

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.261 OF 2017

Indumati Taranath Padate & Anr.	 Applicants
V/s.	
Arun Taranath Padte & Ors.	 Respondents

Mr. K.J. Tiwari for the Applicants.

Mr. Ashwin Shete, a/w. Mr. Santosh Avhad and Ms. Apoorva Yadav, i/by
M/s. Jaykar & Partners, for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 2ND APRIL 2018.

P.C. :

1. Heard Mr. Tiwari, learned counsel for the Applicants, and
Mr. Shete, learned counsel for the Respondents.

2. By this Revision Application, filed under Section 115 of the Code of
Civil Procedure, 1908, the Applicants are challenging the order dated
25th October 2016 passed by the 2nd Joint Civil Judge, Senior Division,
Alibag, below the application at “Exhibit-59” in Special Civil Suit No.65
of 2015.

3. The application at “Exhibit-59” was filed by the present Applicants
before the Trial Court for cancellation of the 'Gift-Deed' dated 22nd
January 2014, executed by the Applicants in favour of Respondent No.1.
The very Suit filed by the Applicants is for cancellation of the 'Gift-Deed'

and at the interim stage itself, Applicants are seeking cancellation of the 'Gift-Deed' and, therefore, it was without saying that, at such an interim stage, the main relief, which the Applicants are claiming in the Suit, cannot be granted.

4. Secondly and most importantly, the reason why the Applicants are seeking cancellation of the 'Gift-Deed' is that, Respondent No.1 being the OCI Card-holder, he cannot acquire the landed property in India. For this purpose, the reliance is placed on the photocopy of the 'OCI Card' in the name of Respondent No.1 to show that, at present, he is residing in U.S.A. and doing the private business; whereas, the 'Gift-Deed' pertains to the agricultural land and, therefore, it is submitted that, there is clear violation of the provisions of the Foreign Exchange Management Act, 1999, (*for short, "FEMA"*). The 'Gift-Deed' is, thus, on the face of it, not legal and valid and, therefore, it is required to be cancelled. In paragraph No.15 of the application filed before the Trial Court, the Applicants have stated as follows :-

"15. Further, Your Honour, as per Section 6(3)(1) of the FEMA Act, 1999 as well as the notification contained in Notification No.FEMA21/2000-RB dated May 3, 2000, as amended from time to time, as stated above, an OCI Card-holder cannot acquire agricultural land property by way of gift, the fraudulently obtained 'Gift-Deed' dated 22.01.2014 may be declared as null and void and mutation entry No.1305 dated 6.2.2014 without an application to that effect, is void ab initio may be

cancelled and the suit property may be ordered to be reverted back in the name of plaintiff Smt. Indumati Taranath Padate."

5. In this Revision Application also, the Applicants are seeking the following reliefs :-

- (a) The present application may be admitted and allowed finally;*
- (b) To declare that there is a violation of mandatory provision of FEMA, 1999, by the wrong doer Arun Taranath Padte and Mrs. Neelam Arun Padte;*
- (c) To declare the 'Gift-Deed' dated 22.01.2014 as null and void and consequent direction to cancellation of the mutation entry No.1305 of 2014 at Vill : Gunjis Alibag Raigad;*
- (d) Direction to the Enforcement Director to expedite the application in the interest of justice, alternatively;*
- (e) That this Hon'ble Court may be pleased to recall the records and proceedings in respect of the Special Civil Suit No.65 of 2015 filed by the Applicant before the 2nd Joint Civil Judge, Senior Division, Alibag at Raigad."*

6. Thus, at the outset itself, it has to be stated that, if the Applicants are challenging the execution of the 'Gift-Deed', merely because it is in violation of the provisions of FEMA and on that count, here in the present case also, the Applicants are seeking direction to the Enforcement Director, under the FEMA, to expedite the application,

which is filed by the Applicants before the said Authority, raising the grievance about this 'Gift-Deed', then, this Court cannot, in its revisional jurisdiction, under Article 227 of the Constitution of India, give such direction.

7. Secondly, if the grievance of the Applicants is that, because of violation of the provisions of FEMA, the 'Gift-Deed' is not legal and valid, then, in that case, as rightly held by the Trial Court, the provisions of Section 13 of the FEMA will take care of the same; because, the said Section provides for the penalty and Section 44 of the FEMA bars the jurisdiction of the Civil Court to entertain any such dispute against the order of the 'Adjudicating Authority'.

8. In that view of the matter, the Trial Court has rightly rejected the Applicants' application for cancellation of the 'Gift-Deed' at the interim stage. Therefore, no interference is warranted in the impugned order passed by the Trial Court.

9. The Revision Application, being without merits, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]