

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7371 OF 2019

[Converted from Civil Revision Application (St.) No.16330 OF 2019]

Nivrutti Genu Dhiwar (since deceased)
through LRs ... Applicants
Vs.
Usha Shantaram Dhiwar and others ... Respondents

Ms Prabha U. Badadare for Applicants.
Mr. Anup Lahoti for Respondents.

CORAM : R. G. KETKAR, J.
DATE : JUNE 26, 2019

P.C. :

Not on Board. At the request of Ms Badadare, taken up for admission.

2. Heard Ms Badadare, learned Counsel for the applicants and Mr.Lahoti, learned Counsel for the respondents.

3. By this Application under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicants have challenged the judgment and order dated 20.07.2018 passed by the learned District Judge, Pune in Regular Civil Appeal No.194 of 2013. By that order, the learned District Judge allowed the appeal preferred by the respondents and set aside the judgment and decree dated 29.01.2013 passed by the learned trial Judge dismissing R.C.S.No.408 of 2009. The learned District Judge decreed the Suit and directed the applicants / defendants to handover vacant possession of Block No.33, Anand Co-op. Housing Society Limited, Pune 411 016 (for short 'suit premises') to the respondents / plaintiffs. Respondents instituted Suit for recovery of

possession of the suit premises inter alia contending that defendants are gratuitous licensees and they have terminated the licence by notice dated 31.08.1995. Defendants are in illegal possession of the suit premises.

4. In view of Section 7 of C.P.C., the provisions of Section 115 are not applicable to the proceedings arising from the Small Causes Court constituted under the Provincial Small Cause Courts Act, 1887. Hence, leave to convert C.R.A. into Writ Petition is granted. Amendment shall be carried out within one week from today. In pursuance thereof, the office has converted the C.R.A. into Writ Petition.

5. This Petition was argued for quite some time and was adjourned till today so as to enable Ms Badadare to take instructions as to whether petitioners are pressing this Petition. Ms Badadare states that petitioner No.3-Umesh Nivrutti Dhiwar is present in the Court and he has authority to make statement on behalf of the other petitioners. She has tendered photocopy of his Aadhar Card, which is taken on record and marked 'A' for identification. She has also tendered undertaking given by petitioner No.3 for himself and on behalf of the petitioners No.4 and 5. The same is taken on record and marked 'B' for identification. In paragraph 1 of the undertaking, it is stated that petitioner No.3 along with his wife Sheetal Umesh Dhiwar, minor daughter Anagha Umesh Dhiwar and two divorcee sisters, namely, Rani Nivrutti Dhiwar and Shaila vilas Sonawane, petitioners No.4 and 5 respectively are residing in the suit premises and nobody else is residing. Undertaking is given that petitioners and all the family members mentioned in paragraph 1 thereof will handover vacant and peaceful possession of the suit premises on or before 31.12.2019 to the respondents. They will neither create third party interest nor part with possession of the suit premises. Undertaking dated 26.06.2019 is accepted.

6. The petitioners accept correctness of the impugned order. They further accept that their tenancy is extinguished. In view thereof, petitioners are given time to vacate and handover possession of the suit premises to the respondents on or before 31.12.2019. They will neither create third party interest nor part with possession. The petitioners also will not claim any right, title and interest in the suit premises. The Petition is disposed of as not pressed. Order accordingly.

7. List the Petition on 13.01.2020 for reporting compliance as regards handing over possession.

(R. G. KETKAR, J.)

Minal Parab