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M/s. Kermani Transport Company Petitioner.
V/s
Smt. Alka Yogikisan Agarwal and Ors. Respondents.

Mr. Anant Devkate i/b Priyal G. Sarda for Respondent No.3.

DATE: APRIL 11, 2022

1] After execution of Leave and License Agreements dated 09/02/1976 and 25/12/1981, relying on recitals of registered Gift Deed Dated 06/02/1985, Petitioner/Plaintiff took out Special Civil Suit No. 406 of 2020 with a prayer for declaration that he has become owner by virtue of adverse possession and also sought injunction restraining the Respondents from interfering with his possession. Prayer for grant of temporary injunction moved by the Petitioner/Plaintiff came to be rejected vide order dated 29/04/2021 which is confirmed by the Appellate Court vide order dated

22/07/2021. As such, this Petition.

2] Contentions are, in view of recitals in gift deed dated 06/02/1985, other documentary evidence viz telephone bill, it has to be inferred that Petitioner remained in settled possession of the suit property as admittedly there was Leave and License Agreement which was valid up to 1982. He would claim that possession was never surrendered after 1981 Leave and License Agreement. In the aforesaid background, Petitioner claims to be in settled possession of the suit property which was not objected by the original owner. Prayer for injunction is sought before this Court upsetting both the orders of the Courts below.

3] Counsel for Respondents would support the orders impugned and urge that the orders are in tune with the pleadings, documents on record and this Court should be slow in interfering with the concurrent findings.

4] Considered submissions.

5] Both the Courts below have in categorical terms dealt with the issue of Leave and License Agreement *inter se* between the Petitioner and original owner and also recitals in the Gift Deed dated 6/2/1985

6] Courts below thereafter proceeded to hold that Petitioner has failed to establish his settled possession over the suit property. Even if it is presumed that there was upto 1982 License in favour of the Petitioner and by virtue of same he continued to operate his transport business from the suit premises, there is no iota of evidence brought on record to infer such settled possession of the Petitioner over the suit property. Whatever material brought on record in support of such claim by the Petitioner was, in fact, in detail dealt with by both the Courts below to hold that Petitioner has failed to prove his settled possession over the suit property.

7] In the aforesaid backdrop, this Court is of the view that view expressed by both the Courts below is based on appreciation of pleadings and documentary evidence on record. Against such

concurrent findings, I hardly see any convincing reason or ground which warrants interference as the Petitioner has failed to demonstrate his settled possession over the suit property. His claim that he is in settled possession of the suit property and as such established a plea of adverse possession also cannot be looked into at this stage of the suit.

8] That being so, no case for interference in extraordinary jurisdiction is made out. Petition as such fails and same stands dismissed.

(NITIN W. SAMBRE, J.)