

MHPU020011362016



Presented on : 25/02/2016

Registered on : 02/03/2016

Decided on : 06/05/2025

Duration : YY MM DD
09 02 04

**IN THE COURT OF ADDITIONAL JUDGE, SMALL CAUSES COURT &
JT. CIVIL JUDGE SR. DIVISION, PUNE AT PUNE**
(Presided over by: Ketaki M. Chavan)

SPL. CIVIL SUIT NO. 296/2016
Exh.No. 127

Girish Nilkanth Kolambe

Age : 42 Years, Occu. : Service,
R/at : C/O of P. L. Dhake, Ashwini Bunglow in
front of Jain Mandri, Old Sangavi, Pune.
411 0027

...Plaintiff

Versus

Prafull Ramchandra Karve

Age : Adult, Occu. : Business,
R/at : 1) Flat No. 2, Kedar Heights 460-462
Narayan Peth, Near Lokhande Talim, Pune
411 030 and
2) Plot No. 11/1, Swaroop Colony, Survey No.
28/2, 29/1A, Anand Nagar, Hingane Khurd, Pune
411 051

...Defendant

SUIT FOR RECOVERY OF POSSESSION.

Appearances: -

Shri. K. B. Bhujbal Advocate for plaintiff

Shri. A. B. Dhamdhare Advocate for defendant.

J U D G M E N T
(Delivered on 06th May 2025)

Property involved in the present suit: -

All the piece and parcel of first floor consisting of three rooms along with one toilet and bathroom, totally admeasuring about 550 sq. ft., which is part of the building constructed on Plot No. 11/1, admeasuring 1500 sq. ft., bearing Survey No. 28/2, 29/1A Aanand Nagar, Hingane Khurd, Tal. Haveli Dist. Pune and situated in Swaroop Colony within the limits of Pune Municipal Corporation as specifically described in schedule -II of the plaint is the subject matter of present suit (for the sake of gravity hereinafter referred to as “suit property” and the entire building which is described in schedule-I of the plaint as “said property” in short).

The plaint in brief is as under: -

2] The plaintiff is owner of the said property by virtue of sale deed dated 30.06.2009, which has been duly registered in the office of Sub Registrar Haveli No. 8. It is RCC one storied building.

3] It was initially owned by Narayan Maheshwar Karve. He died on 12.06.2008, survived by widow namely Vaijayanti Karve. After the demise of late Narayan, his widow Vaijayanti Karve became owner of the said property. Plaintiff purchased it from Vaijayanti

Karve by above mentioned registered sale deed. Then Vaijayanti Karve died on 19.01.2013.

4] Defendant is nephew of late Narayan and Vaijayanti Karve. He was and is aware of the fact that late Vaijayanti Karve has executed above mentioned sale deed of the said property in favour of plaintiff. After the execution of sale deed dated 30.06.2009, late Vaijayanti Karve handed over peaceful possession of said property to the plaintiff but under the garb of removing the household articles, the defendant started illegally claiming tenancy right in the suit property. With malafide intention to extract money from the plaintiff, the defendant even went to the extent of filing frivolous Civil Suit bearing No. 240 of 2010 before Small Causes Court, Pune. Said court pleased to frame issue, whether the plaintiff i.e. defendant herein proves that he is tenant in the suit property. In the said matter, full fledge opportunity was given to defendant herein to lead the evidence showing his tenancy in the suit property. He laid the evidence in the said matter but failed to prove the tenancy. As such the Small Causes Court Pune, pleased to hold that defendant is not the tenant in the suit property and accordingly on 19.10.2013 passed judgment and decree in the said matter.

5] Feeling aggrieved by the said judgment and decree, defendant herein preferred Misc. Civil Appeal No. 433 of 2013 before the Hon'ble District Court, Pune. After hearing both parties at length, the Hon'ble District Court, Pune, is also pleased to dismiss the appeal by it's judgment and order dated 12.02.2014, holding that defendant has failed to establish that he is the tenant in the suit property. Thus,

the judgment and decree passed by the Small Causes Court, Pune in Civil Suit No. 240 of 2010 has attended finality. In the said matter, except the claim of tenancy right, defendant herein has not claimed any other right in the suit property.

6] By virtue of execution of sale deed dated 30.06.2009, the plaintiff become absolute owner of the suit property and the defendant is not entitled to remain in the suit property in whatever capacity. Thus, the defendant is the trespasser and plaintiff is entitled to get possession of suit property and mesne profit from defendant. Hence this suit.

Reliefs claimed in the suit: -

7] On the strength of aforesaid pleading, it is the request of the plaintiff that suit be decreed with costs. Defendant may be directed to handover the vacant and peaceful possession of suit property to plaintiff. He be further directed to pay past mesne profit amounting to Rs. 4,32,000/- to plaintiff and inquiry as to future mesne profit may kindly be directed.

Appearance of defendant and his defence: -

8] Defendant has appeared and contested the suit by presenting written statement at Ex No. 18. According to defendant, his uncle late Narayan Karve has initially permitted him to reside in the two rooms on the ground floor of the said property. Thereafter, his uncle desired to shift in the two floors on the ground floor and permitted defendant to carry out the construction on the first floor at the cost of defendant. Accordingly, the defendant carried out the

construction of the suit property, which is of permanent nature and started residing therein. He has been in the possession of suit property since its construction. Thus, the relation created in favour of defendant by his late uncle amounts to irrevocable license.

