

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 1472 OF 2019

Gheverchand Hazarimal Mehta

...Petitioner

Versus

Sharda Himmatlal Mehta
and others

...Respondents

....

Mr. Sameer S. Kolge, Advocate for the Petitioner.

....

CORAM : R. G. KETKAR, J.

DATE : 06th FEBRUARY, 2019

P.C.

1. Not on board. At the request of Mr.Kolge taken up for admission
2. Heard Mr. Sameer Kolge, learned counsel for the petitioner, at length.
3. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 25.10.2018 passed by the Appellate Bench of the Small Causes Court at Bombay below Exhibit-35 in (A-1) Appeal No.119/2007. By that order, the application filed by the petitioner/appellant/original defendant for deletion of the name of respondent No.1/plaintiff Ms. Sharda Himmatlal Mehta from the array of the respondents, was rejected.
4. In support of this Petition, Mr. Kolge strenuously contended

that respondent No.1/plaintiff had conveyed the property in favour of respondent No.3 Shreepati Jewels on 31.7.2010. On 6.8.2010, respondent No.1 through her Constituted Attorney Mr.Harihar Himmatlal Mehta informed said fact. She has also attorned the tenancy to Shreepati Jewels and also directed the petitioner to pay the arrears of rent to Shreepati Jewels. By that letter, the petitioner was also informed that he has to deal with respondent No.3 as respondent No.1 is not the legal landlady of the suit premises. Respondent No.1 is, therefore, neither necessary nor proper party in the appeal. He, therefore, submitted that the petition requires consideration.

5. I have considered the submissions advanced by Mr. Kolge. I have also perused the material on record. As mentioned earlier, respondent No.1 has conveyed the property by a registered instrument dated 31.7.2010 in favour of respondent No.3 Shreepati Jewels. In that conveyance reference is made to the suit instituted by her against the present petitioner. It was further agreed between the parties as under:

“FURTHER that the outcome of Suits bearing R.A.E. Suit No.558/1988 of 1997 filed by the Vendor in the Hon'ble Small Causes Court at Mumbai against Ghevarchand H. Mehta & Ors. and R.A.D. Suit No.2102 of 1996 filed by one the Sardar Pasha Alias Abdul Jabbar against Vendor shall be binding on both the parties if the decree is passed than the vendor shall be entitled to the possession and alternate permanent accommodation in the new building if the suit is dismissed in that case the

vendor is entitled to file appeal for which the purchaser shall not raise any objection and further the vendor alone shall be entitled to the arrears of rent mesne profits etc. from said Kantilal Mohanlal and/or Sardar Pasha AND FURTHER that the Vendor and every person having lawfully or equitably claiming any right, title, interest or estate in the said premises hereby granted conveyed transferred and assured or expressed so to be by from or in terms for the Vendor as aforesaid shall and will from time to time and at all times hereafter at the request and cost of the Purchasers.....”

6. In view thereof, the Appellate Court rightly observed in paragraph-5 of the impugned order that page-9 of the sale deed shows that the vendor, namely, respondent No.1 had reserved rights of entitlement to the possession and alternate permanent accommodation in the new building, if the suit is decreed. She has also reserved right to file appeal in case the suit is dismissed. In view thereof, I do not find that the Appellate Court committed any error in rejecting the application. Hence, the petition fails and the same is dismissed.

7. It is made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of Code of Civil Procedure, 1908.

(R. G. KETKAR, J.)