

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 205 OF 2017

IN

CIVIL REVISION APPLICATION NO. 324 OF 2009

WITH

CIVIL APPLICATION NO. 43 OF 2017

IN

CIVIL APPLICATION NO. 788 OF 2016

IN

CIVIL REVISION APPLICATION NO. 324 OF 2009

Saraswatibai Bhiswambharlal Charity Trust & Ors ...Applicants

In the matter between

Mahendra Ratilal Jasani & Anr ...Petitioners

Versus

Saraswatibai Bhiswambharlal Charity Trust & Ors ...Respondents

Dr B Saraf, a/w Mr Sethna, Ms Nafisa Khandeparkar, Ms W Parkar,
i/b ALMT Legal, for the Applicants/Respondents in both Civil
Applications.

Mr Naved Chaudhary, i/b Bhuta & Asso., for the Petitioners.

CORAM: G.S. PATEL, J

DATED: 21st November 2017

PC:-

1. There are two Civil Applications in two Civil Revision Applications. The main Civil Revision Applications are admitted and are pending final hearing.

2. The dispute is about a 1300 sq ft residential apartment, Flat No.22, B-Wing, Maheshwari Mansion, 34 Nepean Sea Road. It is undoubtedly a property of considerable value.

3. Respondent No.1 to the Civil Revision Applications' is a charitable trust. Respondents Nos.2 to 4 to the Civil Revision Applications' are the present trustees. The trust owns the building 'Maheshwari Mansion'. The flat in question was initially let out to one Ratilal B Jasani, since deceased. He had four sons. One of the sons was Mahendra Jasani and he was Defendant No.1 to the suit. Defendant No.2 to the suit was one Shirish Jasani, the nephew of the original tenant and a cousin of the 1st Defendant, Mahendra. It is said that Shirish was a permanent resident of the United States. He was impleaded later as Defendant No.2. It seems that he too has passed away. It appears that Shirish's widow Jayashri claims to be in occupation of this flat. Mahendra is still alive.

4. There are several difficulties at this stage. To begin with, the Civil Revision Applications need to be amended. Shirish Jasani's name must be deleted since he has admittedly passed away. It seems that Jayashri has sought to be impleaded as Petitioner No.2 and was also directed to implead Shirish and Jayashri's son, Ashish, to avoid future complications. This was by an order dated 18th September 2017 in Jayashri's Civil Application No.6 of 2017 for impleadment. That amendment has not yet been carried out.

5. In any case that amendment carries its own problems because it means that Mahendra Jasani, Revision Applicant No.1, will presumably be represented by Mr Jain, who filed the application, and

Shirish Jasani's heirs will be represented by another Advocate, resulting in a situation where there are two Advocates for the Applicants. This is unacceptable and I will not allow this to continue. It is contrary to our rules. Either Shirish Jasani's heirs will have to be transposed as Respondents or Mahendra Jasani will have to be transposed as a Respondent. They cannot both continue as Petitioners with different Advocates. The third alternative is that they must agree on a common Advocate for all Petitioners. There is no fourth possibility.

6. Jayashri Jasani is present in Court. This entire proceeding is flawed because she is not impleaded anywhere in these papers and proceedings and yet she continues to occupy this flat. Her son has also not been impleaded. This is not a state of affairs that can be allowed to continue because it severely restricts my ability to take up the matter in the first place.

7. I propose, therefore, to appoint a Court Receiver of the flat. He will take only symbolic or formal possession. Jayashri Jasani will not be dispossessed. She will be appointed as an agent of the Court Receiver. For the present, there will be no order as to security or royalty, but I make it clear that this is kept open and will be decided in a subsequent Civil Application or by some order. One thing is clear: Jayashri Jasani cannot continue to occupy this premises entirely free. What royalty should be fixed and on what basis is a question that will be addressed at a later stage. Jayashri Jasani is however put to notice that there is no possibility at all of her continuing in occupation without payment of some amount into Court. It is clarified that the agency of the Court Receiver creates no right in favour of the Jayashri Jasani and further

that it prohibits or from parting possession or inducting any person into this premises.

8. Applicant No.1, Mahendra, does not seem to have come to Court for these matters on the last several occasions. This means that he cannot be transposed as a Respondent. Consequently, the previous orders are modified and Jayashri Jasani and her son Ashish Jasani will be joined as Respondents Nos.5 and 6 to the CRAs. The amendment will be carried out by the Advocate for Jayashri Jasani and Ashish Jasani within one week from today. The Registry will permit the amendment on production of an authenticated copy of the order without need of reverification. The Respondents Nos.5 and 6, Jayashri and Ashish Jasani waive service.

9. Dr Saraf points out that Jayashri and Shirish Jasani also have two daughters namely Sonal and Shimul. Jayashri, who is present in Court, states that her daughters are also interested in prosecuting the action. They will thus also be joined as Respondents Nos.7 and 8 to the Civil Revision Applications. I expect a common Vakalatnama will be filed by Jayashri, Ashish, Sonal and Shimul and I will not afford them separate representation.

10. For the present this order sufficiently disposes of the trust's Civil Application No.43 of 2017.

11. As regards Civil Application No.205 of 2017 this is also filed by the Trust and it seeks an order of compensation or mesne profits or both. Evidently the title of this Civil Application will also be required to be amended. Leave to Dr Saraf's client to amend the Civil Application

without need of reverification to implead Jayashri, Ashish, Sonal and Shimul as Respondents Nos.2(a), 2(b), 2(c) and 2(d) to the Civil Application. A copy will be served on the learned Advocate who appears for the Jayashri on behalf of all heirs. Affidavit in Reply to be filed by 4th December 2017.

12. List the Civil Application for orders on 12th December 2017.

13. The learned Advocate for Jayashri Jasani waives service of Civil Application No.205 of 2017 on behalf of all the heirs of Shirish Jasani. The addresses of Shirish Jasani's heirs may be furnished by the end of the day tomorrow. Amendments to be carried out within one week from today.

14. It is clarified that although the prayer in Civil Application No.205 of 2017 is worded as one for mesne profits, this is to be understood as a claim for entire compensation as understood in the decisions of the Supreme Court in *Atma Ram Properties (P) Ltd v Federal Motors Pvt Ltd*¹ or *State of Maharashtra & Anr v Super Max International (P) Ltd & Ors.*²

(G. S. PATEL, J.)

1 (2005) 1 SCC 705.

2 (2009) 9 SCC 772.