts Act, 1882, wherein there is separate jurisdiction conferred on Small Cause Court in the Presidency town and the ratio will not *ipso facto* apply to the cases filed at Kolhapur, as there is no Small Cause Court there and cases under the Act of 1999 are filed before the Court of Civil Judge, Junior Division.

6. Though both the courts have rendered a finding that the Appellant was given a temporary place without payment of any amount and the phrase *gratuitous licensee* has been referred to in the discussion, one has to see the tenor of the pleadings of the

Respondents/Plaintiffs and Appellant/Defendant. It is the case of the Respondents/Plaintiffs that the Appellant was given place to occupy on a temporary basis because the Appellant was known to them. It is stated that the Appellant had no rights whatsoever in the suit property. The tenor of the plaint is that, the Appellant is a trespasser of that property. Written statement was filed and a specific stand is taken that the Respondents were paying a certain amount towards rent. In the written statement there is not even a whisper that there is any bar of jurisdiction.

7. In fact, the case that the Appellant was given possession of the property on *gratuitous licensee* is specifically denied and that a specific case was asserted that a certain amount was being paid to the Respondents. Both the courts, therefore, examined this assertion of the Appellant regarding payment of the rent and came to the conclusion that there was no evidence whatsoever that any rent was paid and it is only for a temporary period the Appellant was allowed to occupy the premises. It is in this context the learned District Judge has employed the phrase “*gratuitous licensee*”.

8. Even assuming that the Appellant falls within the definition of “*gratuitous licensee*” and consequently “*a licensee*” in view of Section 33 of the Maharashtra Rent Control Act, 1999, the suit had to be filed in the Court of Civil Judge. Therefore, even

assuming that Maharashtra Rent Control Act was applicable to the suit, it was filed before the correct forum, as far as, the city of Kolhapur is concerned.

9. It was then sought to be contended by the learned Counsel for the Appellant that Chapter VIII of the Act of 1999 would apply. In fact, Chapter VIII provides for summary disposal of certain applications and a stringent procedure in favour of the landlord. Neither in the written statement nor in the First Appeal this contention was raised by the Appellant. Advantage is taken of the general procedure applicable.

10. Therefore, firstly the suit was filed by the Respondents/Plaintiffs on premise that the Appellant had become trespasser of the suit property in the Civil Court. There is specific contention that the possession was given to the Appellant for a limited period. It is only a context as to why the possession was handed over to the Appellant. That the Respondent/landlord had stated that it was because the Appellant was known to the Respondents. This fact has been categorically denied by the Appellant stating that the Appellant was tenant upon payment of certain rent. Both the courts have negatived this contention and have held that the Appellant has no right in the suit property and has upheld the assertion of the Respondents/Plaintiffs that possession

was given only for a temporary period and Appellant had become trespasser. While arriving at this conclusion, certain observations have been made regarding the initial entry of the Appellant in the suit premises. From this observation and by use of word “*gratuitous licensee*” an entire edifice is sought to be created for the first time in the Second Appeal that the court had no jurisdiction. The perusal of both the decisions would clearly indicate that the Appellant was trespasser in the suit property who had not handed over possession which was given to her for a limited period. Therefore, the suit was rightly instituted in the Civil Court and the Appellant cannot be considered as *gratuitous licensee*. In the circumstances, contention that the suit was barred, raised for the first time in the Second Appeal cannot be considered. It is clear that the Appellant has no rights whatsoever in the suit property. The contentions advanced are nothing but an abuse of process of law.

11. It was put to the learned Counsel for the Appellant as to whether the Appellant would apply for time to vacate the possession, the learned Counsel for the Appellant submitted that the Appellant will at the most pay the amount of Rs. 6500/- during her stay. The learned Counsel for the Respondents, on the other hand, submitted that the Bungalow is situated in the prime locality of the city and will fetch rent at least Rs. 7000/- to Rs.7500/-. Thereupon the learned

Counsel for the Respondents has chosen to address the Court on merits.

12. As per the discussion above, no substantial question of law arises. The Second Appeal is accordingly dismissed.

13. As the Second Appeal is dismissed, nothing survives in the Civil Application. Hence, the Civil Application stands disposed of accordingly.

14. The learned Counsel for the Appellant, at this stage, seeks extension of ad-interim relief. As stated above the Appeal is an abuse of process of law. The Appellant is simply squatting in the property. The relief as sought for cannot be granted simpliciter. Upon the condition that the Appellant will deposit amount of Rs. 3,00,000/- in this Court within a period of two weeks from today, the decree will not be executed for a period of four weeks. Both periods will commence from the date order is uploaded.

15. The deposit shall be subject to further orders to be passed.

(N.M. Jamdar, J.)