

IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5082 OF 2015

WITH

CIVIL APPLICATION NO.1565 OF 2015

Shashikala V. Shetty ... Petitioner

Vs.

Hiralal Shobhnath Gupta (decd) through LRs & others ... Respondents

WITH

WRIT PETITION NO.5083 OF 2015

WITH

CIVIL APPLICATION NO.1566 OF 2015

Shobha Krishna Surve and another ... Petitioners

Vs.

Hiralal Shobhnath Gupta (decd) through LRs & others ... Respondents

Mr. Vasantkumar G. Mehta for Petitioners.

Mr. Niraj Pande for Respondent No.1.

CORAM : R. G. KETKAR, J.

Reserved on : **11TH JUNE, 2015**

Pronounced on: **29TH JUNE, 2015**

ORDER :

Heard Mr. Mehta, learned Counsel for petitioners and Mr. Pande, learned Counsel for respondent No.1 in both the Petitions at length.

2. Writ Petition No.5082 of 2015 is instituted by Ms Shashikala V. Shetty (for short 'Shashikala'). Shashikala had filed Notice of Motion No.747 of 2015. Writ Petition No.5083 of 2015 is instituted by Ms Shobha Krishna Surve and Krishna Babu Surve (for short 'Shobha and Krishna'). Shobha and Krishna had filed Notice of Motion No.748 of 2015. Both these motions were filed in Execution Application No.17 of 2015 in S.C.Suit No.509 of 2000. That Suit was instituted by

respondent No.1 Hiralal Shobhnath Gupta, since deceased (for short 'Hiralal') for specific performance of contract that is for compliance of statutory obligations under the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 against (a) defendant No.1 – Jagat Manubhai Parikh, Sole Proprietor of A. J. Corporation, Promoter and Builder, (b) defendant No.2 – Yadav Kumar Rao, Chief Promoter, (c) defendant No.3 – K. J. Alwa, Chairman, (d) defendant No.4 – John Fernandes, Treasurer, defendants No. 2 to 4 being the office bearers of defendant No.7 – The Rishabh Co-operative Housing Society Limited, (e) defendant No.5 – Bharat Kothari and (f) defendant No.6 - Harish Gurahani. Hiralal had booked residential flat No.701 admeasuring 580 sq.ft. and flat No.702 admeasuring 560 sq.ft. on 7th floor of 'A' Wing in the proposed building on a land bearing C.T.S.No.17/1 in Rishabh Apartments at Village Amboli, Veera Desai Road, Andheri (W), Mumbai 400 058 (for short 'suit flats') and accordingly two agreements were executed on 15.07.1993 (exhibits 9 and 10) by defendant No.1 in favour of Hiralal. Hiralal agreed to purchase the suit flats for a consideration of Rs.5 lacs.

3. It was the case of Hiralal that agreements at exhibits 9 and 10 were not registered but later on, deed of confirmation dated 06.03.1999 was lodged for registration. Hiralal was co-owner of C.T.S. No.17/1., admeasuring 1264 sq.mts. at Amboli Village, Veera Desai Road, Andheri (W), Mumbai 400 058 along with one Lalitadevi Gupta. They agreed to enter into Development Agreement with defendant No.1. Defendant No.1 had agreed to complete the project of construction on building on land bearing C.T.S.No.17/1 and also agreed to pay Rs.14 lacs. Defendant No.1 also agreed to give two flats namely suit flats on ownership basis to the plaintiff after the building will be constructed.

Defendant No.1 also agreed that the price of each flat would be Rs.2.50 lacs. Defendant No.1 further took responsibility of handing over flat No.602 admeasuring 560 square feet in 'A' Wing to the other co-owner Lalitadevi Gupta for a price of Rs.2 lacs. Defendant No.1 entered into one agreement with proposed society on 17.05.1999. However, name of Hiralal was not mentioned in the agreement as well as in annexure-A. Since defendant No.1 was unable to complete the construction work as per the agreement, he handed over the work to defendants No.2 to 4 being the office bearers of the proposed society.