9] Thereafter his uncle started residing on the ground floor while defendant started residing in the suit property. In view of sale deed dated 30.06.2009 executed in favour of plaintiff, it is ostensible that purchaser is stepped into in the shoes of vendor and contracts executed by vendor before the execution of sale deed is required to be considered and would certainly create right in favour of defendant.

10] It is true that, defendant could not prove his tenancy since his uncle did not issue rent receipts in his favour. But his uncle never denied or disputed the possession of defendant in the suit property. The defendant was not aware of intention of late Vijayanti Karve to sell the said property. Moreover, he was also not aware of the execution of sale deed of the said property in favour of plaintiff. He came to know about it, when defendant showed him its copy after it was executed. In given set of facts, it is evident that the plaintiff has not taken due care and caution before entering into transaction of said property. He has purchased it on "as is where is basis". As the plaintiff has now stepped into the shoes of vendor, the rights of defendant in view of provisions of Section 60 (b) of the Easement Act, 1882 would also attract against plaintiff. The license granted to the defendant by his uncle would be binding on plaintiff.

11] It is true that, this defendant had filed Civil Suit bearing

No. 240 of 2010 and it was decided by the Small Causes Court, Pune, by passing judgment and decree dated 19.10.2013. However, it is not true and correct that under the garb of removing household articles, defendant started illegally claiming the tenancy rights in the suit property. Since the plaintiff illegally disconnected the electricity supply of the suit property, the defendant was constrained to approach the Small Causes Court, Pune, for appropriate reliefs. It is true that Small Causes Court, Pune pleased to record a finding against the defendant. Nonetheless, the fact remains that uncle of defendant never filed any suit for eviction, at any point of time against the defendant. The reason for not filing any such suit against defendant for eviction was clearly known to the uncle, since he had granted the permission to the defendant to carry out the construction at his own cost and had permitted him to reside in the suit property. Thus, uncle of defendant never treated him as a trespasser in the suit property. Even after the demise of uncle, defendant's aunt also never denied or disputed the possession of the defendant with respect of suit property, nor did she ever file any legal proceeding thereby seeking possession of the suit property.

12] The order passed by Small Causes Court, Pune was not upset by the District Court, Pune. The order passed by the Small Causes Court, Pune, in the said suit was for return of plaint. The rights of the parties were never decided in the said suit. Thus, plaintiff is not lawfully entitled to get the possession of the suit property from the defendant. So also he is not entitled to any mesne profit with respect of the suit property at the hands of defendant. As he is not illegally occupied the suit property, question of mesne profit

doesn't arrive.

13] The defendant is in the possession of suit property by virtue of irrevocable license as per provision of Section 60 (b) of the Easement Act. So, this court has not jurisdiction to try and entertain present suit.

14] Defendant is the son of Ramchandra Karve, who had three brothers by name Madhav, Dinkar and Narayan. They were although married, did not have any child born out of the marriage with their respective wives. Late Narayan Karve wanted to accommodate the defendant as he was old and has no child born out of the wedlock with his wife. Therefore, he permitted defendant to carry out the construction at his cost. Late Narayan Karve, who purchased the said property was not residing in it when it was purchased. He and his wife were residing at 460 Narayan Peth, Pune. Thereafter, he was residing at Sadashiv Peth Pune, during the year 1998-1999. When the two rooms were constructed on the ground floor of the said property Narayan Karve never resided therein. The defendant has been doing business since the year 1998-1999. At that time, he was looking out for suitable premises for his residential purpose. He had in fact located suitable plot at Sinhgad Road locality. Late Narayan Karve learnt of the intention of the defendant during one of the visits to his doctor by name Dr. I. C. Bavdekar. So, he personally offered to accommodate the defendant as a tenant in the two rooms of ground floor to which defendant agreed.

15] The defendant was doing business of food products and his uncle had granted him permission to do such business, for which

defendant obtained Shop Act License bearing No. Hingane/II/199 dated 19.04.1999. The defendant was thus, doing the business from the said property since 1999. The defendant did pay amount of rent to his uncle. However, uncle did not issue rent receipt. Looking with relationship with his uncle, defendant did not raise any objection. Subsequently, Narayan Karve desired to shift to the two rooms of the ground floor due to his old age. He requested defendant to shift to the first floor after construction, for which uncle had granted the permission to defendant to carry out the construction at his own cost, since uncle was retired and did not have the necessary funds for construction. The defendant agreed to the said proposal and carried out a construction at his own costs. For the purpose of construction, he engaged services of Shri. Milind Ashtputre and their sub-contractors, Shri. Nilesh Chavan, S. D. Kadam etc. He had borrowed money from his uncle Dinkar Karve and from his parents. Thus, it is the request of the defendant that suit be dismissed with cost.

Issues: -

16] Considering rival pleadings of the parties, my Ld. Predecessor has framed issues at Ex. 32. I am reproducing those issues along with my findings, for the reasons given thereon as under: -

<u>Sr. No.</u>	<u>ISSUES</u>	<u>FINDINGS</u>
1]	Whether plaintiff proves that he is the lawful owner of the suit property?	..Yes
2]	Whether the plaintiff prove that defendant is in illegal occupation of the suit	..Yes

property?

