

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

REVISION APPLICATION NO. 108 OF 2023

Romell Housing Llp and Anr. ...Applicants
vs.
Sameer Salim Shaikh and Ors. ...Respondents

Mr. G. S. Godbole Senior Advocate a/w Mr. Drupad S. Patil a/w Mr. Dheeraj Patil- Advocate for the Applicant
Mr. Chaitanya Pendse a/w Mr. Deepak Shukla a/w Mr. S. Tailor - Advocate for the Respondent No. 1
Mr. Rohan Savant i/by Mr. Laxman Jain – Advocate for Respondent Nos. 3 and 4.
Mr. H. J. Dedhia – APP for the Respondent-State

ALONGWITH
INTERIM APPLICATION (ST) NO. 6224 OF 2024

Chandramani Deoraj Dubey
And Ors. ...Applicants
vs.
Sameer Salim Shaikh and Ors. ...Respondents

Mr. R. R. Ojha i/by Mr. M. P. Mishra – Advocate for Intervenor in IAST 6224 of 2024
Mr. H. J. Dedhia – APP for the Respondent-State

ALONGWITH
INTERIM APPLICATION NO. 144 OF 2024
IN
REVISION APPLICATION NO. 108 OF 2023

Khurshid Nooruddin Shaikh
(w/o. Nooruddin Shaikh)
and Ors. ...Applicants
vs.
Sameer Salim Shaikh and Ors. ...Respondents

Mr. H. J. Dedhia – APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 18th MARCH 2024

P.C. :-

1. As orally directed, learned Senior Advocate Shri Godbole has placed on record the copy of the google image about location of the land and structures involved in the dispute. For reference purpose, it is taken on record. The Respondents are at liberty to make their submissions.

2. Learned Advocate Shri Pendse submitted that this was not part of the record. He may be right. It is also true for understanding purpose, this oral direction was given. In that context, it is taken on record.

3. Heard learned Senior Advocate Shri Godbole. He also placed on record the summary of witnesses :--

- a. examined on behalf of the present Applicant-original opponent no. 1 and
- b. examined on behalf of the present Respondent-Opponent No. 2.

It is taken on record and marked as '**Annexure-X**'.

4. In part, he read over the observations by learned Metropolitan Magistrate in the Order dated 21/12/2019 at page no. 592. While reading that he also read over the evidence of the following relevant witnesses:-

DW No. 1 - Sameer Shaikh	at Page no. 311 - Vol. -II.
PW No. 5- Imran Shaikh	at page no. 445 – Volume No. II.
PW No. 15 - Dinesh Ambore	at page no. 476 – Volume No. II

5. During arguments, he pointed out reference of following facts/documents/findings from the said Order :-

- (i) Exhs. 63 and 38 executed by deceased K. N. Shaikh on 10/12/2016 in favour of the present Applicant for handing over the possession, para no. 11
- (ii) The presence of the learned Advocate Shri Diwakar – PW No. 6 and learned Advocate Shri Pradeep PW No. 7- para no. 12, 13 and 14.
- (iii) The comment made in the judgment about evidence of the PW No. 5-Imran (para no. 12) and affidavit at Exh. 59 (relied upon by other side during his cross-examination). Finding on the evidence of the PW No. 5- Imran.
- (iv) His evidence is not accepted for the reason “not deposed specific date on which the possession was handed over”. However according to learned Senior Advocate Mr. Godbole, the fact is otherwise. This witness has also signed

on letter of handing over the possession, about depositing cheques on behalf of the K. N. Shaikh (According to him, the affidavit Exh. 59 does not throw any light about the present dispute) para no. 24.

- (iv) Reference of the Dr. Chetan-PW No. 13 (para no. 15) giving details about hospitalization of the K. N. Shaikh (not indicating about hospitalization on the relevant date i.e. 10/12/2016)
- (v) About execution of the documents by one Sultana Shaikh as Power of attorney holder of deceased K. N. Shaikh on 31/12/2016 (para no. 18) Exh. 129 to Exh. 133. Trial Court has discarded them. For the reason that they are not supporting the case of the present Applicant. Trial Court opined registration is necessary.
- (vi) About stand taken by Opposite party no. 2-Salim about partnership for the K. N. Shaikh Construction having K. N. Shaikh as one of the partner. He becomes sole surviving partner in view of the death of the others. This theory was not accepted by the trial Court as no documents were produced at para no. 20.
- (vii) Reference in para no. 21, about visits of PW no. 8- Padmakar and PW No. 2-Dilip.
- (viii) The learned Metropolitan Magistrate has discarded the evidence of the PW Nos. 9, 10 and 11 on the point parking of the vehicle in the disputed land. Their evidence does not throw any light about possession.

- (ix) About the evidence of the PW No. 15- Dinesh, who is security guard (who was present on the date of the incident). The trial Court has discarded his evidence because photocopies dated 23/04/2017 are not material. (Mr. Godbole has disputed this) at para no. 24.
 - (x) Para no. 25 the documentary evidence in the form of the Exh. 63 and 38 does not help the Applicant because date is not mentioned (whereas according to learned Senior Advocate Mr. Godbole after execution, possession was taken on the same date as deposed by the witness)
 - (xi) Learned Metropolitan Magistrate has emphasized on lacunae in the evidence of the DW No. 1, at para no. 27.
 - (xii) About the comment made by learned Metropolitan Magistrate on the registration of the F.I.R., handing over the investigation to the CBI, at para no. 28
6. For paucity of time, stand over for hearing remaining arguments on **01st April 2024 at 2.30 p.m.**
7. Interim relief granted earlier to continue till next date.

[S. M. MODAK, J.]