

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE SIDE JURISDICTION****WRIT PETITION NO.5905 OF 2003**

Sangita Vijay Mahajani and another	]	Petitioner
Vs.		
Narendra Sadanand Javale (since deceased)	]	
through his legal representatives	]	
Suhasini Narendra Javale and others	]	Respondents

WITH**CIVIL APPLICATION NO.2811 OF 2014**

Narendra Sadanand Javale (since deceased)	]	
through his legal representatives	]	
Suhasini Narendra Javale and others	]	Applicants

IN THE MATTER OF:

Sangita Vijay Mahajani and others.	]	
Vs.		
Narendra Sadanand Javale (since deceased)	]	
through his legal representatives	]	
Suhasini Narendra Javale and others	]	Respondents

WITH**CIVIL APPLICATION [ST] NO.23307 OF 2018**

Dr. Deepale Mahajani & Anr.	]	Applicants
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IN THE MATTER OF:

Sangita Vijay Mahajani and another.	]	Petitioners
Vs		
Narendra Sadanand Javale (since deceased)	]	
through his legal representatives	]	
Suhasini Narendra Javale and others	]	Respondents

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Mr. S.A. Ghaisas i/b A.M. Joshi for respondents in C.A and Petitioners in W.P.
 Mr. S.S. Haridkar for applicants in C.A and respondent Nos. 1 to 3 in Writ
 Petition.

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CORAM : R.G. KETKAR, J.

DATE : 16TH OCTOBER, 2018.

JUDGMENT:

Heard Mr. Ghaisas, learned Counsel for the petitioners and Mr. Hardikar, learned Counsel for the respondents No.1 to 3 at length.

2. Civil Application [ST] No.23307 of 2018 is taken out by the petitioners for amending the Petition. By proposed amendment, the petitioners/defendants are claiming protection under section 53-A of the Transfer of Property Act, 1882 (for short 'T.P. Act'). Civil Application is allowed in terms of prayer clause (b) with no order as to costs. Amendment shall be carried out within two weeks from today.

3. This Petition takes exception to the judgment and decree dated 6th September, 2001 passed by the learned third Additional District Judge, Pune in Civil Appeal No.450 of 2000 along with Cross Objections. By that order, the learned District Judge allowed the appeal preferred by the respondents and dismissed the cross objections. The learned District Judge set aside the judgment and decree dated 29th July, 1999 passed by the learned Additional Judge, Small Causes Court, Pune in R.C.S No.450 of 1997 and decreed the suit filed by the respondents, hereinafter referred to as “plaintiffs”. The learned District Judge directed the petitioners, hereinafter referred to as “defendants” to hand over vacant possession of Flat No. B-3 in Hrishkesh Co-operative Housing Society, 454/456, Gokhale Road, Shivaji Nagar, Pune, more particularly described in paragraph 1 of the plaint (for short 'suit premises').

4. In support of this Petition, Mr. Ghaisas submitted that the decree passed by the Appellate Court is a nullity. The Small Causes Court has no

jurisdiction to entertain and try the suit instituted by the plaintiffs' purportedly on the ground that the defendants are gratuitous licensee. He has taken me through the order passed by the learned trial Judge. After considering the material on record, the learned trial Judge held that the Small Causes Court has no jurisdiction to entertain and try the suit and accordingly dismissed the suit. As against this, the learned District Judge held that the Small Causes Court has jurisdiction to entertain and try the suit as the suit is between licensor and a gratuitous licensee.

5. Mr. Ghaisas submitted that the plaintiffs had agreed to sell the suit premises to the defendants. The plaintiffs had obtained Rs. 2,25,000/- from defendant No.1 as the plaintiff was in need of money. He submitted that the defendants have taken out Civil Application [ST] No.23307 of 2018 for amending the Writ Petition in terms of schedule annexed to the application. By way of proposed amendment, the defendants want to add paragraph 6(a) in the Petition to contend that the parents of the petitioners were put in possession of the suit premises as they have paid Rs. 2,25,000/- to respondent Jawale. A flat was given in their possession as a security. A letter dated 3rd March, 1983 was written by the plaintiffs to defendants' mother saying that since the plaintiffs are unable to pay the amount, they have agreed to sell the suit premises for the said amount to her. In view thereof, there is no relationship of licensor and licensee between the parties and the learned District Judge was not justified in passing the decree. He, therefore, submitted that the impugned order deserves to be set aside, thereby, dismissing the suit instituted by the plaintiffs.