- | | | |
|------|--|-------------------------------------|
| 3] | Whether defendant proves that he is the owner and possessor of the suit property? | ..No |
| 4] | Whether defendant proves that plaintiff is trying to evicting without following the due process of law from the suit property? | ..No |
| 5] | Whether plaintiff proves that he is entitled for vacant and peaceful possession of the suit property? | ..Yes |
| 6] | Whether plaintiff proves that he is entitled for mesne profit to the tune of Rs.4,32,000/-? | Separate inquiry is ordered. |
| 6-A] | Whether this court has jurisdiction to try & entertain the present suit? | ..Yes |
| 7] | What order and decree? | As per final order. |

Evidence of the plaintiff:-

17] To substantiate the claim made in plaint, plaintiff has examined himself as Witness No. 1 (PW.1) at Ex No. 35. He has also examined Nalini Umesh Vitekar as Witness No. 2 (PW.2) at Ex No. 63. Apart from this oral evidence, he has produced on record order dated 19.10.2013 passed in Civil Suit No. 240/2010 thereby returning the plaint as per the provisions of O. VII R. 10 of Code of Civil Procedure, the leave and license agreement dated 28.05.2016 executed by Subhash Narayan Deshmukh in favour of Mrs. Nalini Subhash Vitekar (Ex No. 66) and sale deed dated 30.06.2009 (Ex No. 52).

Evidence of defendant:-

18] On the other hand, defendant has examined himself as witness No. 1 (D.W.1) at Ex No. 69. He has also examined his daughter Ms. Mrunal Prafull Karve as Witness No. 2 (D.W.2) at Ex No. 118, Dr. Shri. I. C. Bawdekar as Witness No. 3 (D.W.3) at Ex No. 119, Milind Vishnu Ashtpure as Witness No. 4 (D.W.4) at Ex No. 120 and Krushnat Vishnu Narkar as Witness No. 5 (D.W.5) at Ex No. 120. Apart from this oral evidence defendant has produced on record, judgment dated 12.02.2014 passed by the Hon'ble Ad-hoc District Judge-1, Pune in Misc. Civil Appeal No. 433/2013 (Ex No.48), Passbook of defendant of the account maintained at Bank of Maharashtra (Ex No. 72), Shop Act License standing in the name of defendant (Ex No. 73, 74 and 75), receipts dated 30.08.2001, 10.09.2001, 11.09.2001 and 16.05.2001 issued by Swami Agencies (Ex No. 76, 77, 78 and 82), receipt dated 29.09.2001 issued by S.P. Nimhan (Ex No. 79), receipt dated 15.10.2001 issued by Vijay Tiles (Ex No. 80), receipt dated 16.05.2001 issued by Bafna Steels (Ex No.81), receipts of payment dated 08/6/2001, 20/6/2001, 27/6/2001, 09/08/2001, 13/09/2001, 17.09.2001, 26.09.2001, 11.10.2001,08.11.2001,19.11.2001,18.12.2001,07.02.2002,13.02.2002,26.02.2002 issued by Bafna Steels, Sarang Building Material Suppliers, Shri. Ganesh Transports, Swami Agencies, Shri. Engineers and Consultants (Ex No. 83 to 98), Shop Act License (Ex No. 75).

Admitted facts:-

19] From the averments made in the plaint and written statement, following facts appeared to have admitted to both sides.

- a) Said property consists of ground plus first floor in R.C.C.,

bearing Plot No. 11/1 in Swaroop Colony situated at Anand Nagar, Hingane Khurd, Tal. Haveli Dist. Pune of which suit property is part and is purchased by plaintiff vide registered sale deed dated 30.06.2009 (Ex No. 52).

- b) The said property was initially owned by Narayan Maheshwar Karve, who died on 12.06.2008 survived by widow namely Vaijayanti Karve.
- c) Vaijayanti Karve is died on 19.01.2013. Before death, she executed aforesaid sale deed (Ex No. 52) in favour of plaintiff in respect of said property.
- d) Defendant is nephew of late Narayan and Vaijayanti Karve.
- e) Defendant had filed Civil Suit No. 240/2010 against the plaintiff, in the Court of Small Causes, Pune claiming to be tenant in the two rooms situated at ground floor of said property.
- f) The plaint of Civil Suit No. 240/2010 was returned by the Court of Small Causes Pune vide order dated 19.06.2013.
- g) Against the said order of return of plaint, defendant had preferred Misc. Civil Appeal No. 433/2013 before the Hon'ble District Court, Pune, which has also been dismissed by the Judgment and order dated 12.02.2017.

Being these facts are admitted to both sides, as per provisions of Sec. 58 of the Indian Evidence Act, they are not required to be proved.

Rival submissions: -

20] I have heard arguments advanced by both sides at length. Ld. Advocate for plaintiff vehemently urged that, in the entire W. S., description of suit property is not challenged or disputed. Then he drew my attention to the description of the

property involved in C.S.No.240/2010 and submitted that same description was given in C.S.No.240/2010 by defendant. He further made a point that in C. S. No. 240/2010 plea of irrevocable license was not taken. Thus, according to him, stands taken by defendant in C.S.No.240/2010 as plaintiff and in the instant suit by way of defence are mutually destructive. As defendant has not presented the plea of C.S. No. 240/2010 after it being returned for presenting it to proper court, now he has no voice to challenge the jurisdiction of this court. He further drew my attention to judgment and order passed by the Hon'ble District Court in Misc. Civil Appeal No. 433/2013 and submitted that the Hon'ble District Court has not only considered the plea of tenancy but has also considered the license.

