



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO.51 OF 2025

Shankarrao Nimbaji Falke (Dead) and others .Vs. Gajanan Shankarrao Falke

WITH

SECOND APPEAL NO.46 OF 2025

Shankarrao Nimbaji Falke (Dead) and others .Vs. Gajanan Shankarrao Falke

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. R.N. Badhe, Advocate for appellants.

CORAM : ROHIT W. JOSHI, J.

DATE : 11/09/2025

1. The present appellants are the original plaintiff in Special Civil Suit No.39 of 2015 which was decided by the learned Civil Judge Senior Division, Yavatmal vide judgment and decree dated 09.12.2022. The plaintiff No.1 is husband of plaintiff No.2 and father of plaintiff No.3 and sole defendant. The suit was filed seeking declaration that the plaintiffs are exclusive owners of the suit property and for recovery of possession thereof. In the suit, the defendant filed counter claim, claiming ownership over the suit property and seeking possession thereof.

2. It is the case of the defendant that the plaintiffs were allowed to occupy the suit house as licensees having regard to the *inter se* relation between the parties. The learned trial Court has dismissed the suit as well as the counter claim.

3. Both the parties i.e. plaintiffs and defendant preferred separate appeals challenging the decree passed by the learned trial Court. The appeal preferred by the present appellants being Regular Civil Appeal No.07 of 2023 came to be dismissed and the appeal preferred by the defendant being Regular Civil Appeal No.3 of 2023 came to be allowed by common judgment and decree dated 11.07.2024. The original plaintiffs have filed the present second appeal challenging the said decree.

4. Mr. Badhe, learned counsel for the appellants/plaintiffs, contends that the defendant alleged that the plaintiffs were in occupation of the suit property as licensees. He contends that the defendant did not assert that the plaintiffs were gratuitous licensees. He draws attention to the issues framed by the learned trial Court and the points for determination filed by the learned first appellate Court to contend that the issue before the trial Court was whether the plaintiffs were in occupation of the suit property as licensees, whereas the point for determination before the learned first appellate Court was whether the plaintiffs were in occupation as gratuitous licensees.

5. The learned counsel contends that in the absence of the pleading regarding gratuitous licensees, the learned first appellate Court ought not to have framed point for determination to decide as to whether the plaintiffs were

gratuitous licensees. He contends that serious prejudice caused to the plaintiffs since they did not lead evidence in the matter, considering the case of the defendant that the plaintiffs were gratuitous licensees.

6. Having perused the judgment delivered by the learned trial Court and also the written statement and counter claim, it appears that the defendant has come up with a clear case that he had allowed the plaintiffs to occupy the suit property out of love and affection, having regard to the *inter se* relation between the parties, the plaintiff Nos.1 and 2 being his parents and plaintiff No.3 being his brother. This is the only point which is canvassed by the learned counsel. It is clear that, the case of the defendant / counter claimant all throughout was that the plaintiffs were gratuitous licensees. The defendant has never stated that any licensee fees was paid or was payable by the plaintiffs. On the contrary, he has clearly stated that they were allowed to occupy the property out of love and affection.

7. In that view of the matter, in the considered opinion of this Court, no substantial question of law arises for consideration.

Both Second Appeals are **dismissed**.

(ROHIT W. JOSHI, J.)