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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 1253 OF 2013
WITH
CIVIL APPLICATION NO. 936 OF 2015
AND
CIVIL APPLICATION NO. 1492 OF 2013
AND
CIVIL APPLICATION NO. 1560 OF 2013
AND
CIVIL APPLICATION NO. 667 OF 2014

Ibrahim G Shaikh & Ors

...Appellants

Versus

Fizza Najmuddin Khambatti & Ors

...Respondents

Mr Pravin Samdani, Senior Advocate, with Nishant Sasidharan, Bhavin Gada, & Harsh Behany, i/b Maniar Srivastava Associates, for the Appellants.

Mr Ajay Panicker, i/b Ajay Law Associates, for the Applicant in CAA/ 9636/2015.

Mr Sharan Jagtiani, with RA Mishra, i/b V Dhingreja, for Respondents Nos. 9(a) to 9(c).

Ms Poonam Mital, for Respondents Nos. 11(a)(ii), 11(b)(i) to (iv).

Mr SB Deshmukh, for Respondent No. 11(D)

Mr Kalpesh Joshi, for Respondent No. 1.

Mr Ajay Panicker, i/b Ajay Law Associates, for Respondents Nos. 2 to 6.

CORAM: G.S. PATEL, J

DATED: 10th July 2017

PC:-

1. **Admit.** Private paper-book to be filed within eight weeks from today. Hamdast permitted.
2. There was an interim order dated 31st October 2014 in the Appeal. It will have to be modified in the terms set out below.
3. The Appeal is filed by seven persons. They sought impleadment in a partition Suit filed in the City Civil Court. By an order dated 27th June 2013 that Chamber Summons for impleadment was dismissed with costs. The Applicants seeking impleadment are in Appeal.
4. The Applicants claim to be assignees of the alleged heirs of original Defendant No. 9. In the Suit, a preliminary decree was passed on 28th July 1994 (the Suit is of 1969, itself a matter of some concern and even alarm). In that preliminary decree, the shares of Defendant No. 9, Abdulla, in the two properties in question were determined as being 1/5th and 94/540 respectively.
5. At first the Plaintiffs themselves sought to implead the persons they believed were Abdulla's heirs. The Plaintiffs then realized that something was amiss, and that these persons were not in fact the legitimate heirs of Abdulla. They withdrew that Chamber

Summons. It is these persons, or some of them, who then purported to assign Abdulla's rights to the present Appellants.

6. Before the Trial Court the matter proceeded on this basis without it being disclosed at any time that in the meanwhile the Appellants had themselves transferred their interest to a firm of builders, M/s. Tirupati Builders. The Appellants are therefore first assignees from the alleged heirs of Abdulla; that heirship is disputed; hence the assignment to the Appellants is disputed; and they are subsequently the assignors to M/s. Tirupati Builders. Tirupati Builders is not before the Court.

7. By the order dated 31st October 2014, the hearing of the Notice of Motion before the Trial Court was stayed although the pleadings were allowed to be completed.

8. Having regard to the position of the Appellants, which in my view, is at the very least tenuous, it is not possible to stay the hearing of the Notice of Motion or the trial of the Suit. The Applicants' Chamber Summons was remanded four or five times. Ultimately, evidence was taken in the chamber summons. This could not, evidently, have been in aid of getting the Applicants any substantive relief. It could only have been on the question of proof of heirship, the validity of the assignment or gift or transfer to the Applicants, and as to their locus.

9. Mr Samdani says the interest of the deceased 9th Defendant must be protected. There must be someone to watch over it and

keep it safe. Indeed. But that person does not need to be any of these Applicants. They are, after all, said to have had a questionable gift from doubted heirs and have then divested themselves of such title as they once claimed — and they have kept that divestment from every Court until now, when it is revealed by their opponents, who only found out by other means. After all, this is a partition suit, and I have every confidence that while deciding the Motion or the Suit, the trial court will bear in mind the declared share of Abdulla and will ensure that appropriate steps are taken to implead his true heirs, give sufficient and appropriate public notice, etc. The validity of the documents on which the Appellants claimed title has been doubted; this will have to be assessed at the final hearing of the Appeal. But that is no reason to keep on hold the rest of this long-pending litigation.

10. It will be open of course for the Appellants to adopt independent proceedings to establish title if they are able and if permissible in law.

11. I see no reason to grant the Appellants any kind of interim protection. The order of 31st October 2014 is therefore modified. The Motion and the suit will proceed.

12. Civil Application No. 667 of 2014 is dismissed. No costs.

13. All other civil applications do not survive and are disposed of as infructuous.

(G. S. PATEL, J)