

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16414 OF 2024

Shashikala Satyawar Dhavale

....**Petitioner**

: **Versus** :

Ramesh Dattoba Gajre

....**Respondents**

Mr. Sandeep Patode i/by. *Ms. Gunjan Shah a/w. Kavyal Shah and Ms. Vidhi Jain, for the Petitioner.*

CORAM: SANDEEP V. MARNE, J.

Dated: 4 DECEMBER 2024.

P.C. :

1) The petition challenges order dated 17 July 2023 passed by the Ad-hoc District Judge-3, Pune allowing Regular Civil Appeal No.345/2018 and setting aside the eviction decree dated 26 June 2018 passed by the 5th Additional Judge, Small Causes Court, Pune in Regular Civil Suit No.451/2015 for want of jurisdiction of Small Causes Court to entertain the same.

2) I have heard Mr. Patode, the learned counsel appearing for the Petitioner and have considered the submissions canvassed by him.

3) To my mind, the plaint in Regular Civil Suit No.451/2015 is a confused document. In para-1 of the plaint, Plaintiff pleaded that she is the owner of the house property bearing No.898, Kasba Peth,

Pune-11 in which Defendant has been residing in a Room admeasuring 10 x 10 for the last 15 years illegally. In para-5 of the plaint, Plaintiff specifically pleaded that Defendant is a trespasser in respect of the suit premises. There is no pleading in the entire plaint that Defendant is a tenant or that Plaintiff is the landlord in respect of the suit premises. Infact, the plaint proceeds on a specific pleading that the Defendant never paid any rent/license fees to the Plaintiff. Thus absence of landlord-tenant relationship is apparent from the pleadings of the plaint. Despite this position, Plaintiff sought recovery of possession of the suit premises on various grounds as such nuisance, bonafide requirement etc.

4) The Trial Court committed a patent error in holding that Defendant is a gratuitous license of the Plaintiff in respect of the suit premises. In the entire plaint, there is no averment that Plaintiff ever permitted the Defendant to occupy the suit premises. Since permissive use of the premises is not averred, there is no foundational pleading for the purpose of inferring grant of gratuitous license in favour of the Defendant. Therefore, the finding recorded by the Trial Court that Defendant is a gratuitous licensee of the Plaintiff is bereft of foundational pleadings.

5) The further error committed by the Trial Court is to decree the suit as if the Defendant is a tenant of the Plaintiff. The suit is decreed on the ground of *bonafide* requirement under the provisions of Section 16(1)(g) of the Maharashtra Rent Control Act even though the Trial Court itself held the Defendant to be merely gratuitous licensee. If Defendant is held to be a gratuitous licensee, how suit could be decreed under the provisions of Section 16(1)(g) of M.R.C. Act is incomprehensible. Nonetheless, the basic findings recorded by the

Trial Court about Defendant being a gratuitous licensee of the Plaintiff itself is perverse and unsustainable. Plaintiff did not plead in the plaint that Defendant is either a gratuitous licensee or a tenant. On the contrary, Plaintiff came up with a specific case that Defendant is a trespasser in respect of the suit premises. In that view of the matter, the Small Causes Court did not have jurisdiction to entertain the suit filed by the Plaintiff. If Plaintiff believes that Defendant is a trespasser, she will have to file a suit before the Civil Court for recovery of possession of the suit premises. The Appellate Court has rightly reversed the erroneous decree passed by the Trial Court. The decree passed by the Trial Court does not suffer from grave error. The Writ Petition is accordingly **dismissed**. However, it is clarified that Plaintiff would be at liberty to file Suit before the Civil Court if she believes that Defendant is a trespasser in respect of the suit premises. Such suit, if instituted, shall be decided on its own merits, without being influenced by any observations made in this order.

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[SANDEEP V. MARNE, J.]