

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

CIVIL REVISION APPLICATION NO. 152 OF 2016

Smt. Maniben Dama (Rathod)	... Applicant
V/s.	
Shri. Bikha alias Bhibhabhai Naran	... Respondent

Mr. P. V. Bhalerao for the Applicant.

CORAM : K. K. TATED, J.
DATED : 08/07/2016

PC.:

. Not on board. At the request of Advocate for the applicant, matter is taken on board for urgent orders.

2 By this Civil Revision Application, applicant defendant and obstructionist challenges the order dated 05.10.2015 passed by the Civil Judge, Senior Division, Diu below Exhs. 10, 14, 26 & 80 in Regular Execution Application No. 2 of 2016.

3 In the present proceeding, the Trial Court passed Judgment and Decree dated 17.04.2003 in Regular Civil Suit No. 20 of 1997 directing defendant/Judgment Debtor to deliver the possession of the suit property i.e. 22 sq. mtrs situated at Vekaria, Diu to the plaintiff/Decree Holder.

4 The said Judgment and Decree was challenged by the defendant before the Appellate Court. The Appeal was dismissed on the ground of delay. Thereafter, as the defendant failed and neglected to comply

the Judgment and Decree dated 17.04.2003 passed by the Trial Court in Regular Civil Suit No. 20 of 1997, the plaintiff filed Regular Execution Application No. 2 of 2006. In that execution application, the defendant and obstructionist preferred applications below Exhs. 10, 14, 26 and 80 on several grounds. Those applications were dismissed by the Trial Court by common order dated 05.10.2015. Hence, the present Civil Revision Application.

5 The learned Counsel for the applicants submits that application below Exh. 10 dated 18.04.2007 filed by Judgment Debtor on the ground that Judgment and Decree dated 17.04.2003 passed by Trial Court on the basis of sale deed, was bad in law. He submits that the sale deed was executed by the defendant without consent of his wife and other legal heirs. Exh. 14 dated 16.11.2007 was filed by the defendant under Section 47 of Code of Civil Procedure, 1908 for setting aside the Judgment and Decree passed by the Trial Court. The Judgment Debtor along with objector filed Exh.26 under Order 21 Rule 97 of Code of Civil Procedure, 1908 challenges the Judgment and Decree dated 17.04.2003 in Regular Civil Suit No. 20 of 1997. These applications filed by the Judgment Debtor and Objector on following grounds:

“A) The suit property which is described in the plaint and execution application does not belong to the opponent No.1 decree holder.

B) The decree holder-opponent no.1 has not become the owner of the property on the strength of so called sale deed dated nil which is produced in the suit vide exhibit 16.

C) The opponent No.1 decree holder has not been ever in possession of suit property.

D) The so called sale deed of Rs.99/- is fabricated and false documents and never signed by the seller of the property.

E) It is respectfully submitted that the original owner was the father of the applicants and opponent no.2 and 3 were not the only owner and possession of the suit property, the applicants are also the legitimate sons of the deceased father and opponent no.2 and 3 have no powers and/or authority to sell the disputed property.

F) The applicants are the legal heirs of the suit property and it is submitted as per the case of the opponent No.2 and 3 the amount has already been paid to the opponent No.1 in the presence of the community leaders and the opponent No.1 has no right, title and interest in the suit property.

G) The applicant submit that all the applicants were necessary parties in the suit and they have not been joined because the applicants are the owners and in possession of the suit property.

H) The applicants most respectfully submit that the description of the property is also not tally with the correct boundaries of the property and it can be said that the so called sale deed is bogus and fabricated.

I) The opponent No.2 and 3 have no right, title and interest of sale the property neither to the decree holder or anybody else.

J) The applicant respectfully submit that the decree passed in R.C.S. No. 20/1997 is not binding to the applicants and it is ab-initio-void and it is obtained by the decree holder-opponent No.1 by committing fraud. Actually the so called sale deed is not pertaining to the suit property.

K) The applicant submits that the decree holder-opponent no.1 has also played a fraud with the Enquiry Officer, and illegally confirmed his name without the consent and notice to the applicants and hence the opponent No.1 is not the real owner of the suit property.

L) The applicant submits that the said decree

is not executable against the applicants and they are the joint owners and in actual and physical possession of the suit property.”

6 The defendant preferred Exh.80 dated 21.10.2013 under Section 47 of Code of Civil Procedure, 1908 for setting aside the decree on the ground that the plaintiff filed Regular Civil Suit No. 20 of 1997 only against two legal heirs of deceased Dhama Govind, while other legal heirs were not joined in said suit.

7 Bare reading of applications below Exhs. 10,14,26 & 80 show that defendant obstructionist seeking review of Judgment and Decree dated 17.04.2003 passed in Regular Civil Suit No. 20 of 1997. That is not allowed when the Appeal filed by the defendant was dismissed. Therefore, defendants not preferred any further appeal.

8 Considering this fact, I do not find any substance in the present Civil Revision Application to interfere with the well reasoned order dated 05.10.2015 passed by the Civil Judge, Senior Division, Diu.

9 Hence, Civil Revision Application stands rejected.

(K.K.TATED, J.)