

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.172 OF 2025

Kishorilal Shivbux (Deleted through his LRs) ...Petitioner
Laxmidevi Kishorilal Verma & Ors.)

Versus

Pratapsing Narsingrao Pupala ...Respondent

Mr. Bharat Joshi, Advocate for Petitioner.

Ms. Kavita A. Shah for Respondent.

CORAM: MADHAV J. JAMDAR, J.

DATED : 15th JANUARY 2025

P.C.:

1. At the outset Mr. Bharat Joshi, learned Counsel appearing for the Petitioner seeks leave to amend the prayer clause to include the challenge to the Order dated 7th November 2024 passed by the learned Judge, Small Causes Court, Mumbai below Exhibit 135 in R.A.E. Suit No. 647/1072 of 2000. Accordingly leave as prayed is granted. Amendment be carried out forthwith. Reverification is dispensed with.

2. By the impugned Orders, application of the Petitioner filed in the said Suit seeking reconstruction of the photographs which are part of the Court Commissioner's report, is rejected.

3. It is admitted position that the Court Commissioner report, which is the subject matter of the impugned Orders was filed in the Small Causes Court, Mumbai. The said report of the Court Commissioner (Pages 29-30 of the Writ Petition) specifically records that the Commissioner has taken the necessary photographs in the presence of the Plaintiff and Defendants and the said photographs are produced alongwith the Court Commissioner's report. Copies of the Court Commissioner's report are supplied to the Plaintiff and the Defendants. The Plaintiff has raised detailed objection dated 2nd May 2008 to the Court Commissioner report. In the said objection (Pages 31-36 of the Writ Petition) it has been specifically stated that the Plaintiff has gone through the said report along with the sketch plan and photographs submitted by the Court Commissioner.

4. Thus, it is clear that these photographs were part of the Court Commissioner's report and the Commissioner's report along with photographs has been submitted before the learned Judge, Small Causes court, Mumbai. It is also admitted position that the said photographs are missing from the record of the Small Causes Court, Mumbai.

5. In the facts and circumstances, the parties are put to notice that the Writ Petition will be heard finally at the stage of admission, subject to the convenience of the Court.

6. Stand over to **3rd February 2025 at 2.30 p.m.** for hearing of the Petition at admission stage.

7. Till disposal of the Writ Petition, ad-interim relief in terms of prayer clause (c).

8. In the meanwhile as the factual position involved in the Writ Petition shows that the record of the Small Causes Court has been tampered with and the photographs which are part of the Court Commissioner's report are missing from the record of the Small Causes Court, Mumbai, the Registrar of the Small Causes Court, Mumbai is directed to submit the report to this Court on or before the next date.

BHALCHANDRA
GOPAL
DUSANE

(MADHAV J. JAMDAR, J.)

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BHALCHANDRA
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Date: 2025.01.16
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