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

WRIT PETITION NO.2248 OF 2023

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Somnath Radhakrushna Mahale (Shimpi) ... Petitioner

V/s.

Ujwala Sudhakar Pagar & Ors.

... Respondents

Mr. Pramod N. Joshi for the petitioner.

Mr. Girish Agarwal for respondent No.1.

Mr. Pratik B. Rahade for respondent Nos.2A to 2E.

Mr. Sachin D. Kadam for respondent No.4.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 26, 2023

PC.:

1. This writ petition under Article 227 of the Constitution of India challenges rejection of objection under Section 37 of the Code of Civil Procedure, 1908 ("CPC" for short) raised by the judgment debtor/original defendant contending that the suit property 2C needs to be interpreted to mean immovable property bearing House No.11.

2. It appears that respondent No.1 has filed Regular Civil Suit No.641 of 1995 seeking partition of the suit property. In the description of the suit properties, house No.11 was independently described as suit property. Business in House No.11 was described as suit property 2C. The Trial Court framed specific issue bearing

No.11, which reads thus:

“11. Whether suit cloth shop is self-acquired property of defendant No.1 Somnath? ...Affirmative.

3. While answer issue on Issue No.11, the Trial Court has observed thus:

“38. ... In result, I hold that the cloth business is exclusive business of the defendant no.2. Consequently the plaintiff is not entitled to share in the cloth business. Therefore, I answer issue no.11 in affirmative.”

4. The Trial Court passed decree. Relevant clauses are as under:

“1. ...

2. The plaintiff is declared entitled to 1/4th share in the suit field Gat no.665 of village Girnare admeasuring 3H.50R, and in house property bearing Grampanchayat no.11 of village Girnare as described in para no.2-A and 2-B of the plaint.

3. to 5. ...

6. The claim of plaintiff for share in the cloth business is dismissed.”

5. In execution filed by the plaintiff, the petitioner filed an application below Exhibit 203 contending that the suit property 2C needs to be interpreted to mean part of house property. The said objection has been rejected by the Trial Court. The petitioner has, therefore, filed present writ petition.

6. On perusal of the judgment of the Trial Court and the decree

passed, it is clear that the plaintiff described House No.11 as suit property 2B and business in the said suit property as suit property in clause 2C of the suit. Issue No.11 is in relation to business carried out in House No.11. While answering issue No.11, the Trial Court considered suit property 2C restricted to business in house No.11. If that be so, the petitioner's contention that business is described in clause 2C needs to be interpreted as part of house No.11 cannot be considered. The description of the suit property, issues framed, discussion on the issue and the decree leads to only one inference as suit property 2C restricted to the extent of business in house No.11.

7. Therefore, in my opinion, there is no error of jurisdiction by the Courts below while rejecting application under Section 47 of the CPC.

8. The writ petition stands dismissed. No costs.

(AMIT BORKAR, J.)