

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.198 OF 2017

Firoz Sahajada Khan	...	Applicant
Vs.		
Mohan Chandrakant Sawant	...	Respondent

WITH

CIVIL REVISION APPLICATION NO.227 OF 2017

Firoz Sahajada Khan	...	Applicant
Vs.		
Dilip Chandrakant Sawant	...	Respondent

WITH

CIVIL REVISION APPLICATION NO.231 OF 2017

Firoz Sahajada Khan	...	Applicant
Vs.		
Mohan Dhondur Sawant	...	Respondent

Mr. Lulia V. Tikamdas a/w. Ms P.D.Madhuwani for Applicant in all C.R.As.

CORAM : R. G. KETKAR, J.

DATE : MARCH 13, 2018

P.C. :

Heard Mr. Lulia, learned Counsel for applicant in all Civil Revision Applications at length.

2. By these applications filed under Section 115 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), applicant, hereinafter referred to as 'plaintiff', has challenged the judgment and decrees dated 18.10.2016 passed by the appellate bench of the Small Causes Court at Mumbai in P. Appeal No.25 of 2013, P. Appeal No.28 of 2013 and P. Appeal No.26 of 2013. By these orders, the appellate Court allowed the appeal preferred by the respondent, hereinafter referred to as 'defendant', and

quashed and set aside the judgment and decrees dated 28.01.2013 passed in L.E.Suit No.104/113 of 1994, L.E.Suit No.105/114 of 1994 and L.E. Suit No.106/115 of 1994. The appellate Court dismissed the Suits instituted by the plaintiff. Since common questions of law and facts arise in these Applications, the facts from C.R.A.No.198 of 2017 is taken into consideration for the sake of convenience and brevity.

3. In support of this Application, Mr. Lulia submitted that originally Suit was instituted by Vijay Ravji Sawant (for short 'original plaintiff') through the present applicant as his Constituted Attorney. The original plaintiff asserted that he is the owner of the 'Sawant House' situate on the land bearing Survey No.15, Hissa No.B-1 Part, C.T.S.No.309 part of Village Asalpa, Ghatkopar (West), Mumbai 400 084 in all admeasuring 105 sq.mtrs. Original plaintiff contended that defendant is his close relative and on account of close relationship, defendant was allowed to use and occupy room No.1 of Sawant House jointly with him without charging any compensation for the same. He submitted that during the pendency of the Suit, plaint was amended and paragraphs 8(a) to 8(f) were added. He submitted that defendant filed written statement on 03.02.1994. In paragraph 1, defendant denied that the original plaintiff is the sole owner of Sawant House. In other words, defendant clearly admitted that original plaintiff is co-owner of Sawant House. He submitted that after the plaint was admitted and paragraphs 8(a) to 8(f) were added, defendant did not file additional written statement dealing with these assertions. As the defendant did not deny the ownership of the original plaintiff, the ownership is deemed to have been admitted. The learned trial Judge, after considering the several judgments cited before him, decreed the Suit and directed the defendant to handover possession of the suit premises.

4. As against this, the appellate Court dismissed the Suit on the ground that there is no relationship of licensor and licensee between the present applicant and the defendant. The appellate Court came to this conclusion on the ground that present applicant claims ownership on the strength of - (i) Affidavit dated 29.12.1992, (ii) Special Power of Attorney dated 02.01.1993 and (iii) General Power of Attorney dated 28.05.1996. He submitted that as the defendant admitted ownership of the plaintiff, the said issue was not open for consideration by the appellate Court. The appellate Court, therefore, was not justified in interfering with the trial Court's well-reasoned order.

5. I have considered the submissions advanced by Mr. Lulia. I have also perused the material on record. As noted earlier, originally, Suit was instituted by Vijay Ravji Sawant through the present applicant as his Constituted Attorney. It is in that context, one has to appreciate the assertions made in the plaint and in particular paragraphs 1 to 3 and paragraphs 8(a) to 8(f) as also the written statement dated 03.02.1994 filed by the defendant. From the perusal of the appellate Court's judgment, it is evident that present applicant came with the specific case that he became owner / licensor in respect of the suit premises on the basis of the affidavit dated 29.12.1992, Special Power of Attorney dated 02.01.1993 and General Power of Attorney dated 28.05.1996. The appellate Court considered each document on the basis of which present applicant claimed ownership. In so far as affidavit dated 29.12.1992 is concerned, the appellate Court recorded that the same is scribed on stamp paper of Rs.5/- and is not a registered instrument. It, therefore, cannot be considered as a sale deed or indenture of conveyance. This aspect is considered by the appellate Court in paragraphs 20 to 22.

6. The appellate Court thereafter considered Special Power of

Attorney dated 02.01.1993 in paragraph 23 and held that it cannot be considered to be conveyance in favour of the present applicant. In paragraph 24, the appellate court considered General Power of Attorney dated 28.05.1996, which is executed after instituting the Suit. The appellate Court held that mere Power of Attorney cannot be treated as a document of conveyance. In paragraph 25, the appellate Court noted that Special Power of Attorney was executed on 02.01.1993 and General Power of Attorney was executed on 28.05.1996 and the executant Ravji Laxman Sawant died on 20.12.1999 during the pendency of the Suit. As the executant of the Power of Attorney expired, these documents are of no consequence.

7. In the case of ***Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana***, AIR 2012 SC 206, the Apex Court has observed thus,

“Immovable property can be legally and lawfully transferred / conveyed only by a registered deed of conveyance. Transactions of the nature of ‘General Power of Attorney Sales’ or ‘Sale agreement/WILL transfers’ do not convey title and do not amount to transfer, nor can they be recognized as valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of Section 53A of the TP Act.”

8. For the reasons recorded by the appellate Court, I do not find that the appellate court committed any error in dismissing the Suit. In view of the aforesaid discussion, no fault can be found with the impugned orders. Hence, Applications fail and the same are dismissed.

(R. G. KETKAR, J.)