

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 428 OF 2014

Smt. Vasumati Bhogilala Shah & Ors. ... Appellants
Vs.
Ms. Kavya Alok Shah & Ors. ... Respondents

a/w

CIVIL APPLICATION NO. 681 OF 2014

IN

APPEAL FROM ORDER (St.) NO. 14154 OF 2014

Ms. Kavya Alok Shah ... Applicant
Vs.
Alok Sharad Shah (Decd.) & Ors. ... Respondents

Mr. Shailesh Shah, Senior Advocate a/w. Ms. Maya Sarkar i/b. Madhukar Munim & Co., for the appellants.

Mr. P.S. Dani, Senior Advocate i/b. Mr. Jaydeep Deo for the respondent and applicant

CORAM: MRS.MRIDULA BHATKAR, J.

DATE : 5th October, 2015

P.C.:

Admit. By consent, both the Appeals are heard finally and disposed of at the stage of admission.

2. These two Appeals from Order are preferred against the order dated 9th December, 2013 passed by the 4th Joint Civil Judge Senior Division, Pune directing the appellants/defendant nos. 2 to 4 not to dispossess or alienate or create any third party interest in the suit properties in paragraph nos. 8(a), 8(b), 8(c), 8(f), 8(h) and 8(i) of the plaint till final disposal of the suit and no order of injunction is passed in respect of properties in paragraph nos. 8(d), 8(e) and 8(g).

3. Suit No. 1180 of 2013 is filed by the minor girl child through her mother seeking partition in the ancestral and joint family properties against her father, great grandmother, grandmother and her paternal aunts. The mother and defendant no. 1/father of the plaintiff got their marriage dissolved by decree of divorce by mutual consent before filing of the suit and by way of maintenance Rs.50,000/- each were paid to the plaintiff and her mother. Thereafter, respondent no. 1/plaintiff filed this suit for partition against her father and family members of the father and also sought injunction in respect of joint family properties, i.e., immovable properties are described in paragraph 8 of the plaint. After perusal of the plaint, say filed by the respondents, on hearing the submissions of learned counsel for both the sides and after going through the impugned order below Exhibit 5 , it is evident that the plaintiff/respondent no.1 is having undivided share in the suit properties, however, the apportionment of her share is disputed by the defendants. In the suit, plaintiff/respondent no. 1 claimed $1/18^{\text{th}}$ share in some of the properties as mentioned in 8(a) to 8(c) and $1/6^{\text{th}}$ share in the properties mentioned in 8(d) to 8(i) of the plaint. During the pendency of the suit, father Alok died and naturally there is increase in the share of the plaintiff/respondent no. 1. However, till today, though the plaint is not amended, the subsequent event of death of defendant no. 1/father can be taken into account while deciding this

Appeal from Order.

4. From the submissions of learned counsel for the appellants, it is found that another branch of the family of Pannalal, who was brother of Bhogilal, i.e. great grandfather of plaintiff/respondent no. 1 has also filed suits in respect of immovable properties, i.e., properties mentioned in paragraph nos. 8(a), 8(b), 8(c), 8(f) of the plaint and they are also claiming shares in the properties. As these properties are under litigation in other Court, the order of injunction granted in respect of these properties mentioned in paragraph nos. 8(a), 8(b), 8(c), 8(f) needs no interference. In respect of property mentioned in paragraph 8(g), the learned counsel for the appellants made statement that appellants are not going to sell the said property, i.e., piece and parcel of agricultural land, which is valued by the plaintiff/respondent no. 1 at Rs.40 crores. The said statement is accepted and the appellants to adhere to the statement as it is binding on them pending suit.

5. In respect of properties mentioned in paragraph nos. 8(d) and 8(e) there is no order of temporary injunction. Property in para 8(d) is a plot and property in para 8(e) is a shop. The plaintiff/respondent no1 claims share in the said properties, as these are joint family properties, they can be sold by the appellants only after taking necessary permission of the trial

Court so that the right, if any, of the plaintiff/respondent no. 1 can be secured to the extent of her share at the time of deciding the said application.

6. Regarding property mentioned in paragraph 8(i), the learned counsel for the appellants submitted that Alok, the father of the plaintiff was very sick and required medical treatment, therefore, huge expenses were incurred on his hospitalization and treatment. So also, in order to clear off the liability which arose from the decree of divorce by mutual consent, the said plot mentioned in paragraph 8(i) was agreed to be sold by the appellants for Rs. 18 crores. It is also submitted that certain liabilities towards joint family business are also to be paid and, therefore, money is required, hence sale of property 8(i) is necessary. He further submitted that out of Rs.18 crores, Rs. 1 crore is paid towards maintenance and Rs. 1 crore is spent for medical expenses of father Alok. From Rs.16 crores, Rs. 6 crores are to be invested in capital gain and thus out of remaining Rs.10 crores, appellants will have to pay taxes and the remaining amount of Rs. 8 crores is required to meet liability of joint family business.

7. The learned senior counsel Mr. Dani, while opposing the submissions of learned counsel for the appellants, has submitted that plaintiff/respondent no. 1 has $1/3^{\text{rd}}$ share in the property due to demise of

her father and that is to be secured in the property which is going to be purchased from the money after sale of the property mentioned in paragraph 8(i).

8. After considering the submissions of learned counsel of both the sides, I am of the view that the order of injunction against all these suit properties is excessive and hence sale of property mentioned in paragraph 8(i) is necessary and fair enough to meet the liabilities of joint family business. Hence, I think the following order will be appropriate to meet the ends of justice:

(i) Appellants to secure or invest Rs.2 crores in the name of the plaintiff/minor girl and details are to be communicated to the Court and the plaintiff/the respondent no. 1.

(ii) If any property is purchased out of 6 crores towards the capital gain, the details of the said property are also to be communicated to the Court and the plaintiff.

(iii) No property is to be sold without seeking permission of the Court which is going to be purchased from Rs.6 crores.

9. Appeal from Order stands disposed of on above terms. Civil Application is also disposed of accordingly.

10. Learned senior counsel Mr. Dani prays to stay the operation of this order for sometime.

11. Considering the nature of the litigation and as the rights of the plaintiff/respondent no. 1 are secured, the prayer for stay of this order is rejected.

(MRIDULA BHATKAR, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/Order.