

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

Digitally signed
by BIPIN
DHARMENDER
PRITHIANI

Date:
2022.07.14
10:53:05
+0530

BIPIN
DHARMENDER
PRITHIANI

CIVIL REVISION APPLICATION 324 OF 2022

Smt. Sunita Parashuram Surve ... Applicant
Versus
Smt. Sulochana Madhav Patil and Ors. ... Respondents

Mr. R. S. Datar i/by Mr. Rupesh T. Padwal for the Applicant.
None for the Respondents.

CORAM: ROHIT B. DEO, J.
DATE : 13th JULY, 2022

P.C. :-

. The applicant is the original defendant 2 in Special Civil Suit 98 of 1998 which is brought by the plaintiff therein seeking decree of cancellation of sale deed and possession.

2. The applicant-defendant 2 claims to be in possession of the suit property by virtue of sale deed executed by defendant 1.

3. The suit came to be decreed by the learned Trial Court vide judgment dated 16th January, 2009. The defendants preferred first appeal, which was dismissed. The defendants then approached this Court in second appeal which also was dismissed. Undeterred, defendants approached the Apex Court which dismissed the SLP.

4. Defendant 2 claims that since 1998 she trusted defendant 1-her vendor to take care of the litigation and now she has realized that her vendor acted in collusion with the plaintiffs. It is on such premise that defendant 2 preferred an application raising objection under Section 47

of the Code of Civil Procedure, 1908 (for short 'Code').

5. Notably, the defendant 2 did not adduced any evidence in support of the allegations. Be that as it may, the learned Executing Court has rejected the application under Section 47 of the Code *inter-alia* on the premise that since the grievance of defendant 2 was against her vendor – defendant 1, the objection did not fall within the scope and ambit of Section 47 of the Code. This observation is seriously assailed.

6. I did not dilate on that aspect. Assuming that the reason which is given by the Executing Court may not be strictly correct, the conclusion certainly is. I have no doubt in my mind that the objection under Section 47 is frivolous and vexatious. The allegation that defendant 1 Shrikant colluded with the plaintiffs in obtaining the decree is inherently incredible considering that it is Shrikant, even according to defendant 2, who challenged the judgment of the Civil Court till the Apex Court. In any event, as observed supra, the defendant 2 has not adduced any evidence in support of her case. Notably, it is not in dispute that defendant 2 did sign the Vakalatnama and the case papers. Her case is that the signatures are obtained by Shrikant by practicing misrepresentation.

7. Again, the version is incredible and in the absence of positive evidence must be rejected.

8. I see no reason to interfere in jurisdiction under Section 115 of the Code.

9. The Civil Revision Application is dismissed.

10. The Executing Court shall proceed with the execution forthwith and shall finally conclude the same within next 90 days.
11. Compliance report shall be filed by the Executing Court in the Registry.
12. The Registrar (Judicial-I) shall ensure that copy of this order shall be communicated to the Executing Court.

[ROHIT B. DEO, J.]