

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****INTERIM APPLICATION NO. 9846 OF 2024****IN****WRIT PETITION NO. 4791 OF 2023**

Haridaya Charitable Trust through
its Trustee and Ors.

.... Applicants

In the matter between

Mrs. Mrudula K. Jasani Thr. POA
Rajesh Rajnikant Thakkar
V/s.

....Petitioner

Dr. Swapna P. Dalal and Ors.

....Respondents

Mr. Kunal Bhanage i/b Sonal Mishal, for the Petitioner.

Mr. Vishwanath Talkute, for the Respondent No.1.

Mr. R. S. Pawar, AGP for Respondent – State.

Mr. Rajesh Thakker, POA to Petitioner present-in-Court.

CORAM : SANDEEP V. MARNE, J.

Date : 24 OCTOBER 2024.

P.C. :

1) Interim Application is filed seeking substitution of name of the Petitioner with the name of the Applicant - Haridaya Charitable Trust. It is contended in the application that the Petitioner – Mrs. Mrudula Kirtikumar Jasani has gifted the

premises in question in favour of the Haridaya Charitable Trust by virtue of registered Deed of Gift dated 30 March 2022.

2) Mr. Talkute, the learned counsel appearing for Respondents would raise serious objection to substitution of name of the Applicant against the name of the Petitioner. He would submit that the Deed of Gift sought to be relied upon by the Applicant is a void document. He would submit that the Gift Deed is signed by Petitioner - Mrs. Mrudula Kirtikumar Jasani whereas it is an admitted fact that she is a resident of Australia and has never travelled to India for signing the Gift Deed. He would submit that alongwith Gift Deed there is a Power of Attorney attached which is shown to have been executed in the name of Mr. Rajesh R. Thakkar. That Mr. Rajesh R. Thakkar has not signed the Gift Deed but the same is shown to have been signed by Mrs. Mrudula Kirtikumar Jasani. He would submit that the attestation provided by two witnesses to the alleged signature of Mrs. Mrudula Kirtikumar Jasani is void as the said attesting witnesses in India could not have seen Mrs. Mrudula Kirtikumar Jasani sign the Gift Deed in Australia. He would submit that the constituted Attorney Mr. Rajesh R. Thakkar has merely presented the Gift Deed for registration and has not executed the same, as it bears signature of Mrs. Mrudula Kirtikumar Jasani. On these broad submissions, it is Mr. Talkute's case that since the Deed of Gift itself is a void document not resulting in transmission of title in respect of the premises in favour of the Applicant-Trust, this Court cannot permit the Applicant-Trust to replace itself in

place of Mrs. Mrudula Kirtikumar Jasani for prosecution of the present Petition.

3) I am not impressed by the submissions of Mr. Talkute. By now it is settled position of law that legal representatives / assigns are brought on record only for the purpose of ensuring valid carriage of the proceedings after death of the original party. Merely because a persona or entity is brought on record to represent the estate of the deceased party, the same *ipso facto* does not mean recognition of transmission of title in respect of estate of the deceased in favour of such party. Therefore, even if the Applicant-Trust is brought on record in place of the Petitioner, the same would not mean that the Applicant-Trust has become owner of the suit premises. Any party claiming adverse title in respect of the premises against the Trust would be in a position to establish the same in a competent Court of law and mere bringing on record of the Applicant in place of the Petitioner in the present Petition would not come in the way of such persons / entities claiming adverse title in respect of the premises. Applicant-Trust is taken on board only for the purpose ensuring prosecution of the Petition. As of now, registered Deed of Gift is sufficient for the purpose of arriving at a *prima facie* conclusion that the Applicant-Trust can represent estate of the Petitioner. Respondent do not claim ownership in respect of the premises. They are mere licensees. The limited issue involved in the present case is about right of Respondent-licensees to remain in possession of the suit premises. They are mere permissive users, who do not claim ownership in respect of the premises in

question. Therefore, bringing on record the Applicant-Trust in place of Petitioner would not adversely affect the Respondents as they do not claim ownership in respect of the premises in question.

4) To make the case worse for Mr. Talkute's clients Mr. Bhanage, the learned counsel appearing for Petitioner would submit that Mrs. Mrudula Kirtikumar Jasani is alive. This contention is sought to be disputed by Mr. Talkute. In my view, it is not necessary to delve deeper into this aspect in view of failure on the part of the Respondents to produce on record death certificate of the Petitioner.

5) In my view, since the Applicant-Trust claims ownership in respect of the premises on the strength of Deed of Gift executed by the Petitioner, it can be permitted to brought on record as Petitioner No.2 so that the Petition can be jointly prosecuted by the original Petitioner as well as by the Applicant.

6) I accordingly proceed to pass the following order :-

- (i) Applicant-Trust is permitted to be impleaded as Petitioner No.2 to the Petition.
- (ii) The amendment to be carried out forthwith.
- (iii) Re-verification dispensed with.
- (iv) Interim Application is accordingly disposed of.

[SANDEEP V. MARNE, J.]