

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO. 40 OF 2015

MRS.VEENABEN R. PAREKH.

... Petitioner

Versus

MR.ATMARAM DHURI.

... Respondent

Mr. J. A. Lobo, Advocate for the petitioner.

Mr. Sudhir Naik, Advocate for the respondent.

Coram:- S. B. SHUKRE, J.

Date:- 10th February, 2016

P.C.

On going through the judgment dated 31/07/2015 passed in Regular Civil Suit No.83/2014 by Civil Judge, Junior Division, Vasco, the judgment, which impugned herein and also the depositions of three witnesses of the plaintiff including the plaintiff (respondent) himself, and after having heard both sides, I find that this is a case wherein identity of the flat allegedly unlawfully occupied by the defendant (petitioner) is in dispute. The defendant does not dispute ownership and possession of the plaintiff in respect of Flat No.F-1, the suit property. But, the defendant seriously disputes the averment that this flat, which is flat no.F-1, is unlawfully occupied by the defendant. According to the defendant, she is the owner in possession of the flat No.M-1 situated in the same building, which flat is on the mezzanine floor and entirely a different property from the suit property i.e. flat No.F-1 situated on the first floor of same building. Therefore, what was necessary for the Trial Court is

to see as to whether or not the plaintiff has proved his case that the defendant is in unlawful possession of flat No.F-1 situated on the first floor and the best evidence to prove such a contention would have been in the nature of report of a Court Commissioner.

2. It is well settled law that whenever in a suit, identification of the suit property is in doubt or in serious dispute, a Court Commissioner must be appointed to inspect the suit property and submit his report so that the facts relating to identity of the suit property are clearly brought on record and the controversy is set at rest completely and finally.

3. The plaintiff has stated on oath that flat no.F-1 is in unlawful occupation of the defendant. But, in a controversy of the present nature, mere assertion of the plaintiff on oath would not be enough. This is because of the fact that ownership and possession of the flat no.F-1 are not being denied by the defendant and the defendant has been asserting that she is the owner in possession of different suit property. Incidentally, the suit property (flat No.F-1) and the mezzanine floor flat i.e. flat No.M-1, were originally owned by one and the same person. He is Mr. M. A. Andrew. He also could have been made a witness of either of the parties to clear the air of doubt about identity of the suit property. Even sanctioned plan of the building could have gone a long way in establishing the identity of the suit property. But, neither Mr. M. A. Andrew has been examined as a witness nor the sanctioned plan of the building has been produced in evidence by the plaintiff. As stated earlier, there was no

Court Commissioner appointed to throw light upon the disputed identity of the suit property. These facts impel me to find, this is a fit case for making interference with the impugned judgment and order. The controversy involved in this case, cannot be resolved unless sufficient evidence is brought on record for establishing the identity of the suit property. The impugned judgment and order, therefore, deserves to be quashed and set aside and the case remanded back to the learned Civil Judge, Junior Division for deciding the suit afresh, in accordance with law.

4. In the circumstances, Civil Revision Application is allowed. The impugned judgment and order are hereby quashed and set aside. The matter is sent back to the learned Civil Judge, Junior Division, for deciding the suit afresh in accordance with law and same shall be done from the stage of recording of evidence of the parties. Learned Civil Judge may also consider appointment of Court Commissioner by keeping in mind the well settled principles of law applicable to the facts of the present case. The suit may be disposed of finally within a period of one year from the date of the appearance of the parties. Parties to appear before the Trial Court on 29/02/2016 at 10.00 a.m.

5. Civil Revision Application is disposed of.

S. B. SHUKRE, J.

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