

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1369 OF 2024

Priyadarshini Sahakari Grihanirman Housing
Society and Anr.

.. Petitioners

Versus

Nivrutti Bhausahab Thosar

.. Respondent

.....

- Mr. Asadullah Shaikh a/w. Mr. Jainendra Seth, Advocates for Petitioners.
- Mr. Pankaj S. Shah, Advocate for Respondent.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 05, 2024

P.C.:

1. Heard Mr. Shaikh, learned Advocate for Petitioners and Mr. Shah, learned Advocate for Respondent.

2. The present Writ Petition takes exception to three orders dated 21.06.2022, 04.11.2022 and 27.09.2023. Suit is filed in the year 2018 by Respondent for possession under Section 6 of the Specific Relief Act, 1963.

3. Sum and substance of the Plaintiff before the Trial Court is that by virtue of Sale Deed dated 17.06.2017 from the predecessor of the Plaintiff, he was put in possession of the suit property i.e. Room No.B-1931. In support of Plaintiff's case, he has referred to and relied upon Sale Deed dated 17.06.2017, Power of Attorney dated 17.06.2017 and Affidavit executed between the parties in respect of

taking over possession of the suit property.

4. All these three documents stated above are original documents produced by the Plaintiff in evidence before the Trial Court. Mr. Shaikh, learned Advocate appearing for the Petitioners i.e. Defendants in the Suit has drawn my attention to the first impugned order dated 21.06.2022 whereby the learned Trial Court has observed that the Plaintiff ought to prove the aforementioned three documents as also seven other documents in the list of 11 documents which the Plaintiff had sought to refer to and rely upon in support of his case. In that context, the learned Trial Court did not mark the said documents at that stage. He would submit that when the Plaintiff was called upon by the learned Trial Court to prove the aforementioned documents, the learned Trial Court without considering the objections of the Defendants exhibited all 11 documents without considering the specific objections raised by Defendants.

5. He however candidly submitted to the Court that immediately thereafter Defendants filed Notice of Motion seeking a challenge to the marking of these three documents out of the 11 documents which are referred to and alluded to hereinabove namely Sale Deed, Power of Attorney and the Affidavit.

6. He would submit that a specific objection was raised in the Affidavit in support of the Notice of Motion that the Sale Deed dated

17.06.2017 was insufficiently stamped and therefore ought not to have been exhibited in evidence. Defendants in support of their case relied upon the decision of this Court (Coram : Amit Borkar, J.) in the case of ***Puneet Satpal Malhotra and Ors. V/s. Mukesh Satpal Malhotra and Ors.***¹ wherein this Court has held that in the event if objection is raised on the admissibility of a document requiring registration and on the basis of insufficient payment of stamp duty, this Court has followed a consistent view adopted by the Supreme Court that such admission and marking of a document would not be permissible in view of the express bar under Section 34 of the Maharashtra Stamps Act, 1958 and in fact such a document can be rejected at any stage of the suit proceedings by the learned Trial Court.

7. Mr. Shaikh would however fairly submit that all three aforementioned documents are original documents. Therefore, *prima facie*, there can be no impediment in marking them as Exhibits, however subject to the above objection raised by the Defendants with respect to one of them being insufficiently stamped.

8. From the above, it is seen that there is one such contentious document namely the Sale Deed dated 17.06.2017. In so far the other two documents are concerned, originals have been produced by the Plaintiff and the same have been correctly exhibited by the learned

1. Writ Petition No.10684 of 2023 decided on 16.10.2023

Trial Court in evidence. Perusal of the third impugned order dated 27.09.2023 which is at Exhibit-C, page No.37 of the Writ Petition shows that objection raised by the Defendants have not been considered at all by the learned Trial Court.

9. In that view of the matter, the impugned order dated 27.09.2023 stands recalled and set aside only in respect of the document dated 17.06.2017 which is the Sale Deed at page No.56 of the Writ Petition. Learned Trial Court shall consider the objection raised by the Defendants in respect of exhibiting the said Sale Deed in evidence in view of it been insufficiently stamped as also the fact that the objection raised is covered by the judgment in the case of *Puneet Satpal Malhotra (supra)* and decide the Notice of Motion *qua* the Sale Deed dated 17.06.2017 afresh strictly in accordance with law after hearing both the sides. Rest of the order dated 27.09.2023 in so far as the other two documents are concerned, as also the reasons given thereunder for those documents are sustained.

10. Needless to state that orders dated 21.06.2022 and 04.11.2022 also stand sustained since they now merge into the stand adopted by the Defendants by filing Notice of Motion restricting the Defendants' case only to in so far as marking of three documents is concerned.

11. The above direction regarding the Sale Deed dated

17.06.2017 in the Notice of Motion filed by Defendants, shall be decided by the learned Trial Court within a period of four weeks from today positively. Parties to the suit are directed by this Court not to seek adjournments and the learned Trial Court shall not give any unnecessary adjournments to the parties unless absolutely necessary. Considering the nature of the suit proceedings, the learned Trial Court is requested by this Court to dispose of S.C. Suit No.1424 of 2018 as expeditiously as possible and preferably within a period of ten months from today strictly in accordance with law.

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

H. H. SAWANT

[MILIND N. JADHAV, J.]

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