4. During the pendency of the Suit, Hiralal died and his legal representatives, who are respondents No.1(a) to 1(e), hereinafter referred to as the 'decree holders', were brought on record. The Suit was decreed on 22.12.2014. The learned trial Judge directed defendant No.7 along with defendants No.2 to 4 to put the decree holders in possession of the suit flats within 15 days from the date of the order, if decree holders are not put in possession by the Court Receiver. Defendant No.7 along with defendants No.2 to 4 were directed to complete the work of suit flats in all respects as per the agreements dated 15.07.1993 and also to provide all other amenities in the suit flats. The learned trial Judge declared that defendants No.5 and 6 have no right, title and interest in the suit flats and they were permanently restrained from causing any disturbance to the decree holders in regard to the suit flats. Defendants were directed to jointly and severally pay compensatory costs of Rs.25,000/- to the decree holders.

5. Decree holders have filed Execution Application No.17 of 2015 for execution of decree passed in S.C.Suit No.509 of 2000. Decree holders filed application on 26.02.2015 at exhibit-3 for possession of the suit flats by breaking open lock. Defendant No.7 filed application at

exhibit-4, which was taken on record. After hearing both sides, the learned trial Judge passed order on 03.03.2015. In that order, the learned trial Judge noted that defendants / judgment debtors failed to comply decree and therefore, decree holders filed instant execution proceedings. Defendants No.5 and 6, who are in possession of the suit flats did not turn up. Defendants No.2 to 4 who are office bearers of defendant No.7 sought time on the ground that they have preferred First Appeal against the judgment and decree dated 22.12.2014. Admittedly, till date, no stay was granted by the appellate Court. Record shows that defendants did not pay / deposit compensatory costs of Rs.25,000/-. As per the Bailiff's report, the flats in question are under lock. Mere filing of appeal cannot be a ground to stay the further proceedings before the trial Court. Defendant No.7 sought time to file reply. The learned trial Judge observed that its reply would be for the limited purpose to the extent that whether it has got stay order to the decree. The learned trial Judge granted 10 days time subject to filing reply by defendant No.7 to exhibit-3 provided it deposits compensatory costs of Rs.25,000/- within 3 days from the date of the order in the Court. Defendant No.7 should give undertaking to the effect that it would not create third party interest in the suit flats and change structure by any means. It was clarified that if defendant No.7 / applicant of exhibit-4 fails to comply aforesaid conditions then possession warrant with liberty to break open the lock of suit flats will be issued on the fourth day of the order. Hearing of the application at exhibit-3 was adjourned to 13.03.2015. Shashikala has filed Notice of Motion No.747 of 2015. Shobha and Krishna have filed Notice of Motion No.748 of 2015. Both the Motions were taken out for staying order dated 03.03.2015; for hearing the petitioners as being third parties that they are not bound by the decree but they are adversely affected by order dated 03.03.2015.

6. Shashikala claims to be in possession of flat No.702 and Shobha and Krishna claim to be in possession of flat No.701. These Motions were disposed of by common judgment and order dated 15.02.2015 by the learned Judge, City Civil Court (Borivali Division), Dindoshi. It is against this order, above Petitions are instituted.

7. In support of these Petitions, Mr. Mehta strenuously contended that Shashikala, Shobha and Krishna are strangers. They were not party in S.C.Suit No.509 of 2000 filed by Hiralal on 24.01.2000. They are not party to execution proceedings. Warrant of possession is also not issued against these persons. He submitted that Shashikala had instituted Suit No.1987 of 2009. Shobha had instituted Suit No.1988 of 2009. In these Suits, prayers viz. declaration that Court Receiver has no right or power to disturb their possession and for permanent injunction restraining Court Receiver from disturbing their possession in respect of the suit flats without adopting legal procedure were sought.

