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

WRIT PETITION NO. 2144 OF 2024

Atmaram Vithal Jadhav

.. Petitioner

Versus

Shivaji Ganpat Jadhav and Ors.

.. Respondents

-
- Mr. Vaibhav V. Ugle, Advocate for Petitioner.
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 21, 2024.

P.C.:

- 1.** Heard Mr. Ugle, learned Advocate for the Petitioner.
- 2.** Order impugned is dated 06.12.2023 passed in Notice of Motion No.3060 of 2016 filed by the Respondents. This was an Application filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short “**CPC**”) seeking dismissal of the Suit plaint. Suit is filed in the year 2013 whereas Application under Order VII Rule 11 of the CPC is taken out in August, 2016.
- 3.** Be that as it may, on merits it is contended by the Defendants that right is claimed by the Plaintiffs on the basis of bequeathal of the Suit property to the predecessor-in-title of the Plaintiffs whereas it is the Defendants own case that the Municipal Corporation had transferred the tenancy from the original owner

Sitabai Dagadu Rane / Shinde to the predecessor-in-title of the Defendants.

4. Both the rival parties are claiming entitlement to the subject property. It is seen that in the meanwhile, the subject Room No.5 as also the entire property has gone for redevelopment and this is what is driving the parties to litigation.

5. Mr. Ugle would submit that in view of allotment of tenancy by the Corporation to the Defendant's predecessor, the PAAA was executed with the Defendants and Defendants have been given alternate rehab tenement in lieu of the original room. However, he would candidly inform the Court that Suit filed is for cancellation of the transfer of tenancy right from Sitabai to the predecessor-in-title of the Defendants. He would submit that the thrust of Plaintiffs' case is now based on the "Will" of Sitabai bequeathing the original room to the predecessor-in-title of the Plaintiff. He would further submit that the said Will is not probated considering the Suit property is in Mumbai and therefore the Will dated 24.03.1983 ought not to have been accepted.

6. I have heard the submissions made by Mr. Ugle as also perused the order dated 06.12.2023. The submissions made by Mr. Ugle as also the Plaintiffs case has been considered in detail by the learned Trial Court.

7. The learned Trial Court has however held that both the Plaintiffs as well as Defendants have raised disputed questions of facts in so far as claiming entitlement to the subject original Room No.5 is concerned. Series of facts on which the Plaintiffs have based their case find mention in the Suit plaint and are delineated in the order. The facts and the questions as to how or who i.e. either Plaintiffs' or Defendants' predecessor-in-title was inducted into the Suit premises would be a matter of evidence.

8. I find that cogent reasons are given by the learned Trial Court in the order dated 06.12.2023 and a trial is therefore inevitable. The order is sustained.

9. Mr. Ugle also points out that the issue relating to disputed tenancy as also the Will not been genuine is decided in one order dated 26.03.2015 passed below Exhibit "2" in C.C. No.608/PW/2012 by the Metropolitan Magistrate. This order is at Exhibit "G" - page No.47 of the Writ Petition. *Prima facie*, on reading of the order, I am of the firm opinion that a trial would decide the issues between the parties.

10. In view of the above observations, order dated 06.12.2023 is sustained and Writ Petition is disposed with a direction to the learned Trial Court to expedite the hearing of Suit No.1078 of 2013 as expeditiously as possible and in any event within a period of six (6)

months from today.

11. It is clarified that parties shall not take any unnecessary adjournments and the Trial Court shall grant adjournment only if it is utmost necessary.

12. Parties are directed to cooperate with the Trial Court for expeditious disposal of the Suit proceedings.

13. All contentions of the parties are expressly kept open before the learned Trial Court.

14. The learned Trial Court shall not be influenced by any observations and findings given in this order as also the impugned order dated 06.12.2023 as they are purely *prima facie* in nature and determine the Suit strictly in accordance with law.

15. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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