

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.852 OF 2014

Suresh Vittal Shetty and another

.. Petitioners

Versus

Sheikh Mohamed Sayyed and others

.. Respondents

Mr. Anand Prakash Khanduri, for the Petitioners.

Mr. M. Saeed Kadu, for the Respondents.

CORAM : R.M. SAVANT, J.

DATE : 14th OCTOBER, 2015

PC.

1. The order dated 10.04.2014 passed by the Learned Judge of the City Civil Court, Greater Mumbai, rejecting the Notice of Motion No.2320 of 2013 is taken exception to by way of the above Petition. By the said Motion, the Petitioners/original Plaintiffs had sought relief of decree on admission in terms of Order XII Rule 6 of the Civil Procedure Code. The suit in question has been filed for seeking possession of portion of the suit property being "Room No.D-1 in Ramesh Sadan". In the suit as originally filed, a declaration was sought that the agreement purportedly registered on 13.09.2010 and the Leave and Licence agreement dated 01.05.2010 in respect of the suit premises described in schedule 'A' of the plaint are vitiated by fraud, misrepresentation, deceit, without consideration etc.

Further a order is sought that the purportedly registered agreement dated 13.09.2010 and the Leave and Licence agreement dated 01.05.2010 be delivered up cancelled and set aside. The Defendant Nos.1 and 2 filed their Written Statement sometime in October 2013. It is on the basis of the averments made in the Written Statement that the Plaintiffs sought a decree on admission under Order XII Rule 6 of the Code of Civil Procedure. The sum and substance of the case of the Plaintiffs was that the Defendants have accepted the fact that the Plaintiffs are the owners of "Ramesh Sadan" as well as "Prakash Sadan" and therefore the suit be decreed. The Trial Court has rejected the said application principally on the ground that there is an ambiguity and confusion in between the two properties i.e. "Ramesh Sadan" and "Prakash Sadan". It is the case of the Defendants that the said agreements which are in respect of the "Prakash Sadan". However, the Plaintiffs have sought to confuse the same with "Ramesh Sadan" as the "Ramesh Sadan" has been made the suit property. The Trial Court has therefore observed that there is a confusion in between "Ramesh Sadan" and Prakash Sadan". The Trial Court has adverted to the fact that the Plaintiffs have deleted prayer clauses (a) and (b), wherein the agreement in respect of the property "Prakash Sadan" have been deleted. The Trial Court was of the view that the confusion between the "Prakash Sadan" and "Ramesh Sadan" can only be decided at

the time of hearing of the suit. It has been stated by the Defendants in their reply to the Notice of Motion that the Defendant No.2 is in possession of "Room No.D-1, Prakash Sadan" and the injunction was also granted in respect of the said room. In so far as the decree on admission is concerned, it is well settled that the admission has to be clear and unambiguous so as to entitle the Plaintiffs to a decree on admission. In the instant case, as rightly observed by the Trial Court there seems to be confusion between the two properties i.e. "Prakash Sadan" and "Ramesh Sadan", though both the properties are of the ownership of the Plaintiffs. The Trial Court has rightly observed that the said confusion can only be resolved at the time of hearing of the suit, in that view of the matter, the order passed by the Trial Court rejecting the application for decree on admission cannot be said to suffer from any error of jurisdiction or any illegality or infirmity for this Court to interfere in the Revisionary Jurisdiction. The Civil Revision Application is accordingly dismissed.

[R.M. SAVANT, J]