8. Mr. Mehta submitted that the Suit instituted by Hiralal was decided on 22.12.2014. Perusal of the judgment does not indicate that Court had appointed Court Receiver. There is no order of appointment of Court Receiver in decree / order dated 22.12.2014. Show cause notice issued under Order 21, Rule 22 Code of Civil Procedure, 1908 (for short 'C.P.C.') against the petitioners is pending and no order is passed till date. He submitted that in the Execution Application No.17 of 2015, names of the petitioners do not appear in columns 'I' and 'J'. He submitted that in the warrant of possession dated 03.02.2015, direction is issued to the defendants in S.C.Suit No.509 of 2000 or such other persons bound by the decree, and if need be, to remove the said defendants or such other persons, if they refuse to vacate and deliver possession to the plaintiffs. Mr. Mehta submitted that the said warrant

of possession cannot be executed against the petitioners as they are neither defendants in the Suit nor they are the persons bound by the decree passed in that Suit. Defendants No.2 to 4 and 7 were directed to handover possession of the suit flats to the decree holders. Defendants No.2 to 4 and 7 are not in possession of the suit flats. Decree has, therefore, become inexecutable.

9. Mr. Mehta submitted that decree holders have not taken out any obstructionist proceedings under Order 21, Rule 97 C.P.C. and hence there is no question of deciding the said proceedings under Rules 98 to 101 of Order 21 C.P.C. The petitioners are not obstructionists and are in possession of the suit flats on the strength of agreements of sale dated 13.02.2001 executed by defendant No.1 in their favour. He further submitted that the learned trial Judge was not justified in decreeing S.C.Suit No.509 of 2000 as the Suit was based upon the agreements dated 15.07.1993 (exhibits 9 and 10). Perusal of these agreements shows that no amount was paid by Hiralal. Since no amount was paid under the agreements, the said agreements cannot be enforced. He submitted that the decree passed in S.C.Suit No.509 of 2000 is nullity, and therefore, also cannot be executed. The decree is in-executable as the agreements dated 15.07.1993 made without consideration are void.

10. Mr. Mehta further submitted that on 25.10.1999, Hiralal lodged complaint before Senior Inspector of Police, Oshiwara Police Station, Jogeshwari (W). In that complaint, it was alleged that the Chief Promoter – Y. K. Rao had opened the locks of the suit flats, and that the Chief Promoter had illegally sold the suit flats to some other parties. He submitted that from this complaint, it is evident that Hiralal was not in possession of the suit flats. Instead of adopting proceedings under Section 145 of the Code of Criminal Procedure, 1973, Hiralal instituted

Suit on the basis of agreements which are void as they were made without consideration. For all these reasons, he submitted that Petitions require consideration and petitioners have made out a case for granting interim order.

11. On the other hand, Mr. Pande supported the impugned order. He submitted that these Petitions are nothing but abuse of process of law as also abuse of process of Court. He has taken me through the various orders passed in the Suit, Notice of Motion, Chamber Summons by the trial Court as also by this Court. He submitted that Petitions may be dismissed by imposing exemplary costs.

12. I have considered the rival submissions made by the learned Counsel appearing for the parties. I have also perused the material on record. In the earlier part of the judgment, I have noted that Hiralal had instituted Suit for specific performance of contract and for possession of the the suit flats. The Suit is based on agreements of sale dated 15.07.1993. The Suit was decreed on 22.12.2014. The learned trial Judge directed the Court Receiver to put the decree holders in possession, if defendant No.7 along with defendants No.2 to 4 failed to comply the decree. It appears that during the pendency of the Suit, on 25.01.2000, the learned trial Judge appointed the Court Commissioner with direction to visit the suit flats on 26.01.2000 without giving notice to the parties to the Suit as advocate on behalf of defendants No.2 to 4 stated that possession in respect of suit flats among others was already parted with as per the list annexed to the plaint mentioning the names of the persons to whom the keys of the respective flats were handed over by defendants No.2 to 4. Hiralal's Advocate stated that in fact these persons were not in possession of their respective flats as the building was incomplete.

