

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION ST NO. 8950 OF 2017
IN
FIRST APPEAL ST NO. 8948 OF 2017
WITH
CIVIL APPLICATION ST NO. 8951 OF 2017
WITH
CIVIL APPLICATION ST NO. 16056 OF 2017

Arvind Pal Ahuja	...Appellant
<i>Versus</i>	
Jatinder Pal Singh Hundal, since deceased through its heirs and legal representatives of Sukhwinder Kaur	...Respondent

**Mr Piyush Raheja, with H Jarimala, i/b Thakore Jarimala &
Associates, for the Appellant.**

CORAM: G.S. PATEL, J
DATED: 14th June 2017

PC:-

1. The Appeal is filed by a party who is neither a Plaintiff nor a Defendant in the Suit that was decreed. The dispute was in respect of an immovable property at Mahakali Caves Road, Andheri (East), Mumbai. One Harbans Kaur suffered a tragedy in which her

husband and children perished. She left Mumbai for Delhi where her parents lived.

2. Without going into the details, it appears that on the basis of a series of documents that property was purportedly transacted by others. Harbans Kaur herself learnt of this though admittedly after some delay and in 1990 initiated litigations in the City Civil Court and in this Court. Importantly there was an order of this Court restraining the transfer of the suit properties or the share certificates in respect of it. Paragraph 6 of the plaint mentions the litigations but then contains a most curious averment saying that the Plaintiff who claims a declaration to protect possession of this very property was not a party to and unaware of the litigation initiated by Harbans Kaur. It is equally true that Harbans Kaur was at that time unaware of this suit. At the very least she ought to have been joined as a party-Defendant, and this is something that *prima facie* the Trial Court could itself have done. Whether it *ought* to have been done is a matter that is left open for a decision at a later stage.

3. For the present, Civil Application St. No. 8950 of 2017 seeks leave to the Applicant who is a nephew and legatee of Harbans Kaur to file the First Appeal. This leave is necessary since Harbans Kaur was not made a party to that Appeal. The Civil Application will have to be allowed.

4. Civil Application St. No. 8950 of 2017 is made absolute in terms of prayer clause (a).

5. Rule on Civil Application St. No. 8951 of 2017 seeking stay, returnable on 4th July 2017. In addition to the service of notice through Court, private notice is permitted.

(G. S. PATEL, J)