

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

CRIMINAL REVISION APPLICATION NO.108 OF 2023

Romell Housing LLP & Anr.	...Applicants
vs.	
Sameer Salim Shaikh & Ors.	...Respondents

**WITH
INTERIM APPLICATION NO.144 OF 2024
WITH
INTERIM APPLICATION (ST) NO.6224 OF 2024
IN
CRIMINAL REVISION APPLICATION NO.108 OF 2023**

Mr. Rajesh Tiwari & Co.	...Applicant
vs.	
Mr. Romell Housing LLP	...Respondent

Mr. Drupad Patil a/w Mr. Dheeraj Patil:	Advocate for Applicants.
Mr. Satsang Tailor a/w Mr. Deepak Shukla:	Advocate for Respondent No.1.
Mr. H.J. Dedhia:	APP for the Respondent No.2 – State.
Mr. Rohan Sawant a/w Mr. Rohit Bamne i/b. Laxman Jain:	Advocate for Respondent Nos.3 and 4.
Ms. Shraddha Prajapati i/b. Mr. Parag Shah:	Advocate for Intervenor.

**CORAM : S. M. MODAK, J.
DATE : 8th APRIL 2024**

P.C. :-

1. When this matter is called out learned Advocate Ms. Shraddha Prajapati submitted that she has filed intervention application on behalf of Mr. Parag Shah. It is filed on Saturday by e-filing and they are in the process of completing the formalities.

2. Learned Advocate Shri Drupad Patil for the Applicants submitted that the final hearing which is fixed today may not be adjourned. He is right.

3. Unless and until that Interim Application will be listed before the Court, the Court will not be in a position to give its opinion. They are at liberty to seek circulation after completing the formalities.

4. Heard Mr. Drupad Patil, learned Advocate for the Applicants. He has read over the earlier submissions advanced by Senior Advocate Mr. Godbole recorded in the last order dated 18th March 2024. He has read over part of the order passed by the Metropolitan Magistrate, 26th Court, Borivali dated 21st December 2019 (pg. 592). **He invited my attention to the following observations/findings:-**

- a. Reference of appointment of Court Receiver (para 3/pg.594) and in para no.35 and the Direction No.2

from the operative order (his client is entitled to receive possession of the disputed property from the Receiver).

5. For the purpose of pointing out what are the questions raised in the order of the Division Bench, he invited my attention to page 202 / para 25 (more specifically page 203 and the issues are referred in para 35/page 207).

6. About the procedure of exhibiting the documents before the trial Court, he invited my attention to the following documents:-

- a. Reference in further examination-in-chief of P.W.1 – Jude Romell in para 61 (not marking the deed of assignment as exhibit but giving him as Article ‘B’ and not marking letter of handing over possession because there is some variance about having signature and seal of Notary).
- b. Application filed by his client for production of copy of letter dated 10th December 2016 (Page 591).
Production was allowed.
- c. Corresponding Roznama (page 562).
- d. Letter of handing over possession is marked as **Exh.63**.

7. According to him, shortcoming in proving that letter handing over possession is cured through P.W.7 – Pradip Rane. He invited my attention to page 456. (letters marked as **Exh.63**). The said letter is on page 131 of compilation of documents. (letter dated 10th December 2016 bearing signature of executant and witnesses as claimed by him and without bearing stamp and seal of Notary Public). Even today, he has brought the original. It is kept with him. He has also shown to me copy of letter dated 10th December 2016 which was referred by P.W.1 during the examination-in-chief (having seal of Notary Public). (When query is put to him whether it is filed on record, it is not filed. However, he has tendered it). Copy given to other side. It is taken on record and it be annexed by Sheristedar to page **131** and be marked as page **131-A** (for the purpose of convenience). The rights of the other party is kept open.

8. On the point of stand taken by the present Respondents before the trial Court he invited my attention to the following pleadings:-

- a. Application filed by the opposite party No.1/ his client before the trial Magistrate requesting for exhibiting certain documents (2 to 8 of additional compilation).

- b. Reply given by the present Respondents on page 234 of additional compilation and more specifically ground 2(b)(iv) on page 237 (contending that this letter is already marked as **Exh.63** probable value of documents and its effect at the time of final hearing).
- c) Copy of the order dated 12th December 2019 passed by the trial Magistrate (page 241 of the said compilation) when the Court marked documents as **Article 'B'** (deed).

D, E, F, G, H.

9. To counter above submissions, he invited my attention to the findings of the learned Appellate Court in the impugned judgment on page 637. Following are the references made by him:-

- (i) The points framed by the Appellate Court on page 642.

Amongst six points according to him, following are the main points. They are as follows:-

- a) **Point No.II** (who was in possession of the suit property on 22nd April 2017). The finding is in favour of Respondent No.2 and 3 therein i.e. his clients. (i.e. the date on which the incident of alleged tress-pass

took place.

- b) whereas, the findings on **Point No.III & IV** (who was in possession two months earlier to 22nd April 2017 and whether the present Respondents were wrongly dispossessed on or before 22nd April 2017 by present Applicant.) Both these points are answered against him.

10. About the findings by the Appellate Court about exhibiting documents, he made following submissions:-

- a. the findings that *“the deed of surrender and letter of handing over possession were manipulated”* (para 13) is unwarranted. According to him, this case was never put up at any time before the trial Court and elsewhere also.
- b. He challenged the findings by the Appellate Court that both documents are inadmissible. It is for the following reasons:-
 - (i) the letter of handing over possession **Exh.63** was duly proved by P.W.7 - Mr. P.A. Rane.
 - (ii) Deed of assignment was marked as **Exh.155**. It is as

per the order dated 12th December 2019 exhibiting document. Whereas, it is on page 243.

- a. Deed of Assignment does not require registration.
- b. As per the proviso to Section 49 of the Registration Act, 1908 it can be used for collateral purpose.

11. According to him, to prove the possession the case put up is as follows:-

- (i) Case based on oral evidence of witnesses

Let him file the synopsis of those witnesses who were examined on next date.

- (ii) Case based on documents. They are as follows:-

Preliminary documents are as follows:-

1. **Exh.63** letter of possession dated 10th December 2016.
2. **Exh.155** deed of assignment dated 10th December 2016.
3. **Exh.36** and **Exh.37** (page 112) handing of possession by Manpreet Bajaj.

12. Due to paucity of time, stand over to 25/04/2024 at 2.30 pm as part-heard.
13. Interim relief to continue till next date.

[S. M. MODAK, J.]