

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO.2633 OF 2012
WITH
NOTICE OF MOTION NO.2636 OF 2012
IN
SUIT NO.1209 OF 2012**

Grace Constructions

...Applicant
(orig. Defendant No.8)

In the matter between

Hari Niwas Co-operative Housing
Society

...Plaintiff

Versus

Hardas Lachmandas Aswani and Ors.

...Respondents

.....

Mr. Clive D'souza for the Applicant.

Mr. Surel Shah with Mr. Syed M. Ali Bukhari I/b. Mr. S.S. Gavde for
the Defendant No.8.

Mr. R.Y. Sirsekar for the Defendant No.9-MCGM.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 16th APRIL, 2019.

P.C.:-

The Defendant No.8 has taken out these Notice of Motions
with a prayer to reject the Complaint of the Plaintiff under Order 7, Rule-
11(d) of the Code of Civil Procedure, 1908.

2. The Plaintiff has filed a suit for declaration that

indenture/deed dated 28/3/1979, development agreement dated 9/2/2005, deed of rectification dated 27/7/2010 and deed of conveyance dated 15/4/2011 are illegal, bad in law, null and void and are not binding on the Plaintiff Society. The Plaintiff-Society has challenged these documents mainly on the ground that the said documents are forged and fraudulent. The Plaintiff has averred that they were under belief that the original owner Seomal had validly sold the property to the Defendant Nos.6 and 7 by deed dated 28/3/1979. They have stated that it was only in the year 2011 they learnt that the deed was forged and fabricated.

3. The Plaintiff in paragraph 23 of the plaint has averred that in the month of April/May, 2011 they had sent the deed dated 28/3/1979 to the handwriting and forensic expert for examination and opinion. It is averred that on examination of the said documents, the handwriting and the forensic expert have opined that the three signatures on the said indenture/deed dated 28/3/1979 are not of one and the same person. The Plaintiff has further stated that on receipt of the said opinion they applied to the Joint Sub-Registrar for certified true copy of Day Book of 27/7/1979 on which date deed dated 28/3/1979 was lodged with the Joint Sub-Registrar IV, Bombay. The

Plaintiff has averred that the certified copy issued by the Sub-Registrar under the Right to Information Act, 2005 revealed that the property under the indenture/deed dated 28/3/1979 is not registered and there was no date of registration mentioned against the entry in respect of the said indenture/deed of document lodged under No.1231 of 1979.

4. The Plaintiff has further averred that as per the information received from Sub-Registrar IV, Bombay (Bandra) the indenture/deed dated 28/3/1979 does not bear the same rubber stamp of “BOM/B” but bears a differed rubber stamp of “BDR” used by the Sub-Registrar of Assurances for the General Public. On the basis of the aforesaid facts, the Plaintiff has averred that the purported indenture /deed dated 28/3/1979 purported to have been executed by deceased Lachmandas Seeomal in favour of the Defendant Nos.6 and 7 is forged and fabricated.

5. The averments in the plaint therefore indicate that the Plaintiff had challenged the indenture/deed mainly on the ground that the said deed is forged and fabricated and that he has gained knowledge about the said fraud in the year 2011. Suffice it to say that at this stage the Court cannot travel beyond the pleadings. The

learned counsel for the Defendant No.8 contends that the Plaintiff had knowledge about the said document prior to 2011. This is a disputed contention, which will have to be decided on the merits of the case.

6. The issue of limitation being a mixed question of law and fact cannot be decided at this stage. Hence, the plaint cannot be rejected on the ground of limitation. It is not necessary to consider the other grounds as there cannot be partial rejection of the plaint.

7. Under the circumstances, and in view of discussion supra, the notice of motions stand dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)