

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12932 OF 2016

Gul Rupchand Kriplani ... Petitioner
Vs.
Mayur Mangaldas Kothari and others ... Respondents

Mr. Aditya A. Thakkar i/b. Mr. S. J. Khera for Petitioner.
Ms Deepti Panda a/w. Ms Khyati Pandit i/b. Dhru & Co. for Respondent No.1.
Mr. A. N. Narula i/b. J. N. Narula & Associates for Respondent No.2.
Mr. Suresh Chandra Shekhar a/w. Ms Li Shu Fen for Respondent No.5.
Ms Adeline Rodrigues, Respondent No.5 in person.

CORAM : R. G. KETKAR, J.
DATE : DECEMBER 07, 2016

P.C. :

Heard Mr. Aditya Thakkar, learned Counsel for petitioner, Ms Deepti Panda, learned Counsel for respondent No.1, Mr. A. N. Narula, learned Counsel for respondent No.2, Mr. Suresh Chandra Shekhar, learned Counsel for respondent No.5 and Ms Adeline Rodrigues for respondent No.5 in person at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant No.8', has challenged the judgment and order dated 09.12.2015 below exhibit-52 as also the judgment and order dated 09.12.2015 below exhibit-54 in Suit No.7034 of 1998 passed by the learned Judge, City Civil Court, Dindoshi, Mumbai. By order dated 09.12.2015, the learned trial Judge rejected the application exhibit-52 made by the defendant No.8 for framing additional issues on the ground that he has filed amended written statement on 22.12.2012. The learned trial Judge rejected the application mainly on the ground that dispute is essentially between plaintiff on one hand and defendants No.1 to 4 on the other.

3. Mr. Thakkar has taken me through paragraphs 9 and 10 of the plaint. In paragraph 9, reference is made to the Memorandum of Understanding dated 31.01.1992 entered into between defendant No.4 on one hand and defendants No.2 and 3 on the other. In paragraph 10, it is asserted that under the MOU, defendant No.4 inter alia agreed to sell, transfer, release, relinquish and / or surrender to the defendants No.2 and 3 or their nominee/s on "as is where is" basis, the Meherabad Property. My attention is also drawn to the MOU dated 31.01.1992, and in particular clause 3 thereof. Clause 3 provided that defendant No.4 Rusi agrees to sell, transfer, release, relinquish and / or surrender to Janis (defendants No.2 and 3) and / or their nominee/s on an 'as is where is' basis, all his share, right, title and interest of whatsoever nature under the Will or otherwise in the Meherabad Property subject to the alleged claim of defendant No.4 herein who is occupying the ground floor and one of the structures as also garage and outhouse in Meherabad Property and who also claims that the said property was agreed to be sold to him.

4. As noted earlier, the learned trial Judge has rejected the application exhibit-52 principally on the ground that the dispute is between plaintiff on one hand and defendants No.1 to 4 on the other.

5. Mr. Thakkar submitted that by prayer clause (a), plaintiff has sought injunction restraining defendants No.2 to 8 from creating third party interest in Meherabad Property, and therefore, defendant No.8 is entitled to oppose the Suit by raising all contentions that are available to him in law.

6. After perusing the material on record, I am satisfied that the dispute is essentially between plaintiff on one hand and defendants No.1 to 4, and therefore, I do not find that the learned trial Judge committed

any error in rejecting the application exhibit-52. However, it will be open to the defendant No.8 to agitate the contentions that are available to him in law. As far as the order below exhibit-54 is concerned, the learned trial Judge has observed in order dated 09.12.2015 that the effect of the conduct of the plaintiff in his cross-examination at the hand of the defendant No.8 will be considered at the time of deciding the Suit finally. The learned trial Judge reserved liberty to the defendant No.8 to argue this point at the time of final argument. As this order sufficiently protects interest of defendant No.8, I do not find any reason to interfere with this order. Hence, subject to the above clarification, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

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