

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

**FIRST APPEAL NO. 136 OF 2004
WITH
CIVIL APPLICATION NO. 385 OF 2004
WITH
CIVIL APPLICATION NO. 3356 OF 2006
IN
FIRST APPEAL NO. 136 OF 2004**

YUGANDHARA
SHARAD
PATIL

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Date: 2023.03.20
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DR.(Mrs.) Mrinalini Suryawanshi & Anr. ... Appellants

Versus

Pushpa Baburao Suryawanshi ... Respondent

Mr. Vishwajeet S. Kapse a/w Mr. Kunal Rane for the Appellants.
Appellant No. 1 Mrinalini Suryawanshi is present in the Court.
None for the Respondent.

CORAM: PRITHVIRAJ K.CHAVAN, J.

DATE : 14th MARCH, 2023

PC. :-

1. Heard Mr. Kapse, learned Counsel for the Appellant.
2. Rule was issued in this Appeal on 1st September 2004. At the time of issuing Rule, this Court passed the following order:-

“1. Rule returnable early.

2. Heard Shri Kapse for the Applicants. Perused the averments in the application. Considering the fact that the suit flat was purchased in the name of

M.B.Suryawanshi Family Trust of which Appellant No.1 is trustee and Appellant No.2 is the sole beneficiary, the flat cannot be allowed to be retained in the custody of the Registrar of the City Civil Court, Mumbai.

3. Shri Kapse pointed out that the suit filed by the Appellant was not defended by the Respondent. He pointed out that whereabouts of the Respondent are not known as the address given by the Respondent in her own independent suit is that of the suit premises which is admittedly under the lock and key of the Registrar, City Civil Court.

4. In the circumstances, case is made out for grant of ad-interim relief in terms of the prayer clause (b). Accordingly, ad-interim relief is granted in terms of prayer clause (b) of the Civil Application.

5. Registrar of the City Civil Court and the Court Receiver the parties to act on authenticated copy of this order.”

3. Mr. Kapse had invited my attention to the impugned order passed by City Civil Court, Mumbai, on 9th June 200, by which the Plaint came to be rejected under the provisions of Order VII Rule 11(b) of the Civil Procedure Code for want of correct valuation.

4. Mr. Kapse, on instructions of the Appellant No.1/Plaintiff who is present in the Court today, submits that the Appellants are ready and willing to accept the observations made by the trial Court as regards the deficit Court fees and would be ready to abide by the same.

5. None appeared for the Respondents in this Appeal.

6. Since the Appeal is pending on the file of this Court, nearly for about 20 years, no fruitful purpose would be served to keep the Appeal pending.

7. As such, the impugned order passed by the trial Court on 9th June 2003 is set aside and the matter is remanded back to the City Civil Court, Mumbai.

8. The Appellants/Plaintiffs shall correct the valuation of the suit within a period of 8 weeks from today by making suitable amendment in the plaint. Even otherwise, rejection of the plaint on any of the grounds shall not of its own force precluded the plaintiff for presenting a fresh plaint in respect of same cause of action as provided under Rule 13 of Order 7 of the Code of Civil Procedure.

9. After making the amendment and paying the corrected valuation, the trial Court shall proceed further in accordance with law. The trial Court shall expedite the suit and disposed it of within a period of one year from today. The Appellants/Plaintiffs shall not seek unnecessary adjournments.

10. The Appeal stands disposed of in the aforesaid terms with no order as to costs.

11. The interim order passed by this Court will continue to operate till disposal of the suit.

12. Record and proceedings be remitted back to the City Civil Court, Mumbai, forthwith.

[PRITHVIRAJ K.CHAVAN, J.]