

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 291 OF 2024

Mohan Hirachand Shah

.. Applicant

Versus

Bina Ketan Samani & Ors.

.. Respondents

.....

- Ms. Renuka Shah a/w Ms. Siddhi Chavan i/by M.P. Savla & Co for Applicant

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CORAM : MILIND N. JADHAV, J.

DATE : JUNE 14, 2024

P. C.:

1. Not on board. Mentioned. Taken on board.
2. Perused the praecipe dated 14.06.2024.
3. Heard Ms. Shah, learned Advocate for Applicant.
4. Present Civil Revision Application (CRA) takes exception to the order dated 15.03.2024 passed by the learned Trial Court below Exh. 46 being an Application under O. VII, R. 11 of the CPC seeking rejection of the Suit plaint on the premise that three properties which are the subject matter of the suit proceedings are exclusively self acquired properties of Defendant No. 1 (Applicant herein).
5. Ms. Shah has taken me through the pleadings and would contend that on 15.03.2024, learned Trial Court being seized with hearing of Exh. 5 Application as also the Application filed by

Defendant No. 1 passed two separate orders almost simultaneously. Perusal of both the orders which are appended at Exh. O, page Nos. 237-243 and Exh. P, page Nos. 244-248 of the CRA reveals that the order passed below Exh. 46 was uploaded at 11:25 am on 16.03.2024 whereas the order passed below Exh. 5 was uploaded at 11:27 am on 16.03.2024. Be that as it may, it is clearly seen that there is an affirmative finding returned by the learned Trial Court while rejecting Exh. 5 Application of the Plaintiffs to the effect that all three properties are in fact belonging to the exclusive and absolute ownership of Defendant No. 1. Said finding is returned in paragraph Nos. 12, 13 and 14 of the order passed below Exh. 5. In view of such affirmative findings, the impugned order passed below Exh. 46 rejecting the Application under O. VII, R. 11 of the CPC on the face of record is incorrect and cannot be countenanced. Reasons returned by the learned Trial Court in paragraph No. 10 of the order passed below Exh. 46 are innocuous, rather completely irrelevant. Once the learned Trial Court has come to the specific conclusion that the suit properties are belonging to the absolute and legal ownership of Defendant No. 1, there ought not to be any impediment in allowing the Exh. 46 Application.

6. Ms. Shah would submit that there is one registered sale deed and one registered release deed in respect of two properties so as to cover the three suit properties in the suit proceedings.

7. An arguable case is made out by Ms. Shah for immediate stay of the order dated 15.03.2024 passed below Exh. 46 which is impugned herein. Hence, the order dated 15.03.2024 passed below Exh. 46 is hereby stayed.

8. In the meanwhile, issue notice to the Respondents made returnable on 05.07.2024. Humdast permitted. In addition to Court's notice, Applicant is directed to serve copy of the CRA along with copy of this order on the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on or before the next date. After receiving the notice, Respondents to file affidavit-in-reply on or before the next date, if so desired with an advance copy to the Advocate for Applicant.

9. Respondents are directed to remain present either themselves or through their Advocate on the next adjourned date. It is made clear that if Respondents remain absent despite service on the next adjourned date, this CRA shall be heard and disposed of at the stage of admission in the absence of the Respondents.

10. Stand over to 5th July, 2024.

Amberkar

[MILIND N. JADHAV, J.]

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by RAVINDRA
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