

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

CIVIL REVISION APPLICATION NO.497 OF 2024

Gayasuddin Abdul Hassan Khan

....Applicant

V/S

Kanahai Ramlaut Pal

....Respondent

Mr. Nilesh Parte a/w Ms. Arifa Sayed *for the Applicant.*

Mr. H.P. Pandey *for Respondent.*

CORAM: SANDEEP V. MARNE, J.

DATE : 03 DECEMBER 2024.

P.C.:

1 The revisionary jurisdiction of this Court is invoked under provisions of section 115 of the Code of Civil Procedure, 1908 (**the Code**) for setting up a challenge to the judgment and decree dated 25 July 2024 passed by Appellate Bench of Small Causes Court allowing Appeal No.166 of 2019 filed by the Plaintiff and setting aside the judgment and decree dated 4 July 2018 passed by the Small Causes Court. The Appellate Court has decreed LE & C Suit No.18/23 of 2005 by directing the Revision Applicant/Defendant to handover possession of the suit premises to the Plaintiff.

2 I have heard Mr. Parte, the learned counsel appearing for the Revision Applicant/Defendant and Mr. Pandey, the learned counsel appearing for Respondent/Plaintiff.

3 After having considered the submissions canvassed by the learned counsel appearing for parties, it is seen that Plaintiff instituted LE & C Suit No.18/23 of 2005 contending that the Defendant is a licensee by virtue of Leave and Licence Agreement dated 28 January 2003. Revision Applicant/Defendant denied execution of the said License Agreement in the Written Statement. However kept silence about the manner in which he came in possession of the suit premises. However during the course of cross-examination, Defendant stated that he purchased the suit premises through one Mr. Kashiram Rama Kewat Pal in the year 1999. The Appellate Court has recorded finding of fact that Plaintiff and Mr. Kashiram Rama Kewat Pal, are one and the same persons. Thus the statement made by the Revision Applicant/Defendant in his cross-examination would virtually mean that he purchased the suit premises from the Plaintiff in the year 1999. However Revision Applicant/Defendant did not produce any evidence to demonstrate purchase of the suit premises by him from the Plaintiff. On the other hand, Plaintiff has relied upon Leave and License Agreement date 28 January 2003 by which Revision Applicant/Defendant is shown to have been inducted in the suit premises as licensee. There is thus enough material to infer that the Revision Applicant/Defendant is a mere licensee in respect of the suit premises. He could not substantiate his claim of ownership, which was though not pleaded in the Written Statement, but was merely sought to be suggested in the cross-examination.

4 I am therefore unable to trace any patent error or an element of perversity in the findings recorded by the Appellate Court. Revision Applicant/Defendant is not the owner in respect of the suit premises. In his capacity as a licensee, he cannot be permitted latch on the possession of the suit premises indefinitely. The Appellate Court has rightly decreed the suit by reversing the order passed by the Trial Court. In absence of any patent error in the findings recorded by the Appellate Court, this Court is not inclined to exercise revisionary jurisdiction under section 115 of the Code. The Revision Application is accordingly **rejected.**

(SANDEEP V. MARNE, J.)

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