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

SECOND APPEAL NO.442/2017

APPELLANTS : Madhukar Bholaram Hatwalne,
[Ori. Defts.] (being dead through L.Rs.)
On R.A.

1. Smt. Meena wd/o Madhukar Hatwalne
(since dead)

2. Milind s/o Madhukar Hatwalne,
aged 64 years, Occup. Labour.

3. Balu s/o Madhukar Hatwalne,
aged : 40 years, Occup. Service
No.2 & 3 r/o Ambika Nagar,
Malkapur, Tah. And Distt. Akola.

4. Sau. Mangala Suhas Pingale,
Aged : Adult, Occup. Homemaker, r/o
Lasalgaon, Tah. Niphad, Dist. Nasik.

5. Sau. Sami Vinayak Deshpande
aged : Adult, Occup. Homemaker,
r/o Umarkhed, Tah. Umarkhed,
Distt. Yavatmal.

6. Sau. Manik Shrikant Vakil,
aged : Adult, Occup. Homemaker,
r/o Yeotmal, Tah. & Distt. Yeotmal.

...VERSUS...

RESPONDENTS : Yeshwant Bholaram Hatwalne,
(Being dead through L.Rs.)

1. Smt. Shubhangi Yeshwant Hatwalne,
aged : 65 years, Occu. Homemaker,

2. Ravi Yeshwant Hatwalne,
aged : 47 years, Occup. Business,
Both r/o Ambika Nagar, Malkapur
Road, Akola, Tah. and Distt. Akola.

3. Sau. Reeta Hemant Diwekar,
aged : 44 years, Occp. Homemaker,
r/o Dabki Raod, Tah. and Distt. Akola.

4. Sau. Nilima Prashant Joshi
aged : 42, Occup. Homemaker,
r/o Dhamangaon Badhe, Tah. Motala,
Distt. Buldhana.

5. Sau. Bhagyashree Anand Kulkarni,
aged : 39 years, Occup. Homemaker,
r/o Madana, Tah. and Distt. Sajapur (M.P.)

Mr. U.J. Deshpande, Advocate for appellants
Mr. S.V. Sohoni, Advocate for respondent Nos.2 and 5

CORAM : ROHIT W. JOSHI, J.

Date of reserving the judgment : 11/09/2025
Date of pronouncing the judgment : 09/10/2025

J U D G M E N T :

1. The present second appeal is filed by the legal representatives of original defendant. The plaintiff and defendant were real brothers. Both have expired during pendency of the suit. The litigation is contested by their respective legal representatives. The legal representatives of plaintiff and defendant will hereinafter referred to as ‘respondents and defendants’ respectively.

2. The plaintiff had filed a suit against the defendant for possession of half portion of plot No.7 admeasuring 5040 sq. ft. situated in Survey No.3 Mouze Malkapur, Tq. and District Akola. It is the case of the plaintiff that the had purchased the said plot No.7 vide registered sale-deed dated 17/11/1981 and that because his brother wanted to construct a house half portion of the said plot (25.5. sq. ft. X 80 sq. ft.) was allowed to be utilized for construction of residential house. Half portion of this plot in the possession of defendant is the suit property. He states that his brother/defendant had agreed to vacate the same by removing construction as and when required. The plaintiff issued notice dated 01/11/1998 to the defendant revoking the licence w.e.f. 30/11/1998.

3. The defendant issued reply notice contending that the plot was purchased in the name of plaintiff although he had contributed half of the amount of consideration for purchase of said plot. It is stated that the plot belongs to a Cooperative Society of which plaintiff was member and therefore, the said plot was purchased in the name of the plaintiff. In the alternate, the defendant claimed ownership over the suit property by way of adverse possession claiming that he was in occupation of the house constructed over the suit property claiming ownership over the same for a period of more than 12 years. A further contention was

raised in the alternative that since the licence was given for making building construction, the licence was irrevocable and therefore, the plaintiff was not entitled to decree for possession. The defendant claimed that since he had contributed towards purchase price for suit plot the plaintiff had executed an unregistered Gift-deed dated 16/08/1998 with respect to the suit property. The written statement of defendant is on the same lines.

4. Based on the rival pleadings, the learned trial Court framed issues, on which both the parties led their respective evidence. The learned trial Court has held that the plaintiff had proved his ownership over the suit property and that the defendant had failed to establish adverse possession. The learned trial Court accordingly passed a decree for possession in favour of the plaintiff. It will however be pertinent to mention that the learned trial Court directed the plaintiff to pay market value of the structure constructed by the defendant over the suit property since construction was made pursuant to permission granted by the plaintiff and therefore, the occupation of defendant was not illegal *per se*. However, the amount is not quantified.