13. In pursuance thereof, the Court Commissioner visited the site and submitted report dated 26.01.2000. The Court Commissioner recorded that flat No.701 was open and occupied by defendant No.5 Bharat Kothari. Mr. Bharat Kothari along with his family was present in the said flat and they claimed that the said flat was owned by them. The Court Commissioner also recorded the conditions of the said flat to the effect that it was incomplete in respect of the internal works. As far as flat No.702 is concerned, it was noted that the said flat was claimed by Harish Gurushani and Amir Chokshi on behalf of his wife Ms Chokshi. The said flat was not fit for residence as there was no electricity provision, no water connection and no internal door was fixed. In other words, the said flat was not ready for occupation.

14. During the pendency of the Suit, Hiralal took out Notice of Motion No.301 of 2000. That Motion was allowed on 04.10.2001. In the order, the learned trial Judge recorded observations made in the Court Commissioner's report. Perusal of that order shows that defendants No.2 to 4 therein contended that flat No.701 is occupied by one Bharat Kothari and flat No.702 is occupied by one Harish Gurushani. It was further contended that they are not made party to the Suit and therefore, Suit is bad for non-joinder of the necessary parties. The Motion was made absolute and High Court Receiver, Bombay was appointed to take charge of suit flats of 'A' Wing in the incomplete building. The Court Receiver was directed to take possession of the suit flats and put the plaintiff in possession as his agent. Defendants No.1 to 4 were restrained from creating any third party interest in respect of the suit flats as also were restrained from causing obstruction to peaceful possession of the plaintiff Hiralal over the suit flats. Defendants No.2 to 4 were directed to admit plaintiff Hiralal as member of the society.

15. It appears that Bharat Kothari and Harish Gurushani preferred Appeals before this Court being Appeals from Order No.1021 of 2001, 1022 of 2001 and 1024 of 2001 challenging order dated 04.10.2001. By order dated 11.12.2001, this Court directed the trial Court to hear the Notice of Motion, if any application is made by appellants who had been agreed to be impleaded as defendants to the Suit by the learned Advocate for the plaintiff.

16. Shobha and Krishna took out Chamber Summons No.548 of 2002 claiming rights over flat No.701 on the basis of agreement dated 04.09.2001 executed by defendant No.1 in their favour for adding them as party defendants. By order dated 19.04.2002, the learned trial Judge rejected the Chamber Summons. Defendants No.5 and 6 took out Notice of Motion No.1279 of 2002 praying for setting aside order dated 04.10.2001 as also for staying operation of that order till the disposal of the Motion. The said Motion was dismissed by the trial Court on 26.04.2002. In paragraph 8 of that order, the learned trial Judge observed that the agreements of 1993 relied by defendants No.5 and 6 were not registered and the alleged payments were made after filing of the Suit by the plaintiff in the year 2000. In paragraph 9, the learned trial Judge also recorded that Shobha and Krishna had also applied by Chamber Summons to implead them as party to the Suit and claimed that they had an agreement of sale dated 04.09.2001 to purchase flat No.701. The said Chamber Summons was dismissed on 19.04.2002. As far as defendant No.6 Harish Gurushani is concerned, the learned trial Judge recorded that defendant No.6 relied upon document dated 11.01.1988. In the affidavit in support, it was stated to be 15.07.1993. Defendant No.6 had produced receipt dated 01.02.2001 as regards payment of Rs.1,57,000/- to defendants No.2 to 4. It was also observed

that in respect of flat No.701, the agreement was prepared and typed out on a stamp paper dated 30.07.1993 whereas in case of flat No.702, it was the standard printed agreement that was executed by defendant No.1 with defendant No.6. After considering the material on record, by order dated 26.04.2002, the learned trial Judge dismissed the Motion. The Court Receiver, High Court, Bombay who was appointed as Receiver by order dated 04.10.2001 was directed to take physical possession of the suit flats by dispossessing whosoever found in possession and to keep the suit flats under his lock and key until the building completion and occupation certificate is issued by the Corporation. Liberty was given to the parties to mention the matter as and when the building permission and occupation certificate is issued by the Corporation.

