

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO. 315 OF 2014

Mrs. Geeta Chandrashekhar Shrikhande ...Appellant

Versus

Chandrashekhar Mukund Shrikhande & Ors. ...Respondents

Mr. Dnyandeo Babaji Savant, for the Appellant.

Mr. Chandrashekhar M. Shrikhande, Respondent in person.

CORAM : A.S. OKA &
A.A. SAYED, JJ.

DATE : 20th July 2016

P.C. :

1 . Heard learned Counsel appearing for the Appellant-wife.

Perused the record.

2 . The case made out by the Appellant-wife in a Petition filed before the Family Court, Bandra, Mumbai was that her marriage with the 1st Respondent was solemnized in the year 1977. The said marriage was dissolved by a decree of divorce passed in the year 1980. Thereafter, the Appellant and the 1st Respondent remarried in

the year 1987. It is stated in the Petition filed by the Appellant that the couple is blessed with one daughter out of the first wedlock. The prayer made in the present Petition filed by the Appellant is for declaration that she along with the 1st Respondent are entitled to 50 percent share even in various shares of the 2nd to 4th Respondents Companies, which are more particularly described in **Exh.B** to **Exh.D** to the Petition. Therefore, a decree was sought enjoining the Respondents to transfer 50 percent shares in the name of the Appellant. The second prayer was for passing a decree against the 1st Respondent-husband directing him to pay 50 percent of the dividends received by him on the said shares.

3. In paragraph 2 of the Petition, the Appellant came out with the case that certain shares of 2nd to 4th Respondent companies were purchased in the joint names of the deceased mother of the 1st Respondent and the Appellant as well as the 1st Respondent or in the joint names of the Appellant and the 1st Respondent. It is alleged that the shares which have been purchased in the joint names of the 1st Respondent's mother, the Appellant and the 1st Respondent are presently standing in the joint names of the Appellant and the 1st Respondent. It is pointed out that after the second marriage, there

was one more Petition filed in the year 2007 by the 1st Respondent for seeking a decree of divorce. The said Petition has been decreed. An Appeal against the said decree is pending in this Court. It is further alleged that during subsistence of the marriage, the Appellant and the 1st Respondent and deceased mother-in-law jointly purchased certain shares of the 2nd Respondent and after demise of the mother-in-law of the Appellant, the shares are standing in the joint names of the Appellant and the 1st Respondent. It is claimed that the Appellant and the 1st Respondent had jointly purchased the shares of the 3rd Respondent more particularly described in **Exh.C** to the Petition. Similarly, it is claimed that the Appellant and the 1st Respondent are jointly holding the shares of the 4th Respondent company. Various allegations have been made as to how the 1st Respondent received the dividends, declared by the Companies.

4 . The said Petition filed in the Family Court was contested by the 1st Respondent by filing a Written Statement. It is contended that their marriage was solemnized under the provisions of Special Marriage Act, 1954 and therefore, the provisions of Hindu Marriage Act, 1955 are not applicable. Various other technical contentions were raised about the maintainability of the Petition. The specific

defence of the 1st Respondent is that none of the shares mentioned in the Petition were ever bought in the joint names of the deceased mother-in-law of the Appellant, the Appellant and the 1st Respondent or in the joint names of the Appellant and the 1st Respondent. It is the specific case of the 1st Respondent that all equity shares subject matter of the Petition filed by the Appellant have been either acquired by the 1st Respondent as the sole legal representative of his mother or purchased by him out of his own income. It is claimed that the shares of the 2nd Respondent were purchased by his mother from her own income even before the Appellant was born. It is contended that after the marriage between the Appellant and the 1st Respondent was solemnized, the name of the Appellant was added in the shares only for the sake of convenience.

5. The Appellant examined herself and even the 1st Respondent examined himself. Though the objection to jurisdiction of the Family Court raised by the 1st Respondent was overruled, the learned Judge of the Family Court proceeded to hold that the shares do not constitute matrimonial property. The learned Judge relied upon the decree passed by the City Civil Court in M.J. Petition No.

489 of 1979.

6. The learned Counsel appearing for the Appellant has taken us through the pleadings as well as notes of evidence. He submitted that after the first decree of divorce was passed by the City Civil Court, there was a remarriage between the Appellant and the 1st Respondent and therefore, the statement made by the Appellant while passing the decree in M.J. Petition No. 489 of 1979 to sign the Transfer Form Applications for the transfer of joint shares in the name of the 1st Respondent is of no significance. It is an admitted position that the shares subject matter of the Petition were jointly held. Therefore, the Appellant was justified in claiming 50 percent share in the said shares of the concerned companies.

7. We have considered the submissions. We have perused the Affidavit in lieu of examination in chief of the Appellant as well as her cross-examination. In the cross-examination, she admitted that she was not possessing any documents to show that she had contributed towards the purchase of the shares which are the subject matter of the Petition. She admitted that the shares of the 2nd Respondent were purchased prior to 1978. Apart from deposing before the Court, no documentary evidence was adduced by the

Appellant. It is in this context that the learned Judge of the Family Court has referred to the decree passed by the City Civil Court in the first Petition for divorce. A certified copy of the decree passed by the City Civil Court in M.J. Petition No. 489 of 1979 on 29th January 1980 shows that before the City Civil Court, the Appellant solemnly agreed to sign the Transfer Forms/Applications for transfer of the joint shares in favour of the 1st Respondent. Therefore, when the decree of divorce was passed, the Appellant did not claim any right, title or interest in the shares and in fact agreed to sign the transfer forms for transferring all the shares in the name of the 1st Respondent-husband. In view of the said decree and in view of the failure to the Appellant to claim any right, title or interest in the said shares at the relevant time, the Family Court accepted the case made out by the 1st Respondent-husband that the name of the Appellant appeared in the shares only because she happened to be his wife. It is not the specific case of the Appellant that any of the shares were acquired by her from her own income or her own funds. On the contrary, she accepted in the cross-examination that she has not produced any document to show that she had contributed to purchase the shares which are the subject matter of the Petition.

8. Thus, we find absolutely no error in the view taken by the learned Judge of the Family Court, when he came to the conclusion that the Appellant failed to establish her right, title or interest in respect of the shares which are the subject matter of the Petition.

9. Hence, there is no merit in the Appeal and the same is accordingly, dismissed.

[A.A. SAYED, J.]

[A.S. OKA, J.]