

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

WRIT PETITION NO.11293 OF 2024

Varinder @ Rajan Darshan Khanna & Anr. V/S	Petitioners
Raajesh Darshan Khanna & Ors.	Respondents

**WITH
WRIT PETITION NO.11294 OF 2024**

Varinder @ Rajan Darshan Khanna & Anr. V/S	Petitioners
Raajesh Darshan Khanna & Ors.	Respondents

Mr. Ghanshyam Mishra with Ms. Ekta Bhalerao *for the Petitioners in both Petitions.*

Mr. Nirman Sharma i/b Mr. Ashish Mishra *for Respondent No.1 in both Petitions.*

**CORAM: SANDEEP V. MARNE, J.
DATE : 26 NOVEMBER 2024.**

P.C.:

1. These Petitions are filed by Defendant Nos.1 and 2 aggrieved by rejection of their applications seeking rejection of plaint in LE Suit No.71 of 2022 on the grounds of want of cause of action and the suit being barred by limitation.

2. I have heard Mr. Mishra, the learned counsel appearing for Petitioners and Mr. Sharma, the learned counsel appearing for Respondent No.1/original Plaintiff.

3. LE Suit No.71 of 2022 is instituted by the Respondent No.1/Plaintiff branding the Petitioners/Defendant Nos.1 and 2 as gratuitous licensees. Perusal of the plaint would indicate specific averments therein that Plaintiff, alongwith Defendant Nos.3 and 4 have become owners in respect of the bungalow in which Defendant Nos.1 and 2 occupy the suit premises. It is further pleaded that the father of Plaintiff and Defendant No.1 had permitted Defendant No.1 to reside in the bungalow out of natural love and affection. It is further pleaded that by virtue of registered gift deed dated 12 September 2013, the father gifted the entire bungalow in favour of Plaintiff and Defendant Nos.3 and 4. There is specific averment in paragraph 23 of the Plaint that Defendant Nos.1 and 2 are occupying a room in the bungalow as gratuitous licensees. In my view therefore, there are sufficient averments in the plaint establishing cause of action for filing the suit. Therefore the application filed by Defendant Nos.1 and 2 seeking rejection of Plaint under provisions of Order VII, Rule 11(a) of the Code of Civil Procedure, 1908 at Exhibit-22 was clearly misplaced and has rightly been rejected by the Small Causes Court by order dated 5 February 2024.

4. So far as the Application filed by Petitioner/Defendant Nos.1 and 2 at Exhibit-24 for rejection of the Plaint under Order VII, Rule 11(d) of the Code is concerned, the same is premised on Petitioners' contention that the suit is barred by law of limitation. However there is a specific averment in the plaint that the gratuitous license in respect of Defendant Nos.1 and 2 has been terminated by the Plaintiff by issuance of notice dated 12 April 2022. It is the contention of Mr. Mishra that the father had earlier filed a suit in the City Civil Court seeking eviction of Defendant No.1 on the ground of termination of gratuitous license in the year 2010. Mr. Mishra would submit that the suit would be governed by provisions of Article 113 of the Limitation Act and ought to have been brought within a period of three years. He would submit that if the license was already terminated in the year 2010 by the father, there is no question of same being terminated once again by Plaintiff No.1 in the year 2022. In my view this at best can be a defence which can be raised by Defendant Nos.1 and 2 while contesting the suit on the ground of limitation. As far as the pleadings in the plaint are concerned, the suit proceeds on a pleading that the gratuitous license has been terminated by notice dated 12 April 2022. Therefore the plaint cannot be rejected by considering the defences that Defendant Nos.1 and 2 seek to raise. It is well settled position of law that application for rejection of plaint under Order VII, Rule 11 of the Code is required to be decided by considering only the averments in the plaint and the defences that a Defendant can raise are required to be ignored altogether.

In that view of the matter, even the order dated 5 February 2024 rejecting application at Exhibit-24 cannot seriously be faulted.

5. The Appellate Bench of Small Causes Court has rightly rejected both the revision applications filed by Petitioners by upholding Trial Court's orders. I do not find any valid ground to interfere in the impugned orders. Writ Petitions are accordingly **rejected**. However the Trial Court shall not be influenced by any of the observations made in the present order while deciding the suit.

(SANDEEP V. MARNE, J.)

SUDARSHAN
RAJALINGAM
KATKAM

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