

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**SECOND APPEAL No. 308 of 2018**

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Shri Deepak Yashwant Bhosale  
And others .. Appellants  
Versus  
Sou.Kavita Dilip Bhosale .. Respondent

...

Mr. S.S. Kanetkar for the appellants.  
Mr. Sagar Joshi for the respondent.

**CORAM: BHARATI DANGRE, J.**  
**DATED : 13<sup>th</sup> MARCH, 2020**

**JUDGMENT :-**

1 By consent of the parties, the Appeal is heard finally. The appellants are aggrieved by the concurrent finding recorded by the Joint Civil Judge, Sr. Division, Pune in Special Civil Suit No.94 of 2006 and the finding recorded in the First Appeal by the Adhoc District Judge-I at Pune. The appellants have formulated several issues to be the questions of law in the Memorandum of Appeal. However, the Appeal deserves consideration on ground nos.(b) to (f) which reads thus :

(b) Whether the Courts below have failed to consider the law laid down by this Hon'ble Court in

2007(4) All MR 651 (FB), the jurisdiction of the Civil Court to try and entertain the suit filed by the Respondent – Plaintiff was expressly barred.

(c) The finding of the learned Trial Court on additional Issue No.6 is incorrect.

(d) It is a settled law that the jurisdiction is decided on the basis of averments in Plaint. Admittedly, the Respondent – Plaintiff has admitted that the Appellants were gratuitous licensee from her predecessor in title, viz, Yeshwant Bhosale. Thus, it was a suit for eviction of a gratuitous licensee, which was not competent to be triable by the Civil Court.

(e) Whether the Courts below failed to consider that the contention that the license stood revoked is contrary to the provisions of the Easement Act.

(f) Mere transfer of premises from a licensor to a third party will not *ipso facto* terminate the license.

2 Learned respective counsel have also advanced their submissions on the aforesaid point of law by adverting to the necessary facts involved in the present Appeal.

3 Brief reference to the factual aspect involved in the Appeal is necessary.

The respondent Sou. Kavita Bhosale instituted a Special Suit before the Civil Judge, Sr. Division, Pune for possession and sought mandatory injunction in respect of the suit property being residential Flat No.1 admeasuring 540 sq.ft located in Navbharat Co-op Housing Society, Sadashiv Peth, Pune. The appellants before this Court were impleaded as the defendants; being her brother-in-law Deepak Bhosale, his wife and two sons. The defendant no.1 is the brother of the plaintiff's husband. She pleaded before the First Court that her father-in-law is one Yeshwant Bhosale and is aged 80 years and he has three sons by name Subhash, Dilip (plaintiff's husband) and Deepak, defendant no.1. As per the plaintiff, her father-in-law was leading a chain of hotel business through different partnership firms in which the plaintiff, her husband and defendant nos.1 and 2 are partners. The financial condition of Shri Yashwant Bhjosale being sound, he purchased three flats in Navbharat Co-operative Housing Society. Out of the three flats, flat no.2 was given to the elder son Subhash and it is in his name and Subhash is residing in the said flat with his family. Flat No.3 was retained by Yashwant Bhosale himself and is occupied by him along with his wife. Flat No.1 was purchased by Yashwant Bhosale for plaintiff's husband Dilip. The plaintiff is paying the maintenance charges of the said society.

4           The case of the plaintiff is that the defendant no.1 obtained permission from his father to reside in the suit property and defendant started residing in the same. He did not pay any consideration or any licence fee for occupation of the suit flat and according to the plaintiff, he was a gratuitous licence of Yashwant Bhosale.

5           As per the case of the plaintiff, on 6<sup>th</sup> October 2005, she purchased the suit property from Yashwant Bhosale for consideration of Rs.2,40,000/- and all the rights, interest of Yashwant Bhosale in the suit property came to be transferred in favour of the plaintiff by registered deed of assignment and rights and interest of Yashwant Bhosale were extinguished. The plaintiff was put in possession of the suit property on 6<sup>th</sup> October 2005 and it is her case that from the said date, the gratuitous licence in favour of the defendant was revoked and the defendants became trespassers in the suit property as she never granted permission to occupy the suit property. She approached the Civil Court with a specific plea that there is no jural relationship between herself and the defendants. A notice was issued by her on 17<sup>th</sup> October 2005 asking for vacation of the suit property which was responded to by the defendant with a plea of denial. Hence, the Suit came to be filed seeking possession of the suit property.

