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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6413 OF 2022**

Shri Pradeep Baburao Shirsad Petitioner.
V/s
Shri Ranjit Yashvant Shinde Respondent.

Mr. Balasaheb R. Deshmukh for the Petitioner.

CORAM: NITIN W. SAMBRE, J.

DATE: JULY 27, 2022

P.C.:-

1] This Petition is by the tenant-licensee, questioning the judgment dated 21/4/2018 delivered by the Small Causes Court in L.E. Suit No.152 of 2009 which was confirmed in Appeal No.234 of 2018 on 23/3/2022.

2] Facts necessary for deciding present Petition are as under:-

3] Respondent/Plaintiff initiated aforesaid suit in respect of Room No.19/B/E, Ground Floor, Anand Nagar, Chembur, Sion, Bombay. It is claimed that suit premises consists of 15 X 25 sq.ft which is situated

on the plot of land bearing CTS No.336/53.

4] Respondent/Plaintiff claims that suit premises are situated at Little Malbar Hill Co-operative Housing Society, Anand Nagar, S.T. Road, Chembur, Mumbai – 400071. It is also claimed that suit premises i.e. independent room is assessed as Room No.19(AE) in the name of the Plaintiff by the Bombay Municipal Corporation, that the aforesaid room is part of structure consisting of five rooms standing in the name of Mrs. Sushila Yeshwant Shinde. According to the Respondent, Petitioner/Defendant is a son-in-law of sister of his wife and as such was inducted as gratuitous licensee.

5] Since the Petitioner failed to vacate the premises, suit was brought into action, seeking possession. The said suit was decreed on 21/04/2018 with direction to the Petitioner to handover peaceful and vacant possession of premises bearing Room No. 19-B/E, Anand Nagar, Sion-Trombay, Mumbai – 400071. Petitioner's prayer in appeal for setting aside the said judgment came to be rejected on 23/3/2022. As such, this Petition.

6] Contentions of Mr. Deshmukh, learned Counsel appearing for the Petitioner are, claim of the Respondent that Petitioner is a gratuitous licensee is out and out incorrect. According to him, Respondent/Plaintiff has failed to establish his title over the suit property as he has not produced the document i.e. affidavit dated 29/01/1998 executed by his mother, thereby permitting him to use the premises. He would urge that State Government is a necessary party, as the suit premises were allotted to Co-operative Society by the State Government. According to him, provisions of Section 53 of the Indian Easement Act are required to be appreciated under which, license alleged could not have been granted by the Respondent. According to him, there is absence of leave and license agreement. That being so, embargo under sub-section 21 of Section 41 of the Provincial Small Causes Courts Act will operate, as the suit is not maintainable. According to him, status of the Petitioner is that of encroacher. In this background, in the absence of agreement to the contrary, question of termination of same does not arise. He would urge that no cause of action is pleaded and as such both the

judgments impugned are liable to be set aside. In addition, contention of the Petitioner is, Sushila, mother of Respondent, was blessed with three sons and a daughter. It is claimed that suit property is part of an independent house allotted to father of the Respondent after whose death Sushila succeeded to the said property. It is claimed that property in question is not only occupied by three sons or Shushila, including the Respondent but also other relatives. Mr. Deshmukh would urge that property which is in possession of the Petitioner is part of the government land which he has encroached and that being so, judgments impugned are liable to be set aside.

7] I have appreciated the aforesaid submissions.

