

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 167 OF 2015

Mrs. Indira Yogesh Nakhwa ... Appellant
Vs.
Jagdish Chintaman Koli & Ors. ... Respondents

Mr. G.S. Godbole a/w. Mr. Vishal Kanade i/b. Ashoka Law Firm for the appellant.
Mr. Shriram S. Kulkarni, Advocate for the respondents.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **25th January, 2016.**

P.C.:

This Appeal from Order is directed against the order dated 25th November, 2014 passed by the learned Civil Judge Senior Division, Thane below Exhibit 32 in Special Civil Suit No. 7 of 2014. The appellant/sister has filed the suit against the respondents/brothers and mother for partition. In the said suit, the appellant moved an application under Order 40 read with section 151 of the Code of Civil Procedure for the appointment of Court Receiver. The appellant/plaintiff has also prayed to direct the defendants to disclose and furnish all the relevant documents and papers and description of all the movable and immovable properties of the deceased father. The said application was contested by the respondents/defendants by filing reply mainly on the ground that the plaintiff has received sum of Rs.65,00,000/- towards full and final satisfaction of the claim in the property of the father. Hence, this Appeal.

2. The learned counsel Mr. Godbole for the appellant has submitted that the appellant is a sister and she claims her 20% right in all the properties left behind by her father. The learned counsel submitted that no partition has taken place between the parties about the movable or immovable properties of the father and, therefore, her 20% share is alive in the suit properties. The respondents are using the properties for their own purpose and some properties are unused due to negligence or inability of the respondents to make proper use of the properties. The learned counsel submitted that the fact of receipt of Rs.65,00,000/- by the appellant is not denied, however, that is not towards the full and final satisfaction of her 20% share in the properties. He demands that Court receiver is to be appointed to supervise the earning of the properties so that the true earning can be brought on record and the properties will not be wasted. He further submitted that the accounts and description of the properties are also suppressed by the respondents and monthly accounts are required to be submitted by the respondents.

3. The learned counsel Mr. Kulkarni for the respondents opposed the submissions and submitted that in the properties where the name of sister/appellant is entered, the brothers/respondents are ready to give 20% of her share in the properties. However, respondents maintained that

Rs.40 lakhs is paid by respondent/mother and Rs.25 lakhs were paid by respondents/brothers to the appellant. The learned counsel further submitted that respondents have applied for heirship in respect of the properties and the appellant gave NOC and thereafter heirship certificate was issued in favour of the respondents. Thus, the appellant lost her right in the property, therefore, no Court receiver is to be appointed. However, the respondents are ready to submit the accounts in respect of movable and immovable properties and earning out of the property monthly or by-monthly as per the order of this Court.

4. Heard the submissions of learned counsel for both the sides and perused the documents produced by the parties and the impugned order passed by the trial Court. It is a property dispute between the sister, brothers and mother. Undisputedly, the appellant/sister has 20% right in the suit properties. However, an amount of Rs.65 lakhs is received by the appellant/sister jointly from the mother and brothers but whether it was accepted with an understanding as a part or full adjustment towards 20% of the share is a matter of evidence by both the parties. As on today, 20% right of the appellant/sister in the family properties cannot be denied. It appears from the submissions and after going through the chart of the properties that on some properties, the name of the sister is mentioned and

one or two properties are completely looked after by the sister, however, a bungalow which is most valuable property is claimed by the brothers and the sister claims right in the said property. It is found from the submissions of learned counsel of both the sides that son of the brother wants to convert and furnish the said bungalow as a hotel and has obtained licence to run the business there.

5. I am not inclined to appoint the Court receiver when most of the properties are utilized for drawing income. However, it is necessary for the parties to submit the accounts of the income which they receive from the properties so that there should be complete transparency in respect of the income earned from the family properties and the respondents are directed to furnish quarterly accounts to the appellant/sister and copies of the same are to be filed before the trial Court after six months. Liberty is given to the appellant/sister to move an application in future if accounts are not produced by the respondents/brothers.

6. With this, Appeal from Order is disposed of.

(MRIDULA BHATKAR, J.)