

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

WRIT PETITION NO. 8094 OF 2019

Mulund Vimal Vihar Co-operative
Housing Society Ltd.,

... Petitioner.

V/s.

Suryakant Hirji Furia & Anr.

... Respondents.

Mr.Rohan Cama, Advocate, Shoma Maitra & Ms.Naziya
Khan i/by Wadia Ghandy & Co. for the Petitioner.

Mr. Kunal Bhanage, Advocate a/w. J. M. Siddqui i/by
Akshay Pawar for Respondent No. 1.

CORAM : UJJAL BHUYAN, J.

DATE : NOVEMBER 13, 2019.

PC :

1 Heard Mr. Rohan Cama, learned counsel
appearing for the Petitioner and Mr. Kunal Bhanage,
learned counsel for Respondent No.1.

2 By filing this petition under Article 227 of the
Constitution of India, Petitioner seeks quashing of
order dated 27.02.2019 passed by the learned Co-
operative Court, Mumbai in application filed by
Respondent No. 2 in Dispute No. CC/II/89 of 2014 filed
by Respondent No. 1.

3 Respondent No. 1 filed the above dispute before the learned 2nd Co-operative Court against the Petitioner, which is a Co-operative Housing Society.

3.1 For the purpose of adjudication of this Petition, it may not be necessary to deal-with the factual matrix of the case in detail. However, it may be noted that in the said dispute, the following issues were framed on 29.03.2017 -

- “1. Whether this Court has jurisdiction to entertain, try this dispute ?.
2. Whether the disputant proves that she is a legal & valid member of the opponent no.1 Society ?
3. Whether the disputant proves that the alleged unilateral deemed conveyance deed is fraud and forgery ?
4. Whether the opponent no. 2 proves that in view of the order of deemed conveyance dated 19th December, 2013, passed under MOFA Act, 1963 by District Registrar read with Deed of Unilateral Conveyance dated 31st December, 2013, the disputant ceased to have any right, title and

interest in Plot No. 156-A in Opponent No. 1 Society ?

5. Whether the Opponent No. 2 proves that the disputant sold/ assigned her leasehold right in favour of Mr. Sadashiv Guruji ?.

6. Whether the Opponent No. 2 proves that the Disputant has received Rs. 80,000/- towards the alleged sale of her lease hold right ?

7. Whether the Opponent No. 2 proves that Sadashiv Guruji sold his right to Bimal Enterprises ?

8. Whether the disputant is entitled to seek relief claimed ?.

9. What order ?

4 Thereafter, an application was filed by Respondent No. 2 for framing an additional issue that the dispute raised by Respondent No. 1 was hit by the principle of res-judicata. By order dated 27.02.2019, the said application stood rejected.

5 The aforesaid order was passed on the application filed by Respondent No. 2. Respondent No. 2 has not filed the present writ petition, raising

grievance against order dated 27.02.2019, rejecting his application for framing additional issue. Grievance has been raised by the Petitioner.

6 Be that as it may, court is of the view that the issues framed under the said dispute on 29.03.2017, more particularly Issue No. 4, covers the controversy in question and it will be open to all the parties to the dispute to raise their respective contentions.

7 In so far order dated 27.02.2019 is concerned, the said order has to be read and understood in the context of the order passed, rejecting the application of Respondent No. 2 for framing additional issue. Nothing more is required to be read into it.

8 As indicated above, all contentions of the parties are kept open which may be decided at the time of adjudication of the dispute.

9 In the light of the above, court finds no error or infirmity in the impugned order.

10 Subject to the observations made above, Writ Petition is dismissed.

(UJJAL BHUYAN, J.)

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