6. On the other hand, Mr. Hardikar supported the impugned order. He submitted that the suit against gratuitous licensee is maintainable in the Small Causes Court and not in the Civil Court and the said issue is concluded

by the decision of the Apex Court in **Prabhudas Damodar Kotecha Vs. Manhabala Jeram Damodar AIR 2013 Supreme Court 2959**. He further submitted that the defendants cannot claim protection under section 53-A of the T.P. Act. He invited my attention to the order dated 4th June, 2002 passed by this Court in Writ Petition No.5487 of 2001. In that order, this Court specifically held that the defendants were inducted in the suit premises as licencees and not as purchasers or prospective purchasers. The defendants were inducted in the suit premises in the year 1977 and according to averments made in the written statement, the agreement was entered in Diwali of 1983. This Court, therefore, held that the defendants' entry in the suit premises was that of licencees and not purchasers or prospective purchasers. In addition, he submitted that defendant No.1 Sangita Vijay Mahajani had instituted Civil Suit No.1180 of 1998 for specific performance of contract. By order dated 13th February 2006, the suit was dismissed in default under Order-IX, Rule-8 of the Code of Civil Procedure, 1908 (for short 'C.P.C') and thereafter, no attempt was made by the defendants for restoration of the said suit. He submitted that the learned District Judge rightly held that the suit against gratuitous licencee is maintainable before the Small Causes Court. He submitted that no case is made out for interfering with the impugned order.

7. I have considered rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. A perusal of the trial Court's order shows that the learned trial Judge held that the plaintiffs have proved that the defendants are gratuitous licencee in respect of the suit premises. The learned trial Judge further held that the plaintiffs proved that the licence of the defendants was terminated by notice dated 9th October, 1996 with effect from 30th November, 1996. The learned trial Judge, however, dismissed the suit only on the ground that the Small Causes Court has no jurisdiction to entertain and try the suit.

8. In so far as the judgment of the District Judge is concerned, the learned District Judge also held that the plaintiffs proved that the defendants are gratuitous licencees in respect of the suit premises and that the plaintiffs proved that the licence stood terminated by notice dated 9th October, 1996 with effect from 30th November, 1996. The learned District Judge further held that the defendants failed to prove that they became owner of the suit property by adverse possession and that the Small Causes Court has jurisdiction to entertain and try the suit. The said issue is no longer *res integra*. In the case of **Prabhudas Kotecha** (supra), the Apex Court resolved controversy and held that the Small Causes Court alone has jurisdiction to entertain and try the suit against a gratuitous licencee.

9. In view thereof, I do not find that the learned District Judge has committed any error in holding that the Small Causes Court has jurisdiction to entertain and try the suit. In so far as contention raised by the defendants to amend the Petition as per C.A. [ST] No.23307 of 2018 is concerned, it is not possible to accept this contention. By order dated 4th June, 2002 in W.P. 5487 of 2001, the learned Single Judge had categorically observed that the defendants were inducted in the suit premises in the year 1977 as licencees. In other words, they were not inducted in the suit premises in pursuance of agreement of sale purportedly executed in Diwali of 1983. Thus, the defendants cannot claim protection under section 53-A of the T.P. Act. By way of the proposed amendment, the defendants want to reiterate the said contention which is already rejected as far as long back in the year 2002. In view thereof, I do not find any merit in this contention.

10. In the light of the above said discussion, I do not find that the learned District Judge has committed any error in passing the impugned order. The defendants are not in a position to demonstrate that the findings recorded

by the District Court are perverse being based on no evidence or that on the basis of material on record, no reasonable or prudent person would have come to the conclusion arrived at by the District Court. Merely because on the basis of the material on record, another view is possible that, by itself, is no ground for exercising the powers under Article 227 of the Constitution of India. In the result, the Petition fails and the same is dismissed. Rule is discharged with no order as to costs. In view of dismissal of main Petition, Civil Application No.2811 of 2014 taken out for fixing date of hearing does not survive and the same is dismissed. Order accordingly.

[R.G. KETKAR, J.]