17. Shobha and Krishna instituted Civil Revision Application No.997 of 2002 challenging the order dated 19.04.2002 dismissing their Chamber Summons No.548 of 2002. That Petition was dismissed by this Court on 12.06.2002 by observing that there was no lis between the plaintiff and Shobha and Krishna in relation to the Suit flats and the rights, which are sought to be claimed, are through the parties who are already on record. On the oral motion made on their behalf, execution of the order dated 26.04.2002 passed by the trial Court in Notice of Motion No.1279 of 2002 was stayed till 28.06.2002.

18. Notice of Motion No.246 of 2006 was taken out by Shashikala. Another Notice of Motion No.4785 of 2003 was taken out by Shobha and Krishna for setting aside the order dated 04.10.2001 passed in Notice of Motion No.301 of 2000 and order dated 26.04.2002 passed in Notice of Motion No.1279 of 2002 by the trial Court, after holding enquiry under Order 40, Rule 1(2) C.P.C. and for stay of the orders.

Notice of Motion No.4284 of 2005 was taken out by Hiralal praying for directions to the Court Receiver to take forcible possession of the suit flats with the help of police and for punishing defendants No.5 and 6 for contempt as they parted with possession of the suit flats. Hiralal also prayed in the alternative for referring the matter to the High Court for taking action against defendants No.5 and 6 under the Contempt of Courts Act, 1971 and for temporary injunction restraining defendants No.1 to 3 from transferring the suit flats or creating third party right, title and interest in the suit flats till the decision of the Suit. All these Motions were clubbed together and were disposed of by common judgment and order dated 01.07.2009. The learned trial Judge dismissed the Notice of Motion No.246 of 2006 taken out by Shashikala as also Notice of Motion No.4785 of 2003 taken out by Shobha and Krishna. Notice of Motion No.4284 of 2005 was partly allowed in terms of prayer clause (a). The Court Receiver was directed to take forcible possession with the help of police, If required, of the suit flats from defendant No.3 - K. J. Alwa, Chairman of defendant No.7 Society. Aggrieved by these decision, Shobha and others instituted Appeal from Order No.690 of 2009 in this Court. By order dated 01.09.2009, this Court dismissed the Appeal. In paragraph 2 of that order, it was observed that Appeal was misconceived and was not tenable because this Court had already held that appellants therein were not necessary parties to the Suit (order dated 12.06.2002 passed by this Court in C.R.A.No.997 of 2002). It was further observed that appellants therein who claim to have title and right to possession of the suit flats, can file separate proceedings to establish and vindicate their rights. The ad-interim order granted by this Court on 15.07.2009 was continued for a period of 4 weeks. It was made clear that if any other proceeding is filed by the appellants, the same will be decided, without being influenced by any observations made in the impugned order as also in

that order. The statement made by the Advocate that in case he moves for ad-interim relief by separate application, he will give 48 hours prior notice to the defendants in those proceedings was recorded.

19. In pursuance of the liberty granted by this Court, Shobha instituted Suit No.1988 of 2009 and Shashikala instituted Suit No.1987 of 2009 against the Court Receiver and others. By order dated 21.11.2012 passed by this Court in Writ Petition No.2155 of 2022, Civil Suits No.509 of 2000 and 1988 of 2009 were clubbed together. It appears that Suit No.1987 of 2009 was also clubbed along with Suit No.509 of 2000 and 1988 of 2009. However, Shobha and Shashikala withdrew Suit No.1988 of 2009 and 1987 of 2009.

