

IN THE HIGH COURT OF JUDICATURE AT MUMBAI  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.10984 OF 2014

Pravin Bajirao Ghorpade and another                      ...      Petitioners  
Vs.  
Rita Pradeepkumar Pandey                                      ...      Respondent

Mr. Vinay M. Bhate for Petitioners.  
Ms Rita P. Pandey, Respondent in person.

**CORAM : R. G. KETKAR, J.**  
**DATE : DECEMBER 18, 2015**

**P.C. :**

Heard Mr. Bhate, learned Counsel for petitioners and Ms Pandey, respondent in person at length.

2. By this Petition under Article 227 of the Constitution of India, original plaintiffs have challenged the judgment and order dated 09.10.2014 passed by the learned Judge, City Civil Court, Greater Mumbai in Notice of Motion No.4519 of 2013 (wrongly mentioned as 'Notice of Motion No.3613 of 2013') in Short Cause Suit No.3677 of 2011. By that order, the learned trial Judge rejected the Motion taken by the petitioners, hereinafter referred to as plaintiffs, under Order 26, Rule 10-A of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for sending the agreement dated 07.11.2005 allegedly executed by them in favour of the respondent, hereinafter referred to as the defendant, to the State Examiner of Documents for verification of the signature and thumb impressions to be that of the plaintiffs, after comparing the same with admitted specimen signatures and thumb impressions of the plaintiffs.

3. Mr. Bhate submitted that in pursuance of the order dated

19.08.2015, he has moved the trial Court for clarification and the learned trial Judge has clarified that Notice of Motion No.3613 of 2013 filed by the plaintiffs was allowed to be withdrawn with liberty to institute fresh Motion and accordingly, plaintiffs filed Notice of Motion No.4519 of 2013. Mr. Bhate submitted that plaintiffs never executed the alleged agreement and the signatures and thumb impressions upon the said agreement are fake. Defendant is residing in the suit premises since 10.11.2004 on leave and licence basis. Plaintiffs have never sold the suit premises to her.

4. By the impugned order, the learned trial Judge rejected the Motion. In paragraph 9, the learned trial Judge observed that prima facie, signatures and thumb impressions bearing on the agreement are of the plaintiffs. It was further observed that only on the basis of agreement of sale, a person cannot become the owner of the property unless and until the registered sale deed is executed in pursuance thereof. It was further observed that even if there is any agreement of sale in favour of the defendant, it would not come in the way of the plaintiffs to recover possession of the suit property based on the title.

5. Mr. Bhate submitted that the observation in paragraph 9, though made prima facie, that the signatures and thumb impressions on the agreement appear to be of plaintiffs, will come in the way of plaintiffs at the time of final hearing. Apprehension made by Mr. Bhate is baseless. The learned trial Judge has made prima facie observation and while deciding the Suit, the learned trial Judge will consider the evidence on record and will not obviously be influenced by the observations made at interlocutory stage.

6. Mr. Bhate further submitted that on the basis of the agreement of

sale, defendant got unilateral Deed of Declaration dated 09.12.2010 registered. In my opinion, that will not make any difference as basically, the plaintiffs have instituted Suit for declaration of their ownership and for declaration that the Deed of Declaration dated 09.12.2010 registered with the Registrar of Sub-Assurances, Mumbai Suburban District, Borivali is not binding on them as the same is not signed and executed by them.

7. The learned trial Judge, while rejecting the application, observed that for deciding the genuineness of the agreement of sale, it is not necessary to send document to expert in every case and the plaintiffs can be successful by leading evidence. Apart from that, the Court, if it thinks appropriate, can also consider invoking Section 73 of the Indian Evidence Act, 1872. Understood thus, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) C.P.C.

**(R. G. KETKAR, J.)**

*Minal Parab*