

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

CIVIL REVISION APPLICATION NO. 353 OF 2016

Sunanda Rajendra Nahar & Ors.	...	Applicants
V/s.		
Smt.Pramila Uttamchand Nahar	...	Respondent

- Mr.Anand Lawate i/b. Mr.Sandeep R. Waghmare for the Applicants.
- Mr.Chaitanya Nikte for the Respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 19th MARCH, 2018.

P.C. :

1] Heard learned counsel for the Applicants and learned counsel for the Respondent.

2] By this Civil Revision Application, filed under Section 115 of the Code of Civil Procedure (*for short, "C.P.C."*) the Applicants are challenging the order dated 6th April 2016 passed by the District Judge-14, Pune, thereby allowing Miscellaneous Civil Appeal No.226 of 2012.

3] The said Appeal was preferred by the original Plaintiff challenging the judgment and order dated 18th April 2012 passed in

Special Civil Suit No.1533 of 2008 by the Civil Judge Senior Division, Pune, thereby returning the plaint under Order-7 Rule-10A of the Code of Civil Procedure (for short, "C.P.C.") for presenting it before the Small Causes Court, Pune.

4] Brief facts of this Civil Revision Application are to the effect that, the Respondent/Plaintiff had filed the suit for possession of the suit property from the Applicant No.1 who is the daughter-in-law and Applicant Nos.2 and 3 who are the grand children of the Respondent. According to the Respondent, she is the owner of the said property and she has constructed the three storied building over the plot from her own earnings. She and her husband had allowed their son Rajendra to carry on his business in the ground floor of the suit property. The said partnership business came to an end in the year 1995 and therefore, the Applicant along with her husband shifted to Shirur. It is her case that, she has allowed her deceased son Rajendra to occupy the suit property as a gratuitous licensee out of love and affection, without giving him any right in respect of the suit property. Even after his death, the Applicants herein, who are her daughter-in-law and the grand children, had continued to remained in occupation of the suit premises as gratuitous licensee. However, as they started raising dispute, Respondent issued notice to them on 15th April 2008

and called upon them to handover vacant possession of the suit premises. In reply to the said notice, the Applicants denied the title of the Respondent over the suit premises and hence, the Respondent was constrained to file this suit for possession before the trial Court.

5] The Applicants herein resisted the said suit and denied that deceased Rajendra was permitted to occupy the suit premises as gratuitous licensee and contended that the suit property is the joint family property and being the members of the joint family, they are having right to remain in possession of the suit property.

6] On these respective pleadings of the parties, the trial Court framed necessary issues at Exhibit-35 and parties went for the trial. After considering the evidence adduced on record, the trial Court vide its impugned order dated 18th April 2012 came to the conclusion that as the Respondent/Plaintiff has stated in the plaint that Rajendra and thereafter, the present Applicants' possession over the suit premises is that of a gratuitous licensee, the Civil Court has no jurisdiction to decide the suit and accordingly, the trial Court has, relying upon the judgment of this Court in the case of *Prabhudas Damodar Kotecha V/s. Maharbala Jeram Damodar*, 2007(5) *Mh.L.J.* 341, held that, even in respect of the gratuitous licensee, only the Small Cause Court can have the jurisdiction and accordingly, returned the plaint to the

Respondent for being presented before the Small Causes Court.

7] When the Respondent challenged this order before the Appellate Court, by preferring Misc. Civil Appeal No. 226 of 2012, the Appellate Court after considering the averments made in the plaint came to conclusion that as the suit is filed on the basis of the title and not on the ground that the possession of the Applicant/Plaintiff is that of a gratuitous licensee, the Civil Court alone will have jurisdiction to decide the suit and accordingly, set-aside the impugned order passed by the trial Court.