5. Aggrieved by the aforesaid judgment and decree, the defendant preferred first appeal. In the said appeal the plaintiff also

filed cross-objection challenging direction for making payment of market value of the building structure.

6. Learned first Appellate Court has dismissed the appeal confirming the findings relating to ownership of plaintiff as also findings negating case of adverse possession set up by the defendant. The cross-objection of the plaintiff was allowed, thereby direction for making payment of market value was quashed.

7. It will be pertinent to mention that neither the plaintiff nor the defendant have entered the witness box. Their sons have deposed on their behalf. As stated above, both expired after filing of the suit. The appeal was admitted vide order dated 29/06/2018 on the following substantial questions of law :-

> *"[1] The defendant in para-6 (c) of the written statement having specifically pleaded that half plot was given to him on license after which he erected a permanent structure making the license irrevocable, whether his possession was entitled to be protected in the light of provisions of Section 60 (b) of the Indian Easements Act, 1882 ?"*
>
> *[2] Whether the appellate Court was justified in reversing the decree by which the plaintiffs were directed to pay market value of the construction as made ?"*

8. Mr. U.J. Deshpande, learned Advocate for the appellant contends that going by the case of the plaintiff himself, the defendant is in occupation of the suit property as a licensee. He states that according to the plaintiff licence was granted for the purpose of construction of residential house. He further contends that it is admitted that permanent construction in the nature of residential house is made by the defendant. He, therefore, contends that taking the plaint averments on their face value the license must be held to be an irrevocable licence in view of Section 60 (b) of the Indian Easements Act, 1882 (for short hereinafter referred to as "Easements Act"). He contends that both the learned Courts have not adverted to the said statutory provision.

9. Per contra, Mr. S.V. Sohoni, learned Advocate for the respondent/plaintiff vehemently opposed the submissions. Mr. Sohoni contends that a licence becomes irrevocable under Section 60 (b) of the Easements Act if and only if construction of permanent nature is made by the licensee acting upon the licence. Mr. Sohoni contends that the defendant has come up with a case of having perfected his title over the suit property by way of adverse possession. Mr. Sohoni contends that a person who claims to be in hostile possession of immovable property cannot take recourse to Section 60 (b) since possession of a licensee is always permissive possession. Mr. Sohoni, therefore, contends that the

contention raised by the appellant/defendant is not open to him having regard to pleadings in the written statement. Mr. Sohoni further contends that a licence is a personal right granted in favour of the licensee and it continues to exist only to the life time of the licensee and terminates automatically upon his demise. Mr. Sohoni contends that licence thus came to an end with demise of the original defendant.

10. Mr. Sohoni has placed reliance on the judgment of this Court in the matter of ***Ramesh s/o Raghunath and others Vs. Pandurangrao Ratnalikar and others***, reported in ***2006 (4) Mh.L.J. 83***. In the aforesaid case, the plaintiff had filed a suit for possession claiming that the defendants were inducted in the suit property as licensees and then they did not vacate the suit property despite service of notice terminating the licence. The defendants came up with a case of adverse possession stating that they were residing in the suit property for years together and had also made construction of residential houses and had accordingly perfected their title by adverse possession. The suit was decreed by the learned trial Court and the appeal of the defendant was also dismissed. The defendants raised contention in the second appeal that the licence had become irrevocable since they had constructed permanent structures on the suit property and were residing there for years together. In this backdrop, this Court has held

that a licence becomes irrevocable under Section 60 (b) of the Easements Act only when construction is made by the licensee acting upon licence. It was held that the defendants did not plead that they had made construction over the suit property acting upon any license. It was, therefore, held that in the absence of such plea of licence becoming irrevocable, even issue in that regard was not required to be framed. This Court has placed reliance on the judgment of the Kerala High Court in the matter of ***Elizabeth and others Vs. Saramma,*** reported in ***AIR 1985 NOC 159 (Kerala)*** wherein it is held that irrevocability of licence has to be pleaded and proved and in the absence of any pleading in that regard license could not be termed to be irrevocable. This Court has also placed reliance on the judgment of the Hon'ble Supreme Court in the matter of ***Shankar Gopinath Apte Vs. Gangabai*** reported in ***AIR 1976 SC 2506***, wherein the case of irrevocable licence was rejected since the licensee pleaded a case of tenancy and not of licence.