6           The First Court after framing the issue as to whether the plaintiff had proved her title over the suit property and whether the defendants are residing in the said property illegally and it amounted to trespass answered the issue in the affirmative. An additional issue which was framed, on a submission of the defendant was about the jurisdiction of the Civil Judge to entertain the said suit. While dealing with a plea based on Full bench Judgment of this Court in case of Prabhudas Damodar Kotecha Vs. Smt. Manharbala Jeram Damodar, 2007 (5) Mh.L.J 341, which laid down the proposition to the effect that Suit by licensor against a gratuitous licensee is tenable before the Provincial Small Causes Court and that the term 'licensee' employed in Section 41(1) of the Presidency Small Causes Court Act, the term was required to be interpreted widely. Not finding support from the said decision, the said issue was answered in the negative, by placing reliance on Section 52 of the Easement Act which define the term 'licence' as well as on making reference to Section 59 of the Easement Act, the Court held that it possess the jurisdiction to try the suit and proceeded to determine other issues on merits.

Cumulatively dealing with the issues in the backdrop of the evidence tendered by the plaintiff herself where she examined herself, her father-in-law Yashwant and brother-in-law Subhash, the finding came to be recorded that the suit property was not ancestral property and the plaintiff had purchased the

same from Yashwant Bhosale. Based on the evidence, the Civil Judge returned a finding that the defendants were residing in the suit flat as gratis licensee and on 6<sup>th</sup> October 2005, she was put in possession of the said property and since then, the defendant became their trespassers. The admission of the plaintiff that in order to avoid the recovery of Rupee Co-operative Bank, the father-in-law had transferred the flat in her name for which she had paid the consideration, the Court recorded a finding that the suit property was not purchased from the income of the Joint Hindu Family and it came into exclusive ownership of the plaintiff after she purchased the same from her father-in-law. On the evidence of the defendant being perused, who examined the Clerk and Manager of Rupee Co-operative Bank who had placed on record the letters issued by the Recovery Officer to Yashwant Bhosale, the evidence of one of the witness brought on record that the suit property was never attached and put in auction by the Rupee Co-operative Bank for recovery of amount due from Yashwant. Holding that the defendant no.1 is a gratuitous licensee and the date on which the plaintiff became the owner of the suit property, he became a trespasser in view of section 59 of the Easement Act which provided that when the grantor of the licence transfers the property, the transferee is not bound by the licence. The suit was, therefore, decreed. The defendants were directed to hand over peaceful and vacant possession of the suit property to the plaintiff within two months.

7           On an appeal being preferred by the appellants before the District Judge, Pune, he concurred with the finding recorded by the Civil Judge, Sr. Division on all issues including the issue of jurisdiction of the Civil Court to try the suit. The transaction of sale between Yashwant and the plaintiff being not in dispute, the District Judge held that the plaintiff had proved her ownership and the licence which was simply a gratuitous licence and it stood revoked impliedly the moment the ownership of the suit property was devolved upon plaintiff and since she did not accept the gratuitous licence in favour of the defendant, he became the trespasser. The stand of the defendant that the suit property was purchased from the joint family income and hence is a joint family property was also answered in the negative. No illegality being found in the decision of the trial Judge, the District Judge dismissed the Appeal.

8           Being aggrieved, the Appellants are before this Court. As far as the factual aspects are concerned, both the Courts have recorded concurrent finding. The plaintiff who had examined herself and also her father-in-law and elder brother-in-law and who had placed on record a deed of assignment, had specifically brought on record the factual aspect that Yashwant Bhosale had purchased the flat for his son from his own earnings from the hotel business and the sugar-cane business which he was

undertaking from the year 1953. He had denied that it was Hindu Undivided family and as per the evidence adduced on behalf of the plaintiff, through herself and her witnesses, the suit property was purchased for plaintiff's husband Dilip and being in relation, Yashwant Bhosale permitted the defendant to reside in the suit flat and hence they were licensees at gratis in the suit property. The plaintiff therefore, clearly established that the property was not purchased from the funds of the joint Hindu family and once the plaintiff purchased the property on 6<sup>th</sup> October 2005 from Yashwant, she became lawful owner of the suit property on payment of consideration of Rs.2,30,000/-. The stand of the defendant that the property was sold in order to defraud the Rupee Co-operative Bank who had advanced loan to Yeshwant Bhosale, on examining the two witnesses on behalf of the defendant, the said stand did not gain any roots through the evidence of defendant nos.1 and 2 and in fact, the defendant's witnesses had admitted in the evidence that the amount due to the bank came to be recovered by attaching and selling the property by name Jayashree's Executive. In any contingency, the defence witnesses admitted the said fact that there were no dues of the said bank against Bhosale family. The finding recorded on the facts being based on the material placed on record of the trial Court and being concurred by the First Appellate Court in its findings, do not warrant any interference.

