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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1539 OF 2015
IN
FIST APPEAL NO.880 OF 2012.

Sidney Francis Gomes

.... Applicant

V/s.

Treasa Samuel and ors

.... Respondents

Mr. Owen Menezes, I/by Mr. R.K. Thakkar, for the
Applicant.

Ms. K. P. Reshma Ravi, for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 04th OCTOBER, 2016.

P.C. :

1. This application is preferred by the original respondent seeking return of the original deed of conveyance dated 2.6.1996. It is submitted that the original deed of conveyance, was brought on record of this Court by the Sub -Registrar's Office when he was examined in the Court and trial Court itself has vide its judgment and order dated 10th April, 2012, specifically directed that original conveyance deed of suit property be returned to Registrar's Office situated at Borivali, Mumbi, after

the appeal period is over. It is submitted that the appeal is preferred and it is pending in the Court. However, meanwhile it is necessary to submit the original conveyance deed before Registrar's office for the purpose of complying with the formalities.

2. According to learned counsel for appellant, no such original conveyance deed was produced before the trial Court at all and how the original conveyance deed has appeared on the record of the trial Court is a matter required to be enquired into. Accordingly complaint application is filed before Registry of this Court for making an enquiry and till enquiry is made, conveyance deed should not be returned to the respondent-plaintiff. To substantiate this submission, learned counsel for appellant has placed reliance on the evidence of witness No.3 for plaintiff namely Prakash Golegaonkar, who has stated that he has brought original conveyance deed. However, he is unable to produce the same unless permission of the superior officer is obtained. It is urged that note made by the trial Court at the end of his cross examination is clear to the effect that witness was allowed to take back conveyance deed which he has brought on that day on condition that he will seek permission of the superior officer and will produce the same in the Court on Monday. According to learned counsel for the appellant, there is no Roznama or

any record to show that the said original conveyance deed was produced on Monday. Hence it is urged that as there is no evidence to show that original conveyance deed was produced on record and as it is suspicious as to how it was introduced on the record, until the enquiry is completed, it should not be returned to the respondent.

4. Submission is also made to the effect that the original conveyance deed was never admitted in evidence or referred as 'exhibit'. It was only marked as "K" for the purpose of identification. Thus, according to learned counsel for appellant, if the Xerox copy of conveyance deed was before the trial Court, there is no explanation how original conveyance deed is found in the record, all of a sudden.

5. The perusal of the judgment and order passed by the trial Court, however, in my view, clearly goes to reveal that trial Court has considered the original conveyance deed and in the judgment and in the operative order paragraph No.3, specifically directed that original conveyance deed of suit property be returned to Registrar's Office, after appeal period is over. It may be true that the trial Court has not exhibited the same. That may be because the contents thereof were not proved or the formalities like lodging of the documents for the purpose of admission

were not complied with. But that does not mean that the original conveyance deed was not produced before the trial Court at all. In such situation, when the impugned judgment and order passed by the trial Court clearly states that original conveyance deed be returned, it follows that such conveyance deed was before the trial Court when the judgment was pronounced.

6. Learned counsel for respondent, in this respect, has also relied upon well established legal position as laid down in **State of Maharashtra -vs- Ramdas Shrinivas Nayak and anr¹**; that judges record is conclusive. Neither lawyer nor litigant may claim to contradict it, except before the Judge himself, but nowhere else.

7. In view thereof, as trial Court itself has given direction for return of original deed of conveyance, there remains nothing to enquire as to how original conveyance deed came in the record of trial Court. In view, thereof, this application is allowed.

8. The office is directed to return original deed of conveyance dated 2.6.1996 as directed by the trial Court, to the office of Sub-

1 (1982) 2 SCC 463

Registrar, Borivali for the purpose of completing requisite formalities as directed by the trial Court.

9. The application is accordingly disposed of finally.

[DR. SHALINI PHANSALKAR JOSHI, J.]