8] While challenging this order of the Appellate Court, the submission of the learned counsel for the Applicants is that for deciding the jurisdiction of the Court, the averments in the plaint are the sole determining factor. Here, in the case, he has drawn attention of this Court to the averments made in paragraph No.4 of the plaint, which are to the effect that, “the Respondent has allowed her son Rajendra to use the suit premises, without any consideration, for his business out of love and affection, as gratuitous licensee”. It is further stated in the next paragraph No.5 that, “even after the death of Rajendra his wife and the children were allowed to continue in the possession of the suit premises, considering the relations between the parties and they had otherwise no right to remained in possession

thereof”.

9] Thus, it is urged by learned counsel for the Applicants that, the very case pleaded in the plaint is that the possession of the Applicants in the suit property is that of “a gratuitous licensee”. In such situation, merely on account of the notice issued to the Applicants calling upon them to handover vacant possession of the suit premises, their possession cannot become that of an encroachers or trespassers. According to learned counsel for the Applicants, if this analogy is to be applied, then the possession of every gratuitous licensee, on the receipt of the notice, will be converted to that of a trespasser and that will confer the jurisdiction on the Civil Court. It will be against the mandate of the law; especially the law laid down by this Court in the case of *Prabhudas Damodar Kotecha V/s. Manharbala Jeram Damodar*, (2007) 3 Mah.L.R.225, wherein it is clearly held that, the expression “licensee” includes the gratuitous licensee and the Suit by licensor against gratuitous licensee can be entertained only by the Small Causes Court.

10] Here, in the case, he has therefore submitted that, the trial Court has rightly rejected the plaint, holding that the Civil Court has no jurisdiction to decide the suit. Hence, the Appellate Court should not have interfered in the said judgment and order.

11] Per contra, learned counsel for the Respondent has supported the impugned judgment and order by pointing out to the further averments made in the plaint; especially in paragraph Nos.7, 8 and 10. According to him, the plaint has to be read in its entirety and not piecemeal. It is his case that the meaningful reading of the plaint is sufficient to show that, the suit is filed, not on the ground that the possession of the Applicants is that of gratuitous licensee or it has become of a trespasser after the issuance of a notice, but on the ground that the Applicants have denied the exclusive ownership and title of the Respondent over the suit property and claimed the property as belonging to joint family. Therefore, according to him, Civil Court has alone jurisdiction to decide such suit. It is submitted that, the law laid down by the Full Bench of this Court in the case of *Prabhudas Damodar Kotecha (supra)* cannot be applicable to this case. As against it he had relied upon the judgment of the Hon'ble Apex Court in the case of *Abdulla Bin Ali & Ors. Vs. Calappa & Ors., (1985) 2 SCC 54*, wherein it was held that, if the suit is filed treating Defendant as trespassers since they have denied the title of the Plaintiff over the suit land, then the Civil Court alone will have jurisdiction and not Revenue Court or Tenancy Court.

12] It is undisputed legal position that for deciding the

jurisdiction of the Court, the averments made in the plaint are of paramount importance. As a matter of fact they are the *sine-qua-non* and the sole determining factor.

13] Here, in the case, it is true that in paragraph No.4 of the plaint, the Respondent has stated that she has allowed her son Rajendra to do the business in the suit premises without any fees or charges and out of love and affection and hence, as a gratuitous licensee. She has further stated in paragraph No.5 of the plaint that the Applicant No.1 being the wife of Rajendra and Applicant Nos.2 and 3 being their children, considering the relationship, even after the death of Rajendra, she did not object to the Applicants' occupation and use of the suit premises. However, thereafter, as they have raised certain disputes, she could no more allow them to continue in possession of the suit premises and therefore, by issuing the notice dated 15th April 2008, she called upon them to handover vacant possession of the suit premises.

14] The Applicants had admittedly replied the said notice on 10th June 2008 and denied the Respondent's exclusive ownership over the suit premises. Hence, in paragraph No.8 of the plaint, the Respondent has stated that the suit property is owned by her alone. It is not the joint family property; nor purchased out of income of the

joint family. Therefore, except for her, no one else is having the right over the suit property in order to remain in possession of the same. Therefore, the Applicants being the gratuitous licensee only, after the notice, their possession has become that of the trespassers.

