

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER st. NO.30986 OF 2017
with
CAAst/30990/2017

Sanjay Nagesh Burekar

... Appellant

Vs.

Sulochana Nagesh Burdekar

... Respondent

Mr.Y.A. Rajgor with D.S. Aahierey for the Appellant
Mr.D.M. Vyas with Y.M. Vyas and N.S. Vyas i/b H.P. Panday for
Respondent

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: NOVEMBER 13, 2017

P.C.:

1. Upon urgent mentioning, taken on Production Board.
2. This Appeal from Order is preferred against the order dated 12.10.2017 by the learned Judge, City Civil Court, Dindoshi, Mumbai, in Notice of Motion No.1986 of 2017 in S.C. Suit No.1765 of 2017. The respondent step-mother of the plaintiff filed the suit for injunction and declaration that the royalty charges from the conductor of one Raghavendra Hindu hotel and also the rent in respect of 6 shops in Nagesh Burdekar chawl be granted in favour of the

respondent/plaintiff. According to the plaintiff, she got married with the late Nagesh Burdekar in the year 1974 and begotten six children out of the wedlock. She has admitted that the appellant-defendant is a step son, who is having one sister and one brother, who is no more. It is the case of the plaintiff that Nagesh expired on 9.11.2016 and thereafter, the defendant is illegally collecting royalty of the said hotel and rent of the other shops though the plaintiff and her children have share in the said property.

3. In the said Notice of Motion, the defendant appeared and it was contended that the suit properties i.e., the hotel and shops, were originally owned by the maternal grandfather of the defendant and, therefore, the defendant and real brother and sister have right in the suit property and the plaintiff has no right in it. The trial Court after considering the submissions, made the Notice of Motion absolute in terms of prayer clauses (a) and (b) and injuncted the defendant from collecting the royalty charges from the conductor of the hotel and other occupants of the suit premises. Hence, this appeal.

4. The learned Counsel for the appellant has pointed out that the learned Judge of the trial Court has made observations in respect of paternity of the appellant and also raised doubt about the marriage of

his mother with his father Nagesh. He has submitted that in fact in the plaint, the plaintiff herself has accepted his relationship with his father. The learned Counsel has pointed out that this has weighed on the mind of the learned Judge and, therefore, the order passed in the Motion is to be set aside.

5. Per contra, the learned Counsel for the respondent has submitted that the plaintiff has one son and four daughters out of the wedlock. Her husband was the owner of the six shops and the hotel. She and her children have right in the said property. It is submitted that from the date of the death of the father, the defendant is collecting the royalty and other amount illegally by keeping aside the plaintiff and her children. He supported the order passed by the learned trial Court.

6. After hearing the learned Counsel for both the sides and perusal of the order and the documents pointed out by the learned Counsel, it appears that the issue of the ownership of the hotel and the suit premises can be decided after recording of the evidence. However, it is noted at this stage that when the plaintiff has admitted the relationship between the defendant and the late Nagesh as son and father, the finding given by the learned Judge about the paternity

is unwarranted. Thus, the plaintiff and the children as also the defendant and his siblings, *prima facie*, are the legal representatives of the late Nagesh.

7. It is argued by the learned Counsel for the appellant that the area where the suit premises are located, is declared as slum. The tenants are occupying the six shops and are not paying any rent to the defendant. However, an amount of Rs.900/- per day is paid as royalty by the conductor of Raghavendra Hindu Hotel. Therefore, some workable arrangement can be made till final hearing of the suit. In these circumstances, accordingly, out of the said amount of Rs.900/-, an amount of Rs.500/- is to be paid to the appellant / defendant and an amount of Rs.400/- is to be paid to the respondent / plaintiff.

8. It is suggested by the learned Counsel for the appellant that the amount of Rs.400/- per day, which is collected as royalty from the conductor of the hotel, will be deposited in the account of the respondent/original plaintiff fortnightly. The bank account number of the plaintiff is to be communicated to the appellant and the appellant shall deposit the amount of Rs.400/- per day from 12th October, 2017

and hereafter he shall deposit the amount on every 1st and 15th day of the month till the suit is finally heard.

9. Appeal from Order is disposed of.

10. Civil Application also stands disposed of.

(MRIDULA BHATKAR, J.)