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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**REVIEW PETITION NO.10 OF 2013**  
**IN**  
**FIRST APPEAL NO.1635 OF 2011**  
**IN**  
**S.C. SUIT NO.1284 OF 1998**

|                                  |                 |
|----------------------------------|-----------------|
| Smt. Kalavati Choudhary and Ors. | ... Petitioners |
| Vs.                              |                 |
| Narayan Gaikar and Ors.          | ... Respondents |

Mr. Uday P. Warunjikar a/w Mr. I.S. Yadav for the Petitioners.  
Mr. Pradeep J. Thorat i/by Mr. Jayesh R. Vyas for the Respondent Nos.1 to 4.

**CORAM : A.S. OKA, J.**

**DATE : 29<sup>th</sup> SEPTEMBER, 2017**

**PC.**

1            Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the Respondents. The petitioners are the plaintiffs – appellants. The Review Petitioners filed a Suit for injunction in the City Civil Court at Mumbai in respect of land bearing CTS No.3271 and 3273-C corresponding to Survey No.351 Hissa Nos.44 and 47 at village Kole Kalyan, Taluka Andheri, Santacruz (East), Mumbai – 400 055. The Suit was contested by the respondents who are the defendants. The trial Court framed five issues including the issue of

ownership or title. The trial Court dismissed the Suit on the ground that only on the basis of 7/12 extracts produced by the petitioners, ownership cannot be taken as established. Being aggrieved by the dismissal of the Suit, the petitioners preferred First Appeal which is dismissed by judgment and order dated 7<sup>th</sup> September, 2011. Review is sought of this Judgment and Order.

2           The learned counsel appearing for the review petitioners invited the attention of the Court to the cross-examination of Ramdhari Deonarayan Mishra, the Constituted Attorney of the review petitioners in which he stated that he purchased the Suit property from one Smt. Kamlabai Shetty by virtue of sale deed. He invited attention of the Court to further cross-examination of the constituted attorney of Review Petitioners. He stated that witness specifically stated that the sale deed of the suit land was lost and damaged during the floods in his office in the year 2005 and that he had lodged a complaint in the Police Station about the same.

3           The learned counsel appearing for the petitioners invited my attention to the assertions made in the Review Petition and the documents annexed thereto. He submitted that the case made out in the cross-examination by the Constituted Attorney of the petitioners has

been substantiated by producing documents showing that a complaint was filed with the police station regarding loss of documents in the floods of July, 2005 and a certificate to that effect issued by the local police station. The complaint to the police is of 5<sup>th</sup> August, 2005 on the basis of which the certificate was issued on 23<sup>rd</sup> November, 2006. He submitted that later on the documents were traced, the copies of which are annexed. The documents annexed are photo copies of the registered conveyance deed dated 27<sup>th</sup> October, 1995 executed by Smt. Kamlabai Shetty and two others in favour of the petitioners with annexures thereto. He also invited attention of the Court to the documents annexed to the additional affidavit which are copies of property cards and IOD granted on 3<sup>rd</sup> June, 1996. He also relied upon a copy of 7/12 extract annexed to the additional affidavit. He would, therefore, submit that as in the year 2012 the original documents were traced, an opportunity may be granted to produce the said documents as the Suit and Appeal have been dismissed on the ground of the failure of the petitioners to produce documents of title.

4           The learned counsel appearing for the respondents contested the grounds in the Review Petition. Apart from that he submitted that even the documents annexed to the conveyance deed show that the predecessors of the petitioners were not the owners and at highest they were the tenants.

5           The learned counsel appearing for the review petitioners submitted that the predecessors of the petitioners namely Kamlabai Shetty and two others had perfected title by adverse possession and there is a recital to that effect in the agreement for sale which preceded the conveyance deed. He also invited attention of the Court to the stand taken in the written statement and submitted that even otherwise there is merit in the case of the petitioners. He would, therefore, submit that an opportunity may be granted to the petitioners to produce the documents which were traced in the year 2012.

6           I have given careful consideration to the submissions. In the first paragraph of the plaint, the review petitioners have specifically alleged that they are owners of suit property bearing CTS No.3271 and 3273-C corresponding to Hissa Nos.44 and 47 of Survey No.351. There is a reference to IOD and sanctioned plan. In paragraph 1 of the Plaint, there is a clear assertion that the petitioners are claiming to be the owners of the suit property.

7           The petitioners examined their Constituted Attorney Shri Ramdhari Deonarayan Mishra. In his affidavit in lieu of examination-in-chief, he claimed that the petitioners were the joint owners of the suit

property. Even in the examination-in-chief, he did not refer to any document of title. In the cross-examination made by the advocate for the respondents, the Constituted Attorney stated thus :-

“I am not in possession any other documents. I purchased CTS No.3271 from Kamlabai Shetty by virtue of sale agreement and the subsequent conveyance. I do not remember the date of these documents. I can produce them on the next date. CTS no.3273-A, 3273-B and 3273-C were also owned by Kamlabai Shetty and I purchased them from her by virtue of conveyance. Only one conveyance was executed for all these properties.”

