

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

**WRIT PETITION NO. 3879 OF 2015
with
CIVIL APPLICATION NO. 1095 OF 2015 IN WP/3879/2015**

Smt. Saraswati Sadashiva Nair

..Petitioner.

Vs

Ashok Venkat Reddy

.. Respondent

Ms Neeta Karnik i/b Rajesh Mudholkar, Advocate for Petitioner.
Mr. Rajesh S. Datar, Advocate for Respondent.

**CORAM : R.G.KETKAR,J.
DATE : 20/01/2017**

PC:

1. Not on Board. At the request of Ms.Karnik, taken up for admission. Heard Ms.Neeta karnik, learned counsel for the petitioner and Mr.Rajesh Datar, learned counsel for respondent at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as defendant/appellant, has challenged the Judgment and order dated 18.10.2014 passed by the learned District Judge-8, Thane, below Exhibits 18, 20 and 22 in Civil Appeal No.273 of 2012. By that order, the learned District Judge rejected the application Exhibit-18 made by the defendant for framing issues of tenancy and about arrears of rent. The learned District Judge also dismissed the application-Exhibit-20 taken out by the defendant for amending the written statement so as to

incorporate paragraphs 12(A) and 12(B) in the written statement. The learned District Judge also dismissed the application Exhibit 22 filed by the defendant for impleadng (i) Mr Indravadan Dayalji Gandhi, (ii) Mr Promodchandra Dayalji Gandhi, and (iii) Mr Jeetendra Dayalji Gandhi as party defendants. The plaintiff resisted the applications and after hearing both sides, the learned District Judge, by common order, dismissed the applications.

3. In support of this petition, Ms Karnik has taken me through the written statement filed by the defendant as also application Exhibits 18, 20 and 22. She submitted that Mr. Indravadan Dayalji Gandhi executed conveyance deed in her favour on 8.7.1992. Deed of confirmation was executed on 25.2.1999. She submitted that her husband Sadashivan Nair expired on 27.2.2014. While searching papers pertaining to claim of insurance of her husband, she came across documents pertaining to the suit property in the suite-case of her deceased husband. The defendant, therefore, took out application Exhibit-18 for framing issues of tenancy on the ground that the learned trial Judge did not frame issue as to whether the defendant is a tenant in the suit property and whether the plaintiff proves that the defendant is in arrears of rent. Instead of framing these issues, the trial Court proceeded on the issue of specific performance of agreement. The defendant therefore took out application for framing these issues.

The defendant also filed application Exhibit 20 for amending the written statement so as to incorporate paragraphs 12(A) and 12(B) and bringing on record conveyance deed dated 8.7.1992 and registered deed of confirmation dated 25.2.1999. The defendant also filed application Exh.22 under Order I, Rule 10 for impleading Indravadan Dayalji Gandhi, Jeetendra Dayalji Gandhi as defendant in the suit. By the impugned order, the learned District Judge has dismissed the application. She submitted that it is absolutely necessary to allow the applications filed by the defendant as the defendant is the owner of the suit property by virtue of conveyance deed dated 8.7.1992 as also registered deed of confirmation dated 25.2.1999. The said plea could not be taken as the documents were not in the custody of the defendant. The defendant's husband was appointed as power of attorney to look after the suit. For all these reasons, she submitted that the applications deserve to be allowed by setting aside the impugned orders.

4. On the other hand, Mr. Datar has taken me through the written statement filed by the defendant on 7.3.2007. In the written statement, the defendant specifically contended that the plaintiffs are bound to follow terms and conditions of the agreement dated 2.6.1999. That agreement was executed by the plaintiff in favour of the defendant. The plaintiff agreed to sell

the suit property in favour of the defendant. He submitted that in the entire written statement, the defendant did not come with the case that she had purchased the property from Gandhi by Conveyance Deed dated 8.7.1992 and that registered confirmation deed was executed on 25.2.1999. He, therefore, submitted that no case is made out for interfering with the impugned order.

5. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. The plaintiff had instituted the suit against the defendant for recovery of possession of the suit property. The defendant came with the case that the plaintiff had agreed to sell the suit property to the defendant by executing agreement of sale on 2.6.1999. Perusal of the written statement dated 7.3.2007 shows that the defendant did not plead her case that she became owner on the basis of the conveyance deed dated 8.7.1992 and registered deed of confirmation dated 25.2.1999. In the application Exh.20 the defendant gave explanation to the effect that her husband expired on 27.2.2014. While searching papers pertaining to claim of insurance of her husband, she came across documents pertaining to the suit property. Documents were found in the suite-case of her deceased husband. At that time, she got documents (1) Power of Attorney dated 6.7.1992 (2) Receipt

dated 25.2.21999 and (3) Conveyance Deed dated 8.7.1992 and (4) Deed of confirmation dated 25.2.1999. Thus, reason given by the defendant is totally unacceptable. If at all, the defendant became owner of the suit property on the basis of conveyance deed dated 8.7.1992, she would not have entered into transaction with the plaintiff for purchasing the suit property, more so when even deed of confirmation was executed on 25.2.1999 and the plaintiff executed agreement of sale in favour of defendant on 2.6.1999. In view thereof, I do not find that the learned District Judge has committed any error in passing the impugned order. Hence, petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of proceedings as contemplated by Section 105(1) of C.P.C.

6. In view of dismissal of Petition, Civil Application No.1095 of 2015 in Writ Petition No.3879 of 2015 does not survive and the same is disposed of.

(R.G.KETKAR, J.)