21] On the contrary Ld. Advocate for defendant urged, how the license granted to defendant by late Narayan Karve is irrevocable even at the hands of plaintiff. By giving reference to receipts produced by defendant on record, he tried to make a point that construction of the first floor i.e. suit property is made by defendant at his own cost. He has taken lot of pains to make compilation, which made the task easy for the court to compare the entries. I appreciate it.

22] In support of defence taken in the written statement, he relied upon the judgment of the Hon'ble Apex Court delivered in cases of **Ram Sarup Gupta Vs. Bishun Narain Inter College and ors. 1987 (2) SSC 555, R. V. E. Venkatachala**

Gounder Vs. Arulmigu Viswesaraswami and V. P. Temples and ors. 2003(8) SSC 752, Prabhudas Damodar Kotecha Vs. Manhabala Jerairam Damodar 2013(9) SCR 52, M/S Frost International Ltd. Vs. M/S Milan Developers and Builder Pri. Ltd. 2022(8) SSC 633, Hanamanthappa and ors. Vs. Chandrashekharappa and ors. 1997(9) SSC 688, M/s. Vshnu Horticulture Pri. Ltd. Vs. M/s Shampiyani Viniyard Ltd. 2010 (2) MHLJ 244, Chandra Prem Shaha Vs. K. Raheja Universal Pri. Ltd. 2015(5) MHLJ 714 and Shreyans Industries Vs. State of Uttar Pradesh and another 2004(1) MHLJ 50.

23] I have gone through each and every citation minutely. Except the judgment delivered in the case of Ramsaroop Gupta (cited Supra), R. V. E. Venkatchala gounder (Cited Supra) and Prabhudas Kotecha (Cited Supra), other citations are in respect of law relating to return of plaint as contemplated under O. VII R. 10 and 10-A of C.P.C. The judgment delivered in the case of Prabhudas Kotecha (Cited Supra) is the famous case and laid down the law relating to gratuitous license, which is in fact not involved in the present case. In the case of R. V. E. Venkatchala Gounder (Cited Supra), it has been held that the objection to admissibility of the document should be raised before endorsement is made. Ordinarily and objection to the admissibility of evidence should be taken, when it is tendered and not subsequent. Only the Judgment delivered in the case of Ramsaroop Gupta (cited supra) is pertaining to irrevocable license as provided by section 60 (b) of the Easement Act. So, it is considered at the

time of appreciation of evidence on the relevant issue.

REASONS

As to issue No. 1:-

24] As indicated above the said property consists of ground plus 1st floor in R. C. C. construction bearing Plot No.11/A, in Swaroop colony situated at Aanand Nagar Hingane Khurd, Tal. Haveli Dist. Pune is initially owned by late Narayan Maheshrao Karve, who died on 12.06.2008 survived by widow namely vaijayanti Karve. She has also been died on 19.01.2013. Before her death she has sold the aforesaid entire property of which suit property is a part vide registered sale deed dated 30.06.2009 (Ex No. 52) are admitted facts between parties. It is significant to note that from 30.06.2009 till date defendant has not challenged the registered sale deed executed by late Vaijanti Karve in favour of plaintiff in respect of said property (Ex No.52) in any court. There is no counter claim in the present suit made by defendant challenging the sale deed of plaintiff (Ex No.52). There is nothing before the court indicating that sale deed executed in favour of plaintiff by late vaijanti Karve (Ex No.52) is declared by any competent court as illegal or void ab-initio. So, no option left to court except to hold the plaintiff is lawful owner of the suit property on the basis of registered sale deed dated 30.06.2009 executed by late Vaijanti Karve in his favour (Ex No.52). Hence, on the basis of admissions, issue No. 1 is answered in affirmative.

As to Issue No.3:-

25] Before appreciating evidence on this issue, it is necessary

to be note that defendant is claiming to be in the possession of suit property on the basis of alleged license granted by late Narayan Karve in his favour. According to him the said license being in terms of Section 60(b) of the Easement Act, it is irrevocable at the instance of plaintiff also. It is not the defence that such irrevocable license was granted by late Narayan Karve in writing, so as to gather the terms and conditions from the written instrument itself. As such it has to be gathered from circumstantial evidence adduced by the parties before the court, especially defendant, whether it was a license granted by late Narayan Karve in favour of defendant and whether it was in the nature of irrevocable license in terms of Section 60(b) of Easement Act.

