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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER No. 372 OF 2018
WITH
CIVIL APPLICATION No. 482 OF 2018**

Sanat M. Shetty ... Appellant
Vs.
Mrs. Vasanti Dinesh Shetty & Ors. ... Respondents

Ms. Archana Khan, for the Appellant.
Ms. Nutan Moily, for the Respondent .

**CORAM : V. M. DESHPANDE, J.
DATE : JULY 16, 2018**

ORAL JUDGMENT:-

. Heard learned counsel for the appellant. **Admit.**
Learned counsel for the respondent waives service. By consent of the parties appeal is taken up for final hearing.

2. Heard learned counsel for the parties. The present appeal is directed against the order dated 24/4/2018 in S.C. Suit No.3406/2014.

3. In the aforesaid suit, Notice of Motion No.3704/2015 was taken out by the present contesting respondent No.1/defendant No.1

4. The appellant is the original plaintiff whereas Respondent No.1 is the original defendant No.1 who has taken out Notice of Motion No.3704/2015. She also filed counter claim and said counter claim is registered as 11 of 2015

5. By the suit the appellant sought permanent and mandatory injunction restraining Defendant Nos.1 to 8, their agents, representatives, administrators, hirelings or any other persons claiming by under or through them from dispossessing, entering into, disturbing, obstructing and/or interfering with the appellant's/plaintiff's possession and enjoyment of the suit property named 'Hotel Shree Sharada" situated at Shop No.4, Sagar Villa, Sajjit C.H.S. Ltd., 38, Bhulabhai Desai Road, Mahalaxmi, Mumbai-400 026 along with other ancillary reliefs.

6. The contesting Respondent No.1/Defendant No.1 prayed in her counter claim various reliefs including the prayer to the effect that agreement/memorandum of understanding dated 1/3/2010 and alleged agency of Memorandum of Understanding dated 6/9/2014 entered into between the plaintiff and the defendant No.7 is not binding on her and the other legal Representatives of late Shri Karia M. Shetty.

7. It is not in dispute that one late Shri Karia M. Shetty was the original owner of the said hotel and he died on 13/5/2008. Defendant No.1 in the suit filed by the appellant, has filed counter

claim is the daughter of late Shri Karia Shetty whereas defendant No.2 is the son of Defendant No.1 and Defendant Nos. 3 to 5 are the members of the society who has taken objection for running the hotel whereas defendant No.6 is one Sharda another daughter of late Shri Karia Shetty and defendant No.7 is the husband of defendant No.6. So also defendant No.8 is the son of late Shri Karia Shetty. According to the parties after the death of late Shri Karia Shetty family settlement was entered into allotting various shares amongst family members of late Shri Karia. As the defendant No.7 was facing financial crisis and being the husband of defendant No.6, he was allowed to run the hotel business. It is admitted position that this Defendant No.7 has inducted appellant/plaintiff to run the hotel business by entering into the agreements to which the challenge is set up in the counter claim.

8. There is no dispute in between the parties that prior to inducting the appellant by Defendant No.7 no written consent of other legal representatives of the late Shri Karia Shetty was obtained. What is submitted before this Court is that since the Respondent No.1 and others accepted the amount of compensation presupposes their consent. Be that as it may as the said issue is still to be tried before the Court below as of today admittedly from 2014 no amount of compensation is either given or credited in the account of other legal representatives. The submission on behalf of the learned counsel for the appellant before this Court is that they have stopped accepting the amount of compensation. In my view, this submission holds no

good ground since there is nothing on record to show that either the appellant/plaintiff or the original Defendant No.7 offered compensation either to the Respondent No.1 or other legal representatives of late Shri Karia Shetty and it was refused. Thus, it is clear that from 2014 till today the appellant was enjoying the business of running hotel without paying any amount of compensation to the legal representatives of late Shri Karia Shetty.

9. The license is still in the name of late Shri Karia Shetty is the submission of all the counsel. The appellant is not the legal representative who can step into the shoes of the original owner. He claims that he is inducted by Defendant No.7 after obtaining no objection from all other legal representatives. One thing is clear that there is no written memorandum of understanding and/ or consent extended in favour of the appellant by any of the legal representatives of late Shri Karia Shetty. The Memorandum of Understanding that is executed on which the appellant is placing reliance is executed in his favour by only the defendant No.7. Even this defendant is not the legal representative of late Shri Karia Shetty since his status is only the husband of defendant No.6, who is one of the daughter of late Shri Karia Shetty.

10. By taking out Notice of Motion No.3704/2015, various prayers were made by respondent No.1: i) Appellant be restrained from carrying out hotel business; ii) Court Receiver should be appointed and claimant No.2 shall be appointed as an agent of the

Court Receiver. iii) Respondent No.1 and Respondent No.7 be directed to render the details and true accounts of money transactions and also claims for recovery of compensation from 1/2/2010. By the impugned order, the Court below has partly allowed the Notice of Motion. In my view, the learned Judge has rightly refused to grant rendition of accounts and recovery of compensation from 1/2/2010 at the stage of deciding Notice of Motion.

11. The defendant has every right to file application for injunction in the suit filed by the plaintiff. In the present case in addition to that defendant No.1 has filed counter claim. The parameters for granting temporary injunction in favour of the plaintiff or defendant are identical. The party which claim temporary injunction has to satisfy that prima facie case exists in favour of the said party. In the present case, in my view respondent No.1 has rightly pointed out prima facie case is made out in her favour by demonstrating the fact that she is the legal representative of late Shri Karia Shetty being his daughter and there is no document executed by her authorizing the defendant No.7 the husband of her sister to induct the appellant as a person to conduct the business of running hotel and/or has extended any consent whatsoever in nature by executing the document in that behalf. In my view learned counsel for the Respondent has successfully pointed out that the appellant is running the business of hotel without their being any authorization from any legal representative of original owner.

12. Further the impugned order has not granted possession of the hotel exclusively in favour of respondent No.1. The Court below in order to save the property being vested has rightly appointed the Court Receiver. Not only that as per the order the Court Receiver was directed to call bids from the defendant Nos.1, 6 and 8, who are the legal representative of late Shri Karia Shetty for running the hotel business in the suit premises and to hand over the business to run the hotel in favour of the highest bidder. Thus, in my view learned Judge has balanced the equities amongst the legal representatives of late Shri Karia Shetty.

13. After perusal of the impugned order I see no reason to interfere with the same on the touch stone of settled principle of law. Consequently, appeal fails and it is required to be dismissed and it is dismissed accordingly. Hence, I pass following order:

ORDER

- i) Appeal is dismissed and is accordingly disposed of. Interim orders stand vacated;
- ii) At this stage Ms. Khan for appellant states that 4 weeks time be given to her client to remove the belongings. The Court Receiver is directed to facilitate the appellant to remove the goods. It is made clear that only under the supervision of Court Receiver and appellant or his independent representative not connected in any manner whatsoever to the parties to the

litigation are allowed to assist the appellant to remove all goods. Needless to mention that this is only for removal of the articles not to run business. Civil Application pending in this appeal is also disposed of.

[V. M. DESHPANDE, J.]

Rajeshwari
Subodh
Karve

Digitally signed
by Rajeshwari
Subodh Karve
Date:
2018.07.24
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