

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

**WRIT PETITION NO.4966 OF 2016**

- |                                      |                    |
|--------------------------------------|--------------------|
| 1. Shrikant Marutrao Patankar,       | ]                  |
| Age : 67 years, Occ. Nil             | ]                  |
| 2. Sharda Marutrao Patankar,         | ]                  |
| Age : 77 years, Occ. Household       | ]                  |
| 3. Suresh Marutrao Patankar,         | ]                  |
| Age : 70 years, Occ. Business        | ]                  |
| 4. Vijay Marutrao Patankar,          | ]                  |
| Age : 61 years, Occ. Business        | ]                  |
| All are residing at Azad Chowk,      | ]                  |
| Raviwar Peth, Pudhari Khadi Bhandar, | ]                  |
| Karad, Tal. Karad, Dist. Satara.     | ] .... Petitioners |

***Versus***

- |                                    |                    |
|------------------------------------|--------------------|
| 1. Azad Jamaluddin Ansari,         | ]                  |
| Age : 31 years, Occ. Business      | ]                  |
| 2. Jamaluddin Rahimulla Ansari,    | ]                  |
| Age : 64 years, Occ. Business,     | ]                  |
| Both are residing at House No.353, | ]                  |
| Budhwar Peth, Karad, Tal. Karad,   | ]                  |
| District Satara.                   | ] .... Respondents |

Mr. T.D. Deshmukh for the Petitioners.

Mr. Girish R. Agrawal for the Respondents.

**CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.**

**DATE : 28<sup>TH</sup> FEBRUARY 2018.**

### **ORAL JUDGMENT :**

1. Rule. Rule is made returnable forthwith. Heard finally, at the stage of admission itself, by consent of Mr. Deshmukh, learned counsel for the Petitioners, and Mr. Agrawal, learned counsel for the Respondents.

2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the Judgment and Order dated 30<sup>th</sup> June 2015 passed by District Judge-2, Karad, thereby allowing the Miscellaneous Civil Appeal No.53 of 2013, which was preferred by the Respondents herein against the Judgment and Order dated 28<sup>th</sup> June 2013 passed by the 2<sup>nd</sup> Joint Civil Judge, Junior Division, Karad, below “Exhibit-5” in Regular Civil Suit No.228 of 2013, thereby rejecting the said application for interim injunction.

3. Petitioners are the Original Defendants. Respondent No.1 has filed the Suit, contending, *inter alia*, that the suit premises are let out to his father – Respondent No.2, who was joined in the Suit subsequently, by the present Petitioners about ten years prior to the filing of the Suit and since then, they are in lawful possession thereof. However, as the Petitioners started causing obstruction to their possession over the suit premises, Respondents filed the Suit simplicitor for injunction, restraining the Petitioners from causing such obstruction. Along with the Suit, Respondents also filed an application for interim injunction.

The Trial Court has rejected the same holding that, there is no evidence to show that the Respondents are in possession of the suit premises as a 'tenant'.

4. When this order was challenged in the Miscellaneous Civil Appeal No.53 of 2013, filed before the Appellate Court, the Appellate Court was pleased to hold that, on the own showing of the Petitioners herein, as reflected in the notice dated 15<sup>th</sup> December 2014, Respondent No.1's father was put in possession of the suit premises as a 'gratuitous licensee' on the basis of the oral agreement on 3<sup>rd</sup> March 2005. In view thereof, the possession of the Respondents cannot be called as patently unauthorized and illegal. Accordingly, the Appellate Court reversed the order of the Trial Court and protected the possession of the Respondents against any attempt of dispossession, without following due process of law.

5. While challenging the impugned order of the Appellate Court, the submission of learned counsel for the Petitioners is that, there is not a single document, like the Rent Receipt or the Lease Agreement, worth the name, to show that the father of Respondent No.1 was put in possession of the suit premises as a 'tenant' or even as a 'gratuitous licensee'. Moreover, during the lifetime of Respondent No.2, Respondent No.1 cannot claim to be in possession of the suit premises as a 'tenant' or

as a 'gratuitous licensee' and, therefore, such relief of interim injunction, as granted by the Appellate Court, cannot be called as legal and valid.

6. In support of his submissions, learned counsel for the Petitioners has relied upon the landmark decision of the Apex Court in the case of *Maria Margarida Sequeira Fernandes and Ors. Vs. Erasmo Jack De Sequeira (Dead), Through LRs, (2012) 5 SCC 370*; especially the principles of law, which are laid down therein in paragraph No.97 of the said Judgment. In clause No.(4) of paragraph No.97, on which the reliance is placed, it is held that, *“the protection of the Court can only be granted or extended to the person, who has valid, subsisting Rent Agreement, Lease Agreement or Licence Agreement in his favour”*. It is submitted that, in the present case, there is no such Lease Agreement, Rent Agreement or Licence Agreement in favour of the Respondents and in such situation, no such protection, by way of order of interim injunction, could have been extended to the Respondents.

7. However, in my considered opinion, what is pertinent to note is that, if the possession of Respondent No.1 or his father was illegal or unauthorized or without any status, then, Petitioners would not have tolerated such possession from the year 2005 itself. Petitioners would have taken appropriate action for eviction or dispossession of the Respondents in accordance with law. It is worth to note that, in this Suit

also, the Respondents have not filed any counter-claim to get possession of the suit premises.

8. Conversely, as discussed by the Appellate Court, the Petitioners have issued notice to the Respondents on 15<sup>th</sup> December 2014, stating that the possession of the suit property was given to the father of Respondent No.1 on 3<sup>rd</sup> March 2005 as a 'gratuitous licensee', on oral agreement and the said license has now been revoked in January 2012 and the notice has been issued for possession and compensation. Thus, by this notice, Petitioners have admitted the possession of Respondent No.1's father as 'gratuitous licensee' in the suit premises. In this situation, the Petitioners have to follow the due process of law to take possession of the suit premises from the Respondents. It may be stated that Respondent No.1' father is also now joined in the Suit as 'Plaintiff' and, therefore, the technical objection raised that, during the lifetime of Respondent No.2, Respondent No.1 cannot claim to be in possession as a 'tenant' or as a 'gratuitous licensee', also no more remains.

9. The result is that, admittedly, the Respondents are in possession of the suit premises, on own showing of the Petitioners, as 'gratuitous licensee', at-least, for a period of more than ten years and no procedure, as contemplated by law, is taken or initiated by the Petitioners to evict them from the suit premises. In such situation, the only relief, which is

granted by the Appellate Court, that of restraining the Petitioners from dispossessing the Respondents without following due process of law, cannot be called as illegal, so as to warrant interference therein in the writ jurisdiction.

10. The impugned order passed by the Appellate Court, therefore, being just, legal and correct, no interference is warranted therein. The Writ Petition stands dismissed.

11. Rule is discharged.

**[DR. SHALINI PHANSALKAR-JOSHI, J.]**