

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 1466 OF 2023

IN

AWARDS NO. 115 OF 1978

Ishwar Nagar Co-operative Housing Society ...Applicant/Org.
Ltd. Respondent No. 1

In the matter of

Kanji Damji Lodaya & Ors. ...Plaintiffs/Original
Applicants

Versus

Ishwar Nagar Co-operative Housing Society
Ltd. & Anr. ...Respondents

Ms. Neeta Rajda with Mr. Murlidharan, MR. V. Mannadiar & Co. for
the Plaintiffs.

CORAM : R.I. CHAGLA J

DATE : 23 January 2024

ORDER :

1. By this Interim Application, the Applicant/original
Respondent No. 1 has sought permission to rectify the schedule of the
property appearing in the Decree dated 22nd November 1978 which

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is annexed at Exh.E to the Interim Application.

2. Further, relief is sought for permission to the Applicant to register a Deed of Rectification submitting the Schedule to the registered Deed with a corrected Schedule showing the correct Survey No. and CTS No. (Survey No. 230 and CTS No. 619) in substitution of the schedule to the registered Decree in terms of the draft annexed at Exh.K to the Interim Application.

3. The Applicant has stated that the Applicant was the original Respondent No. 1 in the Notice of Motion taken out by the original Applicant seeking decree in terms of the Award.

4. The Award had directed the property described in Exh.A to the Interim Application to stand, vested, transferred, granted, assured and assigned to the Applicant Society.

5. The Applicant has stated that the land owners approached this Court for a decree in terms of the Award. This Court after hearing Notice of Motion No. 1153 of 1978, passed Decree dated 22nd November 1978 in terms of Award No. 115 of 1978.

Thereafter, the Applicant Society got a drawn up Decree prepared, adjudicated and after payment of appropriate stamp duty presented the Decree under cover of the letter issued by the Prothonotary & Senior Master of this Court dated 15th March 1979. The Decree was lodged with the Sub-Registrar of Assurances, Bombay on 23rd March 1979 and the same was registered under Registration No. S 830/79 dated 19th June 1979.

6. The Applicant has stated that the Decree was registered as a conveyance as an unilateral document since it was an order of this Court. Thereafter, the Applicant noticed that there was a minor but significant error in description of the property in the Award, which was confirmed by this Court and converted into the decree that was registered.

7. The Applicant thereafter approached the office of the City Survey Officer to mutate the revenue records and add the name of the Applicant Society in the subject land bearing Survey No. 230. However, it was noticed that earlier the properties were identified by survey numbers and thereafter, in the suburbs CTS numbers were introduced thereby replacing survey numbers with CTS numbers.

However, there was no city survey number in the suburban District.

8. Further, it is stated that the Applicant Society is the owner of the property having Survey No. 230 before Survey numbers were replaced by CTS numbers which is evidenced by the 7/12 extract of the property bearing Survey No. 230 issued in the name of the original owner “Kanji Damji”. Document at Exh.G is a copy of 7/12 extract of the said Society.

9. The Applicant Society states that the property should have been described by Survey No. 230 instead of City Survey Number. This was an error in the Award that was converted into the Decree and subsequently registered. Further, the correct CTS Number in respect of the Plot of land upon which the Applicant Society building stands is 619. The Survey Number 230 corresponds to CTS Number 619.

10. The Applicant Society has approached this Court for amendment in the Award and the Decree. However, this was not followed up by the office bearers of the present Applicant Society and none appeared before this Court when the matter had been called

out and no order was passed on the Application. This was borne out from the copy of the minutes of order dated 12th November 1990, which is at Exh.I to the present Interim Application.

11. The Applicant has thereafter, stated that there was a change in the committee members and no progress has been made. However, in the year 2017, the Applicant Society caused searches to be taken of the proceedings in this Court to find out the status of the Application made for amendment in the decree. It was confirmed that no amendment was carried out.

12. The Applicant Society states that the Society has five wings consisting of 148 flats and 56 shops. The Society buildings are more than 50 years old and it is imperative that the Society goes in for redevelopment of the Society's property and gets constructed new buildings in place of the old buildings. However, the Society is unable to proceed further because the Society does not have its name on the property card which could not be issued by the Revenue Department as the description of the property in the Decree does not match the actual situation.

13. The Applicant Society has accordingly, preferred the present Interim Application by stating that though the Decree was passed on 22nd November 1978, there is an error in the schedule, which error is of a nature that does not have any material effect on the Award or decision of this Court passing the Decree in terms of the original Award and this Application is not barred by limitation.

14. Having considered the averments, in the present Application as well as submissions of the learned Counsel appearing for the Applicant, in my view, there is an obvious error in the description of the said property where instead of words and numbers “Survey No. 230”, it is written as “City Survey No. 230” in the original Award. This requires rectification and for which the draft Deed of Rectification at Exhibit “K” to the Interim Application appropriately describing the said property by showing correct Survey Number and City Survey Number (Survey No. 230 and City Survey No. 619) in the schedule substituting the original Schedule, requires to be registered.

15. In view thereof, the relief sought for in the Interim Application is granted.

16. The Interim Application is made absolute in terms of prayer clauses (a) to (c), which read thus:-

“(a) this Honourable Court be pleased to permit the rectification of the Schedule of the property appearing in the Decree dated 22nd November, 1978 **EXHIBIT “E”** hereto.

(b) this Honourable Court be pleased to permit the Applicant to register a Deed of Rectification substituting Schedule to the registered Deed with a corrected Schedule showing the correct Survey No. and CTS No. (Survey No. 230 and CTS No. 619) in the Registered Decree in terms of the draft annexed hereto as **EXHIBIT “K”**;

(c) This Hon’ble Court be pleased to direct that the Deed of Rectification be signed by an Officer of this Hon’ble Court on behalf of the Land Owners.”

17. Interim Application is accordingly, disposed of.

[R.I. CHAGLA J.]