11. Countering the contention raised by Mr. Sohoni, Mr. Deshpande learned Advocate for the appellant has placed reliance on the judgment in the matter of ***Himmatrao Marotrao Dhobale and others Vs. Arun Gulabrao Jichkar***, reported in ***2015 (2) Mh.L.J. 560***. In this case, this Court after considering ***Shankar Apte*** and ***Ramesh s/o Raghunath*** (supra) has held that since finding that defendant was a

licensee was recorded by the fact finding Courts, Section 60 (b) could be invoked in favour of defendant to hold that licence was irrevocable even if defendant did not plead case of licence.

12. Mr. Deshpande, strenuously argues that since positive finding is recorded by both the learned Courts that the defendant was in occupation of the suit property as a licensee, the benefit of Section 60 (b) of the Easements Act cannot be denied to the defendant. He, therefore, contends that the licence is irrevocable and therefore, decree for possession could not have been passed. With respect to contention that the licence came to an end with the demise of defendant, the learned Advocate argues that a license which is irrevocable does not come to an end with the demise of the licensee and that his legal representatives are entitled to continue to hold possession of the licensed premises.

13. **Substantial Question of Law No.1** :- The substantial question of law is framed in view of contentions raised in paragraph No. 6 (c) of the written statement. Perusal of the written statement of defendant would indicate that it is all throughout the case of defendant that he had contributed half of the consideration for purchase of suit property. The defendant also claimed ownership by way of adverse

possession. The written statement is amended in order to incorporate the contention that he is in exclusive possession of the suit property and that the intention of the parties was to create a permanent and irrevocable licence in his favour. The three contentions raised in the written statement cannot go hand in hand. Although the defendant may take alternate stands in defence to the suit, he must choose one of them during the course of trial. D.W. 1, who is son of defendant, has denied that the defendant/his father was a licensee. These denials in the examination-in-chief by D.W. 1 are express and unequivocal. It will be appropriate to quote statements from examination-in-chief of D.W. 1 in this regard.

> *"Para 6. .....The say of plaintiff that my father was licensee of the plot is false.*
>
> *Para 9. The contention of plaintiff that the suit plot is owned by him and it is given to my father as a licensee for being used is false."*
>
> *(True English Translation)*

14. Having said so, D.W. 1 has further stated in paragraph 9 of his examination-in-chief that in the event the defendant is held to be a licensee, the protection of the Central Provinces and Berar Letting of Houses and Rent Control Order, 1949 will be available to the defendant. It is further stated in the alternative that the defendant had made

construction of house on the suit plot with knowledge of the plaintiff and a permanent residential house is standing thereon and as such the licence must be considered to be an irrevocable licence. The relevant statement in paragraph 9 reads as under :-

> *"Para 9. .....My father has constructed residential house on the said plot with knowledge of the plaintiff and a permanent residential house is standing on the said plot. Therefore, if it is proved that my father is a licensee, the said licence is irrevocable and as such, the plaintiff will not have right to seek possession of the plot."*
>
> *(True English Translation)*

15. In this context it is necessary to refer to Section 60 (b) of the Easements Act. A licence under Section 60 (b) will be irrevocable only if the licensee has executed work of permanent character acting upon the licence. Thus, mere construction of permanent character by a licensee will not make the licence irrevocable. It must also be established that the construction was made acting on the licence. The words "acting upon the licence" in the provision assume significance in the facts of the present case.

16. The plaintiff has filed a suit categorically stating that the defendant is in possession of the suit property as a licensee. He has also categorically pleaded that licence was granted to the defendant to

enable him to construct his residential house. However, the plaintiff has added rider that the defendant had agreed to vacate the suit property on demand.

17. As against this, the defendant, as stated above, has raised plea of co-ownership, adverse possession and in the alternative of licence being irrevocable. The defendant has stated in paragraph 6 (c) of the written statement that intention of parties was to create permanent irrevocable licence. This plea is of course in the alternate. However, during the course of evidence, the defendant has clearly given up the plea of licence. D.W. 1 has categorically denied the status of defendant as licensee in his examination-in-chief, as noted above. More over, the examination-in-chief in relation to alternate plea of licence being irrevocable will demonstrate that D.W. 1 has not stated that the defendant has made construction over the suit plot acting on the licence. As stated above, some construction of permanent nature does not make the licence permanent. The construction must be made acting on the licence.

18. D.W. 1 has only stated that construction was made by defendant with knowledge of plaintiff. He does not say that defendant acted on the licence and made permanent construction. The statement

regarding construction being made with knowledge of plaintiff cannot be read in isolation. It has to be read with earlier statements where D.W. 1 has expressly denied that defendant was a licensee.

