



**Order below Exh.57 in**  
**Special Civil Suit No.242/2011**

[Chandrashekhar Sheth-Shedji Vs. Purushottam Sheth-Shedji & Ors.]

Plaintiff filed the present application under Order VI Rule 17 of the Code of Civil Procedure, 1908, thereby contending that, he, recently got revealed with a fact of execution of a registered partition deed dated 03/05/1995 and its correction deed dated 03/06/1998, in respect of suit property, amongst his father i.e. defendant no.1, his mother Sou.Radha Shrikant Shethaji and his sister Sou.Charulata Rajesh Gujrathi. On the basis of these events, he contends that, he has got half share in the suit property. Furthermore, this fact about the documents were brought to the notice of his earlier senior advocate Shri.Bapat, who was looking after the matter but, he did not paid any heed to it. Due to this, there were differences between him and his advocate Shri.Bapat. On this background, he made an application before the court for cancellation of Vakalatnama of advocate Shri.Bapat and sought permission for conducting the matter in person. Meanwhile, the learned advocate died and thereafter, due to lock-down plaintiff could not able to take necessary steps in this matter. After the death of his mother on 11/07/2020, necessary amendment to that effect was brought with the help of new advocate. These documents were shown to his new advocate and on the basis of these two registered documents, the plaintiff intends to add three paragraphs in para (7) of the plaint and want to bring some minor additions in para nos.8, 12, 14 and 16. Lastly, prayed for allowing the application.

(2). Defendant nos.3 to 6 strongly resisted the application through their say at Exh.65. They contend that, the present application is liable to be rejected on the ground of delay and laches and it is barred by limitation. They further contend that, plaintiff has never disclosed about the alleged partition deed and its correction deed dated 03/05/1995 and 03/06/1998 in the earlier proceedings of recovery suit and in its execution proceedings. For the first time, the plaintiff is coming up with a case of having any registered documents in respect of any partition of the suit property amongst his father i.e. defendant no.1, his mother Sou.Radha Shrikant Shethaji and his sister Sou.Charulata Rajesh Gujrathi, in the month of November 2021. This itself creates doubt about the story of the plaintiff. Apart from it, the plaintiff has blamed his own senior advocate on record after his death. The plaintiff is trying to take disadvantage of his own inaction and delay by blaming the said advocate. They further contend that, there is nothing brought on record to show that, plaintiff was not aware about these alleged partition and correction deeds before the present application dated 23/11/2021. The plaintiff is trying to misguide this Court by making false statement about his status and that of the nature of the suit property. Lastly, they prayed for rejection of the application.

(3). Heard learned advocate Shri.S.S.Shaha for plaintiff and learned advocate Shri.C.D.Mane for defendant nos.3 to 6 at length.

(4). The learned advocate for plaintiff relied upon the following citations in support of his argument.

(i). **2014(5) Mh.L.J. 380, R.K.Patel Engineers and Contractors Pvt. Ltd. Vs. City and Industrial Development Corporation of Maharashtra Ltd. and another.** This authority is cited to point out that,

the court should allow the amendment application seeking adding of better particulars, documents, which were left out by earlier advocate.

(ii). **2015(1) ALL MR 795, Sumer Builders Pvt. Ltd., Vs. Sadhana Textiles Mills Pvt. Ltd. & Ors.** This authority is cited to point out that, while dealing with amendment application, it is always open to court to disregard delay and allow an amendment.

(iii). **2009(10) Supreme Court Cases 84, Revajeetu Builders and Developers Vs. Narayanswamy and Sons and Others.** This authority is cited to point out that, while deciding the application for amendment, the court has to consider potentiality of prejudice or injustice which is likely to be caused to the other side by the amendment.

(5). Perused the application, say and record and proceedings. The present suit is filed for partition and separate possession of share in the suit property.

