

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 170 OF 2025

Fatima Abdul Shaikh

.....APPLICANT

: VERSUS :

Sattar Abdul Shaikh (deceased) and others

....RESPONDENTS

Mr. Induprakash K. Tripathi i/by C.K. Tripathi for the Applicant.

Mr. M.A. Khan with Hamza Shaikh for the Respondents.

CORAM : SANDEEP V. MARNE, J.

DATED : 16 April, 2026.

P.C :

1) The Applicant has filed the present Civil Revision Application challenging the judgment and order dated 3 January 2025 passed by the Appellate Bench of the Small Causes Court allowing Appeal No.14 of 2024 filed by the Respondents and setting aside the judgment and decree dated 30 January 2024 passed by the Small Causes Court in L.E. Suit No.121 of 2018. The Small Causes Court had decreed the suit holding Respondents to be the gratuitous licensees of the suit premises and had directed Respondents to handover possession of the suit premises to the Plaintiff.

While reversing the decree of the Trial Court, the Appellate Bench has dismissed L. E. Suit No. 121 of 2018.

2) Plaintiff/Applicant is the mother of Defendant No.1-Sattar Abdul Shaikh. Plaintiff claims to be monthly tenant in respect of the suit premises bearing Room No.3, Plot No.49/C, CTS No.884/885 ALJ Khan Chawl-1, Ibrahim Abdullah Khan, Property 49/C Bandra West Mumbai-400050. She also claims to be the monthly tenant in respect of adjoining Room No.2. Plaintiff claimed that her son Defendant No.1 was inducted in the suit premises as a gratuitous licensee wherein he resided with his wife (Defendant No.2) and son (Defendant No.3). She revoked the gratuitous license of the Defendants vide notices dated 17 May 2018 and 10 August 2018. She thereafter filed L.E. Suit No. 121 of 2018 seeking recovery of suit premises from the Defendants. Defendants appeared in the suit and filed written statement denying relationship of licensor-licensee and claimed that they are family members. Defendants claimed residence in Room Nos.2 and 3 as joint family and due to growth in the family, arrangement was made for residence of family of Defendant No.1 in the suit premises. Based on pleadings, the Trial Court framed issues. Plaintiff examined herself and relied upon several documents. Defendant No.2 was examined as a witness. After considering the pleadings, documentary and oral evidence, the Trial Court proceeded to decree the suit vide judgment and order dated 30 January 2024. Defendants filed P.Appeal No.14 of 2014 before the Appellate Bench of the Small Causes Court. During pendency of the Appeal, Defendant No.1 passed away. The Appeal has been allowed by the Appellate Bench vide judgment and order dated 3 January 2025

dismissing the suit of the Plaintiff. Aggrieved by Appellate Court's decree, the Plaintiff has filed the present Revision Application.

3) I have heard Mr. Tripathi, the learned counsel appearing for the Applicant. He submits that the Appellate Court has grossly erred in reversing the well-considered decision of the Trial Court. That tenancy of the Plaintiff in respect of the suit premises is proved. That since Defendants are found residing in the suit property, such residence constitutes permissive use by the Plaintiff. That the Appellate Court has grossly erred in holding that Defendants resided in the suit premises as a part of joint family. That under the Mohammedan Law, there is no concept of joint family. That in the cross-examination, Defendants have admitted possession of alternate premises at Mahim. That Defendants have failed to prove their independent right to occupy the suit premises. That Plaintiff is a senior citizen at an advanced age of 94 years and is in need of suit premises. That Defendant No.2 has harassed the Plaintiff by filing complaint of domestic violence, which was dismissed on 13 October 2021. That even appeal filed by Defendant No.2 has been dismissed by the Sessions Court on 28 November 2023. That Defendant No.2 is harassing the Plaintiff, who is the real tenant in respect of the suit premises. That Defendant No.2 and her son are illegally occupying the suit premises after the death of Defendant No.1. He therefore prays for setting aside the impugned decree passed by the Appellate Court.

