

IN THE COURT OF SMALL CAUSES AT MUMBAI

**ORDER BELOW EXHIBIT-65
IN
R.A.D. SUIT NO.230 OF 2002
(CNR NO.MHSCA2-005649-2004)**

Messrs Arun Bros .. Plaintiffs
V/S.
Messrs S. K. Kabbur Private Limited and Ors. .. Defendants

Mr. Suraj Shah, Advocate for the plaintiffs
Mr. D. C. Mehta, Advocate for defendant Nos.1 and 3

**Coram:- S. D. Kurane, Judge
Court Room No. 8
Dt.12.02.2024**

ORDER

This is an application filed by defendant No.3 under Section 151 of CPC to recall the order below Exh.40 dated 26.11.2019 as prayed.

2. It is alleged that defendant No.4 had filed an application Exh.40 is based on the averments that her application for withdrawal of amount deposited by the plaintiffs being Exh.34 was rejected by this Court by order dated 07.12.2017 holding that intervener (present defendant No.4) has not prayed for joining of party to the present RAD Suit No.230 of 2002. In application Exh.40, it has been averred that defendant No.1 has surrendered all its right, title and interest in the subject matter of the property in favour of the legal heir of the deceased Radhabai Kabbur and said property is treated as joint possession of all the legal heirs mentioned in the Consent Terms dated 04.02.2013 and 05.05.2015. It had been also averred in Exh.40 that as per Consent Terms, the plaintiff has been declared as tenant

of all the new owners of the suit property and all the new owners have accepted the plaintiff as their tenant. According to defendant No.3, the plaintiff had indirectly supported the case of intervenor (present defendant No.4) and played fraud on the Court in getting order dated 26.11.2019 by which plaintiff is beneficiary. It is further alleged that recently, plaintiff moved an application Exh.45 for joining remaining persons claiming to be heirs and of the late Radhabhai as party defendants which was supported by the defendant No.4, however as the defendant Nos.1 to 3 has placed the correct facts on record, the said application is rejected by this Court by order dated 18.08.2022. The plaintiff herein has preferred the Revision Application against that order before the Hon'ble Appellate Bench and after considering the application on merit, the Hon'ble Bench was pleased to reject the same Revision Application No.253 of 2022 by its order dated 24.02.2023 by observing that defendant No.4 who was joined as party defendant on the similar pleading in its application Exh.40 has not only misrepresented this Court, but had played systematic fraud and caused this Court to believe that the suit premises in question has been devolved upon the beneficiaries of the deceased Radhabai and one of them is defendant No.4, which is not the fact. So, according to defendant No.3, this being the position, prima facie, there is nothing to find substance in the intervener's contention regarding the devolution or assignment of an interest in the suit premises in her favour being one of the heirs of the deceased Radhabai. It is alleged that inspite of knowing fully well being one of the party to the said Consent Terms filed before the Hon'ble High Court, misrepresented this Court and applied to be joined as she is one of necessary parties to the suit. So, according to defendant No.3,

order below Exh.40 need to be recalled and whatever amendment carried out in pursuant of the said order be directed to be deleted and plaint be restored to its original position as before passing of the order dated 26.11.2019.

3. The plaintiffs have endorsed their say to the application and thereby resisted it and prayed for its rejection.

4. Defendant No.4 Anuradha Anant Umarani alias Jayashree Narayan Kabbur has resisted the application by filing her independent reply at Exh.67 and thereby submitted that defendant No.1 is no longer landlord of the plaintiffs by virtue of Consent Terms. Defendant No.1 is party to the Consent Terms and have specifically surrendered all right, title and interest in plot No.109A and further the defendant No.1 is in occupation and possession of a particular godown premises only admeasuring approx. 1000 sq.ft. in the plot No.109A. According to her, as per Consent Terms, defendant No.1 has surrendered all right, title and interest to the Estate of the deceased Radhabai. So, now defendant No.1 cannot claim to be the landlord of the plaintiff especially when the defendant No.4 is declared as the landlord of the plaintiffs. It is the contention of defendant No.4 that she is co-owner alongwith other nine co-owners of the plot No.109A. Furthermore, Consent Terms dated 04.02.2013 is executed before the Hon'ble High Court. So, it is her contention that present application is nothing but try to harass and so it is liable to be dismissed in limine.

5. According to defendant No.4, at the relevant time of filing present suit in the year 2002, defendant Nos.1 & 3 were actively involved in trying to dispossess the plaintiff from the suit premises.

