

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER ST NO. 22338 OF 2016
WITH
CIVIL APPLICATION ST NO. 24375 OF 2016

Priya Rajan Desai & Ors	...Appellants
<i>Versus</i>	
Shashikala Tukaram Borkar	...Respondent

Mr TD Deshmukh, for the Appellant.
Ms Vrishal P Maindad, i/b AA Desai, for the Respondent.

CORAM: G.S. PATEL, J
DATED: 21st June 2017

PC:-

1. The Civil Application is dismissed as withdrawn. No costs.
2. By consent, the Appeal is taken up forthwith.
3. The unsuccessful Defendant is in Appeal against an order dated 11th July 2016 dismissing the Defendants' Notice of Motion. The 1st Defendant, Priya, is the daughter-in-law of the Plaintiff, Shashikala. Shashikala's son Pramod was Priya's husband. Pramod died. Priya re-married after his death. Priya has two daughters from her marriage to Pramod.

4. The Suit is for administration of Pramod's estate. It seems that Flat No. 301, Saikrupa, Sahayog Nagar, Opposite Gyan Kendra School, four Bungalows, Andheri (West), Mumbai 400 058 is in redevelopment. Shashikala was and is staying in this flat. Priya lives in another flat which, from paragraph 2 of the impugned order, seems also to have belonged to the deceased. The Defendant sought directions for disclosure against the Plaintiff about the amount of transit rent, corpus and the redevelopment agreement that was being executed.

5. It is difficult to understand how this could be necessary. Obviously, Pramod had four heirs on intestacy (his widow, mother and two daughters), and it is nobody's case before me that he left a Will. If this be so, then his four heirs would each have a 25% interest in his estate and this would include any flat that belonged to him and was, therefore, part of this estate. If the Saikrupa flat (or any part or share in it) is part of his estate, all rights in that flat are necessarily subject to the outcome of the administration suit. In any case, the Re-development Agreement is compulsorily registrable. The Defendant can always obtain a certified copy from the office of the Sub-Registrar of Assurances. She can also follow the applicable provisions of the Code of Civil Procedure, 1908 for disclosure, discovery and inspection at the time of trial. There is no case made out for production of a copy at the interim stage or for deposit of the Re-development Agreement in this Court. If Pramod had a share in the Sai Krupa flat, obviously it cannot be transacted to third parties without the consent of his other heirs and those who have a share in his estate.

6. This order is not to be construed to mean that I have found that either of the flats is in fact part of Pramod's estate. That is a question left for determination on merits at the trial of the suit.

7. The Appeal is dismissed with these observations. There will be no order as to costs.

(G. S. PATEL, J)