

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.301 OF 2022

Asha Deepak Goradia

.. Applicant

Versus

Manju Ashok Jethmalani

.. Respondent

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- Mr. R. D. Soni a/w. Mr. Tushar R. Momaiyah i./by Ram & Co., Advocates for Applicant.
- Ms. S. A. Panjwani a/w. M. K. Chanchani, Advocate for Respondent.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 24, 2024

P.C.:

1. Heard Mr. Soni, learned Advocate for Applicant and Ms. Panjwani, learned Advocate for Respondent.

2. The present Civil Revision Application takes exception to the order passed below Exhibit-78 in Special Civil Suit No.727 of 2016. Application below Exhibit-78 is filed under the provisions of Order XII Rule 6 of the Civil Procedure Code, 1908 (for short '**CPC**') by Plaintiff seeking decree on admission.

3. Briefly stated suit is filed for declaration, permanent injunction and cancellation of sale deed dated 23.02.2016 by the Plaintiff. Case of the Plaintiff is that she had purchased the said suit property by registered sale deed dated 19.11.1994. The suit was filed

in view of the fact that some time in the year 2016, the Plaintiff realised that revenue record of the suit property was mutated and name of the Defendant was entered into the said revenue record on the basis of an alleged document dated 23.02.2016. Being aggrieved with the above action, Plaintiff filed the suit before the Trial Court.

4. Initially the Defendant filed written statement on 20.02.2018. However, subsequently the Defendant filed an Application being say on application filed below Exhibit-37 on 20.02.2018, *inter alia*, recording and admitting that Defendant was not aware about the purchase of the suit property belonging to the Plaintiff by virtue of the alleged document nor had the Defendant filed written statement by appending her signature on the same and nor had the Defendant signed vakilpatra of the Advocate who had filed the written statement on her behalf. It is stated in the said Application that Defendant herself desired that the sale deed dated 23.02.2016 which is the subject matter of the suit proceedings be cancelled and Plaintiff be declared as true and lawful owner of the suit property.

5. The learned Trial Court while considering the Application passed the impugned order, *inter alia*, recording that despite the aforesaid admitted facts since Defendant had originally objected the Application filed below Order 12 Rule 6 of CPC below Exhibit-78, the learned Trial Court, on the basis of the transaction document of 2016,

held the Defendant to be owner and possessor of the suit property and therefore did not consider the say of the Defendant filed below Exhibit-37 as admission under Order 12 Rule 6 of CPC as the same was filed in reply to breach of injunction order.

6. The learned Trial Court opined that since in the written statement taken on record below Exhibit-24, the Defendant had denied the title and possession of Plaintiff, the Application filed by Plaintiff under Order XII Rule 6 did not deserve any merits and rejected the said Application.

7. In the present Civil Revision Application, the Defendant has filed a sworn Affidavit-in-Reply dated 12.04.2024 before the Section Officer, High Court, Appellate Side, Bombay by identifying herself. In this Affidavit-in-Reply, the Defendant has once again reiterated her stand taken and filed in her Application below Exhibit-37 and would submit that the Applicant – Plaintiff is the true and lawful owner of the suit property and Defendant is not its owner and she seeks cancellation of the sale deed dated 23.02.2016 in view of the facts and circumstances which are enumerated in the said Application.

8. Rather in paragraph No.8 of the Affidavit, Defendant has given her no objection and consent for cancellation of the sale deed dated 23.02.2016. Copy of the said Affidavit is taken on record and marked 'X' for identification on record as the said Affidavit is not

found in the Court's record today. There cannot be any clear or more glaring admission of Defendant as referred to and alluded to hereinabove in her own pleadings.

9. In that view of the matter, the impugned order is required to be interfered with. Application filed below Exhibit-78 under Order XII Rule 6 of CPC seeking decree of admission deserves to be allowed. The impugned order dated 04.03.2022 is clearly not sustainable and is quashed and set aside. Exhibit-78 stands allowed. Prayer clause (a) stands granted. Consequential prayer clauses (b), (c) and (d) are also therefore allowed. Necessary decree be drawn in terms of prayer clauses (a), (b), (c) and (d) which read thus:-

- “(a) The Sale Deed dated 23/02/2016 (registered at Sr. No. 1602/2016 in the office of Haveli-14) be declared as illegal, void- ab-initio and be thereby further cancelled, quashed and set-aside being nullity at law;*
- (b) The Plaintiff be declared as true and lawful owner of the suit property on the basis of Sale Deed dated 19/11/1994 registered at Sr. No. 2516/1994 in the office of Sub Registrar, Haveli No. 7 on 30/12/1995;*
- (c) Defendant either acting herself or through her attorneys, agents or advocates etc. be permanently restrained from creating third party interest in respect of the suit property on the basis of said illegal Sale Deed dated 23/02/2016;*
- (d) Defendant be permanently restrained from claiming any right over the suit property or from interfering with the ownership rights of the Plaintiff,”*

10. A server copy of this order be placed before the Trial Court for compliance. In view of the above order, Special Civil Suit No.727 of 2016 before learned Trial Court also stands disposed.

11. With the above directions, Civil Revision Application is disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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