

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.172 of 2025

Kishorilal Shivbux Deleted

Thr His Legal Representatives

Laxmidevi Kishorilal Verma

And Ors.

...Petitioners

Versus

Pratapsing Narsingrao Pupala

...Respondent

Mr. Bharat Joshi a/w Yatin Kochare, for the Petitioners.

Ms. Kavita A. Shah, for the Respondent.

CORAM: MADHAV J. JAMDAR, J.

DATED: 06 FEBRUARY 2025

JUDGMENT:

1. By the present Writ Petition filed under Article 227 of the Constitution of India, the Challenge is to the legality and validity of the Order dated 7th November 2024 passed by the learned Judge, Small Causes Court, Mumbai below Exhibit-135 in RAE Suit No.647/1072 of 2000 and Order dated 19th December 2024 passed by the learned Judge, Small Causes Court, Mumbai.

2. The said Application bearing Exhibit-135 has been filed by Defendant Nos. 1(d) and 2 seeking reconstruction of the photographs taken by the Court Commissioner annexed to the Court Commissioner's report dated 7th April 2008. The said Application has been rejected by the impugned Order dated 7th November 2024. The Review Application bearing Exhibit-139 seeking review of said Order dated 7th November

2024 has also been rejected by Order dated 19th December 2024.

3. This Court has passed following Order on 15th January 2025 :-

“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"

4. Pursuant to the said Order dated 15th January 2025, a report has been filed by the Registrar, of Small Causes Court, Mumbai *inter alia* stating that the said suit proceedings were transferred from Court Room No.17 to Court Room No.12. It is further stated that the record and proceeding of the suit was received in Court Room No.17 from Court Room No.12 duly paged and indexed on 20th March 2021. The entry at Serial No.15 of Page No.2 of Index of file "D" shows that photographs along with photo copies of map and one open packet was send from Court Room No.12 to Court Room No.17 on 20th March 2024. Thereafter the matter was in custody of Judicial Clerk of Court Room No.17 and photographs are not found in the record and proceeding of that suit since then.

5. In fact it is the contention of Mr. Bharat Joshi, learned Counsel appearing for the Petitioner that the photographs were in the record till 30th August 2024 and thereafter the said photographs are not traceable in the record of the small Causes Court. This is a very serious matter where the record of the Court is not traceable and in fact the photographs which the Commissioner has taken and annexed to the Commissioner's report dated 7th April 2008 are not to be found in the Court record.

6. In fact the learned Judge, Small Causes Court, Mumbai, while rejecting the Application for reconstruction of the photographs have observed that the same will be considered after examining the Court Commissioner. However, the Court Commissioner has passed away and therefore the said possibility is not there. In any case the Court Commissioner's report along with colour photographs have been furnished to both the parties and both the parties are in possession of the colour photographs taken by the Court Commissioner. In view of the above position both the parties have filed Minutes of Order. The Minutes of Order are signed by learned Advocate of the Petitioner and learned Advocate of the Respondent as well as by the Petitioner. Learned Counsel appearing for the Respondent state that she has taken instructions from the Respondent and the Respondent is agreeable for the Minutes of Order.

7. Accordingly, the said Minutes of Order are taken on record and marked as “X” for identification. The said Minutes of the Order read as under :-

Minutes of the Order

“1) By consent of the parties, impugned orders dated 19th December, 2024 below Ex.139 and order dated 7th November, 2024 below Ex.135 stand modified as under:-

- (i) The 23 photographs annexed to the Report of Court Commissioner Dr. J.S. Sawant, dated 07th April, 2008 (Ex.18), to be reconstructed in R.A.E. Suit No.1072 of 2000. Copies of the said 23 photographs are annexed hereto as Annexure A Colly.*
- (ii) The reconstruction of the 23 photographs is permitted only by way of reconstruction of the records, keeping all the rights and contentions of the parties in that regard open in the above Suit before the Small Causes Court, Mumbai. The Trial Court to decide and proceed with the above Suit on its own merits.*

Dated this 06th day of February, 2025”

8. Accordingly, in view of the above Minutes of Order, the impugned Order dated 7th November 2024 as well as impugned Order dated 19th December 2024 passed by the learned Judge, Small Causes Court, Mumbai below Exhibit-135 and below Exhibit-139 in RAE Suit No.647/1072 of 2000, are quashed and set aside. The said Application bearing Exhibit-135 and Exhibit-139 are allowed in terms of the Minutes of Order.

9. It is clarified that what is allowed by this order is only

reconstruction of the record by reconstructing said 23 photographs, however, all the rights and contentions of both the parties regarding admissibility of the said photographs in evidence as well as the admissibility of Commissioner's report in evidence are expressly kept open.

10. As the factual position on record clearly shows that from the Court record the crucial documents are missing, the learned Chief Judge of the Small Causes Court is requested to conduct thorough enquiry and take appropriate action against the concerned persons in accordance with law.

11. Accordingly, the Writ Petition is disposed of in above terms with no Order as to costs.

[MADHAV J. JAMDAR, J.]