(6). It is not disputed that, the defendant no.1 is the father of plaintiff, who died on 29/10/2018. The defendant no.1, in his lifetime, stood guarantor to a loan of Rs.3,50,000/- taken by a company named "The Kirti Re-rolling Mills Pvt. Ltd". The said company became defaulter, so, the defendant no.2, who gave loan, had initiated a recovery by filing a Civil proceeding bearing Spl.C.S.No.76/1983 which came to be decreed on 20/07/1990. Thereafter, the defendant no.2 filed an execution proceeding bearing Special Darkhast No.66/1991. During the pendency of the said Darkhast, as per "The Recovery of dues to the Bank and Financial Institutions Act, 1993", it came to be transferred to the file of Debts Recovery Tribunal, Pune. The proceeding was further continued and the present suit property was attached and sold in auction for

Rs.50,21,000/- to defendant nos.3 to 6. A sale certificate was duly issued in their favour and were put also into physical possession of it.

(7). This being so, plaintiff, i.e., the son of defendant no.1, has filed the present suit and is claiming partition and separate possession of his share in the suit property on the ground that, his contention were not taken into account by D.R.T., Pune while attaching and selling the suit property in auction.

(8). During the pendency of the present matter, defendant no.1 died, similarly, his wife also died in the year 2020. The plaintiff contend that, he has recently found the copies of registered partition and its correction deeds executed amongst his father, his mother and his sister on dated 03/05/1995 and on 03/06/1998. This fact was brought to the notice of his earlier advocate Shri.Bapat, who was conducting the present matter, but, he did not took any interest in it, therefore, he had developed differences with him and requested the Court to cancel his Vakalatnama and to permit him to contest the suit in person. Meanwhile, Advocate Bapat died and thereafter, due to lock-down the plaintiff was not able to bring to the notice of this Court about these documents. After the death of his mother on 11/07/2020, necessary amendment to that effect was brought with the help of new advocate. These documents were shown to his new advocate and on the basis of these two registered documents, now, plaintiff wants to bring the contents of the said registered deeds in plaint.

(9). From the background of the facts, it can be seen that, the father of plaintiff i.e. defendant no.1, who stood guarantor to the loan taken by a company named "The Kirti Re-rolling Mills Pvt. Ltd" from

defendant no.2, some-where in the year 1981. Thereafter, as the said company become defaulter, a Spl.C.S.No.76/1983 came to be filed by defendant no.2 and, in which, he had fully contested the matter. The said matter came to be decreed on 20/07/1990. Thereafter, an execution proceeding bearing Spl.Dar.No.66/1991 came to be filed by defendant no.2. The chronological events clearly goes to show that, till filing of Spl.Dar.No.66/1991, there was no existence of any registered documents.

(10). On the background of these facts relating to the suit property , its attachment and sale in auction, the documents, now, relied by the plaintiff cannot be allowed to be brought on record. The documents were executed and were within the knowledge of defendant no.1 and despite that, he has never tried to bring these documents either in the Darkhast proceeding bearing Spl.Dar.No.66/1991 or during the proceedings initiated of attachment and sale of the suit property by the D.R.T., Pune. He died on 29/10/2018, during the pendency of the present matter. Even then, he has never made any statement regarding execution of these documents. Therefore, the rulings relied by the plaintiff can't be applicable to the present set of facts at hand.

(11). Apart from it, as the suit property has been attached and sold by D.R.T., Pune. The suit property is not in existence as it was. Moreover, this Court does not have got any jurisdiction to set aside or to consider the acts done by the concerned authority as per under Section 34 of the Recovery of Dues to the Bank and Financial Institutions Act, 1993. The only remedy, which the plaintiff has got, is to challenge the order of D.R.T., Pune passed in recovery proceeding by filing a separate miscellaneous application before D.R.T., Pune as

per Section 17 of the said Act. On this count also, the said amendment cannot be allowed. Hence, the following order.

**ORDER**

(1). The application at Exh.57 is hereby rejected.

Sangli  
Date:-12/10/2022.

(M.M.Rao)  
Civil Judge Sr. Dn., Sangli.

**CERTIFICATE**

I affirm that, the contents of this P.D.F. file are same, word to word as per the original order.

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|------------------------------------------|---|----------------------------|
| Name of Stenographer                     | : | G.S.Parve                  |
| Court                                    | : | Civil Judge Sr.Dn., Sangli |
| Date                                     | : | 12/10/2022                 |
| Order signed by the Presiding Officer on | : | 12/10/2022                 |
| Order uploaded on                        | : | 12/10/2022                 |