

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (L) NO. 386 OF 2016

IN

NOTICE OF MOTION NO. 79 OF 2011

IN

TESTAMENTARY SUIT NO. 34 OF 2005

IN

TESTAMENTARY PETITION NO. 141 OF 2005

WITH

NOTICE OF MOTION (L) NO. 3014 OF 2016

Darius Dhanju Chichgur

.. Appellant

V/s

Jeroo Rustom Engineer & Ors.

.. Respondents

WITH

APPEAL (L) NO. 388 OF 2016

IN

NOTICE OF MOTION NO. 78 OF 2011

IN

TESTAMENTARY SUIT NO. 36 OF 2005

IN

TESTAMENTARY PETITION NO. 140 OF 2005

WITH

NOTICE OF MOTION (L) NO. 3019 OF 2016

Darius Dhanju Chichgur

.. Appellant

V/s

Jeroo Rustom Engineer & Ors.

.. Respondents

Mr. Zal Andhyarujina with Ms. Shruti Sardessai i/b Mr. Rohin Thomas for the appellant.

Ms. Mili Thakkar i/b Mr. Rajan Thakkar for respondent no.2 and legal heirs of respondent no.1.

Mr. Sharan Jagtiani with Mr. Ashish Rao and Ms. Kruttika Pokale i/b M&M Legal Ventures for respondent no.4.

**CORAM: DR. MANJULA CHELLUR, CJ. &
M.S. SONAK, J.**

DATE : 20th OCTOBER 2016

P.C.:

The delay in filing the appeals is condoned.

Heard the learned counsel for the appellant on merits.

2. The appellant before us, who is the 3rd defendant before the learned Single Judge, apparently seems to be the beneficiary under the two Wills which are challenged. The executant of these two Wills was the tenant of the property in question and the benefit which is bequeathed under the Wills seems to be the tenancy right. Apparently the contesting parties seem to be the sister and legal representatives of another deceased sister of the executant of the Wills.

3. Admittedly, the appellant – defendant no.3 was appointed as an agent of the Receiver way back in 2005 by an order dated 12th August 2005. The Receiver seems to have made a report pursuant to the order dated 20th June 2016 which reveals that the father of the appellant - defendant no.3 is having the key of the property in question and the challenge was how the father of the alleged beneficiary could hold the key on behalf of the so-called

agent of the Receiver and/or beneficiary under the Will. The notice of motion apparently is coming up for hearing tomorrow, i.e. on 21st October 2016.

4. The main contention is, a totally and completely stranger/an authorised person who cannot hold the key of the flat is holding the key, since the appellant frequently visits Canada as his entire family has been shifted to Canada. In that background, the key of the flat was directed to be handed over to the Court Receiver by the end of the day of the impugned order and the Court Receiver shall take the possession of the flat and also indicate by putting a board at a conspicuous place that the property is in custody of the Court Receiver. Normal directions are also given with regard to maintenance and cleaning of the property.

5. The appellant has challenged the aforesaid order directing the Receiver to take over physical possession of the property. Apparently, the father of the appellant is residing in a different flat, may be adjacent to the present flat. One cannot find fault with the person who hands over the key to the father when he leaves the country, in order to maintain the property. In the peculiar circumstances in which the physical possession of the property was entrusted to the appellant as an agent of the Receiver, it cannot be considered as a routine obligation of the father to look after the property in question even if he were to be the executant of the Will

since the appellant was not in his individual right to be in possession of the property, but he was put in possession as an agent of the Receiver. In that view of the matter, we do not see any good ground to interfere with the impugned order. If the appellant is not having any other property to live in and this is the property which he uses for his stay when he visits India and whenever he resides at Mumbai, it is altogether different situation. The appellant has to make an independent application before the Trial Court to seek directions in that regard. So far as the present situation is concerned, we decline to intervene and the appeals are dismissed.

6. We make it clear that none of the observations made herein will have any persuasive value while disposing of the notice of motion on merits or any other orders in future.

(M.S. SONAK, J.)

CHIEF JUSTICE