On the substantial question of law as to the jurisdiction of the Civil Court to grant relief in favour of the plaintiff in light of the Full Bench judgment, which has been relied upon by Shri Advocate Kanetkar falls for consideration. The objection before the Civil Judge was to the effect that even if the licence in favour of the defendant no.1 is a gratuitous licence, in light of the Full Bench Judgment, which had construed the term “licensee” in a broad manner so as to cover and include a gratis licensee and therefore, it is only the Small Causes Court which would be entitled to entertain the said dispute and not the Civil Court is the submission of Shri Kanetkar.

On perusal of the judgment delivered by the Full Bench in case of Prabhudas Kotecha (*supra*), the ratio needs to be followed in light of the facts and the provisions of the Presidency Small Causes Court *vis-à-vis* the Bombay Rent, Hotel and Lodging Houses Rates Control Act, 1947. The issue for determination before the Full Bench was one whether the expression “licensee” used in Section 41(1) in Chapter VII of the Provincial Small Causes Court Act, not having defined therein, would derive its meaning from the expression “licensee” as used in sub-section (4A) of Section 5 of the Rent Act and/or whether the expression “licensee” used in Section 41(1) of Presidency Small Causes Court Act (PSCC Act) is the term of wider import so as to mean and include a “gratuitous licensee” also and whether a suit

by a licensor against a “gratuitous licensee” is tenable before the Presidency Small Causes Courts Act.

9 In light of the conflict in the views taken by two Division Benches of this Court on the very aspect whether such Suit would by a licensor against a gratuitous licensee could be filed before the Small Causes Court or before the Civil Court was the precise controversy. After making an exhaustive reference to the two judgments which took diagonally opposite view and after making reference to the legislative history of the Rent Act and the legislative intent behind the said enactment by introduction of various provisions and on consideration of the provisions of Section 41(1) of the PSCC Act, the Full Bench on applying the accepted principles of statutory interpretation held that the Provincial Small Causes Court Act did not define the expression “licensor” and licensee” and these two expressions find place in Section 41(1) of the PSCC Act. The Full Bench rendered its finding in the following paragraphs :-

*“42 The PSCC Act does not define expression “licensor” and “licensee”. Both these expressions find a place in section 41(1) of PSCC. Under this provision the Court of Small Cause is conferred with the jurisdiction to entertain and try all the suit and proceedings between a “licensor” and a licensee” relating to recovery of possession of any immovable property or relating to recovery of licence fee. Section 5(4A) of the*

*Rent Act defines the term “licensee” while section 52 of the Indian Easement Act, 1882 defines the term “licence”. A mere look at both these provisions would show that sub-section (4A) of section 5 of the Bombay Rent Act clearly provides that the “licensee” means a person who is in occupation of the premises or such part as the case may be, under a subsisting agreement for licence given for a “licence fee or charge”. The definition of “licensee” under sub-section (4A) of Section 5 is very exhaustive and is inclusive and exclusive in character. However, it would suffice to note that the licensee under sub-section (4A) must be a licensee whose licence is supported by material consideration. In other words, a gratuitous licensee is not covered under the definition of licensee under sub-section (4A) of section 5 of the Rent Act.*

43        *As opposed to this, the expression “licence” as defined under section 52 of the Indian Easement Act, provides that where one person grants to another or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to easement or an interest in the property, the right is called a license. Section 52 does not require any consideration, material or non-material, to be an element of the definition of licence, nor does it require that the right under the licence must arise by way of contract or as a result of a mutual promise. Thus, licence as defined in section 52 of the Indian Easement Act can be a unilateral grant and unsupported by any*

*consideration. The Supreme Court in State of Punjab vs. Brig. Sukhjit Singh, 1993(3) SCC 459 has observed that, “payment of licence fee is not an essential attribute for subsistence of licence”.*