20. As noted earlier, S.C.Suit No.509 of 2000 instituted by Hiralal, since deceased, was decreed by the trial Court on 22.12.2014. While decreeing the Suit, the learned trial Judge directed defendant No.7 along with defendants No.2 to 4 to put the decree holders in possession of the suit flats within 15 days from the date of the order, if they are not put in possession by the Court Receiver. Pursuant to that order, representative of the Court Receiver visited the suit flats on 05.01.2015 for the purpose of taking peaceful possession of the suit flats from defendant No.7 along with defendants No.2 to 4 and put the decree holders in possession of the suit flats. On visiting the site, the Court Receiver found that the suit flats were in locked conditions. On the door of flat No.701, name plate showed name of Shobha and on the door of flat No.702, name of Mr. Vishwanath was shown. Since the suit flats were found locked, he could not execute the order dated 22.12.2014 and accordingly, submitted the report. Decree holders, therefore, filed Darkhast proceedings on 21.01.2015. Decree holders also filed affidavit dated 21.01.2015 of Ravishankar Hiralal Gupta. In the affidavit, it was stated that defendants

are avoiding to execute the decree and put the decree holders in possession of the suit flats. It appears that on 06.02.2015, notice under Order 21, Rule 22 C.P.C. was issued. On 03.03.2015, the learned trial Judge passed order on application dated 26.02.2015 filed by the decree holders for possession of the suit flats by breaking open locks. On behalf of defendant No.7, application at exhibit-4 was filed seeking time for filing reply. The learned trial Judge disposed of exhibit-4 and granted 10 days time to defendant No.7 to file reply to exhibit-3 filed by decree holders provided it deposits compensatory costs of Rs.25,000/- within 3 days and further to give undertaking that it would not create third party interest in the suit flats and change structure by any means. If defendant No.7 - applicant of exhibit-4 failed to comply the aforesaid directions then possession warrant with liberty to break open the lock of the suit flats will be issued on the fourth day of the order. It is against this order, Shashikala filed Notice of Motion No.747 of 2015 and Shobha and Krishna filed Notice of Motion No.748 of 2015. By the impugned order, the learned trial Judge dismissed the Motions.

21. As noted earlier, during the pendency of the Suit, Hiralal took out Notice of Motion No.301 of 2000. That Motion was allowed on 04.10.2001. High Court Receiver, Bombay was appointed to take charge of the suit flats and put the plaintiffs in possession of it as his agents. Defendants No.1 to 4 were restrained from creating any third party interest in the suit flats as also were restrained from causing obstruction to the peaceful possession of plaintiff Hiralal over the suit flats. Defendants No.2 to 4 were directed to admit Hiralal as member of the society. Defendants No.5 and 6 took out Notice of Motion No.1279 of 2002 for setting aside order dated 04.10.2001. The learned trial Judge dismissed the Motion on 26.04.2002. The learned trial Judge directed the Court Receiver who was appointed by order dated 04.10.2001 to

take physical possession of the suit flats by dispossessing whosoever found in possession, to keep the suit flats under his lock and key until the building completion and occupation certificate is issued by the Corporation. Liberty was reserved to the parties to mention the matter as and when building completion and occupation certificate is issued by the Corporation. In the meantime, Shobha and Krishna took out Chamber Summons No.548 of 2002 claiming rights over flat No.701 on the basis of agreement dated 04.09.2001 executed by defendant No.1 in their favour. The said Chamber Summons was rejected on 19.04.2002. Shobha and Krishna instituted Civil Revision Application No.997 of 2002 challenging the order dated 19.02.2002. That Petition was dismissed by this Court on 12.06.2002 by observing that there was no lis between Harilal and Shobha and Krishna in relation to the suit flats and the rights which were sought to be claimed were through the parties, who were already on record. On the oral motion made on their behalf, execution of order dated 26.04.2002 passed by the learned trial Judge in Notice of Motion No.1279 of 2002 was stayed till 28.06.2002.

