

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL APPLICATION NO.449 OF 2018
IN
CIVIL REVISION APPLICATION NO.752 OF 2014

Krishnakumar Karsandas Ashar] Applicant

IN THE MATTER BETWEEN:

Krishnakumar Karsandas Ashar] Applicant

Vs.

Archie John Varel]

(since deceased) through his legal heirs]

1/1. Cynthia Milan Barboza @]

Cynthia Archie Varel and others.] Respondents

WITH

CIVIL APPLICATION NO.159 OF 2018

IN

CIVIL REVISION APPLICATION NO.752 OF 2014

Clyde Archie Varel] Applicant

IN THE MATTER BETWEEN:

Krishnakumar Karsandas Ashar] Applicant

Vs.

Archie John Varel]

(since deceased) through his legal heirs]

Mark Vincent Varel and others.] Respondents

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Mr. K.S. Dewal a/w Mohit P. Bhansali and K. Jain i/b Rohan Tanna, for Applicant in C.R.A and Civil Application No.449 of 2018.

Mr. Sandesh Patil i/b Anusha Amin, for Respondents No.1/1 and 1/2 in C.A. No.449 of 2018.

Mr. Ashotosh R. Gole, for Respondent No.1/3 in C.R.A. and Applicant in C.A. No.159 of 2018.

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CORAM : R.G. KETKAR, J.

DATE : 8TH FEBRUARY, 2019.

P.C:

Heard Mr. Dewal, learned Counsel for the applicant in C.R.A and C.A. No.449 of 2018, Mr. Patil, learned Counsel for respondent No.1/1 and 1/2 in C.A. No.449 of 2018 and Mr. Gole, learned Counsel for respondent No.1/3 in C.R.A and applicant in C.A. No.159 of 2018.

2. Civil Application No.449 of 2018 is taken out by Krishnakumar Ashar for bringing on record respondents No.1/1 to 1/3 as the legal heirs and representatives of deceased respondent No.1-Archie John Varel (since deceased) on record after condoning delay of 108 days.

3. Civil Application No.159 of 2018 is taken out by Clyde Archie Varel for adding him as legal representative of deceased respondent No.1-Archie John Varel (since deceased) on record.

4. Mr. Gole states that respondent No.1/3 has taken out Civil Application No.159 of 2018 for adding him as legal representative of respondent No.1- Archie John Varel on the ground that respondent No.1 had executed registered Gift Deed in his favour on 16th May, 2017. He submitted that the said Gift Deed is challenged by respondent No.1/1 by instituting Special Civil Suit No.715 of 2017 in the Court of Civil Judge, Senior Division, Thane. During pendency of that suit, respondent No.1/1 took out application Exhibit 5 for injunction restraining respondent No.1/3 from dealing with or disposing of or creating third party interest or parting with possession of the suit property i.e land bearing CTS No.187, Tikka No.12, admeasuring 1239.97 square meters along with the building named as 'Cecelia House' consisting of ground plus three upper floors situate at Dr. Moose Road, Thane. By order

dated 14th February, 2018, the learned trial Judge allowed application and issued injunction restraining respondent No.1/3 from dealing with or disposing of or creating third party interest or parting with possession of the suit property till disposal of the suit. He submitted that respondent No.1/3 has not challenged that order. However, that order does not prohibit respondent No.1/3 from acting upon the Gift Deed. He submitted that so long as Gift Deed is not set aside, respondent No.1/3 is entitled to act upon the Gift Deed.

5. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. As mentioned earlier, it is not in dispute that respondent No.1/1 and respondent No.1/2 are the heirs and legal representatives of respondent No.1-Archie John Varel (since deceased). It is also not in dispute that respondent No.1 had executed registered Gift Deed in favour of respondent No.1/3 and the said Gift Deed is the subject matter of Special Civil Suit No.715 of 2017.

6. In view thereof, without prejudice to the rights and contentions of respondents No.1/1 and 1/2 as also without prejudice to the rights of respondent No.1/3, in the pending proceedings, C.A. No.449 of 2018 is allowed. Amendment shall be carried out within 14 days from today and amended slip shall be made over to the other side. In view of disposal of C.A. No. 449 of 2018, C.A. No.159 of 2018 does not survive and as such is disposed of.

7. It is made clear that the learned trial Judge seized of Special Civil Suit No.715 of 2017 will decide the suit on the basis of the evidence on record in accordance with law and un-influenced by this order. All contentions of the parties in the main suit are expressly kept open.

[R.G. KETKAR, J.]