19. It is therefore apparent that although it is the case of plaintiff that licence was granted to defendant for making construction of residential house, the defendant does not state that he has made construction acting on the licence, his positive case rather is of co-ownership and ownership by adverse possession. Thus, the defendant cannot fall back of Section 60 (b) of the Easements Act to contend that the licence is irrevocable.

20. The judgments in the matter of ***Shankar Apte*** and ***Ramesh s/o Raghunath*** (supra) clearly lay down that in order to make out a case that the licence is irrevocable under Section 60 (b) of the Easements Act the defendant must raise the said plea in the written statement. It will be appropriate to extract relevant portion from the judgment of the Hon'ble Supreme Court in the matter of ***Shankar Apte*** (supra), which reads as under :-

> *"Only one more thing need be stated : even assuming that the appellant has executed work of a permanent character on the land it cannot be said that he has done so "acting upon the licence", as required by section 60 (b) of the Easements*

Act. If he really improved the land by executing a work of a permanent character, he did so in the belief that being a tenant he will become a statutory purchaser of the land, or that the oral agreement of sale will one fine day be implemented. The execution of work would therefore be in his capacity as a tenant or a prospective purchaser and not in his capacity as a licensee."

21. The Hon'ble Supreme Court has unequivocally held that since the appellant has contended that work of permanent character was executed as a tenant and not as a licensee, contention that the licence was irrevocable under Section 60 (b) of the Easements Act could not be entertained at the behest of the appellant.

22. The said decision is followed by this Court in the matter of ***Ramesh s/o Raghunath*** (supra). In the matter of ***Ramesh s/o Raghunath*** (supra) the plaintiff filed suit claiming that the defendants were in occupation of the suit property as licensees and since the licence was revoked decree for possession be passed in his favour. The defendants filed written statement disputing their status as licensees and claimed ownership over the suit property by way of purchase and in the alternate by way of adverse possession. However, in the appeal the decree for possession was challenged on the ground of licence being irrevocable on the ground that the defendants had made permanent

construction over the suit property. This contention was rejected by this Court in light of pleadings of defendants.

23. In the case at hand although the contention regarding licence being irrevocable is raised in the alternate, the said plea is given up during the course of evidence. The defendant has thus failed to prove that construction over the suit property was made by him as a licensee pursuant to the licence granted to him. The defendant therefore cannot claim that the licence is irrevocable.

24. As regards the judgment in the matter of ***Himmatrao Dhobale*** (supra) in the said case also the defendant had denied that he was in occupation of the suit house as a licensee. However, the said contention was rejected and a finding was recorded by the learned trial Court as well as the learned first Appellate Court that the defendant was in occupation of the suit property as a licensee. In view of such categorical finding by both the Courts, this Court held that although the defendant denied that he was in possession of the suit property as a licensee, in view of categorical finding by two Courts that the defendant was a licensee, it was open for the defendant to invoke Section 60 (b) of the Easements Act. Accordingly, this Court has dismissed the second appeal filed by the plaintiff holding that the licence in favour of the

defendant was irrevocable. It must be mentioned that the judgment in the matter of ***Himmatrao Dhobale*** (supra) takes into consideration the judgment of the Hon'ble Supreme Court in the matter of ***Shankar Apte*** and also judgment of this Court in the matter of ***Ramesh s/o Raghunath*** (supra).

25. It is necessary to consider the written statement of defendant in the said case. The defendant had stated that the plaintiff had agreed to sell the suit plot to him for a consideration of Rs.8,800/-. The defendant stated that although he had approached the plaintiff with the sale consideration, the plaintiff avoided to execute the sale-deed. The defendant contended that although the plaintiff avoided to sell the suit property to him, nonetheless he permitted the defendant to construct house on the suit plot. The defendant raised contention that since house was constructed by him on the suit plot from his own funds, the plaintiff was estopped from claiming the ownership over the suit plot and house constructed on it. The contention of the defendant in that said case was thus that he had constructed house over the suit plot with permission of the plaintiff. The learned trial Court has recorded a finding that the defendant therein was in occupation of the suit house as a licensee under permission of the plaintiffs and accordingly granted decree for possession. The learned first Appellate Court recorded

positive finding that house was constructed with permission of plaintiffs and therefore, the plaintiffs were not entitled for decree of possession. Thus, both the Courts found that it was the case of defendant that he had made construction with permission of plaintiffs. In the present case, the defendant is claiming to be co-owner and also owner by adverse possession. The defendant in the said case did not claim ownership over the suit plot either by way of sale or by way of adverse possession. In this context it will be appropriate to refer to Section 52 of the Easements Act, which defines the term “licence” to mean grant of right to do or continue to do something over the immovable property of the granter, which act in the absence of such permission would be unlawful. This permission is defined to be licence under Section 52. In sum and substance the pleadings in the written statement of defendant in the matter of ***Himmatrao Dhobale*** (supra) appears to be one of licence. It will also be appropriate to refer point for determination No.2 framed by the learned first Appellate Court in the matter of ***Himmatrao Dhobale*** (supra), which reads as under :-

