

IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.70 OF 2016

IN

CIVIL APPLICATION NO.60 OF 2014

IN

CIVIL REVISION APPLICATION NO.50 OF 2013

(Salma Salim Shaikh and others Vs. Gindodebai Jayram Bagaria (decd) and another)

Office Notes, Office Memoranda of Coram, appearances, Court's orders, or directions, and Registrar's Orders	Court's or Judge's orders
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Mr. P. D. Prasad Rao for Applicants.

Mr. R. B. Singh i/b. Mr. S. P. Srivastav for Respondents.

Mr. K. D. Rao Rane, Master (Admin), Court Receiver present.

CORAM : R. G. KETKAR, J.**DATE : 10TH JUNE, 2016****P.C.:**

Heard Mr. Rao, learned Counsel for applicants and Mr. Singh, learned Counsel for respondents.

2. This is an application under Section 151 of the Code of Civil Procedure, 1908 for recalling the judgment and decree dated 13.01.2004 as also the judgment and decree dated 15.01.2010 in R.A.E.& R. Suit No.353/1065/1992 on the ground that the respondent has obtained the decrees fraudulently by posing himself as landlord when in fact, respondent is not the landlord. Mr. Rao submitted that the learned Judge of the Small Causes

Court held that the respondent is not the landlord. He relied upon the judgment and order dated 03.09.2014 passed in R.A.E.Suit No.644 of 2001.

3. Having regard to the fact that the C.R.A. is already disposed of and the applicants have alleged fraud, in my opinion, the appropriate remedy is to institute the Suit to plead and prove fraud. For the first time, in Civil Application, plea of fraud cannot be examined.

4. Realizing this position, Mr. Rao, upon taking instructions from applicant No.3, who is present in the Court, seeks permission to withdraw this Application with liberty to file Suit / appropriate proceedings.

5. On the motion made by Mr. Rao, application is allowed to be withdrawn with liberty as prayed for. It is made clear that I have not examined merits of the case. All the contentions of the parties on merits are expressly kept open. Order accordingly.

(R. G. KETKAR, J.)