26] Now, it is necessary to see what Section 60(b) of Easement Act 1882 says. It is as under,

60. License when revocable- A license may be revoked by the grantor, unless—

- (a) it is coupled with a transfer of property and such transfer is in force;
- (b) the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution

27] As pointed out earlier, while advancing argument in present matter, Ld advocate for defendant heavily placed reliance on the judgment delivered by the Hon'ble Apex Court in the case of Ram Saroop Gupta (Cited Supra). I have gone through the said judgment minutely. It was not the case of oral irrevocable license. There was

written correspondence by the grantor from which the nature of irrevocable license was evident, which is in fact not the case in the present matter. Para 9 of the said judgment is relevant with reference to irrevocable license. I would like to quote the said paragraph for ready reference, which is as follows,

License as defined by Section 52 of the Act means grant or permission, by a person to the other, a right to do or continue to do, in or upon, the immovable property of the grantor, something which would, in the absence of such right, be unlawful. Such right does not amount to an easement or any interest in the property. The rights so conferred is license. The grant of license may be express or implied which can be inferred from the conduct of the grantor. Section 60 provides that a license may be revoked by the grantor unless; (a) it is coupled with a transfer of property and such transfer is in force; (b) the licensee, acting upon the license, has executed a work of permanent character and incurred expenses in the execution. Revocation of license may be express or implied. Section 62 enumerates circumstances on the existence of which the license is deemed to be revoked. One of such conditions contemplate that where license is granted for a specific purpose and the purpose is attained, or abandoned, or if it becomes impracticable, the license shall be deemed to be revoked. Section 63 and 64 deal with licensee's right on revocation of the license to have a reasonable time to leave the property and remove the goods which he may have

placed on the property and the licensee is further entitled to compensation if the license was granted for consideration and the license was terminated without any fault of his own. These provisions indicate that a license is revocable at the will of the grantor and the revocation may be expressed or implied. Section 60 enumerates the conditions under which a license is irrevocable. Firstly, the license is irrevocable if it is coupled with transfer of property and such right is enforced and secondly, if the licensee acting upon the license executes work of permanent character and incurs expenses in execution. Section 60 is not exhaustive. There may be a case where the grantor of the license may enter into agreement with the licensee making the license irrevocable, even though, none of the two clauses as specified under section 60 are fulfilled. Similarly, even if the two clauses of section 60 are fulfilled to render the license irrevocable yet it may not be so if the parties agree to the contrary. In Muhammad Ziaul Hague v. Standard Vacuum Oil Company, 55 Calcutta Weekly Notes 232 the Calcutta High Court held that where a license is prima facie irrevocable either because it is coupled with a grant or interest or because the licensee erected the work of permanent nature there is nothing to prevent the parties from agreeing expressly or by necessary implication that licence nevertheless shall be revocable. On the same reasoning there is nothing to prevent the parties agreeing expressly or -impliedly that the license which may not prima-facie fall within either of the two categories of license (as

contemplated by section 60) should nevertheless be irrevocable. The same view was taken by Das, J. (as he then was) in Dominion of India V. Sohan Lal, AIR 1950 EP 40 Bombay High Court has also taken the same view in H.F. De Souza V. Childrens Education Uplift Society, AIR 1959 Bombay 533. The parties may agree expressly or impliedly that a license which is prima-facie revocable not falling within either of the two categories of license as contemplated by Section 60 of the Act shall be irrevocable. Such agreement may be in writing or otherwise and its terms or conditions may be express or implied. A license may be oral also in that case, terms, conditions and the nature of the license, can be gathered from the purpose for which the license is granted coupled with the conduct of the parties and the circumstances which may have led to the grant of the license.

28] From the above quoted paragraph, it is crystal clear that there may be a case where license may enter into an agreement making the license irrevocable even though, none of the two clauses as specified under Section 60 are fulfilled. Similarly, even if the two clauses of Section 60 are fulfilled to render the license irrevocable yet it may not be so, if the parties agree to contrary. A license is prima-facie irrevocable either because it is coupled with grant or interest or because the licensee erect the work of permanent nature, there is nothing to prevent parties from agreeing expressly or by necessary implication that license be never the less shall be revocable. A license may be oral also in that case terms conditions and nature of the

license may be gathered from the purpose for which the license is granted coupled with conduct of the parties and circumstances which may have led to grant the license.

29] As indicated above in the instant case, there is no written agreement between defendant and late Narayan Karve. It is a clear case of oral irrevocable license. So, no option left except to gather the terms, conditions and nature of the license if granted from the conduct of the parties and circumstances which allegedly led to grant of license in favour of defendant.

30] Institution of Civil Suit No. 240/2010 by defendant against the plaintiff, the order passed by the Small Causes Court on 19/10/2013, filing of Misc. Civil Appeal No. 433/2013 by defendant in the Hon'ble District Court, decision of the Hon'ble District Court in the said appeal are admitted facts between the parties. The decision of the Hon'ble District Court, Pune, given in the Misc. Civil Appeal No. 433/2013 has not been challenged by the defendant in higher court. As such the order dated 19/10/2013 passed in Civil Case No. 240/2010 has no doubt attained the finality. By the order dated 19/10/2013, the Small Causes Court, Pune has returned the plaint to defendant herein, who was plaintiff in that suit, to present it before the proper court. Even after dismissal of Misc. Civil Appeal No. 433/2013, defendant herein has not presented the said plaint to the proper court. What are the reasons for not presenting the plaint before the proper court are known to defendant only. But the fact remains that the defendant who alleges himself to be of tenant or licensee in the said property has not got his status decided by the

competent court. It is important to note that in the instant suit, he has not even sought declaration of his status by way of counter claim.

