

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 10339 OF 2016

Smt. Sujata Rajendra Waghmare ... Petitioner
Vs.
Sharadchandra Vishnu Phale & Ors. ... Respondents

Mr. Jayesh S. Kalankhe, Advocate for the petitioner.
Mr. Bharat H. Mehta, Advocate for respondent no. 2.
Mr. Devdatta B. Salvi, Advocate for respondent no. 1.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 12th April, 2017.

P.C.:

Not on board. Upon mentioning, taken on board.

2. This Writ Petition is directed against the order dated 10th July, 2015 passed by the learned Judge of Bombay City Civil Court, Mumbai in S.C. Suit No. 481 of 2010 thereby dismissing Chamber Summons No. 909 of 2014 filed by the petitioner/original plaintiff no. 2. The petitioner/original plaintiff no. 2 and respondent no. 1/original defendant no. 1 are the real brothers. The petitioner has filed the suit for injunction against his brother/respondent no. 1 in respect of the property left behind by their deceased parents. The evidence of the plaintiff no. 2 and defendant no. 1 is over. In the cross-examination,

it is revealed that the original amount invested in the post account were withdrawn and are invested in some other account, therefore, the petitioner/plaintiff no. 2 took out chamber summons seeking amendment to the plaint under Order 6 Rule 17 of Code of Civil Procedure. The said Chamber Summons was contested by the respondent. Hence, this Petition.

3. The learned counsel for the petitioner submits and confirms that more facts are revealed in the cross-examination in respect of withdrawal of the amount from the post account of their mother by the defendant/respondent.

4. On perusal of the order of the learned Judge, I do not find any fault in the order. It is made clear that if any material is brought on record in the cross-examination, the trial Court needs to deal with that material and assess the evidence accordingly.

5. Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)