

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO. 172 OF 2015
WITH
CIVIL APPLICATION NO. 223 OF 2015
IN
APPEAL FROM ORDER NO. 172 OF 2015**

Shri. Arvind Atmaram Uttarkar & Anr. ...Appellants

Versus

Smt.Leela Parshuram Uttarkar & Anr. ...Respondents

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Mr.Ashutosh S. Khandeparkar for the Appellants.

Ms.C.S.Savitri for Respondent No.1.

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CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE : **FEBRUARY 16, 2018**

P.C.:

1. This Appeal is directed against the order dated 25th July, 2014 passed by the learned Judge, City Civil Court, Gr. Bombay thereby allowing Notice of Motion No. 2397 of 2014 in terms of prayer clause (b) and (c).

2. Respondent no.1/ original plaintiff is a paternal aunt of the appellant/ defendant no.2. It is the case of the plaintiff/ respondent

no.1 that her husband and her brother-in-law, who was the father of the appellant/ defendant no.2, were carrying on joint family tailoring business under the name and style of "*Uttarkar Brothers*". The plaintiff has filed S.C.Suit No. 1236 of 2014 for declaration and injunction in respect of the business i.e., shops, wherein she claimed that it was a partnership business of her husband and the father of the appellant/ defendant no.2. This business was in existence since 1970. After demise of her brother-in-law i.e., the father of the appellant/ defendant no.2, the appellant/defendant no.2 has taken over the entire business i.e., shop nos. 1 and 2, Amin Manzil, 155, L.J. Road, Mahim, Mumbai. As per clause 15 of the Partnership Deed dated 1st November 1970, on the death of any of the partners, the legal heir of the deceased partner should be taken as a partner of defendant no.1 firm and, therefore, the original plaintiff is willing to continue in the business. Notice of Motion was taken out by respondent no.1/ original plaintiff and the said Notice of Motion was allowed in terms of prayer clause (b) and (c). The learned Judge of the trial Court has directed that defendant no.2 is restrained from executing any documents and deeds with defendant no.3 or any other third person and/or from handing over and/or parting with possession of the business premises of defendant no.1 viz. Shop

Nos. 1 and 2, ground floor, 155 L.J. Road, Mahim, Mumbai to defendant no. 3 or to any other third person.

3. The learned Counsel for the appellant submits that the original plaintiff did not produce any Deed of Partnership and documentary evidence. She was not a partner of the partnership firm and she has no right in the partnership firm. The learned Judge of the trial Court has not considered these facts and has granted relief in terms of prayer clause (b) and (c) in favour of the plaintiff. He further submits that the suit shops were demolished in the year 2016, and now they are in the process of new construction.

4. The learned Counsel for respondent no.1 submits that it is a registered partnership firm and her husband was a partner in the said firm. She has produced the registration certificate before the trial Court.

5. This Appeal is pending for admission since 2015 and almost three years have lapsed. Considering the nature of the injunction granted by the trial Court and in view of the subsequent development, I dispose of this Appeal with following order :-

ORDER

- (i) The appellant shall not create any third party right or shall not part with the possession in any manner in respect of the suit shops which the partnership firm or the appellant is entitled to receive from the developer.
- (ii) The trial Court to proceed with the matter. Both the parties to co-operate the trial Court.
- (iii) The trial Court to hear and decide the Suit within a period of 18 months from today.

6. With this, Appeal from Order is disposed of. Civil Application is also accordingly disposed of.

(MRIDULA BHATKAR, J.)