

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11743 OF 2025

ARJUN
VITTHAL
KUDHEKAR

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Date: 2025.09.28
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Kishorilal Shivbux (deceased) (deleted) ...Petitioners
Through his legal representatives
Laxmidevi Kishorilal Verma & Ors.

Versus

Pratapsing Narsingrao Pupala ...Respondent

Mr. Yatin Kochare a/w Priya Rombade i/b Bharat Joshi, for the
Petitioners.

Mr. Nirman Sharma i/b Kavita A. Shah, for the Respondent.

CORAM: MADHAV J. JAMDAR, J.

DATED: 23 SEPTEMBER 2025

P.C.:

1. Heard Mr. Yatin Kochare, learned Counsel appearing for the
Petitioners and Mr. Nirman Sharma, learned Counsel appearing for the
Respondent.

2. The challenge in this Writ Petition filed under Article 227 of the
Constitution of India is to the Order dated 12th June 2025 passed by
the learned Judge, Small Causes Court at Mumbai below Exhibit-147 in
RAE Suit No.1072 of 2000. The said application bearing Exhibit-147 has
been filed by the Petitioner i.e. Defendant and by the impugned Order
the said Application has been partly allowed.

3. The Petitioner-Original Defendant has sought following reliefs in said Exhibit-147 Application :-

“(a) the Court Commissioner’s Report dated 7th April, 2008 at Ex.18 with the sketch of the suit premises and 23 photographs (reconstructed) be marked as exhibit.”

4. By the impugned Order the said Application has been partly allowed by passing the following operative Order :-

“ORDER

- 1. The application is partly allowed.*
- 2. The reconstructed copies of photographs filed by the Court Commissioner are marked as Exh.152 Colly.”*

Thus, it is clear that the Petitioner-Defendant has sought relief that the sketch of the suit premises and 23 photographs (reconstructed) be marked as exhibits and the learned Trial Court has exhibited the reconstructed copies of photographs as Exhibit-152, collectively and in effect the sketch of the suit premises is not marked as Exhibit.

5. The perusal of the record shows that the Court Commissioner’s Report dated 7th April 2008 is already marked as Exhibit-18 and the reconstructed copies of photographs are also marked as Exhibits. Thus, what has not been marked as exhibit is the sketch of the suit premises which is also enclosed to the Court Commissioner’s Report.

6. Mr. Nirman Sharma, learned Counsel for the Respondent-Original Plaintiff, submits that the similar Order as passed on 6th February 2025 in Civil Writ Petition No.172 of 2025 more particularly as contained in

Clause Nos.7 and 9 of the said Order be passed. Learned Counsel for the Petitioner, on instructions, is agreeable for said suggestion.

7. Accordingly, by consent of the parties, the sketch of the suit premises which is annexed to the Court Commissioner's Report at Exhibit-18 is directed to be marked as exhibit. However, it is clarified that the rights and contentions of both the parties regarding evidentiary value of said sketch of the suit premises are expressly kept open, to be decided at the stage of final hearing.

8. Accordingly, Order dated 12th June 2025 passed by the learned Judge, Small Causes Court at Mumbai, below Exhibit-147 in RAE Suit No.1072 of 2000, is modified to the extent as indicated above.

9. Writ Petition is disposed of in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]