

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.316 OF 2017

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| 1. Manjulaben Shah, |] |
| Occ. Housewife, Indian Inhabitant, |] |
| R/at Bangali Building, 2 nd Floor, |] |
| Chandavarkar Road, |] |
| Borivali (West), Mumbai – 400 092. |] |
| 2. Julie Bhagirath Kasvada, |] |
| Indian Inhabitant, |] |
| R/at Rajendra Complex, 1 st Floor, |] |
| Anand Nagar, Dahisar (East), |] |
| Mumbai 400 068. |] |
| 3. Vaishali (Poonam) Vishal Parmar, |] |
| Indian Inhabitant, |] |
| R/at B/401-402, Sai Dham, |] |
| Carter Road – 3, Borivali (East), |] |
| Mumbai 400 066. |] |
| 4. Balkrishna Shetty, |] |
| Indian Inhabitant, |] |
| The Landlord of Soni House, |] |
| R/at Chandavarkar Lane, |] |
| Borivali (West), Mumbai 400 092. |] |
| 5. Shankar Shetty (Since Deceased), |] |
| Through LRs :- |] |
| 5a. Indira Shetty, |] |
| Indian Inhabitant, |] |
| R/at Soni House, |] |
| Chandavarkar Lane, |] |
| Borivali (West), Mumbai 400 092. |] |

5b. Jivesh Shetty,	]
Indian Inhabitant,	]
R/at Soni House,	]
Chandavarkar Lane,	]
Borivali (West), Mumbai 400 092.	]
5c. Smriti Sachin Shetty,	]
Indian Inhabitant,	]
R/at 4, Vinod Apartments,	]
Raghavji Road, Opp. Khambala Hill	]
Hospital, Govalia Tank, Mumbai.	]
6. Indira Shetty,	]
Indian Inhabitant,	]
R/at Soni House, Chandavarkar Lane,	]
Borivali (West), Mumbai 400 092.	]
7. Jivesh Shetty,	]
Indian Inhabitant,	]
R/at Soni House, Chandavarkar Lane,	]
Borivali (West), Mumbai 400 092.	] Applicants

Versus

Madhuriben Meghji Shah,	]
Adult, Indian Inhabitant,	]
Occ. Housewife,	]
Previously residing at Flat No.A/5,	]
Soni House, Chandavarkar Lane,	]
Borivali (West), Mumbai 400 092.	] Respondent

Mr. Y.S. Jahagirdar, Senior Advocate, a/w. Mr. S.S. Kanetkar, i/by
Mr. Uday G. Jaguste, for the Applicants.

Mr. Vinit B. Naik, Senior Advocate, a/w. Mr. Luliya, Mr. Sukand R.
Kulkarni, i/by M/s. Lulia Vashev Tikamdas, for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 30TH JANUARY 2018.

ORAL JUDGMENT :

1. Heard Mr. Jahagirdar, learned Senior Counsel for the Applicants, and Mr. Naik, learned Senior Counsel for the Respondent.
2. Perused the impugned Judgment of the Trial Court and on perusal of the same, this Court finds much substance in the submission advanced by learned Senior Counsel for the Applicants, which is also supported by learned Senior Counsel for the Respondent, that, though the voluminous documentary evidence was produced on record by the parties and the oral evidence was also led of four witnesses, the Judgment of the Trial Court is conspicuously silent about the appreciation or marshaling of the said evidence. The entire Judgment is concluded in paragraph No.13 with the following observation, but not analyzing those documents or even the submissions advanced at bar by learned counsel for both the parties.

“13. I have perused the documents filed on record. It is manifest that the plaintiff is legally wedded wife of late Meghji Shah and defendant No.1 is the second wife. The testamentary proceedings were also filed between the parties, in which Hon'ble High Court had divided the property of late Meghji Shah into 7 shares. The record demonstrates that the plaintiff was in possession of the suit premises till she was dispossessed at the hands of the

defendants. There are several police complaints registered against defendants. Even the FIR is lodged in respect of the said dispossession. The Court has to see whether the plaintiff was in prior possession and whether she was dispossessed without following due process of law. The documents filed on record amply demonstrates that plaintiff was in possession of the suit property and she was illegally dispossessed, by virtue of the complaints filed subsequent to her dispossession. The evidence led by the plaintiff gives credence to her case of illegal dispossession from the suit premises. In view of the above, the plaintiff has made out a case for interference and grant of relief. Hence, issue Nos.1, 2 and 4 are answered in the affirmative.”