22. Notice of Motion No.246 of 2006 was taken out by Shashikala and another Notice of Motion No.4785 of 2003 was taken out by Shobha and Krishna for setting aside the order dated 04.10.2001 passed in Notice of Motion No.301 of 2000 and order dated 26.04.2002 passed in Notice of Motion No.1279 of 2002 by the trial Court, after holding enquiry under Order 40, Rule 1(2) C.P.C. and for stay of the orders. Notice of Motion No.4284 of 2005 was taken out by Hiralal praying for directions to the Court Receiver to take forcible possession of the suit flats with the help of police and for punishing defendants No.5 and 6 for contempt as they parted with possession of the suit flats. Hiralal also prayed in the alternative for referring the matter to the High Court for taking action against defendants No.5 and 6 under the Contempt of

Courts Act, 1971 and for temporary injunction restraining defendants No.1 to 3 from transferring the suit flats or creating third party right, title and interest in the suit flats till the decision of the Suit. All these Motions were clubbed together and were disposed of by common judgment and order dated 01.07.2009. The learned trial Judge dismissed the Notice of Motion No.246 of 2006 taken out by Shashikala as also Notice of Motion No.4785 of 2003 taken out by Shobha and Krishna. Notice of Motion No.4284 of 2005 was partly allowed in terms of prayer clause (a). The Court Receiver was directed to take forcible possession with the help of police, If required, of the suit flats from defendant No.3 - K. J. Alwa, Chairman of defendant No.7 Society. Aggrieved by these decision, Shobha and others instituted Appeal from Order No.690 of 2009 in this Court. By order dated 01.09.2009, this Court dismissed the Appeal. In paragraph 2 of that order, it was observed that Appeal was misconceived and was not tenable because this Court had already held that appellants therein were not necessary parties to the Suit (order dated 12.06.2002 passed by this Court in C.R.A.No.997 of 2002). It was further observed that appellants therein who claim to have title and right to possession of the suit flats, can file separate proceedings to establish and vindicate their rights. The ad-interim order granted by this Court on 15.07.2009 was continued for a period of 4 weeks.

23. In pursuance of the liberty granted by this Court, Shobha instituted Suit No.1988 of 2009 and Shashikala instituted Suit No.1987 of 2009 against the Court Receiver and others. By order dated 21.11.2012 passed by this Court in Writ Petition No.2155 of 2022, Civil Suits No.509 of 2000 and 1988 of 2009 were clubbed together. It appears that Suit No.1987 of 2009 was also clubbed along with Suit No.509 of 2000 and 1988 of 2009. However, Shobha and Shashikala

withdrew Suit No.1988 of 2009 and 1987 of 2009.

24. Earlier discussion clearly depicts that Shashikala, Shobha and Krishna had adopted all possible remedies for protecting their possession over the suit flats. However, they failed in all attempts in protecting their possession. Rather, time and again, direction was issued to the Court Receiver to put the decree holders in possession of the suit flats. The said directions were thwarted unsuccessfully and repeatedly by Shashikala, Shobha and Krishna. While dismissing the Motions, the learned trial Judge also imposed costs of Rs.5,000/- each to be paid to the Legal Services Authority.

25. In the case of *Ramrameshwari Devi Vs. Nirmala Devi*, (2011) 8 SCC 249, the Apex Court has observed in paragraph 43 that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the courts have to ensure that there is no incentive or motive uncalled for litigation. It is a matter of common experience that the court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. In this very judgment, the Court provided that this problem can be solved or at least can be minimized if exemplary costs is imposed for instituting frivolous litigation. It was observed in paragraph 58 that imposition of actual, realistic or proper costs and / or ordering prosecution in appropriate cases would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases, the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.

26. In the case of *Salem Advocate Bar Association Vs. Union of India*, (2005) 6 SCC 344, the Apex Court, in paragraph 37, has observed thus,

“37. Judicial notice can be taken of the fact that many unscrupulous parties take advantage of the fact that either the costs are not awarded or nominal costs are awarded on the unsuccessful party. Unfortunately, it has become a practice to direct parties to bear their own costs. In large number of cases, such an order is passed despite Section 35(2) of the Code. Such a practice also encourages filing of frivolous suits. It also leads to taking up of frivolous defences. Further wherever costs are awarded, ordinarily the same are not realistic and are nominal. When Section 35(2) provides for cost to follow the event, it is implicit that the costs have to be those which are reasonably incurred by a successful party except in those cases where the Court in its discretion may direct otherwise by recording reasons thereof. The costs have to be actual reasonable costs including the cost of the time spent by the successful party, the transportation and lodging, if any, or any other incidental cost besides the payment of the court fee, lawyer's fee, typing and other cost in relation to the litigation.

