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

**SECOND APPEAL NO.53 OF 2023
WITH
INTERIM APPLICATION NO.507 OF 2023**

Shri. Ramesh Gunjali Gaikwad & Anr. ...Appellants
Versus
Shri. Santosh Krushna Gaikwad ...Respondent

Mr. V. A. Gangal, for the Appellants.

Ms. Shweta Parab, for the Respondent.

**CORAM : MADHAV J. JAMDAR, J.
DATED : 18th JANUARY 2023**

P.C. :

1. Heard Mr. Gangal, learned counsel appearing for the Appellants. He submitted that following two substantial questions of law are involved in this Second Appeal:-

i. Whether both the Courts have ignored the evidence on record which clearly shows that the suit premises was demolished in 1997 and therefore, there is no question of granting the same to the present Appellants as gratuitous licensee?

ii. Whether both the Courts committed illegality in not framing the issue regarding limitation and not considering the same?

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2. The learned Trial Court as well as the learned First Appellate Court have concurrently held that the Respondent i.e. Plaintiff is the owner of the suit Room No.212C. Both the Courts concurrently held that the Plaintiff has allowed the Defendants i.e. the present Appellants to keep their household articles in the said room during the rainy season and therefore, granted decree of possession. The concurrent finding recorded by the Courts below are on the basis of evidence on record. Learned Appellate Court in paragraph 12 to 17 has discussed the evidence on record and given valid reasons. The said paragraphs read as under:-

“12. In order to support the testimony of plaintiff, Smita (PW.2) is examined at Exh.41. It reveals from her evidence that she is related with plaintiff as well as defendants. She is their neighbourer, and therefore, acquainted with all the facts. She has specifically stated that the suit room was in possession of plaintiff and his mother until it was given in possession of defendants for temporary use.

13. Plaintiff has examined Chaitali Vinod Rathod as PW.3 at Exh.47. She is Village Development Officer.

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She has deposed on oath on the basis of Grampanchayat record that the room 212C i.e. suit room is recorded in the name of plaintiff in Namuna No.8 for the year 2008-2009, 2010-2011 and 2013-2014. She has produced on record documents (Exhs.50 and 51) in support of her evidence. She was cross-examined at length of time but nothing has been brought on record to disbelieve her testimony.

14. On the other hand, defendant Ramesh examined himself as DW.1 at Exh.65. He has practically admitted entire case of plaintiff. In course of cross-examination, he has admitted that he has carried out construction of three rooms 14 ft. x 25 ft. which bears House Nos.212A, 212B and 212C. Room No.212A was allotted to Tukaram Gaikwad, Room No.212B to himself and Room No.212C to the plaintiff. These rooms have been recorded in their name in Grampanchayat record. Plaintiff and his mother were residing in the suit room till the year 1997. Plaintiff has constructed another house and started residing there. Thereafter, the mother of plaintiff was residing in the suit room. His room is abutting to the suit room. He further admits that till this date suit room is recorded in the name of plaintiff and plaintiff is paying taxes of the suit

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room to the Grampanchayat.

15. From the oral and documentary evidence, it clearly reveals that after construction of suit room it was allotted to the share of plaintiff. Plaintiff alongwith his mother were residing in the suit room. Plaintiff has carried out construction of another house in the year 1997 and since then he started residing separately. However, the mother of plaintiff was residing in suit room till 2009. It has also been proved that the suit room has been recorded in the name of plaintiff in the record of Grampanchayat. Plaintiff is paying the house tax of the suit room to the Grampanchayat.

16. Plaintiff has come with the specific case that defendants had made request to allow them to keep their household articles in the suit room during rainy season for the period of four months. Plaintiff has taken into consideration their relations, allowed the defendants to keep their household articles in the suit room for temporary period. However, after allowing defendants to keep household articles in the suit room, he noted that defendants under the guise of repairs of leakage have carried out construction in bricks in the suit room and increased its height that too without permission of

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the Grampanchayat. On the other hand, defendant Ramesh have come with the case that on 17/04/2009, there was meeting and in that meeting the land beneath the suit room was allotted to his share. The suit room was dilapidated, therefore, it was removed and defendants have carried out construction of new room with permission of Grampanchayat. Plaintiff has categorically stated on oath that defendants were accommodated by allowing them to keep their household articles during rainy season in the suit room. However, defendants under the guise of repairs of leakage have carried out construction in the suit room and increased its height and that too without permission of Grampanchayat. Plaintiff has been cross-examination at sufficient length of time, but nothing has been brought on record which will support the case of defendants.

17. On the contrary, Smita (PW.2) who is related with plaintiff and defendants has supported the case of plaintiff by stating that the suit room was temporary given to the defendants by the plaintiff and she being neighbourer knows the said fact. She was cross-examined on this count, but her evidence has not been shattered in course of cross-examination.”

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3. Apart from above reasons, other reasons are also recorded in the Judgments and Decrees of both the Courts. Therefore, the finding that Plaintiff is the owner of the suit room and the Plaintiff has allowed the Defendants to keep their household articles in suit room in the rainy season is substantiated by the evidence on record. Both the Courts have disbelieved the case that in 1997, the suit room was demolished. Therefore, there is no substance in the first substantial question of law raised by the Appellants.

4. As far as the second substantial question of law raised by the Appellants regarding limitation is concerned, it is admitted position that the said point was not raised in the written statement. Mr. Gangal, the learned counsel appearing for the Appellants fairly states that in the written statement the issue regarding limitation was not raised. However, he submitted that there is separate application filed raising the said issue.

5. The factual position on record clearly shows that both the Courts have concurrently held that the Plaintiff has proved the ownership of the suit premises. Article 65 of the Limitation Act, 1963 provides that suit for possession of immovable property

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or any interest therein based on title, the limitation is 12 years. The said limitation begins to run from the period when possession of the Defendants becomes adverse to the Plaintiff.

6. This is a case where both the Courts have held that the Plaintiff is the owner of the suit room and the same has been given to the Appellants as gratuitous licensee. It is for the Defendants to prove that they have become owners by adverse possession. Mr. Gangal fairly admits that it is not the case of the Defendants that they have become the owners by adverse possession. Therefore, the suit filed for possession by claiming to be owner is well within limitation. Therefore, there is no substance in the substantial question of law regarding limitation.

7. For above reasons, there is no substantial question of law in this Second Appeal and therefore, the same is dismissed.

8. As the Second Appeal is dismissed, nothing survives in the Interim Application and the same is also dismissed as such.

9. At this stage, Mr. Gangal states that longer time be given for vacating the suit room. He states that the Appellants are in

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need of the suit room for their residence.

10. In view of the above contentions, six months time is granted to the Appellants to vacate the suit premises, on the condition that the Appellants and other adult family members of the Appellants shall file undertaking before this Court that within a period of six months i.e. on or before 31st July 2023, they will vacate the suit premises and handover the vacant and peaceful possession to the Respondent. Such undertaking be filed within a period of two weeks from today. It is clarified that if such undertaking is not filed within the aforesaid period of two weeks, then the stay granted by this Court will automatically comes to an end.

11. Although, the Second Appeal is dismissed the time as aforesaid is granted to the Appellants to vacate the suit premises. In case the Respondent is aggrieved by granting such time, the Respondent is granted liberty to apply.

12. With above observations, the Second Appeal is dismissed with no order as to costs.

[MADHAV J. JAMDAR, J.]