

Dusane

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

WRIT PETITION NO.6668 OF 2021

Shri. Augustine Nigel Fernandis ...Petitioners
(since deceased) represented through
his heirs and LRs Rita Augustine
Fernandis & Ors.

V/s.

1. Smt. Manda Dhondu Gaikar & Ors.
2. Shri. Arun Dhondu Gaikar ...Respondents
3. Shri. Prakash Tandale ... Deleted

Mr. Dushyant S. Pagare for Petitioner.

Mr. R.R. Lanjekar for Respondent Nos. 1 and 2.

CORAM: MADHAV J. JAMDAR, J.

DATE: 26th July 2023

P.C.:

1. Heard Mr. Pagare, learned Counsel appearing for the Petitioners and Mr. Lanjekar, learned Counsel appearing for the Respondent Nos. 1 and 2.

2. At the outset, Mr. Pagare, learned Counsel appearing for the Petitioners seeks deletion of Respondent No.3. Accordingly, Respondent No.3 is deleted from the array of the parties. Amendment be carried out forthwith.

3. Both the learned Counsel state that the Petitioners as well as Respondent Nos. 1 and 2 have settled the dispute and have executed the Consent Terms and tenders the Consent Terms.

4. The said Consent Terms are executed by Petitioner No. 1- Rita Fernandis, Petitioner No. 2- Michael Augustine Fernandis and Petitioner No.3 - Joseph Augustine Fernandis. Petitioner No. 2- Mr. Michael Fernandis, who is present in the Court and states that the dispute between the parties has been settled as per the Consent Terms. Mr. Pagare, learned Counsel appearing for the Petitioners identifies the signatures of all the Petitioners. He states that the Petitioner Nos.1 and 3 could not remain present in the Court due to their personal difficulties.

5. Mr. Lanjekar, learned Counsel appearing for Respondent Nos. 1 and 2 states that the Respondent No. 2 is present in the Court. Mr. Lanjekar states that the Respondent No. 2 i.e. Arun Dhondu Gaikar is the constituted attorney of his mother, Respondent No. 1- Manda Dhondu Gaikar. Said Arun Dhondu Gaikar, who is present in the Court also confirms that the dispute between the Petitioners and Respondent Nos. 1 and 2 has been settled in terms of the Consent Terms. His signature is identified by Mr. Lanjekar, learned Counsel appearing for the Respondent Nos. 1 and 2.

6. Accordingly, said Consent Terms are taken on record and marked 'X' for identification and photocopy of general power of attorney dated 1st April 2022 *inter alia* executed by Respondent No.1- Smt. Manda Dhondu Gaikar in favour of Respondent No. 2- Arun Dhondu Gaikar is also taken on record and marked 'X-1' for identification.

7. In view of above, by consent challenge to the legality and validity of the judgment and decree dated 24th February 2020 passed by the learned District Judge-6, Kalyan in Regular Civil Appeal No. 161 of 2013 as well as judgment and decree dated 3rd May 2013 passed by learned Civil Judge, Junior Division, Kalyan in Regular Civil Suit No. 399 of 2007 is rejected. Accordingly, the said judgments are confirmed, however, the Petitioners are granted time to vacate the suit premises till 31st January, 2024.

8. Petitioner No.2- Michael Fernandis, who is present in Court undertakes that the Petitioners will vacate the suit premises on/ or before 31st January 2024. Mr. Pagare, learned Counsel appearing for the Petitioners also, on instructions, gives undertaking on behalf of the Petitioner Nos. 1 and 3. The said undertaking of the Petitioners to vacate the suit premises on/or before 31st January 2024 is accepted as undertaking given to this Court.

9. Accordingly, the Writ Petition is disposed of in terms of the Consent Terms, with no order as to costs.

BHALCHANDRA
GOPAL
DUSANE

(MADHAV J. JAMDAR, J.)

Digitally signed by
BHALCHANDRA
GOPAL DUSANE
Date: 2023.07.28
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