

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 3867 OF 2016
IN
FIRST APPEAL NO. 76 OF 2010

Empire Estate Co-op. Housing Society Ltd.	..	Applicants
<u>In the matter between :</u>		
Empire Estate Co-op. Housing Society Ltd.	..	Appellants
vs.		
Mr. Prakash Ramchandra Advani & Ors.	..	Respondents

Ms Rashmi Patil, Simeen Shaikh i/b. S. K. Srivastav & Co. for
Applicants / Appellants.
Ms Ashwini Hariharan i/b. HAS Advocates for Respondent Nos.1
to 5.

CORAM : M. S. SONAK, J.
DATE : 21 MARCH 2017

P.C :

1] Heard learned counsel for the parties.

2] By this Civil Application, the applicants seek following reliefs:

“a) That the Original Agreement dated 22.11.1963 and Original Sale Deed dated 06.01.1964 entered between Great Western Housing Corporation and Late Mr. Laxmikant Dhage father of Mr. Ashadeep Laxmikant Dhage, the Hon'ble Jt. Secretary of the Applicants to be return;

b) That the Hon'ble court may permit the Applicants to file the notarized copies of the Agreement dated 22.11.1963 and the Original Sale Deed dated 06.01.1964 entered between Great Western Housing Corporation and Late Mr. Laxmikant Dhage father of Mr. Ashadeep Laxmikant Dhage, the Hon'ble Jt. Secretary of the Applicants as soon as the original documents are return to the Applicants.”

3] Order XIII Rule 9 of CPC, reads thus :

“9. Return of admitted documents.— (1) Any person, whether a party to the suit or not, desirous of receiving back any document, produced by him in the suit and placed on the record shall, unless the document is impounded under Rule 8, be entitled to receive back the same—

(a) where the suit is one in which an appeal is not allowed, when the suit has been disposed of; and

(b) where the suit is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred when the appeal has been disposed of:

Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying there for —

(a) delivers to the proper officer for being substituted for the original:

(i) in the case of a party to the suit, a certified copy, and

(ii) in the case of any other person, an ordinary copy, which has been examined, compared and certified in the manner mentioned in sub-rule (2) or Rule 17 of Order VII, and

(b) undertakes to produce the original, if required to do so:

Provided also that a copy of the decree and of the judgment filed with the memorandum of appeal under Order XLI, Rule I, may be returned after the appeal has been disposed of by the Court:

Provided also that no document shall be returned which, by force of the decree, has become wholly void or useless.

(2) On the return of a document admitted in evidence, a receipt shall be given by the person receiving it.”

4] The applicants in paragraphs 7 and 8 of the Civil Application have furnished the following undertakings :

“7. The Applicants undertake to file Notarized copies of the Agreement dated 22.11.1963 and the Sale Deed dated 06.01.1964 in the court records as soon as the original documents are return to him from the court.

8. The Applicants also undertake to bring the Original Agreement dated 22.11.1963 and the Sale Deed dated 06.01.1964 as when it is require by this Hon'ble Court.”

5] The aforesaid undertakings are accepted as undertakings to this Court. The applicants are directed to file notarized copies of the agreement and sale deed in the Registry, before, they can receive the original documents.

6] Since, in this case, there is sufficient compliance with the provisions contained in Order XIII Rule 9 of CPC, Civil Application is made absolute in terms of prayer clauses (a) and (b).

7] In the aforesaid circumstances, the Civil Application is disposed of.

(M. S. SONAK, J.)

Chandka