10           The Full Bench held that the plain reading of Section 41(1) would depict that the expression “licensee” is used in a general sense and it does not exclude a gratuitous licensee from its purview. The defined meaning of the expression “licensee” under Section 5(4A) of the Rent Act cannot be assigned or attributed to the word “licensee” occurring in Section 41(1) of the PSCC Act. Referring to the intention of the legislation in bringing the licensor and licensor within purview of Section 41(1) by the 1976 Amendment, being to curb the mischief of unscrupulous elements using directive tactics in prolonging the cases for recovery of possession instituted by the landlord/ licensor to defeat their right of approaching the Court for a quick relief and also caused inconvenience to the Court making it to deal with an issue of jurisdiction. In such cases, even before touching the merits of the matter, the Full Bench accorded a broader construction to the term by upholding the intention of the legislature to bring all suits between the landlord and tenant and licensor and licensee, whether under the Rent Act or under the PSCC Act under one roof.

While answering the questions formulated as above, the Full Bench answered the issue in the penultimate paragraph

of its report in para 62 :

*“Thus, looking at the controversy raised in these petitions from all points of view, we answer the questions formulated by us as follows : The expression “licensee” used in section 41(1) of PSCC Act does not derive its meaning from the expression “licensee” as under in sub-section (4A) of section 5 of the Rent Act. The expression licensee used in section 41(1) is a term of wider import so as to mean and include a “gratuitous licensee” also. In view of this, we hold that a suit by a licensor against a gratuitous licensee is tenable before the Presidency Small Causes Court under Section 41 of the PSCC Act.”*

11 Perusal of the said judgment would amply clarify that the Suit by the licensor against a gratuitous licensee is tenable before the Presidency Small Causes Court under Section 41. The provisions of the Provincial Small Causes Courts Act which are *para materia* to the provisions of Presidency Small Causes Courts Act would thus require a similar interpretation. Pertinent to note that the Suit filed by the plaintiff was not in the capacity as a licensor. She is not a licensor as the license at gratis was granted in favour of the defendants by Yashwant, her father in law. The factum of the purchase of the Suit property by the plaintiff from her father-in-law Yashwant being not in dispute, Section 59 of the Easement Act would come into play with full vigor. The meaning of the expression “license” as defined in Section 52 of the Indian Easement Act, is wide enough to include all licenses,

whether with or without consideration. The Full Bench has also attributed the broader meaning to the term “licensor” and “licensee” so as to give effect to the intention of the legislature to cover the proceedings between the licensor and gratuitous licensee – a licensee without consideration.

12           Section 52 of the Easement Act defines ‘license’ as “where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.

Section 59 of the Easement Act reads thus :

*“When the grantor of the license transfers the property affected thereby, the transferee is not as such bound by the license.”.*

13           According to the said provision, if the person who has granted the license, transfers the property, the transferee is not bound by the license. Applying the said provision to the case in hand, the position that emerges is to the effect that the father-in-law of the plaintiff Yashwant who had granted the gratis licence in favour of the defendant no.1 and when the suit property is transferred by way of sale to the plaintiff from Yashwant, the

plaintiff is not bound by the license gratis granted in favour of defendant no.1. The said license thus extinguished and the plaintiff accordingly sought vacant possession of the suit property by instituting the suit. The suit is filed by the transferee of the grantor i.e. Yashwant and not by the licensor, to be bound by the shackles of Section 41(1) of the Provincial Small Causes Courts Act, or by the verdict by the Full Bench. The Suit is filed by the transferee of the licence by Yashwant and the gratis license granted by Yashwant in favour of defendant no.1, since not accepted by her do not bind her. The defendant no.1 was thus rightly declared to be a trespasser and directed to hand over the peaceful and vacant possession in favour of the plaintiff. The position of law by the Full Bench Judgment does not get attracted in the present case for being the fact that the Suit is not filed by the grantor of the license and consequently, the plaintiff Sou. Kavita Bhosale is not bound by the license though without consideration and a gratis license granted by the erstwhile owner of the suit property in favour of the defendant no.1.

14           The concurrent finding recorded by the Courts below thus call for no interference on fact as well as on the question of law as both the Courts have rightly construed the facts in light of the judgment of the Full Bench by applying the principles evolving therefrom.

The Appeal therefore does not warrant consideration on the question of law raised and deserves a dismissal. The judgment passed by the District Judge, Pune in Civil Appeal No.703/2012 and judgment passed by the learned 11<sup>th</sup> Joint CJSD, Pune in Special Civil Suit No. 94 of 2006 are to be upheld.

Decree be drawn up accordingly.

**SMT. BHARATI DANGRE, J**