27. In the light of the above discussion, I do not find any merit in any of the submissions advanced by Mr. Mehta. Mr. Mehta submitted that Shashikala, Shobha and Krishna are strangers. They were not party in S.C.Suit No.509 of 2000 filed by Hiralal. They are not party to the execution proceedings. Warrant of possession is also not issued against them. The Court Receiver, therefore, has no authority to disturb their possession. I also do not find any merit in the submission of Mr. Mehta that Court Receiver was not appointed while disposing the Suit on 22.12.2014 and that there is no order of appointment of Court Receiver, for the reasons indicated earlier. In fact, while decreeing the Suit, the learned trial Judge directed defendant No.7 along with defendants No.2 to 4 to put the decree holders in possession of the suit flats within 15 days, failing which the Court Receiver was directed to put the decree holders in possession of the suit flats. In my opinion, these Petitions are nothing but abuse of process of law as also abuse of process of the Court.

28. As noted earlier, the learned trial Judge decreed Suit No.509 of 2000 and directed defendant No.7 along with defendants No.2 to 4 to put the decree holders in possession of the suit flats within 15 days from the date of the order, if decree holders are not put in possession by the Court Receiver. By the impugned order dated 03.03.2015, the learned trial Judge observed that if judgment debtor No.7 (defendant No.7) failed to comply conditions 1 and 2 then possession warrant with liberty to open locks of the suit flats will be issued on the fourth day of the order. In view thereof, it is necessary to direct the Court Receiver to take possession of the suit flats from whosoever is found in possession of the suit flats by taking police assistance of the concerned police station, if necessary. Court Receiver, if need be, shall break open the locks of the suit flats and put the decree holders in possession of the suit flats.

29. Before parting, it is also necessary to note that Mr. V. G. Mehta appeared for defendant No.7 in the Suit in the trial Court. At that time, it was not pointed out that defendants No.2 to 4 and 7 were not in possession of the suit flats. During the course of hearing of these Petitions, submission was advanced that decree is inexecutable as defendants No.2 to 4 and 7 are not in possession. The learned trial Judge while dismissing the Motions also noted in paragraph 2 that same Counsel of defendants No.2 to 4 and 7 moved the Motions on behalf of Shashikala, Shobha and Krishna. Even the present Petitions were extensively argued by Mr. Mehta. In my opinion, it was not expected from a lawyer of a long standing to appear on behalf of Shashikala, Shobha and Krishna. In my opinion, the conduct of Mr. Mehta in appearing on behalf of Shashikala, Shobha and Krishna in the trial Court as also in these Petitions is virtually bordering on commission of criminal contempt. By appearing on their behalf, it amounts to interference or tends to interfere with the due course of judicial

proceedings. It also amounts to interference with the administration of justice as contemplated by Section 2(c)(ii) and (iii) of the Contempt of Courts Act, 1971. Be that as it may. I do not deem it fit to dwell on this aspect any further.

30. In view of the decisions of the Apex Court in **Ramrameshwari Devi** (*supra*) and **Salem Advocate Bar Association** (*supra*), Petitions are dismissed with compensatory costs of Rs.25,000/- each. The costs shall be paid over to the decree holders within 4 weeks from today, failing which the Collector, Mumbai Suburban District shall recover the same from the petitioners. Office shall forward authenticated copy of this order to the Office of the Collector, Mumbai Suburban District. In case the petitioners challenge this order and obtain any interim relief, the same shall be communicated to the Collector, Mumbai Suburban District.

31. In view of the dismissal of the Petitions, nothing survives in Civil Applications No.1565 of 2015 and 1566 of 2015 and the same are disposed of accordingly.

(R. G. KETKAR, J.)

Minal Parab