

SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.72 OF 2018
WITH
NOTICE OF MOTION NO.1182 OF 2010
(NOT ON BOARD)
IN
APPEAL NO.223 OF 2010

Jamila Banu Sheikh	..Appellant.
V/s.	
Jayashri Devi Baan & Ors.	..Respondents.

Mr.Dharam Jumanani with Mr.Aagan J.Doshi i/b. Aagame J.Doshi
for the appellant.

Ms.Neelam J.Asrani with Mr.Parag shah i/b. Mahesh Shah & Co.
for respondent No.1.

Mr.Shankar Mhatre with Mr.Dharmesh Pandya i/b. Pandya Gandhi
& Co. for respondent No.2.

CORAM: NARESH H.PATIL AND
NITIN W.SAMBRE, JJ.

DATE : JANUARY 17, 2018

PC.:-

Heard learned counsel for the parties.

2. The counsel for the appellant submits that R.A.D. Suit No.551 of 1999 in respect of the issue of tenancy is pending before the Rent Court for effective adjudication of the same. The appellant prays to stay the effect and operation of the finding on issue No.IX arrived at by the learned Single Judge in Short Cause Suit Nos.27 of 1979 and 1268 of 1979. The counsel submits that if the effect and operation of the said finding in Short Cause Suit Nos.27 of 1979 and 1268 of 1979 is stayed then, the appellant will be in a better position to canvass the issue before the Rent Court.

3. It is submitted that earlier, there was no occasion and cause of action for the appellant to pray for such a relief. The learned Single Judge delivered the judgment in the year 2009 which is appealed against by the appellant before this Court by filing Appeal No.223 of 2010.

4. The counsel appearing for the respondents opposed the prayer made by the appellant and submits that there is absolutely no cause of action for the appellant as the issue of tenancy is to be contested in trial Court in R.A.D. Suit No.551 of 1999. In the

facts of the case and considering the subject matter of the suit, the issue of marital status of Jamila Banu Sheikh cannot be an issue to be raised and considered in the said proceedings. The counsel submitted that there is an abnormal delay on the part of the appellant to pray for subject relief. The appeal filed by the appellant is pending before the Court since last 7 years.

5. The counsel also referred to an order passed below Exhibit 29 in R.A.D. Suit No.551 of 1999. An application was filed by the original defendant No.9 praying for stay of the suit pending hearing and final disposed of the proceedings pending in the High Court. The counsel submitted that Notice of Motion No.1182 of 2010 was filed praying for order restraining the respondents from disturbing the possession though she is continuing in possession as an agent of the Court Receiver. The counsel, therefore, prays that the said Notice of Motion be dismissed.

6. We have perused the notice of Motion and judgment delivered by the learned Single Judge. We have also considered the finding on issue No.IX arrived at by the learned Single Judge.

The finding on the said issue reads as under:-

“ For the aforesaid reasons, the stand taken by Jamila Banu Sheikh that she was wife of late Munawwar Ali Khan and was lawfully married to him on 20th January 1985 has not been proved in evidence. Moreover, the fact that marriage with Munawwar Ali Khan was a valid marriage performed only after lawful dissolution of the first marriage has not been established. As aforesaid, it is not necessary to burden this Judgment with other criticism regarding the veracity of the witnesses examined in support. Accordingly, issue under reference deserves to be answered in the negative against Jamila Banu Sheikh.”

7. The learned Single Judge has observed in para 90 that the question as to whether defendant No.4 in Short Cause Suit No.27/1979 (Jamila Banu Shaikh) and defendant No.18 (Jamila Banu Shaikh) in Short Cause Suit No.1268/1979 is tenant of the suit property as alleged by her, is a matter which is entirely in the domain of the Rent Court which has exclusive jurisdiction to decide the said issue.

8. In the facts of the case, it will not be appropriate for us

to stay part of the finding in Issue No.IX. It will be for the appellant to canvass the issue afresh in the said suit before the trial Court. Even otherwise on merits, we are not satisfied with the submission of the learned counsel for the appellant. However, we observe that the R.A.D. Suit No.551 of 1999 will be decided on its own merits and in accordance with law.

9. Both the Notices of Motion stand rejected.

10. At this stage, the learned counsel for the appellant prays for expediting the hearing of the appeal. Considering the pendency of old appeals, at this stage this request cannot be considered. It can be considered at an appropriate stage.

(NITIN W.SAMBRE, J.)

(NARESH H.PATIL, J.)