> *Does the defendant prove that he had constructed the suit house over the plot of plaintiffs with their permission ?*

26. The judgment of ***Himmatrao Dhobale*** (supra) needs to be appreciated in the backdrop of these pleadings and the question which

fell for determination. The stand of construction with permission was not given up by the defendant in the said case, as is done by the defendant in the present case by making express statement in the examination-in-chief that he was not a licensee. This is a subtle distinction in the facts of present case and facts of case in the matter of ***Himmatrao Dhobale*** (supra). With respect the ratio of ***Himmatrao Dhobale*** (supra) cannot be made applicable to the present case.

27. Although the plaint recites that the suit property was given to defendant as a licensee for making construction of residential house that by itself will not make the licence irrevocable. The licence will become irrevocable only if the defendant establishes that he had made construction of permanent nature pursuant to licence granted to him by the plaintiff. Section 60 (b) of the Easements Act is in the nature of estoppel. It provides that if a licence is granted to a licensee for the purpose of making permanent construction and acting upon the licence, the licensee makes a permanent construction on the land and incurs expenses for the same, the licence becomes irrevocable. The underlying principle of the provision is that if on a representation made by the licensor the licensee makes permanent construction by incurring expenses for the same, the licence will be irrevocable. This of course subject to agreement between the parties. In the case at hand although

the plaintiff contends that licence was given for construction of residential house, the defendant has not come up with a case that construction of permanent nature was made by him pursuant to licence granted by the plaintiff. It needs to be reiterated that the alternate plea set up in paragraph 6 (c) of the written statement with respect to licence being irrevocable is also given up at the stage of evidence. Since the defendant does not contend that he has made construction of residential house on the basis of licence, he cannot claim that the licence has become irrevocable.

28. As stated above, in the case at hand, the defendant had given up the case that he had made construction of the house acting on the licence and therefore, the defendant cannot claim that the licence is irrevocable licence. In view of above, the substantial question of law No.1 is answered in favour of the plaintiff/respondent and against the defendant/appellant.

29. **Substantial Question of law No.2** :- It is not the case of the plaintiff or the defendant that it was agreed between the parties that on termination of licence, the plaintiff will make payment to the defendant in order to compensate the defendant for expenses incurred by him for construction of the building.

30. The learned first Appellate Court has observed that although contentions with respect to compensation are incorporated in the written statement, the defendant did not file any counterclaim. It is further observed that the defendant did not lead any positive evidence to substantiate the expenses incurred towards building construction. Affidavit of one Dilip was filed vide Exh.112 to give the expenses, however, he was not presented for cross-examination. The learned first Appellate Court has held that the defendant has occupied the suit property for a considerable period. The learned first Appellate Court has also observed that there is no agreement between the parties regarding payment of compensation upon termination of licence. The findings and reasons recorded by the learned first Appellate Court in denying compensation appear to be sound.

31. Perusal of the written statement will demonstrate that the defendant claimed compensation for cost of building on equitable consideration. In this regard, it will be appropriate to refer to Section 64 of the Easements Act, which provides that when licence is granted for a consideration and the licensee is evicted in the absence of any fault on his part before he has only enjoyed the licence, he will be entitled to recover compensation from the licensor.

32. As stated above, the defendant has given up the contentions with respect to his status as a licensee during the course of evidence, although, in the written statement it was raised as an alternate plea. In view of the above, defendant cannot claim compensation from the plaintiff under Section 64 of the Easements Act. No other statutory provision or legal principle was brought to the notice of this Court for seeking compensation.

33. In view of the above, second substantial question of law also deserves to be answered in favour of respondent/plaintiff and against appellant/defendant.

34. In view of above, the second appeal deserves to be dismissed and the same is dismissed accordingly. No order as to costs.

At this stage, the learned Advocate for the appellants makes a request to extend the interim order dated 04/08/2017 for a period of eight weeks.

The appellants are in possession of the suit property for past several years. The parties are related to each other as real brothers.

Having regard to the aforesaid, interim order dated 04/08/2027 is extended for a period of eight weeks from today.

(ROHIT W. JOSHI, J.)

Wadkar