

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Appeal from Order (A.O.) No. 735 / 2017

Smt. Shantiben Ravibhai Patel and Ors. ... **Appellants**

Versus

Shri. Fajlerahim Abdullatif Khan ... **Respondent**

Mandar Soman, Advocate for the Appellants.
Mr. Devmani Shukla a/w Rajesh Sahani a/w Reshma Nair, Advocate
for the Respondent.

CORAM : SANDEEP K. SHINDE, J.
DATE : 5th JANUARY, 2022.
[Through Video Conference]

P.C.

Heard. Learned Counsel for the parties.

1. The Special Civil Suit No. 12/2011 instituted by the Appellants, seeking cancellation of the sale deed, dated 5th June, 2009, was dismissed on 12th June, 2017 under Order-IX, Rule-8 of the Code of Criminal Procedure, 1973. On the same day, on an application moved by the Plaintiffs, suit was restored. Order reads as under;

“Perused record. Considering the reasons mentioned and that the Plaintiff has filed the affidavit alongwith the application. It is allowed with directions to Plaintiff for prompt trial.”

2. On the same day after restoring the suit, another application below Exhibit-32 was moved by the Plaintiffs expressing their inability to lead evidence for the want of original document which were in the custody of police, in another case and therefore time was sought. The learned trial Judge rejected the said application, reason being while seeking restoration of suit, Plaintiffs did not disclose the fact of non-availability of original document. Be that as it may, without commenting on the conduct of the Plaintiffs, it may be noted that the Defendants had consented to grant application below Exhibit-32. It is evident from their ‘no objection’ endorsement.

3. In consideration of the facts of the case, the impugned order dated 12th June, 2017 is set aside and the Special Civil Suit No. 12/2011 is restored to the file of the Civil Judge (Senior Division), Dadra and Nagar Haveli, at Silvassa, subject to cost quantified at Rs. 25000/-, which Plaintiffs shall pay to the Defendants within two weeks from today.

4. Subject to payment of cost, Appeal is allowed in the aforesaid terms.
5. The hearing of the suit is expedited.
6. Appeal and all applications therein, are disposed of.

(SANDEEP K. SHINDE, J.)

MOHAMMAD
NAJEEB
MOHAMMAD
QAYYUM

Digitally signed
by MOHAMMAD
NAJEEB
MOHAMMAD
QAYYUM
Date:
2022.01.05
18:39:29 +0530