31] Record and proceeding of C. S. No. 240 of 2010 is before the court. Parties to both the proceeding are same except the capacity. Property involved in both suit is same, with the difference that defendant herein was claiming tenancy rights on the ground floor of the said property. Now he is claiming suit property i.e. first floor of the said property on the basis of irrevocable license in terms of Section 60(b) of Easement Act. It is important to note that in C.S. No.240/2010, defendant herein had not raised the plea of irrevocable license in the suit property as is pleaded in the written statement of the instant case. Rather, if the stands taken by defendant in both the suits regarding the property which he alleges to be in possession are diagonally opposite to each other. No doubt return of plaint under O. VII R. 10 and 10-A of CPC does not follow the decree as contemplated under Section 2(2) of the CPC. But, by filing the suit and by making representation of the fact that he was in the possession of ground floor of the said property as a tenant and by omitting to claim any relief in respect of the suit property, defendant made plaintiff to believe him as tenant on the ground floor of the said property. As such provisions of Section 115 of Indian Evidence Act will come into play and will preclude defendant from taking the stand of licensee in the suit property on the basis of Section 60 (b) of Easement Act. At the cost of repetition, in the previous suit defendant had not whispered about suit property. He had not uttered single word that he is in possession of suit property as is alleged in the

written statement. This omission on his part somewhere weaken his stand as licensee in the suit property. Put it differently, this is one the circumstances which goes against the defence of irrevocable license and is forcing treating it as an idea or thought that occurred later.

32] The sale deed executed by Vaijanti Karve in favour of plaintiff in respect of said property is produced at Ex No. 52. On page No. 13 of the said sale deed, commencement certificate dated 30/01/2001 has been annexed. From the said commencement certificate, it transpires that present defendant has obtained the said commencement certificate as power of attorney holder of late Narayan Karve. If the written statement presented by defendant is read out minutely then it appears that there is no whisper in the written statement either of this commencement certificate or of the fact that late Narayan Karve had ever executed power of attorney in favour of defendant. These were the material facts for the purpose of gathering the nature of license as well as gathering a fact whether it was actual license or not?. Not making any pleading in written statement in respect of power of attorney of late Narayan Karve is compelling circumstance to draw adverse inference.

33] Burden of proving this issue was on the defendant. So, it is necessary to see the evidence of defendant first. Unless and until defendant does not discharge the burden of proving this issue onus of rebuttal will not shift to the plaintiff. The affidavit of examination in chief Prafull (D.W.1) is nothing but reproduction of contents of written statement. Now, it has to be seen how he stood to the test of cross examination. He has admitted in clear terms that in earlier Civil

Suit No. 240/2010, he has not mentioned the fact that initially he was residing on ground floor of the said property and on request of late Narayan Karve, he shifted to first floor i.e. suit property. He has further admitted that he doesn't have any rent receipt to show that he was occupying the ground floor or first floor of the said property as a tenant. When he was asked about the commencement certificate, he has stated in clear terms that commencement certificate for construction of first floor was obtained by him on the basis of power of attorney executed by late Narayan Karve in his favour. It was obtained for and on behalf of late Narayan Karve. At the cost of repetition, said power of attorney is not before the court. The existence of said power of attorney is being admitted by defendant unambiguously, it can be said that he was acting as agent of late Narayan Karve. The production of power of attorney before the court might have made the picture more clear whether late Narayan Karve had intention to give the suit property on irrevocable license basis to defendant or not.

34] It is also noticed by the court that neither in the plaint nor in the written statement, there is pleading of Will of late Narayan Karve. But question relating to his Will are put to plaintiff as well as defendant in the cross examination. Those questions are pointing out the existence of Will of Narayan Karve. Even though original Will is not produced before the court by any of the parties to the suit. Being nephew of late Narayan Karve, he was expected to produce original or at least photo copy of the Will. It can't be expected to be from the plaintiff being stranger to the family of late Narayan Karve. Let it be. Now, I would be like to refer the cross examination of both the

parties. i.e. plaintiff and defendant regarding Will of Late Narayan Karve. Because this is one of the circumstances from which real intention of late Narayan Karve could be gather. Let's see the cross examination of Prafull (D.W.1) first as initial burden of proving this issue was on him.

35] In Para No. 40 of the cross examination Prafull (D.W.1) has admitted the suggestion that by the Will of late Narayan Karve, he was required to vacate the suit property. Rest of the witnesses examined by the defendant are not on the point of Will, therefore I am skipping their evidence so far as Will of Narayn Karve is concerned. By putting suggestion in Para No. 34 of the cross examination of Girish (PW.1), defendant has confirmed the execution of Will dated 08/05/2008 by late Narayan Karve. It was suggested to Girish (PW.1) that by the said Will defendant was permitted to reside in the suit property. As such at one breath defendant is saying that by the Will of late Narayan Karve he was required to vacate the suit property and at the another he is taking a stand that by virtue of Will he was permitted to reside in the suit property. If at all it is accepted that he was permitted to reside in the suit property by the Will dated 08/05/2008 then certainly it would have been produced before the court by the defendant for inspection. But as it is not produced even thought it is alleged to be in favour of defendant compelling me to draw the inference that the said Will was likely to go against the defendant if produced. So he has not taken pain either to plead or to prove it.

36] Mrunal (D.W.2) is daughter of the defendant. She is

examined to prove the incident dated 06/04/2014 allegedly occurred about 9.41 a.m. when plaintiff disconnected water supply of the suit property. She has narrated the incident and has stated how she recorded its video. It was allegedly recorded on her own mobile. However, the video clip allegedly recorded by Mrunal (D.W.2) has not been produced before the court. So, except bare words of Mrunal (D.W.2), there is no other collaborative evidence, though available in her own mobile. So, I doubt the occurrence of alleged incident.