15] In paragraph No.10 of the plaint, which is crucial, as it contains the clause of jurisdiction of the Court to decide the suit, it is stated that, as in reply to the notice, the Applicants have denied the exclusive ownership of the Respondent over the suit property, the Respondent has filed this suit on the basis of her title and ownership over the suit property and therefore, the Civil Court has jurisdiction to decide the suit. Then, in paragraph No.12, she has asked for the peaceful and vacant possession of the suit premises from the Applicants.

16] Thus, in the initial paragraphs of the plaint, the Respondent has averred that the possession of the Applicants as that of gratuitous licensee. However, if one considers paragraph No.10 of the plaint as regard the jurisdiction of the Court, she has made it clear in the plaint itself that, as the Applicants are denying her exclusive ownership and title over the suit premises and contending it to be the joint family property, she has filed this suit on the basis of her title and ownership.

17] Hence, the facts of this case and the averments made in the plaint cannot attract the law laid down in the case of *Prabhudas Damodar Kotecha (supra)*. In that judgment, the issue for consideration was relating to the definition and expression of the term “licensee” and as to whether such definition will cover the gratuitous licensee also. It may be true that, in the present case, the Respondent has contended that, the Applicants' possession is that of a gratuitous licensee, however, subsequent thereto, the Respondent has stated that on account of denial of the ownership right of the Respondent over the suit premises by the Applicants, her suit is based on the title. Thus, the suit is not based on the ground that the possession of the Applicants still continue that of a gratuitous licensee but the suit is based on the premise that she being the exclusive owner of the property and Applicants claiming that the said property to be the joint family property, she has to establish her exclusive ownership and title over the suit property. Therefore, she has filed the suit.

18] The facts of the present suit therefore clearly go to show that in the plaint itself the Respondent has categorically stated that she has approached the Civil Court to establish her ownership over the suit premises on the count that the Applicants have denied her ownership over the suit property. Therefore, this suit cannot be called

as falling under the provisions of the Small Causes Act but the dispute raised being of a Civil nature, the Civil Court alone has to decide the same.

19] In this respect learned counsel for the Respondent has rightly placed reliance on the judgment of the Hon'ble Apex Court in the case of *Abdulla Bin Ali (supra)*, wherein the suit was filed by the landlord for possession of the suit land. On the basis of the allegations made in the plaint, it was held that as the suit was filed on count of the defendants denying the title of the Plaintiff, such suit against the trespassers can lie only in the Civil Court and not in the Tenancy Court. It was further held that, "indeed when the Defendants denied the title of the Plaintiff and the Tenancy of the Plaintiff and the Plaintiff files the suit treating them to be the trespassers and the suit is not on the basis of the relationship of landlord and tenant between the parties, then such suit was cognizable by the Civil Court". It was held so, despite the fact that, in the said suit also, the Plaintiff had alleged in the plaint that Defendant No.2 was the tenant, however in view of the denial of the tenancy and denial of the title of the Plaintiffs, the suit was filed treating him as trespasser and on the basis of the title and it was held to be maintainable in the Civil Court.

20] In the another judgment of this Court also, in the case of *Kusumkant T. Nagda V/s. Mariam Bi Ebrahim, 2004 SCC Online Bom.882*, it was held that, when the suit is filed for possession and mesne profits alleging Defendant to be the trespasser provisions of Section 28 of Rent Act cannot be invoked. The issue as to whether the person is a trespasser or not can be decided only by the Civil Court and not by the Small Causes Court.

21] Here, in the case, as stated above, it may be true that, Respondent has stated in the plaint also that the possession of the Applicants is that of a gratuitous licensee but then the suit is not filed on that count but the cause of action for filing the suit was denial of the Respondent's exclusive ownership and title over the suit property. Therefore, on the basis of her ownership over the suit property, in view of the denial by the Applicants, the Respondent sought possession. Therefore, the order passed by the Appellate Court, holding that the Civil Court alone can have the jurisdiction to decide the suit of such nature, does not call for any interference.

22] The Civil Revision Application, being devoid of merit, stands dismissed.