

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

APPEAL FROM ORDER NO.795 OF 2013
WITH
CIVIL APPLICATION NO.1247 OF 2013
IN
APPEAL FROM ORDER NO.795 OF 2013

Smt. Shashikala Pai	...Appellant
<i>Versus</i>	
Shri Gajanan Ramakant Desai & Ors.	...Respondents

Ms. Rajani Iyer, Senior Counsel a/w Mr. Sandeep Aole, Mr. Kaustav Talukdar, Mr. Labdhi Jhatakia I/b Vidhi Parmars for the Appellant.
Ms. Jyoti Ghonpadi i/b Mr. Sanjiv Punalekar for Respondent No.3.
Mr. Rajiv Patil, Senior Counsel a/w Mr. Tushar Pimple for Respondent Nos.1,2 & 4 to 6.

CORAM : G.S. KULKARNI, J.

DATE : 16 NOVEMBER 2016.

P.C. :

. Heard Ms. Rajani Iyer, learned Senior Counsel for the Appellant, Mr. Rajiv Patil, learned Senior Counsel for Respondent Nos.1, 2 and 4 to 6 and by consent of the parties and at their request heard finally.

2. The order impugned in the present Appeal is an order dated 10/1/2013 passed by learned Judge City Civil Court at Bombay in Notice of Motion No.2599/2012 in S. C. Suit No.2418/2012, whereby the learned Judge has partly allowed the Notice of Motion in the following terms:

“1. The defendant No.1 is hereby restrained from transferring, selling, alienating, encumbering or creating any charges on the suit property to the extent of 1/5th undivided share of plaintiff in the suit building henceforth. It is made clear that the injunction would not come in his way from alienating or dealing with in any manner his or any other heirs share who supports him i.e. remaining 4/5th share in the suit property till the disposal of the suit.

2. The defendant No.1 is further restrained from interfering with the peaceful possession of the plaintiff's flat i.e. Flat No.D-3 and D-4 in any manner whatsoever, till the disposal of the suit.

3. The defendant No.1 shall not block the entry of plaintiff or her guests, servants or agents from the gate on the F-Wing side of the building and shall allow one car parking to plaintiff on F-Wing side of the building as conceded by him in respect of one of the cars bearing registration No.MH/46-N5939 and MH/06-AS-4684, till the disposal of the suit.

4. Rest of the prayers are rejected.

5. Costs to be costs in the cause.”

3. The grievance of the appellant is that the prayer in the Notice of Motion for appointment of receiver in respect of the suit property which is asserted to be a joint family property has not been granted by the learned Trial Judge. According to the appellant this relief ought to have been granted in as much as admittedly respondent No.1 is in possession of a major portion of the property assumed by him under release Deed dated 24/10/2009 the legality of which is the subject matter of challenge in the suit. The grievance is that the property being a joint family property belonging to the deceased Ramakant Baburao Desai who died intestate, all the legal heirs who are parties to the suit, have legal rights in the suit property. The contention is that even in respect of the monetary benefits which are being derived by Respondent No.1 from the suit property the same are required to be accounted for and would enure to the benefit of all the members of the joint family, in case the suit succeeds. Learned

Senior Counsel for the Appellant has drawn my attention to the following observations of the learned Trial Judge in paragraph 29 of the impugned order by which the Appellants contention is not accepted:

“Admittedly, the defendant No.1 is managing the entire property and if he is asked to submit accounts in this case then also this Court can not direct him to pay any amount to the plaintiff out of the profits earned from the premises, as it is not the relief claimed by the plaintiff in the instant suit. Hence, such a plea at the behest of plaintiff is untenable in my view.”
(emphasis supplied)

4. The submission is that this observation is not justified in as much as the appellant is disputing the release Deed by which Respondent No.1 has conferred upon himself the entire property except some portion of the property which is in possession of the appellant. It is submitted that the suit property is being commercially exploited and according to the Appellant without actual partition of the undivided property, only under the purported release deed dated 24/10/2009 , which according to the appellant is illegal and in any case not conferring any legal right to Respondent No.1 in the suit property. It is submitted that these issues being raised in the suit, it is in the interest of the parties that the monetary benefits which are being derived by Respondent No.1 are required to be accounted for.

5. On the other hand, learned Senior counsel for Respondent No.1 submits that the impugned order has properly protected the interest of the appellant in as much as 1/5th share which the appellant would be entitled remains protected. The submission is that even the appellant is commercially utilizing some portion of the property which is also required to be accounted for. It is thus submitted that considering the nature of the order no interference is called for in this appeal as it has adequately

protected the interest of all the parties.

6. With the assistance of learned Senior Counsel for the parties, I have perused the documents on the record of this Appeal. No doubt the learned Trial Judge taking into consideration the facts of the case in paragraph No.1 of the operative portion has granted an injunction as also in paragraph 2 has sufficiently protected the interest of the appellant however in my opinion the interest of justice would be served if the appellant as also respondent No.1 are directed to file before the Trial Court accounts in respect of the property in their possession setting out the income and expenditure incurred by the parties in regard thereto. These accounts shall be subject to the final orders which may be passed in the suit. This becomes necessary for two reasons firstly, if the contention of the appellant as urged in the suit is accepted, then the property which is in possession of Respondent No.1 on which the appellant has asserted her legal right as a member of the joint family would undoubtedly remain as a property belonging to the joint family, entailing to the benefit of all members of the joint family and, secondly, the parties in such a situation can not be subjected to any individual benefit from any of the earnings out of the joint family property, as whatever earnings derived from the property the same would have interest of all members of the joint family and would be required to be apportioned in between the members of the joint family. In the circumstances, it would be appropriate that this course of action be adopted during the pendency of the suit.

7. The parties are therefore directed to file accounts in respect of the respective properties/premises in their possession from the date of filing of the suit till date within a period of 8 weeks from today and thereafter the accounts be filed regularly in intervals of 6 months till the

disposal of the suit. The impugned order is accordingly modified to this extent.

8. Mr. Patil, learned Senior Counsel for respondent submits that for the period from the filing of the suit till date, respondent No.1 is agreeable to file before the Trial Court accounts of the property in possession of respondent No.1, on the basis of Income Tax returns for the said period. This is accepted by Mrs. Iyer, Senior Counsel for the appellant. Respondent No.1 thus shall file within eight weeks from today the detailed account of income and expenditure in respect of flats/properties in his possession on the basis of Income Tax returns for the said period. Respondent No.1 is agreeable to make these Income Tax returns available for the perusal of the Court only for the purpose of verification that the accounts as filed by Respondent No.1 for the said period are actually borne out by the said Income Tax returns. As regards the future period from the date of this order, Respondent No.1 shall file before the Trial Court, accounts of the income and expenditure every six months and the same shall be continued to be filed till final decision in the suit. Copies of the accounts be provided to all the parties in the suit. The same arrangement of filing detailed accounts of income and expenditure in respect of flats in occupation and possession of the appellant would be required to be complied by the appellant for the said past and the future period.

9. The Appeal from Order is disposed of in the above terms. In view of disposal of Appeal from Order, Civil Application does not survive. No order as to costs.

(G.S.KULKARNI, J.)