

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

MISCELLANEOUS CIVIL APPLICATION NO. 449 OF 2022

Neelam Vilas Todankar .. Applicant
v/s.
Jayant Anant Worlikar and Ors. .. Respondents

...
Ms. Duhita Desai i/b. Mr. Sandeep V. Mahadik for the Applicant.
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CORAM : KAMAL KHATA, J.

DATE : 4TH JULY 2023.

P.C. :

1. This Miscellaneous Civil Application is filed by the applicant for transfer of L.E. Suit No. 36 of 2012 pending in the Small Causes Court, Bandra Mumbai to Court No. 6 City Civil Court at Dindhoshi, Mumbai to be heard along with L. C. No. 2894 of 2012.

BRIEF FACTS:

2. The Applicant and the Respondents are real sister and brother respectively. The Applicant claims to be the owner of the premises being Room No. B/17, Bhagyodaya Co-operative Housing Society Ltd., Plot No. 114, RSC-116, Gorai Road, Borivali (West) Mumbai 400092 (referred to as "*suit premises*" for brevity). It is submitted that the Applicant has paid the consideration for construction of the premises on the open plot and she has been

paying the outgoings including the electricity bills and society maintenance charges. It is stated that whereas the Respondents has filed an eviction suit against the Applicant claiming to be the owner of the suit premises, on the other hand the Applicant has filed for a declaration that the Agreement for Sale dated 19th September 1995 is false fabricated and illegal and consequently the Respondent No. 1 is not the owner of the suit premises.

3. The Learned counsel for the Applicant submitted that in both the Suits i.e. L.C.Suit No. 2894 of 2012 before the City Civil Court, Dindoshi, Mumbai and the L.E.Suit No. 36 of 2012 before the Small Causes Court, Mumbai the dispute is regarding the same suit premises, between the same parties and the evidence and documents referred to and relied upon the parties too are common. It is submitted that original documents are required for the evidence to be led filed in City Civil Court Mumbai to be transferred to Small Causes Court is a cumbersome process. Besides, it could be cost saving for both parties. It is further submitted that possibility of conflicting findings and consequently decisions cannot be ruled out. It is therefore prayed that the application for transfer be allowed.

4. The learned counsel for the Applicant relied upon an Order of this Court in the case of *Ulhas Harischandra Dhargalkar vs Padmakar Vasant Desai & Anr*¹ which analysed the provisions of section 24 (4) of the Code of Civil Procedure (CPC) read with section 8 of CPC and held that upon a suit for eviction/rent being transferred from the Court of small causes to the City Civil Court, the Court shall be deemed to be a Court of Small Causes and grant the relief as could be granted by the Court of Small Causes.

5. None appeared for the Respondent though served.

6. I have examined the pleadings filed in both suits and the judgement referred and agree with the contentions of the Applicant. In my view, it would be in the interest of both parties to club/consolidate the proceedings for a speedy adjudication of the issues between the same parties with regard to the suit premises.

The application is allowed with the following directions:

“Transfer the L.E.Suit NO. 36 of 2012 pending in the Small Causes Court, Bandra, Mumbai to the City Civil Court No.6 at Dindoshi, Mumbai preferably within 4 weeks from the receipt of this order and be heard along with L.C. No. 2894 of 2012; and pending transfer the L.E.Suit No. 36 of 2012 be stayed.

1 Bharati Dangre, J. in Misc Civil Application No. 105 of 2020 order dated 1st December 2021

7. The City Civil Court, Dindoshi, Mumbai shall on receipt of the records of L.E. Suit NO. 36 of 2012, fix a date preferably within 3 weeks and issue notice to the parties for proceeding with the matter.”

8. All concerned to act on the authenticated copy of this order.

(KAMAL KHATA, J.)