

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 475 OF 2003

Shri Antayya Gangu Shetty
(Dead) through legal heirs

1A. Smt. Padmavathi Shetty & Ors. .. Appellants

vs.

Shri Gulam Hussain Mirza
Hussain & Ors.

.. Respondents

WITH
CIVIL APPLICATION NO. 4339 OF 2002
WITH
CROSS OBJECTION (STAMP) NO. 11491 OF 2003
WITH
CIVIL APPLICATION NO. 1262 OF 2006
WITH
CIVIL APPLICATION NO. 2882 OF 2011
WITH
CIVIL APPLICATION NO. 3215 OF 2015

Mr. Albert I. Talegawkar with Sarit A. Talegawkar i/b. Bhaishankar Kanga & Girdharlal Appellants.

Mr. Prakash Shetty – Appellant No. 1B present in person.

Mr. Chandra Shety – Appellant No. 1E present in person.

Mr. Niranjana Mogre for Respondent Nos. 1 to 5.

Ms M. R. Bhoir for MCGM.

CORAM : M. S. SONAK, J.

DATE : 03 APRIL 2017

P.C :

1] Learned counsel for the appellant points out that in B.C.C.C L. C. Suit No. 2633 of 1971, learned trial Judge, had ordered deletion of Municipal Corporation of Greater Mumbai (MCGM). However, as a matter of abundant caution the MCGM had been impleaded as respondent to this Appeal. Learned counsel for the

appellant, now seeks leave to delete the MCGM as respondent in this Appeal. Leave is granted. Necessary amendment to be carried out forthwith.

2] Learned counsel for the parties hand in consent terms which are taken on record and marked as 'X' for the purposes of identification.

3] The consent terms are signed by all the parties and their Advocates. The consent terms have also been signed by the respondent no. 4, who is the duly constituted power of attorney on behalf of respondent nos. 1, 2, 3 and 5.

4] On the last occasion, all the appellants were present in the Court and they have stated that they have signed the consent terms after understanding their true scope and import. Today, appellant No. 1B and 1E are present in the Court.

5] On the last date, the consent terms were returned, since, they had been signed by the son of respondent no.4 who claim to have a power of attorney not only on behalf of respondent no. 4 but also on behalf of the remaining respondents. Rather than, go into the controversy as to whether the respondent no. 4 had the authority to delegate his powers in favour of his son, the consent terms were

returned, so as to enable the respondent no. 4 to sign on behalf of himself and on behalf of other respondents who have given the power of attorney in his favour. Accordingly, this exercise has been carried out. The respondent no. 4 is unable to remain present in the Court on account of health issues. Accordingly, these consent terms have been signed before a Notary Public. The son of the respondent no. 4 is present in the Court.

6] The undertakings in paragraphs 7 and 12 of consent terms are accepted as undertakings to this Court.

7] It is made clear that nothing in these consent terms shall bind the MCGM.

8] Order and decree be drawn up accordingly.

9] The Appeal is disposed of in terms of the consent terms. No order as to costs.

10] In view of disposal of the Appeal, pending civil applications and cross objections do not survive and the same are disposed of accordingly.

(M. S. SONAK, J.)