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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 2471 OF 2025

Subhashadevi W/o. Late Kailashnarayan Pandey ... Appellant
V/s.

Umadevi Shaileshkumar Tripathi & Ors. ... Respondents

Mr. Mayur Vinod Faria a/w. Mr. Harshal Hasmukh Savla for Appellant.

Mr. Parth Pravin Bhanushali for Respondent Nos. 1 & 3.

Ms. Harsha Y. Shah i/b. Mr. Yatin Shah for Respondent No.2 & 4.

CORAM : M.M. SATHAYE, J.

DATE : 10th DECEMBER, 2025

P.C. :

1. Heard learned counsel for the parties. Considering the narrow conspectus of the controversy, the appeal is taken up for final disposal with the consent of the parties.

2. The Appellant is org. Plaintiff who filed S.C. Suit No. 1558 of 2016 to declare that she has 1/5th share in the suit property. A further declaration is sought that consent terms in suit No. 1256 of 2012 are null and void. Alongwith plaint, the Appellant has given schedule of suit properties at Exhibit-B, in which 5 properties are described along with necessary address, floor, name of the building, its physical location etc. Paragraph No.5 of the impugned Judgment and Order records that under Exh.16 which was reply argument by Defendants shows that the identification of the suit property was not denied. Learned counsel for Respondents No.2 & 4 fairly submitted that Exh. 16 was document filed by them.

3. It is not disputed that at the time of passing impugned Judgment and Order, the Appellant/Plaintiff was in the witness box, being cross-

examined which was not complete.

4. Under the impugned Judgment and Order dated 13.10.2025, learned Trial Judge has rejected the plaint on the ground that plaint does not comply with provisions of Order VII Rule 3 of Civil Procedure Code, 1908 (for short, 'CPC'). Reference is also made to Chapter II of the Civil Manual.

5. Learned counsel for the Appellant submitted that there was no reason to adopt a hyper-technical approach and reject the plaint. He submitted that the Appellant was in witness box and her cross examination was going on.

6. Learned counsel for Respondents Nos.1 & 3 have no objection if the impugned Order is set aside and suit is remanded for trial in accordance with law.

7. Learned counsel for Respondent Nos.2 & 4, however, has supported the impugned Judgment and Order on the grounds, which in my opinion, are related to the merits of the case.

8. Bare perusal of the Order VII Rule 3 of the CPC shows that where subject matter of suit is immovable property, the plaint shall contain a description of the property "sufficient to identify it" and in case such property can be identified by boundaries or numbers in the record of settlement or survey, the plaint shall specify the boundaries or numbers.

9. Suit is filed for partition and declaration and in Exhibit-B, the properties are sufficiently described with identification in the records/survey and are found to be otherwise sufficient to identify the

same. It is also not disputed that the parties are real brothers and sisters and claim pertains to their share.

10. Respondent/Defendant Nos. 2 & 4 have not denied identification of the suit property and Respondent/Defendant Nos. 1 & 3 have adopted supporting stand. The suit properties are found to be sufficiently described for identification. Therefore it is necessary in the interest of justice that rival contentions are considered and adjudicated on merits.

11. The appeal is therefore allowed by passing following order:

- (a) The impugned Judgment and Decree dated 13.10.2025 passed in S.C. Suit No. 1558 of 2016 by Judge, City civil Court, Mumbai, is set aside.
- (b) The said suit is restored to the file of the Trial Court for hearing in accordance with law. This Court has not expressed any opinion on merits of the rival claims, which are kept open to be decided on merits.
- (c) It is directed that Trial shall proceed further in the restored suit from the point/stage at which it was, when the impugned Order was passed.

12. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)