

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No. 687 OF 2017

Akshada A. Talpade

... Appellant

Vs.

Deepak B. Kothare (Decd.)

through his LRs and Ors.

... Respondents

Mr. Rajshekhar V. Govilkar a/w. Mr. Mohir R. Govilkar, Advocate for the appellant.

Mr. Haresh H. Mansukhani, Advocate for respondent No. 2.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 17th November, 2017.

P.C.:

The learned counsel for the appellant submitted that respondent No. 1(a) Seema Deepak Kothare has expired on 15th September, 2017.

2. The learned counsel for the appellant and learned counsel for respondent No. 2 submit that respondent No. 1(b) Ashwini Radhe Sharma is the only daughter and legal heir of Smt. Seema Deepak Kothare.

3. It is a suit between the plaintiff/sister and two brothers, who are the defendants. One brother Deepak Kothare has already expired.

4. This Appeal from Order is directed against the order dated 6th May, 2015 passed by the learned Judge of the City Civil Court, Greater Mumbai thereby dismissing the Notice of Motion No. 3615 of 2014. The plaintiff/sister has filed High Court Suit No. 3015 of 1993 claiming her 1/3rd share in the suit flat against two brothers. Their father expired on 4th December, 1990. The said suit was earlier filed in the High Court, however, subsequently it was transferred to City Civil Court due to enhancement of the pecuniary jurisdiction of the City Civil Court. The suit was dismissed on 30th April, 2013. The appellant/plaintiff took out Notice of Motion No. 393 of 2014 for restoration of the said suit. The said Notice of Motion was dismissed on 25th June, 2014 for default. Therefore, the appellant/plaintiff took out another Notice of Motion No. 3615 of 2014 for restoration of Notice of Motion No. 393 of 2014. However, Notice of Motion No. 3615 of 2014 was dismissed on merit by the learned Judge of the City Civil Court, Mumbai and therefore, the appellant/plaintiff has taken out this Appeal from Order.

5. After hearing the submissions of learned counsel for both the sides, after going through the affidavit of appellant/plaintiff Akshada Ajit Talpade and also on perusal of Notice of Motion, it is found that

there was delay of 82 days in filing Notice of Motion No. 3615 of 2014. The learned trial Judge held that this delay of 82 days is not satisfactorily explained by the plaintiff and therefore, he dismissed the Notice of Motion. It is mentioned in the affidavit of the plaintiff that the plaintiff admitted that she did not remain present and could not give any reason in the affidavit, however, the Advocate who was looking after her matter got married on 16th June, 2014 and could not attend the Court on 25th June, 2014 when Notice of Motion No. 393 of 2014 came up for hearing.

6. The appellant/plaintiff is prosecuting this suit since 1993. This is a family dispute between the siblings. Now one brother and his wife are expired and their daughter is brought on record as legal heir. Thus, at present, as per the plaintiff, each of them have 1/3rd right. On the other hand, respondent no. 2/brother, who is residing in the said suit flat right from his birth and after the death of his brother, he along with his family has been occupying the said flat. Before death, respondent no. 1/deceased brother was also residing along with respondent no. 2 in the same premises. It is clear that due to this family property, as on today, the relations in the family are completely strained. Considering the facts and circumstances of the case and

as the parties are ready, I am of the view that this is a fit case for mediation. Parties may explore the possibility of amicable settlement between them and to resolve the issue of suit flat. Thus, I allow this Appeal from Order and set aside the order passed by the learned Judge of the City Civil Court dated 6th May, 2015. Notice of Motion No. 393 of 2014 is hereby restored. Parties to appear before the trial Court (Court Room No. 3) on 5th December, 2017 at 2.45 p.m. In between, I hereby appoint Mrs. Sunanda Joshi, Retired Principal Judge of the Family Court as a mediator. Parties may contact the mediator and may have mediation on 19th November, 2017 as per the convenience of the mediator and parties. The report of the mediator is to be sent to the trial Court.

7. A fine of Rs.5,000/- is to be paid by the appellant within one week from today.

8. Appeal from Order is allowed.

(MRIDULA BHATKAR, J.)