37] Prafull (D.W.1) is also deposing about the said incident in his affidavit of examination-in-chief but in the cross examination he has stated that despite of being obstructed by disconnecting water supply of the suit property, he did not make any complaint either to police or he did not rush to court against the plaintiff. The said incident is allegedly occurred on 06/04/2014. The judgment of the Hon'ble District Court confirming the order of return of plaint in C. S. No. 240/2010 is dated 12/02/2014. Put it differently, the alleged incident of disconnection of water supply of the suit property occurred after the decision of the Hon'ble District Court in Misc. Civil Appeal No. 433/2013. Despite defendant did not find it proper to present the plaint before the appropriate court and get his status decided. This inaction on the part of defendant weaken the value of his stand regarding irrevocable licensee in the suit property.

38] Doctor Bawdekar (D.W.3) is the person, who inter meddled between late Narayan karve and defendant when he came to know defendant was looking for residential premises to stay in. In the affidavit of examination-in-chief, he has stated that defendant as

well as late Narayan Karve were his patients. The relation between himself and Karve family become very close rather it was like a family. He has further stated that he disclosed to late Narayan Karve that defendant is looking out for a flat for residence for himself. To which late Narayan Karve suggested him to put word to Prafull i.e. defendant that he need not to purchase any independent flat and he could reside on the ground floor of the said property. Then he suggested late Narayan Karve to talk directly to defendant about it.

39] Before turning to the cross examination of this witness certain things as evident from his examination-in-chief are required to be noted. This witness is talking about intentions of late Narayan Karve, who allowed the defendant to reside on the ground floor of the said property, which is not in fact subject matter of present suit. This witness is not stating anything that late Narayan Karve had intention to give the suit property to the defendant on irrevocable license. From the examination-in-chief of this witness, it can also be gathered that just to meet the need of residence of defendant at relevant time, late Narayan Karve was intending to allow him on the ground floor of the said property. He never expressed his desire to give the suit property on the irrevocable license basis. Otherwise, as admitted by Prafull (D.W.1) in the cross examination, late Narayan Karve has not mentioned in his Will that defendant is required to vacate the suit property. His cross examination was not so helpful to the defendant to prove the irrevocable license of the suit property in his favour.

40] Milind (D.W. 4) is Civil Engineer by profession. He has

been in the business of construction since last 24 years. According to him in the year 2000, Prafull (D.W.1) approached him and inquired as to position to carry out construction of first floor in Plot No. 11 Swaroop Colony, Aanand Nagar, Hingane Khurd. No other person except defendant has approached him for making this inquiry. As he showed willingness to carry out the construction, he informed defendants the names of suppliers, labours and petty contractor for the said work. Defendant was required to make necessary payment directly to the concerned persons and suppliers for the purpose of raw material. The scope of his work was to carry out the construction on supervision basis. Defendant was to bear the costs of procurements of necessary construction materials, to pay the labour charges and also the amounts due to him for supervision. He has further deposed that he procured the construction material on behalf of defendant from various agency and bills were handed over to defendant for payment. He has received supervision costs from defendant time to time. It was paid to him in cash as well as by way of cheque. Defendant had handed over cheque bearing No. 191023 and 56214 for Rs. 7,000/- and 1500/-. He encashed those cheques and nothing is outstanding from the defendant.

41] This witness was asked about so many documents relating to ownership of the said property, commencement certificate and so on. According to him defendant had shown him the document on which the name of defendant was shown as owner. However, no such document is produced before the court. Rather, it is not the defence in the written statement that defendant was ever the owner of said property or any part thereof. So, the question arises what

document was shown to this witness to get his services rendered. Though he is deposing that he was engaged for the purpose of supervision of construction but his appointment seems to be oral one. Because no agreement between defendant and this witness is coming before the court. Moreover, even after the receipt of entire alleged payment from the defendant, this witness has surprisingly not issued any receipt in favour of defendant. This is too a suspicious circumstance. This witness is not sure of the fact that whether supplied material was used for the construction of the suit property. So, the evidence of this witness is also not decisive on the fact that construction of the suit property was made by defendant at his own cost.

42] The next witness Krushnat (D.W.5) is the manager working in Swami Agency, from whom defendant has allegedly bought material for the construction of suit property. This witness though have stated that Swami Agency has past relations with defendant since he placed various order for supply of cement for construction of his house and against the delivery of cement, Swami Agency has received the amount in cash from defendant, he seems to have associated with Swami Agency in the year 2002. He has shown his ignorance of the transaction taken place before 2002. The receipts which defendant have produced on record are of the year 2000. This witness has produced nothing before the court from the custody of the Swami Agency, so that this witness is though not associated with Swami Agency before 2002, his evidence could be relied upon.

43] There is nothing before the court to believe that Krushnat (D.W.5) is really working with Swami Agency as a Manager. So, it would not be safe to rely on his evidence.

44] Now turn to the receipts (Ex No. 76 to 98) produced by the defendant on record. On most of the receipts the name of purchaser is shown as Mr. Karve. There are some receipts standing on the name of Dinkar Maheshwar Karve, who is no way concern with the present suit. From these receipts purchase of construction material can be ascertained but those receipts are not sufficient to draw the nexus that this material was used for construction of suit property, when the engineer under whose supervision the construction of suit property was allegedly completed is not sure about it.