4) Mr. Khan, the learned counsel appearing for the Respondent opposes the Revision Application and supports the judgment and order

passed by the Appellate Court. He submits that Defendants have always resided as members of the family in the suit premises and adjoining room No.2. That there is no induction of the Defendants as a licensee in the suit premises. Even the elder son of the Plaintiff resides as a member of the family. That the mother has arbitrarily singled out Defendant No.1 by treating him as a gratuitous licensee. That the Trial Court had grossly erred in holding Defendants to be the gratuitous licensee. He submits that in absence of any element of perversity in the findings of the Appellate Court, no interference is warranted in the impugned order. He prays for dismissal of the Revision Application.

5) Rival contentions of the parties now fall for my consideration.

6) There is no dispute to the position that Defendant No.1 is the son of the Plaintiff. There are two adjoining premises being Room Nos.2 and 3. The Suit is filed only in respect of Room No.3. Plaintiff is the tenant in respect of both the rooms. During the course of evidence, Plaintiff gave clear admissions that her elder son and Defendant No.1 always resided with her jointly in both the rooms. She admitted that after his marriage with Defendant No.2, Defendant No.1 resided in both Room Nos.2 and 3 as a part of same family. Thus, the case involves residence by the family members in the suit premises. It is the case of the Defendants that while the two sons and mother resided together as a part of single family in the two rooms, frequent quarrels led to arrangement of

convenience where Defendant No.1, with his wife and son, separated and started residing in the suit premises.

7) No doubt, license can be granted even to a member of family. Furthermore, payment of compensation need not be established for inferring license, permissive use by a family member without payment of license fees can also constitute a gratuitous license. However, what needs to be established is exclusive use by a member of a family of premises independent of the owner. If owner permits a close relative to reside with him/her in the premises and the duo reside together as part of single family, induction into the premises does not take place and no license can be assumed. What happens in such a case is a joint residence as a part of single family by the family members.

8) In the present case, Plaintiff has specifically admitted that she, alongwith her two sons, jointly resided as a part of family in Room Nos.2 and 3. She has given admission of Defendant No.1 continuing to reside in the said two rooms as a part of family even after his marriage with Defendant No.2. In such circumstances, permission granted by the mother to her son to reside with her would not constitute a license. It constitutes joint residence by mother and son as a part of family. In the present case, what has possibly happened is that the family has made an arrangement for the purpose of convenience where Defendant No.1 alongwith his wife and son subsequently started occupying only Room No.3 while Plaintiff continued to reside with her other son in Room No.2. This convenience arrangement cannot be treated as induction of

Defendant No.1 into the suit premises as a licensee. Plaintiff has given an admission that Defendant No.1 used to reside in the suit premises as a part of family and such admission destroys the theory of induction as a gratuitous licensee. Defendant No.1 has always resided with his mother since his childhood and he cannot become the gratuitous licensee merely because there is a discord between Plaintiff and Defendant No.1.

9) This Court cannot ignore the fact that Defendant No.1 has passed away during pendency of the Appeal. Now suit premises is the only shelter available for the widow (Defendant No.2) and her son. In such circumstances, if Appellate Court was not to reverse the erroneous decree passed by the Trial Court, the same would have resulted in the widow being rendered shelterless. The Suit appears to have been filed out of disputes amongst the family members. This is also borne out of the fact that Defendant No.2 has filed the case of domestic violence against the Plaintiff. In such circumstances, it is difficult to hold that Defendants were inducted by the Plaintiff as a gratuitous licensee. The case involves residence of Defendants in the suit premises as a part of the family. The Appellate Court has rightly reversed the erroneous decree of the Trial Court.

10) Considering the above position, in my view, no interference is warranted in the decree passed by the Appellate Court. The Civil Revision Application is devoid of merits. It is accordingly rejected.

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[SANDEEP V. MARNE, J.]