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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12829 OF 2022

Dinesh Madhukar Parshetye

...Petitioner

Versus

Smt. Malati Rajaram Parshetye

Since deceased through L.R.

Mr. Abhay Shridhar Shetye and Ors.

...Respondents

Mr. Rajesh N. Kachare, for the Petitioner.

Mr. Umashankar R. Singh, for the Respondents.

CORAM: MADHAV J. JAMDAR, J.

DATE: NOVEMBER 17, 2022

PC.:

1. Heard Mr. Kachare, learned Advocate appearing for the Petitioner and Mr. Singh, learned Advocate appearing for the Respondents.

2. The impugned order in the present petition is order dated 18th October 2022 passed by the learned Judge, City Civil Court, Greater Bombay in Chamber Summons No.144 of 2022 in Execution Application No.124 of 2017 in S.C. Suit No.979 of 1990. By the impugned order, chamber summons taken out by the Petitioner for substituting himself in place and instead of the

Respondent – Abhay Shridhar Shetye in the execution proceeding bearing No.144 of 2022 with permission to execute the decree passed in S.C. Suit No.979 of 1990 was rejected.

3. The original plaintiff – Malati Rajaram Parshetye filed S.C. Suit No.979 of 1990 seeking eviction of Respondent No.2. The said suit was decreed which decree was challenged by the Respondent No.2 by filing First Appeal No.1791 of 2007. Said Malati passed away on 7th December 2012. After death of said Malati, First Appeal was abated and the abatement order was eventually set aside by the Supreme Court in Civil Appeal No.23473-23474 of 2017. By said order of Supreme Court abatement of First Appeal was set aside by directing impleadment of the present Respondent– Abhay Shridhar Shetye in substitution of deceased Malati Rajaram Parshetye in said First Appeal No.1791 of 2007 as legal heir.

4. It is significant to note that Respondent No.2 filed Civil Application No.281 of 2019 in First Appeal No.1791 of 2007 contending that the issue as to whether the present Respondent Abhay Shetye is legal representative of deceased Malati be adjudicated and decided before proceeding with the hearing of the

First Appeal. The said Civil Application was dismissed by order dated 8th November 2019. Thereafter, said First Appeal was dismissed by the judgment and decree dated 19th May 2020. The present execution proceedings are thus, to execute the decree initially passed in said S.C. Suit No.979 of 1990 which has been confirmed by this Court by Judgment and Decree dated 19th May 2020 passed in First Appeal No.1791 of 2007.

5. This is the case where the Respondent No.1 has been impleaded as legal heir of Smt. Malati in the eviction proceedings. Application filed by the Respondent No.2/Appellant i.e. the judgment debtor being Civil Application No.281 of 2019 in said First Appeal raising the same contention has been rejected by this Court by order dated 8th November 2019.

6. In these facts and circumstances, there is no illegality in rejecting the Chamber Summons No.144 of 2022. Therefore, no interference in the impugned order is required.

7. In the light of above discussion, the following order is passed:

ORDER

- (i) Writ Petition challenging the impugned order dated 18th October 2022 passed in Chamber Summons No.144 of 2022 by the learned Judge, City Civil Court, Greater Bombay is rejected;
- (ii) However, it is clarified that the Petitioner can file his independent proceedings seeking to establish his independent right, title and interest with respect to the suit property;
- (iii) To protect the interest of the Petitioners, the Respondent No.1 Abhay Shridhar Shetye is directed not to create any third party interest in the suit property for a period of four months from today;
- (iv) It is further clarified that contentions of both the parties i.e. Petitioner and Respondent No.1 with respect to title to the said property are expressly kept open.

8. Subject to above, writ petition is dismissed with no order as to costs.

(MADHAV J. JAMDAR, J.)