45] Thus, from the evidence of defendant, circumstances are not established on the basis of inference can be drawn that suit property was given to defendant as provided by Section 60(b) of Easement Act. They are incomplete and not decisive. They are more of nature not to hold the license irrevocable. Rather, they are pointing out towards petty attempt on the part of defendant to grab the said property gratuitously. The first attempt was in respect of ground floor and in the present suit, it was in respect of suit property. So, it can safely be said that burden of rebuttal was never shifted to plaintiff. Despite, to be at safer side, evidence of plaintiff necessary to be looked into.

46] Affidavit of examination-in-chief of plaintiff, is nothing but repetition of contents of plaint. If the cross examination of

plaintiff is seen minutely then it will certainly reveal that cross examination is not at all on the line of defence taken in the written statement. So it does not even require detail mention. Moreover, the contents brought on record by way of cross examination of plaintiff are not sufficient to draw the inference of irrevocable license of suit property in favour of defendant.

47] All above discussion leads me to conclude that defendant has failed to prove his irrevocable license in the suit property. Hence, issue No. 3 is answered in negative.

As to Issue No. 4:-

48] This issue is pertaining to the defence that plaintiff is trying to evict the defendant without following due process of law. But institution of present suit and reaching it to the stage of decision itself is sufficient to answer this issue against this defendant. Hence, it is answered in negative.

As to issue No. 2 and 5:-

49] From the reasons and findings given to issue No. 1 and 3, it is crystal clear that the plaintiff is the owner of said property of which suit property is part. The defendant has failed to prove the fact that suit property was given to him on license and because he erected the permanent structure it became irrevocable by the virtue of provisions of Section 60(b) of the Easement Act. By non presenting the plaint of C.S.No. 240/2010 to the proper court, defendant has even failed to get his status decided as a tenant from

competent court in any part of the said property. Now, when he is not able to prove his status as owner, tenant or licensee in the suit property, no other option left to infer that he is illegal occupation in suit property. Under these circumstances, being owner of the suit property, plaintiff is entitled to get possession of the suit property from defendant. Hence, issue No. 2 and 5 are answered in affirmative.

As to issue No. 6:-

50] This issue is pertaining to mesne profit. In the instant suit, plaintiff has claimed past mesne profit to the tune of Rs. 4,32,000/- However, there is no evidence before the court in terms of Section 2(12) of C. P. C. So it would not be proper to pass order in respect of past or future mesne profit in the present matter. Instead, it would be better to pass order of inquiry about the same. Hence, issue No. 6 is answered accordingly.

As to issue No. 6A:-

51] This issue is framed on the basis of plea taken in the written statement. It is well settled legal principle that averments made in the plaint are decisive factor while deciding jurisdiction of civil court. I have already pointed out the history of litigation between the parties. Filing of Civil Suit No. No. 240/2010 by defendant against the plaintiff, in the Court of Small Causes, Pune claiming to be tenant in the two rooms situated at ground floor of said property, the plaint of Civil Suit No. 240/2010 was returned by the Court of Small Causes Pune vide order dated 19.06.2013, against the said order of return of plaint defendant had preferred Misc. Civil

Appeal No. 433/2013 before the Hon'ble District Court, Pune, which has also been dismissed by the Judgment and order dated 12.02.2017 are the admitted facts between the parties. It is important to note that even after the above decision of the Hon'ble District Court, defendant did nothing. He did not present the plaint in the proper court. In the said suit, property involved was of the ground floor whereas present suit is in respect of first floor. In the said suit, plea of irrevocable licence in respect of suit property involved in the present suit was not raised. That apart, it was not even raised in respect of the premises involved in that suit. Even otherwise, competent court has declined to hold the defendant as tenant or licensee on the ground floor of the said property. In the present suit there is not counter claim seeking declaration. Aforesaid reasons and findings are not permitting me to hold defendant licensee in terms of Sec. 60 (b) of the Easement Act. Under these circumstances, no other court than this court has authority to decide the lis between the parties. Hence, issue No. 6-A is answered in affirmative.

As to issue No. 7:-

52] All above discussion leads me to conclude that plaintiff is entitled to get the possession from the defendant. He will also be entitled to get relief of mesne profit from the defendant. But it's quantum would be proper to be decided in the separate inquiry. Therefore, in answer to issue No. 7, I pass following order,

ORDER

- 1] Suit is hereby partly decreed with costs.
- 2] Defendant is hereby directed to hand over peaceful and vacant possession of the suit property to plaintiff within 2 months from the date of this order.
- 3] Separate inquiry of past and future mesne profit is hereby directed under O. 20 R. 12(1)(c) of C.P. C.
- 4] Decree be drawn up accordingly.

Date:- 06/05/2025

(Ketaki M. Chavan)
Addl. Judge, Small Cause Court &
Jt. C.J.S.D., Pune

CERTIFICATE

I affirms that, the contents of the P. D. F. file are same word for as per original.

Name of Steno	S. S. Waykar
Court Name	Ketaki M. Chavan Addl. Judge, Small Causes Court & Jt. Civil Judge, Sr. Div., Pune.
Date	06/05/2025
Judgment signed by Presiding Officer on	13/05/2025
Judgment uploaded & PDF on	15/05/2025