

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 632 OF 2014
WITH
CIVIL APPLICATION NO. 1950 OF 2014**

Jagannath Ramchandra Mejari ... Appellant

vs.

Prakash Ramchandra Mejari & ors. ... Respondents

Mr. S. P. Srivastava, Advocate for the appellant.

Mr. K. S. Shetty, Advocate for respondent no.1.

Mr. Vinay Bhorge i/by Utangale & Co., Advocate for
respondent no.3.

Coram : Smt. R. P. SondurBaldota, J.

Date : 12th April, 2016.

P.C.

1. This first appeal is against the judgment and order dated 28th April, 2014, by which the Bombay City Civil Court decreed the suit filed by the respondent no.1 for a declaration that he is one of the legal heirs of deceased Ramchandra Babu Mejari and for direction to respondent no.2 to enter into a fresh agreement with him along with the appellant for allotment of alternate accommodation in the SRA Scheme, after cancelling the agreement with the appellant and for

direction to respondent no.3 to incorporate the name of respondent no.1 as the joint owner of the permanent alternate accommodation along with the appellant.

2. There is no dispute that respondent no.1 is one of the sons of Ramchandra Babu Mejari and that he is the brother of the appellant. There are two more heirs of Ramchandra being another son and a daughter. It appears that the premises in which father was residing was taken over for redevelopment under a slum redevelopment scheme and Annexure II prepared for the purpose contained the name of the father. During the period of redevelopment, however, the father died and the agreement for alternate accommodation came to be executed by respondent no.2 with the appellant alone. This fact was initially not known to respondent no.1. After respondent no.1 realized the position, he filed the suit herein for the reliefs stated as above.

3. The contest by the appellant to the suit was essentially on two grounds. Firstly, that at the relevant time respondent no.1 was not residing in the premises in lieu of which permanent alternate accommodation made allotted. Therefore, he is not entitled for the same. Secondly the

application made of respondent no.1 for permanent alternate accommodation in respect of another room which was given by the father to him has already been rejected by the authorities. He could not have demanded the share in the permanent alternate accommodation being given to the appellant. The detailed cross-examination of the appellant reveals that there was no independent room given by the father to respondent no.1. Apparently what had happened was the room which was in the name of the father had been divided into two parts, in one part appellant resided and in another part respondent no.1 resided. Later, respondent no.1 shifted to the office quarters and had given his portion of the premises on tenancy to a third party. This would mean that respondent no.1 was in possession of his portion of the room through his tenant. Hence, it cannot be said that he was not in possession of any portion of the premises at the time of redevelopment.

4. The appellant had also contended before the Bombay City Civil Court that the father had given away the room to him by executing an affidavit. The Bombay City Civil Court has by detailed consideration at para 17 of the

impugned order rejected the contention. It has disbelieved the affidavit for several reasons. Firstly, no transfer of immovable property could be effected by execution of a simple affidavit. Secondly, it was an unregistered document. Thirdly, the document not inspire confidence. The signature of the executant on the affidavit carried no identification. It was an unwitnessed affidavit purported to have been signed before "Special Metropolitan Magistrate". There is nothing on record to indicate that the person in whose present the affidavit was allegedly executed was in fact a Special Metropolitan Magistrate appointed under Section 18 of the Code of Criminal Procedure and that his appointment was valid at the relevant time. Besides a Special Metropolitan Magistrate unlike a Special Executive Magistrate enjoys judicial powers. There can be no infirmity in the view taken by the learned Bombay City Civil Court Judge.

5. The record shows that the father of the appellant and respondent no.1 was held eligible under SRA Scheme and his name reflected in Annexure II. He died in the year 2006. At the time of his death, he was entitled to permanent alternate premises in lieu of the old premises, which was to

be allotted in the SRA Scheme in the rehabilitation component. This right of the father for allotment of permanent alternate accommodation, on his death devolved upon his Class - I heirs who are the appellant, respondent no.1, their brother and sister. Respondent has in recognition of everybody's share claimed only 1/4th share in the room. As such, there is no infirmity, whatsoever, in the impugned judgment and order. Thus, the appellant has not raised any arguable question either of fact or law to challenge the impugned judgment and decree. Hence, the first appeal is dismissed.

6. In view of dismissal of the appeal, Civil Application No. 1950 of 2014 does not survive. The same is accordingly disposed off.

[Smt. R. P. SondurBaldota, J.]