So, relevant order passed by this Court in order to protect the plaintiff. After execution of Consent Terms between all the legal heirs of the estate of deceased Radhabai, the defendant No.4 filed intervention application being a co-owner and having sufficient right, title and interest in plot No.109A including suit premises. So, according to her, defendant No.1 is trying to claim possession of the suit premises occupied by the plaintiff, when infact defendant Nos.1 & 3 have no right, title and interest in the suit premises. Thus, prayed for its rejection.

6. Heard and gone through details of the record.

7. First and foremost, it is relevant to state here that the plaintiffs sought declaration of tenancy in respect of the suit premises against the defendants. It is a matter of record that present defendant No.4 had filed an application Exh.40 as being an applicant/intervener and that has been decided on 26.11.2019 and thereby necessary direction had been given to plaintiff to implead intervener as defendant No.4 in the array of the defendants. Accordingly, necessary amendment has been carried out and that intervener is present defendant No.4.

8. Defendant No.3 is mainly come with the contention that the plaintiffs had indirectly supported the case of intervener and thereby played fraud on this Court by getting order dated 26.11.2019. According to them, plaintiff is beneficiary of this order. Therefore, said order need to be recalled and plaint need to be restored to its original position as it was before passing of the order dated 26.11.2019.

9. While demonstrating how the order below Exh.40 need to

be recalled, Ld. Advocate for defendant No.3 has mainly pointed out the observations of the Hon'ble Appellate Bench in Revision Application No.253 of 2022. Thereby submitted that defendant No.4 is not only misrepresenting this Court but played systematic fraud and caused this Court to believe that the suit premises in question has been devolved upon the beneficiaries of deceased Radhabhai and one of them is defendant No.4, but it is not the fact. According to defendant No.3, infact there is specific condition in Consent Terms that defendant No.1 has surrendered all its right except the premises which is under its tenancy. Tenancy rights of the defendant No.1 over the suit premises is valid and subsisting and shall be binding upon all the parties to the Consent Terms. So, according to defendant No.3, it was agreed that parties to the Consent Terms would make efforts to amicably settle issue with defendant No.1 for the development of property. This being the position, prima facie there is nothing to find substance in the intervener's contention regarding the devolution of interest in the suit premises in her favour being one of the heirs of deceased Radhabai.

10. Here, before adverting further, it is to note that contention of defendant No.3 as regards to misrepresentation of this Court as well as fraud played upon this Court needs to be investigated and it would not be possible only by recalling the said order below Exh.40. Recalling of the order is possible only in cases where any apparent mistake or any arithmetical mistake occurred while passing the order.

11. Apart from this, present suit of plaintiff is for declaration of tenancy. By virtue fo said consent decree dated 04.02.2013, plaintiff is recognized as the legal tenant of said suit premises, which is under

exclusive possession of plaintiff. By virtue of the said Consent Terms, there is juror relationship of landlord and tenant between defendant No.4 and plaintiff. So, as per the record, it seems that defendant No.4 is legal co-owner of the suit premises and defendant No.4 shares a landlord tenant relationship with the plaintiff. Moreover, the Hon'ble Appellate Bench while deciding Revision Application No.253 of 2022 dated 24.02.2023 has observed in para No.19 which is reproduced as under;

“Assuming for the sake of argument that one of the beneficiaries is already on record. The law is settled on the point of acquiring possession by one landlord if the property is owned by many co-sharers. Possession by one co-sharer is the possession of all. The impleadment of Anuradha itself disqualified the plaintiff's prayer to add all the beneficiaries of deceased Radhabai on record. The presence of Anuradha in the suit is sufficient to represent all the other beneficiaries. She can easily protect the interest of all the beneficiaries because she and the other beneficiaries are tenants in common for the property devolved upon them by virtue of Consent Terms.”

From the very observation, it makes clear that defendant No.4 being party impleaded by the plaintiff, it within rights to protect her interest in the suit property. So, at this juncture, I do not find any substance to recall the order below Exh.40. Rather whatever contention as regards misrepresentation and fraud raised by the defendant No.3, requires detail investigation for which defendant No.3 has to take a proper steps before appropriate forum. With this, I

viewed that present application deserves to be rejected. Hence, the order.

ORDER

1. Application Exh.65 is rejected.
2. No order as to costs.
3. Parties to take note.

Sd/-

**(S. D. Kurane)
Judge
C. R. No. 8**

Date : 12.02.2024