

IN THE BOMBAY CITY CIVIL COURT AT MUMBAI.

**ORDER BELOW EXHIBIT-33
IN
S.C. SUIT NO. 1233 OF 2017**

**Bina Deegan alias Bina Cunnigham
alias Bina Gopi**

...Plaintiff

Vs.

**1. Saras Gopia alias K.Saraswathi
Amma & Anr.**

... Defendants

Appearance:

Learned Advocate Ms. Saloni a/w. Advocate Ms. Kirti Kalyani h/f
Advocate Mr. Bhadang for the plaintiff.
Learned advocate Mr. Vishal Maheshwari for the defendant No.1

**CORAM : HHJ V. M. Pathade
(C.R.NO.62)
Date : 10th October, 2023**

ORDER BELOW EXHIBIT-33 SETTLEMENT AGREEMENT

DT. 21ST APRIL, 2023

The learned Counsel appearing for the plaintiff and defendant No.1 would make submission that both the plaintiff and defendant No.1 being the daughter and mother of each other have voluntarily arrived at a compromise with respect to the present suit on 21.04.2023 in London, England and hence the said settlement agreement be accepted and the suit be disposed of in terms of the said settlement agreement.

2. Since the plaintiff and defendant No.1 are not on personal attendance before this Court, this Court with a view to ascertain the voluntariness of the plaintiff and defendant No.1 in executing the said settlement agreement had in the recent past made communication through the video conferencing, during which it was confirmed that the plaintiff has entered into the said settlement agreement voluntarily. However, this Court was not satisfied with the voluntariness of defendant No.1 who is stated to be around 97 years old, during such communication by video conferencing. This Court on 07.07.2023, refused to make further communication to defendant No.1 in that regard. Being aggrieved by the orders dated 7th July, 2023 and 10th July, 2023 passed by this Court, the defendant No.1 had moved the Hon'ble Bombay High Court in Writ Petition No.11346/2023. The Hon'ble Bombay High Court vide order dated 13th September, 2023 quashed and set aside the said order dated 7th July, 2023 and 10th July, 2023, and directed this Court to decide the issue of voluntariness of defendant No.1 to the said settlement agreement after granting the parties to the suit opportunity to produce the material in support of their contentions. In view of the said order passed by the Hon'ble Bombay High Court, the plaintiff filed her affidavit vide Exh.29 and defendant No.1 vide Exh.31. The plaintiff also filed compilation of documents vide Exh.30. The learned Counsel for defendant No.1 filed pursis Exh.32 alongwith the computer printout of letter dated 25.09.2023 issued by Maide Vale Medical Centre, 40 Biddulph Mansions, Elgin Avenue, London W9 1HT.

3. After considering the said material produced on record by the plaintiff and defendant No.1, I am satisfied that the settlement agreement dated 21st April, 2023 is signed by the plaintiff Bina Deegan

and defendant No.1 Saras Gopi alias Saraswathi Amma alias Saraswathi Gopalkrishnan, voluntarily and consciously.

4. From the perusal of the terms of the said settlement agreement, it reveals that the plaintiff and defendant No.1 thereby agreed that the suit Flat bearing No. K3, 11th Floor, Cuffe Castle, G.D. Somani Road, Chamundeshwari Nagar, Cuffe Parade, Mumbai, Maharashtra 400 005 was purchased by Mr. Achuthan Gopalkrishnana @ A.Gopi, the husband of defendant No.1 and the father of the plaintiff, who by that time was minor and hence said flat was given to Saras Gopi i.e. defendant No.1 to manage and hold in trust for Bina i.e. the plaintiff. In para 3 of the said settlement agreement the defendant Saras Gopi confirms that Bina is the rightful owner of the said flat as per her father's wishes and that Bina has absolute right, title and ownership to the said flat. The said defendant No.1 further confirms that she did not have the right to bequeath the said flat under any Will and Testament since she was holding the flat in trust for Bina. In para 4 of the said settlement agreement, the defendant Saras Gopi confirms that Bina has the right to take the steps as per law to have her name entered into the register of members of the Cuffe Castle Co-operative Housing Society i.e. defendant No.2.

5. From the perusal of the plaint averments particularly in para 5, the plaintiff asserted that the suit flat was purchased by her father in or around in the year 1974. It is also her contention that her father orally represented that the said flat was purchased in the name of the plaintiff who was a minor at that point of time. Since, defendant No.1 was managing all the affairs pertaining to the said flat, she entered

her name in the Society records pertaining to the said flat to the exclusion of all third parties. The plaintiff also sought direction to the defendant No.2 Society to transfer the share certificates in relation to the said flat in the name of the plaintiff, etc.. None of the parties however produced on record any title document in respect of the suit flat to establish that it was purchased by plaintiff's father either in his own name or in the name of plaintiff who was minor by that time, under a valid and lawful deed of transfer e.g. sale deed, deed of conveyance etc., executed by the concerned vendor. In absence of any such title document, it can hardly be concluded that Mr. Achuthan Gopalkrishnana @ A.Gopi i.e. the plaintiff's father and the husband of defendant No.1 was the rightful owner of and the plaintiff acquired lawful and valid title to the suit flat merely on the words of the plaintiff and defendant No.1 as stated in settlement agreement. Hence, in absence of any title document registered under the provisions of Section 17 (1) (b) of the Registration Act, I am not inclined to accept the settlement agreement to have the legal effect of transfer of title/ownership in the suit flat in favour of the plaintiff. In this view of the matter, therefore, the settlement agreement cannot be said to be a lawful agreement or compromise to be accepted as true and correct, so as to pass title to the plaintiff in respect of the suit flat. In the result settlement agreement dated 21st April, 2023 Exh.33 stands rejected.

Date :10.10.2023

Dictated on : 10/10/2023.

Transcribed on : 11/10/2023.

Signed on : 11/10/2023.

(V. M. Pathade)
Judge, C.R.No.62,
City Civil Court,
Mumbai.

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
SIGNED JUDGMENT/ORDER”

12.10.2023 at 11.10 a.m.
UPLOAD DATE AND TIME

Mr. S.S. Bathe
NAME OF STENOGRAPHER

Name of the Judge(with CR No.)	HHJ SHRI. VM. PATHADE (C.R.No.62)
Date of pronouncement of Order	10/10/2023
Order signed by P.O. on	11/10/2023
Order uploaded on	12/10/2023