

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

SECOND APPEAL NO. 385 OF 2023

Nazma Adam Shah

..Appellant.

v/s.

Jamil Abdul Razzak Tambe

..Respondents

Mr. Sanskar Marathe for the Appellant.
None for the Respondents.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED :3rd OCTOBER, 2023.**

P.C.

1. Heard.

2. This is an appeal under Section 100 of the Civil Procedure Code raising challenge to the judgment dated 30.07.2016 in Civil Appeal No.726 of 2012 and the judgment and decree dated 03.08.2012 in Regular Civil Suit No.13 of 2002.

3. The dispute is in respect of land bearing City Survey No. 392, having Municipal House No. 2675/ 2651 situated at Govalkot. The said property shall be hereinafter referred to as the suit property. The predecessor of the appellant herein had filed a suit for declaration and injunction on the ground that his ancestors, out of love and affection had given the suit property to the father of the respondent as gratuitous

licensee, and had allowed him to construct a temporary house in the suit property, subject to the condition that he would hand over vacant and peaceful possession as and when demanded. In September 2001, the appellant, as a power of attorney of the plaintiff, issued a notice to the respondent claiming vacant and peaceful possession of the suit property. The respondent having failed to hand over vacant possession, the appellant filed suit for aforesaid relief.

4. The respondent-defendants denied their status as gratuitous licensee and claimed that they are in possession of the property under Survey No.392 since the time of their ancestors.

5. The learned Judge, after considering the evidence adduced by the respective parties, held that the appellant had failed to prove his title and exclusive possession in respect of the suit property and further failed to prove that the defendant's father was a gratuitous licensee. The trial court held that the appellant had failed to prove that the respondents had started construction in the suit property, or that they had caused any nuisance. Based on these findings the trial court dismissed the suit. The first appellate court confirmed the findings recorded by the trial court and accordingly dismissed the appeal.

6. Both the courts below have recorded concurrent findings that the

appellant herein has failed to prove that he is the exclusive owner in possession of the suit property and hence he is not entitled for a declaratory relief and/or to recover possession of the suit property. Having gone through the records, in my considered opinion, no substantial question of law is involved.

7. Hence, the appeal is dismissed.

(ANUJA PRABHUDESSAI, J.)