

ingale

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO. 439 OF 2015

Smt. Sheela Tulshiram Gaikwad ... Applicant

Vs.

Smt.Ashadevi Shamlochan Gupta and another ... Respondents

Ms.Bhakti Deshpande, Advocate for Applicant.

Mr.Sandesh Patil, Advocate for Respondents.

CORAM : R. G. KETKAR, J.
DATE : 04th AUGUST, 2015

P.C. :

. Heard Ms.Bhakti Deshpande, learned Counsel for the applicant and Mr.Sandesh Patil, learned Counsel for the respondents at length. Rule. Mr.Patil waives service. At the request and by consent of the parties, rule is made returnable forthwith and the Application is taken up for final hearing.

2. By this Application under Section 115 of the Code of Civil Procedure, 1908 (fort short 'C.P.C.'), the applicant has challenged the judgment and decree dated 15/09/2014 passed by the learned Civil Judge, Senior Division, Thane in Special Civil Suit No. 98 of 2012. By that order, the learned trial Judge decreed the Suit instituted by the respondents under Section 6 of the Specific Relief Act, 1963 (for short 'Act').

3. Ms.Deshpande submits that though applicant-defendant

No.1 filed written statement opposing the Suit, she was prevented by sufficient cause from participating in the trial. Defendant No.1 remained absent and failed to cross examine the witnesses examined by the plaintiff. She invited my attention to paragraphs 10, 12, 13 and 15 of the impugned order. Ms.Despande, therefore, submitted that Suit was virtually uncontested by defendant No.1. She submits that the impugned order may be set aside and the Suit may be restored to the file of the learned trial Judge so as to give opportunity to defendant No.1 to contest the Suit. She has no objection for appointing Court Receiver, High Court Bombay in respect of suit premises namely room No. 5 admeasuring 200 sq.ft consisting of ground plus one upper floor having roof of asbestos sheets in Santoshi Mata Chawl, Sathe Nagar, Road No. 22, Wagle Estate, Thane and for appointing plaintiff as an agent of the Court Receiver. She further submits that plaintiff may be directed to pay the necessary monthly compensation @ Rs.1,500/- during the pendency of the Suit.

4. Mr.Patil has no objection for this course being adopted. In view thereof, by consent of the parties, Application is disposed of in the following terms.

- i) The impugned order dated 15/09/2014 passed by the learned Civil Judge, Senior Division, Thane in Special Civil Suit No. 98 of 2012 is quashed and set aside.

- ii) Special Civil Suit No. 98 of 2012 is restored to the file of the trial Court.
 - iii) Receiver, High Court Bombay is appointed as the Court Receiver and plaintiff is appointed as an agent of the Court Receiver in respect of the suit premises with all powers under Order 40 of C.P.C.
 - iv) Defendant No.1 shall hand over vacant and peaceful possession of the suit premises to the Receiver, High Court, Bombay within 2 weeks from today. Receiver High Court Bombay shall appoint plaintiff as an agent of the Court Receiver and forthwith hand over possession to the plaintiff without payment of any royalty.
 - v) The plaintiff will go on paying electricity charges etc. as also monthly compensation @ Rs.1,500/- to defendant No.1 during the pendency of the Suit.
 - vi) The learned trial Judge will permit defendant No.1 to cross examine the plaintiff's witnesses as also lead evidence in support of her case.
5. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)