(underline supplied)

8 In the further cross-examination, he stated that his documents were lost and damaged during the floods of 2005 and that even these documents have been lost. In the written statement, there is an assertion that notice to produce documents was given to the petitioners. Even in the examination in chief of the witness examined by the respondents, there is a reference of notice to produce.

9 As stated earlier, the suit filed by the petitioners is clearly based on title as owners. In paragraph 17 of the cross-examination quoted above, the petitioners' constituted attorney came out with a case

that the petitioners have become the owners of CTS Nos.3171, 3273-A, 3273-B and 3273-C by virtue of only one conveyance executed by Smt. Kamlabai Shetty. Thus, going by the case of the petitioners, the ownership claim was founded on the sale deed executed by Smt. Kamlabai Shetty.

10           I have carefully perused the documents annexed to the Review Petition and in particular the photocopy of conveyance deed dated 27<sup>th</sup> October, 1995 and the documents annexed thereto. Firstly, it must be noted here that the suit property as described in the plaint consists of CTS No.3271 and 3273-C. Though the schedule of property sold in the sale deed includes 3273-C, CTS No.3271 is not mentioned in the schedule of the sale deed. In the agreement for sale annexed to the sale deed which is dated 31<sup>st</sup> May, 1990 the description of the property is not given with reference to CTS number. Recitals in the agreement for sale show that the said Kamlabai and two others were claiming to be the owners by adverse possession. Though the conveyance dated 27<sup>th</sup> October, 1995 does refer to agreement dated 31<sup>st</sup> May, 1993, it is not stated that Kamlabai and two other vendors were claiming ownership on the basis of acquisition of title by adverse possession. To the conveyance deed, a copy of order/communication dated 30<sup>th</sup> September, 1995 issued by the Additional Collector and Competent

Authority, Greater Bombay, Urban Agglomeration, Mumbai under the provisions of the Urban Land (Ceiling and Regulation) 1976 (for short “the ULC Act”) has been annexed. It is addressed to Smt. Kamlabai Shetty and two others who are said to be predecessors in title of the Review Petitioners. Clause (a) of paragraph 1 of the said communication records that Kamlabai and two others were tenants in possession as of 17<sup>th</sup> February, 1976 in respect of land bearing CTS Nos.3271, 3273-C and other lands. It is stated that as they were tenants in possession on 17<sup>th</sup> February, 1976 in respect of land bearing CTS Nos.3271, 3273-C and other lands, the statement submitted by them under Sub-Section (1) of Section 6 of the ULC Act on 31<sup>st</sup> August, 1995 was accepted. It was ultimately held that the predecessors of the petitioners were not holding any surplus vacant land in excess of ceiling limit. The letter dated 13<sup>th</sup> October, 1995 addressed by the Competent Authority of Mumbai Urban Agglomeration under ULC Act addressed to the predecessors of the petitioners records that as the area held by the predecessors of the petitioners as can be seen from order dated 30<sup>th</sup> September, 1995 was less than the prescribed ceiling limit, there is no question of granting permission to the predecessors of the petitioners to transfer the land subject matter of conveyance. Thus, acting upon the order/letter dated 30<sup>th</sup> September, 1995 that the aforesaid conveyance was executed by the predecessors of the petitioners in favour of the

petitioners. The order dated 30<sup>th</sup> September, 1995 proceeds on the footing that the predecessors of the petitioners were tenants as on 17<sup>th</sup> February, 1976 when ULC Act came into force. As stated earlier, in the agreement dated 31<sup>st</sup> May, 1993 executed by the vendors of the petitioners in favour of the petitioners, it is stated that vendors of the petitioners were claiming ownership by way of adverse possession. Thus, the predecessors of the petitioners were claiming to be tenants till 31<sup>st</sup> August, 1995 when a statement under Section 6(1) of the ULC Act was filed by them and therefore, by no stretch of imagination, they could have claimed in the year 1993 that they have become owners by adverse possession.

11           The conveyance deed is sought to be produced as a document of title of the petitioners for establishing that they were the owners of the suit land. In fact, the title claimed by the petitioners is only on the basis of the said conveyance as claimed in the cross-examination of the Constituted Attorney of the petitioners. Taking the documents annexed to the conveyance deed as correct, the petitioners' predecessors Kamalabai Shetty and three others could not have claimed ownership of the suit land at all and therefore, the conveyance deed will not confer any right, title and interest on the petitioners.



12           As stated earlier, the suit is on title. The petitioners were put to notice that the issue of title will be decided in the suit as issue no.1 was framed on the title. Except for the sale deed, no other document is claimed by the petitioners as their document of title.

13           For the reasons recorded above, taking the contents of the conveyance deed and annexures thereof as correct, the petitioners' predecessors had no ownership right over the suit land.

14           Therefore, even assuming that there were sufficient reasons for not producing the documents either before the trial Court or in Appeal in this Court, by taking the documents as correct, the same will not advance the case of the petitioners on the issue of title.

15           Hence, there is no reason to entertain this Review Petition and the Review petition is rejected.

**Judge**