3. Needless to state that, such a judgment cannot be called a 'Judgment' at all and on this sole ground, it is liable to be quashed and set aside, necessitating remand of the matter to the Trial Court for hearing the arguments afresh and giving fresh judgment, after discussing the entire documentary and oral evidence on record and also adhering to the submissions advanced at bar by learned counsel for both the parties.

4. In this respect, learned Senior Counsel for the Applicants has relied upon the Judgment of the Apex Court in the case of *Maria Margarida Sequeira Fernandes & Ors. Vs. Erasmo Jack De Sequeira (Dead) Through LRs, (2012) 5 SCC 370*, laying down the guidelines as to which aspects the Court has to consider, while deciding the Suit for

recovery of possession and how the Judgment / judicial order should be and the truth should be the guiding star in the judicial process. In paragraph No.33 of the Judgment, the Apex Court has succinctly put as to how the Court's serious endeavour has to be to find out, where, in fact, the truth lies. In the words of Hon'ble Supreme Court,

“33. The truth should be the guiding star in the entire judicial process. Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth. That is their mandate, obligation and bounden duty. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth.”

5. Thereafter, in subsequent paragraphs of the Judgment, the Hon'ble Supreme Court has elaborated on the nature of pleading, evidence and then in paragraph No.97 of the Judgment, the Apex Court has laid down the principles of law, which emerged in the case and are crystallized, as follows :-

“(1) No one acquires title to the property, if he or she was allowed to stay in the premises gratuitously, even by long possession of years or decades, such person would not acquire any right or interest in the said property.

(2) Caretaker, watchman or servant can never acquire interest in the property, irrespective of his long possession. The caretaker or servant has to give possession forthwith on demand.

- (3) The courts are not justified in protecting the possession of a caretaker, servant or any person, who was allowed to live in the premises for some time either as a friend, relative, caretaker or as a servant.*
- (4) The protection of the court can only be granted or extended to the person, who has valid, subsisting rent agreement, lease agreement or licence agreement in his favour.*
- (5) The caretaker or agent holds property of the principal only on behalf of the principal. He acquires no right or interest whatsoever for himself in such property, irrespective of his long stay or possession.”*

6. It is expected that the learned Trial Judge, who has decided the present Suit, should be made aware of this Judgment of the Apex Court, so as to ensure that, henceforth, the Judgments are written with proper reasoning, after marshaling of whatever oral or documentary evidence is on record. As a Court of first instance, which has an advantage of recording the evidence of parties and witnesses in person, it is expected that the Judgment of the Trial Court must reflect the appreciation of evidence and analyzing of submissions advanced before it and, of-course, the reasons for deciding the case in a way or another. “Reasons” are the soul of the Judgment or of any judicial order. Giving of proper reasons serves two fold purposes – of parties being made aware as to why the decision has gone in their favour or against them and, secondly, the recording of reasons assists higher Courts also to test the legality and

validity of the Judgment and Order impugned. Recording of reasons in the Judgment helps everyone to know what has transpired in the mind of the Court for decreeing or dismissing a particular Suit. The importance of recording of reasons in the Judgment is that, it guarantees the fundamental principle of justice delivery system that, *“justice is not only done, but also appears to have been done”*, which is the duty of the Court.

7. The Revision Application is, therefore, allowed. The impugned Judgment and Order passed by the Trial Court is quashed and set aside. The matter is remanded back to the Trial Court for hearing of the final arguments afresh and for its decision by giving a well-reasoned Judgment.

8. As the Suit is of the year 2009 and both the parties to the proceedings are senior citizens, the Trial Court is directed to decide the same within a period of two months from the date of receipt of a copy of this order.

[DR. SHALINI PHANSALKAR-JOSHI, J.]