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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL No. 623 OF 2016  
IN  
NOTICE OF MOTION No. 1857 OF 2016  
IN  
SUIT No. 624 OF 2016  
WITH  
NOTICE OF MOTION No. 2653 OF 2016

Dhirubhai @ Dhirajlal H. Desai & Ors. ... Appellants  
Vs.  
Lataben Abuwalla & Ors. ... Respondents

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Ms. Bindi Dave, Ms. Nikita Bhansali i/b Wadia Ghandy & Co., for the Appellants.

Mr. Zal Andhyarujina, Ms. Shruti Sardessai, S. Bhogle i/b M/s. Hariani & Co., for Respondent Nos. 1, 5 & 9.

Mr. Shyam Mehta, Sr. Counsel a/w Anirudh Hariani, Bhojraj Baral i/b Kalpesh Joshi Associates, for Respondent Nos. 2 & 10.

Ms. Falguni Thakkar i/b Doijode Associates, for Respondent Nos. 6, 7

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CORAM : V. M. KANADE, &  
P. R. BORA, JJ.

DATE : FEBRUARY 15, 2017

PC.

1. Heard the learned counsel appearing on behalf of the

Appellants and the learned counsel appearing on behalf of the Respondents. The Appellants are aggrieved by an order passed by the learned Single Judge, refusing to grant an ad-interim relief in respect of share components of the property owned by the deceased – Dr. Desai. Dr. Desai expired on 28<sup>th</sup> May, 2014, leaving behind him will, which was executed on 7<sup>th</sup> January, 2006, and modified on 22<sup>nd</sup> May, 2014.

2. The deceased – Dr. Desai was a doctor and had established a charitable trust. The deceased owned a flat at Warden Road, Mumbai, certain lands are in Gujrat, and also shares in a company. In his will, he has appointed the Appellant as the executants of the will and had mentioned in his will that 75% of the shares owned by him were bequeathed to the Trust and 25% to his relatives. Lateron, will was amended in 2014. After the demise of deceased-Dr. Desai, a probate petition was filed in this Court and a notice of motion was taken out in the administrative suit, seeking a direction that no third party right should be created in respect of Gujrat lands, flat situated in Mumbai and also in respect of the shares.

3. The counsel appearing on behalf of the Respondent Nos.

2 to 10 made a statement that no third party rights would be created in respect of the flat at Warden Road Mumbai and lands at Gujrat. However, the learned Single Judge took into consideration the various facts and circumstances, which had taken place after the demise of Dr. Desai and came to a conclusion that at this stage the question of granting an ad-interim relief in respect of shares does not arise, and kept the matter for final disposal, and a preliminary issue regarding jurisdiction has been decided in favour of the Appellants herein.

4. So far as the issue regarding the shares is concerned, we direct that value of the shares as on the date of demise of Dr. Desai should be protected and the plaintiffs / Appellants would be entitled to get shares valued, not less than their value as on the date of death. In the event, the Appellants succeed, they would be entitled to get the said valuation and / or other reliefs, which are claimed by the them in the suit and in the motion. Hearing of the motion is expedited. Appeal is accordingly disposed of in the aforesaid terms. All contentions raised by both the parties are kept open. It is open for the Appellants / Plaintiffs to move the appellate forum in respect of other reliefs, which they have claimed.

5. In view of disposal of the appeal, Notice of Motion No. 2653 of 2016 filed therein does not survive and is accordingly disposed of.

Sd/-  
[P. R. BORA, J.]

Vinayak Halemath

Sd/-  
[V. M. KANADE, J.]