8] Fact remains that in support of the contentions in the Plaint, Respondent/Plaintiff has entered the witness box and claimed that suit was filed for eviction of Petitioner. He has specifically stated about the structure consisting of five rooms to which his mother, after death of his father, succeeded. He has specifically stated that his mother has permitted him to enjoy the premises vide affidavit dated

29/01/1998. He has also stated that suit premises were independently assessed in the name of the Respondent and same is independently described also by the Corporation. He has also stated that in the first week of June, 2001 pursuant to the request made, he has admitted Petitioner as a gratuitous licensee. He has stated that he was having electric meter from which electric supply was made available to the suit premises and has produced electricity bill-Exhibit-26 of 29/9/2001. He has specifically stated that he has called upon the Petitioner to remove himself from the suit premises on 20/10/2001. He has admitted that he has carried out excess construction in the open area adjacent to his room, the premises allotted to his late father by the Society. He has stated that his brother and mother are also residing in the adjacent property. As such what can be noticed is, Petitioner was unable to demolish the case of Respondent about he being licensor/landlord. Rather, it is an admitted position from the aforesaid evidence that Petitioner had admitted title of the mother of the Respondent over the suit property. Respondent has established that suit property is independently assessed and was having electric connection in the name of his wife.

9] The Respondent examined himself at Exhibit-39, Deputy Superintendent from Assessment Department of the Municipal Corporation and proved the assessment of the suit property in his name. Respondent has also examined Secretary of the Co-operative Society who has allotted the suit property and structure in favour of his mother. He has specifically stated about membership of the father of the Respondent viz Yeshwant and allotment of House No.19-B/E. After death of Yeshwant, property stood transferred in the name of Sushila on 19/6/1989 by the Society. He has also stated that to the block allotted to mother of the Respondent, temporary structure was added, which is assessed by the Municipal Corporation. In the cross-examination of the said witness, Petitioner herein was unable to demolish theory as regards temporary structure, allotment etc.

10] Petitioner thereafter entered into witness box by filing an affidavit. It was never his contention that he is one of the encroachers in the adjacent land of the State Government. He has admitted that he is residing in the aforesaid property. According to him, suit

property is part of CTS No.336/53 and claimed that same is part of the slum area. Though he has come out with a plea that it is notified as slum area under the Maharashtra Slum Area (Improvement, Clearance And Redevelopment) Act, 1971, however he has not substantiated such claim by producing on record any document to that effect. He has admitted that property card in relation to aforesaid CTS Number mentions name of Little Malbar Hill Co-operative Housing Society as an owner. He has specifically stated that his name is entered in electoral roll at Sr. No.735 at House No.19/B/AE. As such, Petitioner has admitted that he is in possession of the property of which Respondent/Plaintiff has sought possession by way of ordering his eviction. Petitioner has never pleaded a case that he has independently encroached on the government land and has set up construction over the same of which he is in possession of. Fact that originally land belonged to State Government and subsequently was allotted to Little Malbar Hill Co-operative Housing Society was also proved. In this background, it cannot be inferred that the Petitioner, in absence of pleadings and material, has encroached on government land adjacent to the said Society. In cross-examination of the

Petitioner, he was unable to demonstrate that he has raised construction on open space. So as to establish his claim, he has examined an independent witness viz. Bhimrao Shantaram Sonavane who has not supported the case of the Petitioner. Rather, said witness has admitted relationship of the Respondent and present Petitioner/Defendant. As such from the evaluation of the evidence of the Petitioner it is established that he has admitted that prior to 2001, he was having residence at some other places and post 2000, he appears to be gratuitous licensee of the Respondent. Documents placed on record as regards tax assessment and post 2005 claim of the Petitioner as that of having electric connection are not substantiated by him but for his oral evidence. Petitioner has even failed to establish that he is an encroacher over the suit property, as it was never his contention. Rather, Petitioner himself has admitted that Sushila mother of the Respondent has succeeded to the property of her deceased husband and she has allotted each room in the said structure to her three sons including Respondent and the daughter, who are respectively occupying the same. Respondent has brought on record that suit premises were subjected to tax assessment and he has

paid taxes which fact is also admitted (not disputed) by the Petitioner. In this backdrop, it cannot be said that Respondent has no authority pursuant to provisions of Section 53 of the Indian Easement Act to grant license. Rather, fact that the Petitioner was a gratuitous licensee of the Respondent is duly proved and there are concurrent findings recorded.

11] In that view of the matter, no case for interference is made out. Petition fails. As such same stands dismissed.

(NITIN W. SAMBRE, J.)