

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

**APPEAL FROM ORDER NO. 531 OF 2015
IN
NOTICE OF MOTION NO. 264 OF 2015
IN
B.C.C.C. S.C. SUIT NO. 154 OF 2015**

1. Mr. Drishat Duman Batta (deleted
since deceased) and anr. } **Appellants**

V/s.

1. Davinder Lal Batta (deleted since
deceased) and Ors. } **Respondents**

**Mr. Satyaprakash Sharma i/by. ARM LEGAL, Advocate
for the appellants.**

**Ms. Nikita K. Dharamshi i/by. C.K. LEGAL, Advocate for
respondents no.1 to 3.**

CORAM :- SANDEEP K. SHINDE, J.

19TH APRIL, 2022.

P.C. :

1. This Appeal, under Order 43 Rule 1(r) of the
Civil Procedure Code, challenges the order dated 20th
January, 2015 passed in Notice of Motion No. 264/2015

in S.C. Suit No. 154/2015, instituted by the appellants-plaintiffs.

2. Briefly stated facts of the case are that;

. The plaintiff claims that, in terms of “Deed of Family Settlement” dated 21st July, 2007 building, commonly known as, “Sheeshmahal” (suit property) at Girgaon, Mumbai has fallen to his share. His case is that, vide registered Deed of Conveyance dated 25th July, 1990 (suit property) was purchased by him in the name of his father (defendant no.1). However, he was suspicious, that his father and brother, taking undue advantage of the fact that, suit property was registered in his father’s name, would alienate and/or appropriate it to themselves. Therefore, he instituted the suit for diverse reliefs including that of preventive injunction against the father and brother and declaration of his exclusive right to the suit property. Pending suit, he sought temporary injunction to restrain the defendants from creating third party rights in the suit property.

Learned trial Court, declined that relief vide order dated 20th January, 2015. That order is under challenge, pending appeal, plaintiff and his father, passed away, whereafter their legal representatives have been brought on record.

3. It may be stated that, the Deed of Family Settlement dated 21st July, 2007 on which plaintiff's case is founded, was not placed before the trial Court. In any case, now it is placed before this Court at Exhibit-D. This deed was executed amongst the family members of the plaintiff. At end, clause of the deed reads as under :

"Besides the above, the following properties at Delhi and other places, as under, are still joint properties and the D.D. Batta (plaintiff herein) group, will be entitled to one-third part of them on sales and the remaining two-third part, shall go to D.L. Bhatta (father of plaintiff) and S.D. Bhatta (brother of plaintiff).

1. Sheeshmahal at Mumbai.
2. Plot in Delhi
3. Property at Hoshiarpur.
4. Godown in Delhi."

(emphasized)

. Thus, in terms of the Deed, plaintiff may be entitled to claim 1/3rd share in suit property i.e. Sheeshmahal at Mumbai. Therefore, plaintiff's assertion that entire suit

property i.e. Sheeshmahal, has fallen to his share, was incorrect. That apart, the suit property was purchased by the plaintiff's father (defendant no.1) under registered deed dated 25th July, 1990. Law is, a document is presumed to be genuine, if the same is registered and onus to prove otherwise, is on the person who challenges the stated registered document. Therefore, recital of deed, cannot be overlooked. In any case, neither, recitals of the deed, nor the attendant circumstances, imply that the suit property was purchased by the plaintiff, in his father's name. That apart, since the plaintiff was asserting, his exclusive right in the suit property, on the basis of deed of family settlement, he ought to have impleaded all parties to the Deed of Settlement, as defendants in the suit. Therefore, prima-facie, the suit was bad for, 'non-joinder of necessary parties'. Even otherwise, learned Counsel appearing for the appellants, could not justify that, after demise of the plaintiff, having regard to frame of suit, and decree sought therein, cause of action, survives.

4. For all these reasons, the plaintiff has not establish his exclusive right in the suit property. Therefore, impugned order calls for no interference. Appeal is dismissed.

NEETA
SHAILESH
SAWANT

(SANDEEP K. SHINDE, J.)

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NEETA SHAILESH
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