

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4491 OF 2015

Mrs.Santoshkumari Iswarchandra Khanna Petitioner

VERSUS

Ravindra Ishwarchandra Khanna & Ors. Respondents

Ms.Rohini M. Amin for the Petitioner.

Mr.Sudhir V. Sadavarte for the Respondent no.1.

CORAM : R.D. DHANUKA, J.

DATE : 8th OCTOBER, 2018

P.C.

By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 6th April,2015 passed by the learned trial judge below Ex.136 rejecting the application filed by the petitioner (original plaintiff) under section 10 of the Code of Civil Procedure, 1908 *inter alia* praying for staying the hearing of the Suit No.81 of 2004.

2. The petitioner has filed a probate petition *inter alia* praying for probate in respect of the alleged Will of the deceased husband of the petitioner. The said probate petition was subsequently converted into a suit and was numbered as 933 of 2004. It is an admitted position that the said suit has been dismissed by the trial court. The first appeal filed against the said judgment and decree is still pending before this court.

3. The petitioner thereafter filed a suit bearing no. 81 of 2004 *inter alia* praying for accounts and for various other reliefs against the respondent no.1 based on various Memorandum of Understandings. In the said suit, the trial court framed various issues. Issue no.3 framed by the trial court reads thus :-

'Whether the plaintiff is having right, title and interest in the landed property and business as per the alleged Will?',

4. The petitioner thereafter made an application before the learned trial judge (Ex.136) *inter alia* praying for stay of the suit on the ground that the appeal preferred by the petitioner arising out of the Suit No. 933 of 2004 is pending before this court. The said application is rejected by the learned trial judge below Ex.136 which is impugned by the petitioner in this writ petition.

5. Learned counsel for the petitioner invited my attention to the prayers in both the suits, application made by the petitioner (Ex.136) *inter alia* praying for stay of the Special Civil Suit No. 81 of 2004 and the impugned order passed by the learned trial judge. She submits that insofar as the issue no.3 framed by the learned trial judge is concerned, the decision on the said issue in the Suit No. 81 of 2004 would be depending upon the outcome of the first appeal filed by her client arising out of the probate petition which was later converted into the suit in respect of the said alleged Will referred in issue no.3 which appeal is still pending.

6. Mr.Sadavarte, learned counsel for the respondents on the other hand invited my attention to the averments made by the petitioner in Suit No. 81 of 2004 and would submit that all the prayers in the said suit were relating to the accounts and other reliefs based on the two Memorandum of Understandings relied upon by the plaintiff in the said suit and thus the second suit cannot be stayed merely on the ground that the first appeal filed by the petitioner arising out of the Special Civil Suit No.933 of 2004 is pending in this court.

7. A perusal of the averments made in the Special Civil Suit No. 81 of 2004 indicates that most of the prayers in the said suit are arising out of the Memorandum of Understandings relied upon by the plaintiff in the said Special Civil Suit No. 81 of 2004. However, there is a reference to the alleged Will propounded by the petitioner which is subject matter of the said first appeal pending before this court.

8. In my view to the extent the said issue no.3 framed by the learned trial judge in Special Civil Suit No. 81 of 2004 is concerned, any decision on that issue is depending upon the outcome of the first appeal filed by the petitioner arising out of the judgment and decree passed in Special Civil Suit No. 933 of 2004.

9. Insofar as other issues, i.e. issue nos. 1, 2, 4 and 5 are concerned, the same are framed on the basis of the Memorandum of Understandings relied upon by the petitioner in Special Civil Suit No. 81 of 2004. In my view, the learned trial judge is not right insofar as issue no.3 is concerned in the impugned order while rejecting the

application filed by the petitioner (Ex.136). Since the decision on the remaining issues framed by the learned trial judge in Special Civil Suit No. 81 of 2004 are not depending upon the outcome of the first appeal filed by the petitioner arising out of the judgment and decree passed in Special Civil Suit No. 933 of 2004, those issues framed in the said suit can be decided by the learned trial judge without any further delay.

10. I, therefore, pass the following order :-

(i) The impugned order passed by the learned trial judge below Ex.136 is substituted by the following order :-

(a) The learned trial judge in Special Civil Suit No. 81 of 2004 is allowed to proceed with the issue nos. 1, 2, 4, 5 and 6 framed on 19th April,2012 in Ex.65. Issue no.3 is deleted.

(b) Insofar as issue no.3 is concerned, the petitioner would be at liberty to file a separate suit for seeking the said relief depending upon the outcome of the first appeal filed by the petitioner which is pending in this court.

(c) It is made clear that this court has not expressed any views on the merit of the said first appeal or the issue nos. 1, 2, 4 to 6 framed by the learned trial judge in Special Civil Suit No. 81 of

2004 are concerned.

(d) In view of the fact that Special Civil Suit No. 81 of 2004 is already expedited, the parties are directed to co-operate with each other and with the learned trial judge in disposing of the said suit expeditiously.

(e) If any of the parties does not co-operate with the learned trial judge, such conduct of such party shall be highlighted in the order that may be passed in the said suit.

11. Writ petition is disposed of in the aforesaid terms. There shall be no order as to costs.

[R.D. DHANUKA, J.]

Kanchan
Vinod
Mayekar

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by Kanchan
Vinod Mayekar
Date: 2018.10.11
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