

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1577 OF 2016

Santosh Kitta Shetty .. Petitioner

Vs.

Geeta Jaiprasad Shetty and others .. Respondents

Ms.Veena Thadani, for the Petitioner.

Mr.Jagdishkumar S.Hegde, for Respondents No. 1 to 3.

CORAM : M.S.KARNIK, J.

DATE : 02nd APRIL, 2016

P.C. :

. The original plaintiffs filed Special Civil Suit No. 243 of 2013 before the Civil Judge (Senior Division), Kalyan for declaration and injunction. In the said Suit, the following reliefs are claimed :

- a) It be held, declared and decreed that the purported Will dated 29/10/2010 and Gift Deed dated 30/03/2011 are invalid, null and void, fraudulent, got up, sham, fabricated and bogus document and be cancelled.
- b) It be held, declared and decreed that the deceased Kitta Jogappa Shetty died intestate and the plaintiff and the defendants are legal heirs/joint owners of the suit property.
- c) The defendant is agent, servant or anybody through may be restrained from running, operating suit property and/or creating third party interest in the suit property, by granting permanent/perpetual against the defendant.
- d) Interim, ad-interim relief in terms of prayer clause no. c) hereinabove in favour of the plaintiffs.

e) Pending the hearing and final disposal of this suit, Court Receiver may be appointed as per the provisions of Order XL of Civil Procedure Code, 1908, in respect of suit property with direction to take over the possession of suit property and such Court Receiver be entrusted with the management of suit property.

f) Cost of this suit may be granted in favour of plaintiffs.

g) Any other and further relief as the nature and circumstances may require and this Hon'ble Court deem it just and necessary may be granted in favour of plaintiff.

2. The defendant filed the written statement. Thereafter, the plaintiffs filed an application Exhibit 38 for amending the plaint.

By the amended plaint, claims the following reliefs.

a) Declare that the said Will dated 29/10/2010 and the Gift Deed dated 30/03/2011 (registered at Serial No. 3294/ 2011 in the office of the Sub-Registrar, Kalyan-1) made by the said late Kitta Jogappa Shetty in respect of the suit property are void, invalid and inoperative and not binding on the plaintiffs;

b) Declare that the said Kitta Jogappa Shetty died intestate and therefore the plaintiffs and the defendant being the heirs of the said deceased are joint owners of the suit property, each of them having undivided one-fourth share in the suit property and order partition and separation of their shares in the suit property;

(c) Order the defendant to render true and faithful accounts of the incomes and profits earned by the defendant from the suit property and order payment of the plaintiffs shares therein, subject to payment of court-fees thereon by the plaintiffs;

(d) Order permanent/perpetual injunction against the defendant restraining the defendant from selling, alienating or otherwise disposing of the suit property or any part thereof or creating any third party interests therein in any manner; and order appointment of a Court Receiver in respect of the suit property and particularly the said Hotel business therein on such terms and conditions as may be deemed just, proper and convenient;

3. The said application for amendment filed by the plaintiffs was opposed by the defendant. The trial Court by an order

dated 30/11/2015 allowed the application for amendment. The petitioner- original defendant has challenged this order allowing the application below Exhibit 38 for amendment, in this Petition. The principal challenge is on the ground that the amendment changes the texture and nature of the Suit. The trial Court allowed the application for amendment and observed in paragraphs 5 & 6 thus :

5. The defendant though has raised an objection the contents in the plaint show that no new theory has been brought by the plaintiffs. It is mentioned in the plaint regarding the plaintiffs and defendants being legal heirs of Shri Kitta Jogappa Shetty, the will and Gift deed and both the parties having share in the suit property. In the prayer clause also the plaintiffs have sought the declaration regarding the nullity of will and Gift deed and the parties being legal heirs and joint owners of the suit property. These facts show that the plaintiffs have already challenged the will and Gift deed in the plaint.

6. Plaintiffs are claiming to be legal heirs of deceased Shri Kitta Jogappa Shetty and also claiming their share in the property. With respect to these contents they now want to amend the prayer clause and seek declaration regarding the alleged will and Gift deed, being the joint owners of the suit property in capacity of the legal heirs, having share in the said property. So they are claiming partition and separate share. In such kind of facts it no where appears that the nature and the character of the suit is being changed by the proposed amendment. On the contrary if the amendment is allowed it will help in deciding the real controversy in the suit and if the same is not allowed it may lead to multiplicity of proceedings.

4. In my view, the amendment does not change the nature of the Suit and in fact it will help in deciding the real controversy and avoiding multiplicity of the proceedings. I do not find any infirmity in the trial Court's order allowing the amendment and therefore, there is no reason to interfere with the order passed by the

trial Court. It is needless to mention that the petitioner- original defendant is always at liberty to file written statement to the amended plaint and contentions raised therein obviously will be considered on its own merits and in accordance with law by the trial Court. The Writ Petition is, therefore, dismissed with no order as to costs.

(M.S.KARNIK, J.)