

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

**APPEAL FROM ORDER NO.363 OF 2016
WITH
CIVIL APPLICATION NO.470 OF 2016
IN
APPEAL FROM ORDER NO.363 OF 2016**

Satish Jadeshwar Dave ..Appellant/Applicant
V/s.

Renuka d/o Jadeshwar Dave & Ors. ..Respondents

Mr. Bharat Joshi for the Appellant/Applicant.

Mr.Prem Gidwani for Respondent Nos.1 & 2.

Ms.Rajashree Nair for Respondent Nos.3 & 4.

CORAM : M. S. SONAK, J.

DATE : 08 MARCH 2017.

P.C.

1. The learned counsel for the appellant seeks leave to delete respondent Nos.5 and 6, since, their presence is not necessary for the disposal of the appeal. Leave is granted. Amendment to be carried out forthwith.

2. The learned counsel for the appellant also states that the respondent No.7, who is the Court Receiver has been duly served in the matter.

3. Mr.Gidwani appears for the respondent Nos.1 and 2 and Ms.Rajashree Nair appears for respondent Nos.3 and 4.

4. At the request and with the consent of the learned counsel for the parties this appeal is taken up for final disposal at the stage of admission.

5. The challenge in this appeal is to the order dated 20 January 2016 made by the learned Trial Judge, to the extent, that the impugned order, does not even consider the relief applied for by the appellant in terms of prayer clause (b) of the Notice of Motion and to certain extent, the relief applied for in prayer clause (a) as well.

6. The prayer clauses (a) and (b) in the Notice of Motion read as follows :-

“a) Pending hearing and final disposal of this suit. This Court be pleased to appoint Court Receiver, High Court Bombay as Receiver, for the suit premises, with directions to appoint Plaintiff as agent of the Court Receiver or by a fresh Public or private bid, appoint highest bidder,

b) In the alternative direct the Court Receiver to hold fresh bid and appoint highest bidder as agent of Court Receiver.”

7. The appellant submits that presently, the Court Receiver has already been appointed in respect of the suit premises. Further, the respondent No.1, who is the appellant's sister, is in possession of the suit premises as an agent of the Court Receiver paying an amount of Rs.3,500/- which was determined some time in the year 1997 or thereabouts. The learned counsel for the appellant submits that this amount is either required to be enhanced on account of substantial lapse of time since 1997 or in any case the Court Receiver is obliged to invite fresh bids and thereby appoint the highest bidder as an agent of the Court Receiver.

8. Considering that this is a family dispute and the appellant and the respondent No.3 are siblings, the prayer that the Court Receiver holds or invites fresh bids and places the highest bidder, who may as well be a stranger in the suit premises, does not appear to be justified. As such there is no necessity to grant the same. As it is, even the suit is of the year 2015 and is ready to be placed for trial.

9. Mr.Gidwani, the learned counsel for Respondent No.1 states that he wishes to make detailed submissions as to why, even the amount of Rs.3,500/- which is presently being paid by the respondent No.1 is just and equitable in the facts and circumstances of the present case. At this stage, it is not necessary for this Court to go into such issues, since, the learned Trial Judge was duty bound to go into this aspect and on perusal of impugned order, it appears that the learned Trial Judge has not even adverted to the same.

10. Accordingly, the matter is remanded to the learned Trial Judge to determine as to whether the amount of Rs.3,500/- which is presently being paid by the respondent No.1 needs to be enhanced pending the final disposal of the suit. In this regard, all contentions of all parties are kept open. The learned Trial Court shall endeavor to dispose of this issue as expeditiously as possible and in any case within a period of three months from today on production of the authenticated copy of this order.

11. Besides, it is made clear that the suit is also required to proceed and the evidence in the suit cannot be delayed. The learned counsel for the appellant states that the appellant will file his affidavit in lieu of examination-in-chief within a period of two

weeks from today, after furnishing copy to the defendants in the suit. The learned Trial Judge to endeavor to dispose of the suit itself as expeditiously as possible and in accordance with law and on its own merits.

12. With the aforesaid observations, this appeal is disposed of. There shall be no order as to costs.

13. In view of the disposal of the appeal the Civil Application does not survive and the same is also disposed of.

(M. S. SONAK, J.)