

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

WRIT PETITION No. 12980 OF 2017

Smt. Suman Chandrakant Kirloskar ... Petitioner
Vs.
Sanjay Chandrakant Kirloskar ... Respondent

Mr. Vijaysinh Thorat, Sr. Counsel, Ms. Dhruti Kapadia, Ms. Etika Srivastava I/b ABH Law, for the Petitioner.

Mr. Rafiq Dada, Sr. Counsel, Ashish Kamat, Ms. Manik Joshi, Siddhant Jain I/b Crawford Bayley & Co., for the Respondent.

CORAM : R. D. DHANUKA, J.

DATE : OCTOBER 30, 2018

P.C.

1. Heard the learned senior counsel appearing for the respective parties. Both parties have filed written submissions on behalf of their clients. In paragraph 9.4 of the written-submissions filed by the respondent, dated 16th October, 2018, it is submitted by the respondent that if it is case of the petitioner that 1989 agreement has been executed only pursuant to the alleged oral family arrangement and that it confers no independent right or status, since, the entirety of her rights are

only based on the alleged oral family arrangement, then such a claim could be entertained by the trial court. It is further stated that only in such a view of the matter, the trial court would have complete jurisdiction, since the petitioner (original plaintiff) would have no independent claim or right over the suit property de-hors the alleged oral family arrangement and premised on the 1989 agreement.

2. On the other hand, learned senior counsel for the petitioner states that it is case of his client that prayer clause (b) states that agreement dated 31st October, 1989 between the petitioner and the respondent was an agreement of license, agreed on certain terms, which was the family arrangement and that the said agreement dated 31st October, 1989 was executed in furtherance of the family arrangement orally arrived at between the parties.

3. In view this position, both the learned senior counsel have no objection if this Court clarifies that the prayers in the suit filed by the petitioner can be decided by the civil court, in

view of the aforesaid submission made by the learned senior counsel. Both the parties also agree that all findings and observations of the learned trial court in the impugned order are prima-facie findings on interim application. Hence, the following order.

ORDER

- (i) The learned trial judge shall decide Special Civil Suit No. 104 of 2017 on its own merits, without being influenced by any of the observations made and the conclusions drawn in the impugned order dated 4th October, 2017, which is subject matter of this writ petition.
- (ii) Considering the age of the plaintiff, which is around 83 years, hearing of Special Civil Suit No. 104 of 2017 is expedited.
- (iii) In view of the direction of expeditious hearing of the suit, on the request made by the learned senior counsel for the petitioner, Mr. Rafiq Dada, learned senior counsel on instruction, makes a statement that his client would not dispossess the petitioner of the suit property, without due process of law. Statement

is accepted. In view of this statement, the learned senior counsel for the petitioner makes a statement that application (Exhibit 5) filed in Special Civil Suit No. 104 of 2017 by the petitioner is not pressed. Statement is accepted.

- (iv) The parties are directed to approach the trial court within 2 weeks from today. The learned trial judge is directed to settle the draft issues within 2 weeks from the date of filing the draft issues by the parties.
- (v) It is made clear that both parties are entitled to lead additional evidence after the issues are framed by the trial judge. The learned trial judge shall make an endeavour to dispose of Special Civil Suit No. 104 of 2017 within six months from the date of framing the issues.
- (vi) Both the parties are directed not to seek unnecessary adjournment before the trial court and shall cooperate with each other and the trial court in disposing of the suit expeditiously.
- (vii) The writ petition is disposed of in the aforesaid terms. No order as to costs.

Sd/-
[R. D. DHANUKA, J.]