

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.822 OF 2024
IN
CIVIL REVISION APPLICATION (L) NO.34894 OF 2023

Sajjan Balaram Pavashe

.. Applicant

Versus

Stevan Josef Dimelo

.. Respondent

-
- Ms. Saroj N. Pagare, Advocate for Applicant.
 - Ms. Manisha M. Sonawane, Advocate for Respondent.
-

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 02, 2024

P.C.:

1. Heard Ms. Pagare, learned Advocate for Applicant and Ms. Sonawane, learned Advocate for Respondent.

2. For the reasons mentioned in the Interim Application and Exhibits / Annexures appended thereto, the Interim Application stands allowed. Delay in filing Civil Revision Application stands condoned. In view of the above, Interim Application is disposed. Civil Revision Application is taken up for hearing forthwith.

3. Leave to amend is granted at the request of Ms. Pagare, learned Advocate for Applicant. Applicant is permitted to amend and add additional prayer clauses in the present Civil Revision Application. Amendment stands allowed. Amendment is permitted to be carried out forthwith in Court. Re-verification stands dispensed with.

4. By the present Civil Revision Application, amendment is sought to the judgment and order dated 30.01.2023 passed by the learned Trial Court in the Application filed below Exhibit-11. Below Exhibit-11 Consent Terms executed between Plaintiff and Defendant were taken on record. This Consent Terms are appended to the present Civil Revision Application. They are dated 30.01.2023. They were taken on record on 30.01.2023 and according judgment and order was passed disposing of the Suit in terms of the Consent Terms. That judgment and order is at page No.28 of the Civil Revision Application. Perusal of the order reveals that the Consent Terms were taken on record and it is noted by the learned Trial Court that the parties have accepted the terms and conditions in the Consent Terms as true and correct and Plaintiff therefore does not want to proceed further with the suit and hence the suit would stand disposed of in view of the Consent Terms. Besides the aforesaid noting there is no other order passed.

5. Grievance is exhibited by the Applicant who is Plaintiff in the Trial Court. At the outset, Ms. Pagare has drawn my attention to the reliefs prayed for in the suit plaint. She would submit that prayer clause (b) in the suit plaint is crucial and while disposing of the Application / Consent Terms below Exhibit-11, the learned Trial Court ought to have passed appropriate directions in regard thereto. Prayer

clause (b) seeks declaration that Plaintiff is the legal owner of the suit property.

6. Ms. Pagare would submit that reason for seeking this correction / addition in the impugned order passed by the Trial Court is because Plaintiff is encountering serious difficulty for effecting appropriate mutation in the Property Register Card from the concerned Revenue Authorities. She would submit that the impugned order has also drawn up the decree on that basis and Plaintiff approached to the Competent Authority for seeking transfer and mutation of the suit property in the Plaintiff's name.

7. She would next submit that when this Application was made the Competent Authority informed the Plaintiff that the impugned order merely settles the suit proceedings between the parties on the basis of the Consent Terms and there is no specific direction given therein in terms of prayer clause (b) of the suit proceedings that the Plaintiff is the legal owner of the suit property and hence the mutation cannot be carried out.

8. In the Civil Revision Application which is filed Ms. Sonawane, learned Advocate appears for Respondent who is the Defendant in the suit. She would submit that she has obtained instructions and filed Affidavit-in-Reply dated 01.01.2024 to the Application seeking condonation of delay in filing Civil Revision

Application. She would submit that Respondent has no objection for the Civil Revision Application to be taken on record and heard by this Court as also for condoning delay. She has also filed Affidavit-in-Reply dated 01.01.2024 in the Civil Revision Application on behalf of the Respondent stating that he would have no objection for submitting to the orders of this Court and for passing appropriate directions.

9. Ms. Pagare, learned Advocate for the Applicant would make one further grievance and that is in respect of correction of the Schedule and area of the suit property.

10. She would submit that the correct nomenclature of the property CTS No.3524 is admeasuring 56 sq.mtr. and by mistake 54 sq. mtr. was inserted in the Schedule which was filed in the suit proceedings before the Trial Court. She has drawn my attention to the submissions made in the paragraph No.2 of the Civil Revision Application. I have perused the same. The aforesaid mistake was realized only after receiving copy of the order and decree in the month of July-2023. In respect of this rectification she has drawn my attention to the Exhibit-D which is Property Register Card wherein it is seen that CTS No.3524 admeasures 56 sq.mtr. In that view of the matter, she would submit that appropriate correction also needs to be effected in the Consent Terms which were filed in the Trial Court and more specifically in paragraph No.2 which mentions the area of CTS

No.3524 as 54 sq.mtr. instead of 56 sq.mtr.

11. Considering that the Defendant has agreed and admitted the aforementioned rectification and duly supported by the Property Register Card at Exhibit “D” no purpose would be served by relegating the case back to the Trial Court for seeking a fresh direction in respect of the above as it clearly appears that the aforesaid errors are typographical in nature and have occurred inadvertently and clearly by mistake. In that view of the matter, following order is passed:-

- (i) The impugned judgment and order passed below Exhibit-11 is retained as it is.
- (ii) This Court in addition thereto makes the following addition:-

“In view of the above it is clarified that Plaintiff is the legal owner of the suit property as stated in the Consent Terms and more specifically in paragraph No.2 of the Consent Terms. It is clarified that area of CTS No.3524 as stated in the Consent Terms is 56 sq.mtr. as per the Property Card Register produced by the Plaintiff and the same stands rectified from 54 sq.mtr. to 56 sq.mtr.

in the Consent Terms dated
30.01.2023”

- (iii) The learned Trial Court is requested and directed by this Court to include the aforementioned quoted portion in the order passed below Exhibit-11 and issue a fresh decree in terms of the said order dated 30.01.2023 the Plaintiff on making an Application in that regard.
- (iv) An authenticated copy of this order shall be placed before the learned Trial Court by both the parties jointly on 06.02.2024 at 10.30 a.m.
- (v) The learned Trial Court is requested by this Court to take the authenticated copy on record and pass an appropriate order of rectification of the order dated 30.01.2023 as directed and follow the directions given in this order and issue the appropriate decree.

12. With the above directions, Civil Revision Application is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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