

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

REVIEW PETITION (L) NO.73 OF 2012
ALONGWITH
NOTICE OF MOTION NO.1826 OF 2012
ALONGWITH
NOTICE OF MOTION NO.532 OF 2013
IN
SUIT NO.2755 OF 2011

M/s. Smit Properties P. Ltd.	...	Petitioner
Vs.		
Surendra B Sharma	...	Plaintiff
AND		
Smt. Premlata C Sharma & 18 Ors.	...	Defendant Nos. 1 to 18 & 20

Ms. Priyanka Pai, Adv. i/b. Vinod Juwale, Adv. for petitioner.
N R Pradhan, Adv. for respondent No.1.

CORAM : MRS. ROSHAN DALVI, J.
DATE : 21st September, 2015.

P.C. :

1. The petitioner who is defendant No.19 has sought review of my order dated 22nd October, 2012, Exh.A to the petition. The order grants injunction against defendant Nos.1 to 19 restraining them from alienating, encumbering, transferring or creating any third party rights in two properties described in the order. These are properties No.7 and 9 in the list of properties, Exh.b to the plaint which are suit properties.

2. Property at Sr.No.8 is a large property. The plaintiff claims 1/9th share in the estate of the deceased grandmother. Hence Sr.No.8

which is a large property and which was being developed and constructed was not enjoined against sale, transfer or alienation or creation of third party rights.

3. To protect 1/9th share of the plaintiff the property at Sr.Nos.7 and 9 alone were made the subject matters of injunction.

4. Defendant No.19 filed an affidavit in reply to the Notice of Motion. Defendant No.19 had not stated to Court that either of those properties were already sold or conveyed to any other party. The order of injunction came to be passed.

5. The plaintiff filed an appeal therefrom. The appeal has been dismissed and the plaintiff has been directed to withdraw sum of Rs.40 lacs out of Rs.50 lacs which were deposited in the Court.

6. The Review Petition has been taken out prior to the dismissal of the appeal and hence is being contested.

7. It is the case of the petitioner that property at Sr.No.9 has already been sold. Despite this averment in the petition the document showing the sale has not been annexed to the petition. The advocate of the plaintiff states that he has written letters to the advocate for defendant No.19 calling for particulars of the sale and the names of the purchasers. The particulars are not provided.

8. Counsel on behalf of the petitioner tenders to Court a photocopy of a Deed of Conveyance of December, 1992 which does

not show the date of its execution. The conveyance is not shown to be registered. The original conveyance is not produced. Counsel on behalf of petitioner states that original conveyance is lost and the petitioner is not in position to search it. A copy which is produced before the Court without annexing it to the petition is the photocopy of the photocopy of the document.

9. The application made by the petitioner is, therefore, most improper. If there was a sale and if that was not shown to the Court, the Court would pass any order restraining the sale or alienation. Such an order cannot be modified in a review petition. Further upon the petitioner claiming the sale, the petitioner must show a valid sale deed duly registered, sufficiently stamped, dated and produce the original document before the Court. None of these is done.

10. The petition, therefore, lacks bonafides and is accordingly dismissed.

11. The Review Petition as also Notices of Motion are disposed of accordingly.

(ROSHAN DALVI, J.)

C E R T I F I C A T E

Certified to be true and correct copy of the original signed order.