

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

CIVIL WRIT PETITION NO.1728 OF 2013

Mr. Ramnivas Chetram Agarwal (Bansal)

R/at. : “Bansal Niwaas”,
No.6, Aundh Road, Khadki,
Pune – 411 020.

..Petitioner

Versus

1. Mrs. Lila Lall (Died on 26/06/1996)

By L.R. Mr. Dinesh Chandra,
No.4, Aundh Road, Khadki,
Pune – 410 020.

2. (a) Mr. Raghunandlal (Dead)

By L.Rs.

2(a)(i) Mrs. Rampiyari (Dead)

2(a)(ii) Mrs. Prakash A. S. Bhatnagar

2(a)(iii) Mrs. Prem M. B. Bhatnagar

All above three L.Rs. Residing at
Co. Vijay Deep, No.C-10/3, Park Road,
Lucknow – 226 001.

3. Mrs. Prakash Bhatnagar

R/at.: No.119, Aerara Colony,
Mahabir Nagar, Bhopal – 452 016.

4) Mrs. Prem M. B. Bhatnagar

R/at. : E, 1093, Indira Nagar,
Faizabad Road, Lucknow – 226 016.

5) Mrs. Usha Varma

R/at.: Benia Pukar Lane,
Calcutta – 14

**Nilam
Kamble**

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6) Mr. V. S. Yadao

R/at.: 46, Punch Pandav Society,
Shivajinagar, Pune – 411 016.

7) Mr. B. V. Bhokre, Advocate & Notary,

District Court Compound,
Small Causes Court, Lawyers Table,
Shivajinagar, Pune – 411 005.

..Respondents

Mr.Uday Prakash Warunjikar a/w Mr.Vilas B. Tapkir for the
Petitioner.

Mr.Abhishek Jebraj a/w Mr.Zaman Ali i/b Zaman Ali for the
Respondent No.1.

CORAM : C.V. BHADANG, J.

DATE : 07th DECEMBER 2020

ORAL JUDGMENT :

1. By this petition the petitioner (Defendant No.3) is challenging the order dated 15th July 2010 (below Exhibit-142) and the order dated 07th November 2012 (below Exhibit-150), in Special Civil Suit No.2084 of 1995. By the impugned orders the learned Trial Court has refused to stay the suit, under Section 10 of the Civil Procedure Code (for short 'CPC').

2. The Respondent No.1 now deceased Mrs.Lila Lall had earlier filed Special Civil Suit No.289 of 1986, *inter alia* challenging

the Sale Deed No. No.22/61/68/11 dated 01st November 1968 and for a declaration of ownership and other consequential reliefs. That suit was filed against Rahunandan Lall, Rampyare and Inder Lall Varma. It may be mentioned that the petitioner was subsequently impleaded as party Defendant No.3 in the said suit. The said suit came to be dismissed on 24th June 1987. The original plaintiff, challenged the same, before this Court in First Appeal No.891 of 1987, which was transferred to the learned District Judge in view of the enlargement of the pecuniary jurisdiction and was registered as Civil Appeal No.511 of 2000. The said appeal came to be allowed on 31st January 2006 and Special Civil Suit No.289 of 1986 was eventually decreed. Feeling aggrieved the petitioner has challenged the same, before this Court in Second Appeal No.645 of 2006 which has been admitted and is pending before this Court.

3. In the interregnum Respondent No.1 filed Special Civil Suit No.2084 of 1995, *inter alia* challenging the Sale Deed Nos. 1235/95/11 and 1237/95/11, both executed and registered on 30th March 1995. A perusal of Clause-2 of the prayer Clause, shows that the Respondent No.1 has also challenged the Sale Deed dated 01st November 1968, which was subject matter of challenge in the 1986 suit.

4. It is in these circumstances, that the petitioner (Defendant No.3) filed an application Exhibit-142 for stay of the 1995 suit under Section 10 of C.P.C. The learned Trial Court found that the property in both the suits is identical. However, the learned trial Court has found that in the given circumstances Section 10 of C.P.C. is not attracted. The learned Trial Court has also found that the petitioner had not disclosed the number of the Second Appeal. In that view of the matter, the Trial Court by an order dated 15th July 2010 rejected the application at Exhibit-142. A similar application filed at Exhibit-150 came to be rejected on 07th November 2012. These are the orders which are subject matters of challenge in this petition.

5. Heard learned counsel for the parties. Perused record.

6. The learned counsel for the petitioner submitted that there was specific challenge raised to the Sale Deed dated 01st November 1968 in 1986 suit which is presently pending in Second Appeal No.645 of 2006. It is thus submitted that the petitioner could not have instituted the subsequent suit in the year 1995 again raising a challenge to the Sale Deed dated 01st November 1968.

7. Faced with this, the learned counsel for the respondent No.1 on instructions, states that the respondent No.1 shall delete the challenge to the Sale Deed dated 01st November 1968. The statement so made is accepted.

8. The learned counsel for the parties, in view of the specific statement submitted that this Court may pass appropriate order in the matter.

9. Having regard to the overall circumstances, the following order is passed :-

ORDER

(i) The impugned orders are hereby set aside subject to the Respondents (Original Plaintiffs) deleting the challenge to the Sale Deed dated 01st November 1968. The necessary deletion, if prayed for, shall be allowed by the learned Trial Court and shall be carried out within two weeks from today.

(ii) Upon such deletion, the learned Trial Court shall reconsider the application Exhibit-142 under

Section 10 of C.P.C. on its own merits and in accordance with law.

(iii) The Trial Court shall decide the application as expeditiously as possible and in any event within a period of six weeks from the receipt hereof without being influenced by the observations in the orders dated 15th July 2010 and 07th November 2012.

(iv) Rival contentions of the parties in this regard are left open.

(v) Rule is partly made absolute in the aforesaid terms, with no order as to costs.

C.V. BHADANG, J.