

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 237 OF 2018
WITH
CIVIL APPLICATION NO. 310 OF 2018

Smt.Priti Upendra Parekh .. Appellant
Vs.
Mr.Mahendra Chimanlal Parekh and ors. .. Respondents

Mr.Yogesh Katira, for the Appellant.
Mr.Raju S.Motwani, for Respondents No.1, 2A, 2B, 3 to 5.

CORAM : M.S.KARNIK, J.

DATE : 03rd JULY, 2019

P.C. :

. Heard learned Counsel for the appellant and learned Counsel for the respondents.

2. The challenge in this Appeal is to an order dated 22/01/2018 passed by the learned Judge, 6th Addl. Small Causes Judge & Jt. Civil Judge, S.D., Pune. The appellant is the wife of Upendra Parekh. Their marriage was solemnized in the year

2006. 2 years after their marriage, in an unfortunate incident, the husband of appellant died. The appellant contended that the properties belonging to her deceased husband which are his exclusive properties and properties in which he has share are being misappropriated by the defendants. It is the contention of the learned Counsel for the appellant that plaintiff was not aware of the properties owned by the deceased Upendra. Even after filing of the Suit, the appellant came to know about several other properties and investments to which deceased Upendra is entitled to and the same are being misappropriated by the defendants. Therefore, detailed application for amending plaint was moved. The plaint has since then been amended.

3. By filing the application at Exhibit 180, the appellant sought appropriate order against the defendants restraining them from selling, alienating, transferring and/or appropriate directions from otherwise transferring the said properties and investments and operating the accounts.

4. The appellant further contended that even in respect of the properties which were exclusively in the name of the deceased Upendra, on the basis of the fabricated and bogus Will, the defendants claimed that the said properties devolved upon the defendants.

5. I have gone through the order passed by the trial Court. As to what are the self acquired properties of deceased Upendra and in what properties deceased Upendra had a share are the questions which will be determined upon the trial as the defendants have serious disputes about the stand of the appellant. Insofar as the properties mentioned in the Will which admittedly are owned by Upendra, the trial Court has passed the restraint order. Operative part of the trial Court's order reads thus :

“1. The application Exh.180 is hereby partly allowed as under -

2. Defendant Nos. 1 to 4, their agents, servants or anybody on their behalf are hereby temporarily restrained from alienating the ice-cream factory i.e. S.No. 120/2 admeasuring

2 R situated at Katraj, Pune (specifically described, in paragraph No. 18A I of the plaint) till further orders, except according to the due process of law.

3. Defendant Nos. 1 to 4, their agents, servants or anybody on their behalf are hereby temporarily restrained from operating or making any transaction only in respect of the accounts, which were on the name of deceased Upendra at the time of his death i.e. individual account, joint account of deceased Upendra with defendant No.1, or deceased Upendra with defendant No. 2 to 4, Mutual Fund account, share investment account, Fixed Deposit account, Bank accounts hereafter, which are mentioned in the suit property No. 1B, till further orders except according to the due process of law.

4. Parties to bear their own costs.”

6. I find the trial Court recorded that there are no materials produced by the plaintiff to show as to how the deceased Upendra has a share in the properties which the defendants claim as their exclusive properties. These are the matters which the trial Court will have to adjudicate only after the full-fledged trial based on evidence. At this stage, appropriate orders have been passed by the trial Court in respect

of the properties and investments and accounts which were in the name of deceased Upendra.

7. In this view of the matter, I am not inclined to interfere with the order passed by the trial Court. However, considering the fact that the Suit is of the year 2012, request is now made that in respect of the properties which are not in the name of the deceased Upendra, but in which deceased Upendra has a share, the defendants should submit accounts. As on today, there is nothing on record to show even prima facie that deceased Upendra had a share or interest in the properties of the defendants which they claim are their self acquired properties.

8. In the event, the plaintiff is in a position to demonstrate that deceased Upendra had a share in the properties / investments which are in possession of the defendants relying upon such materials which supports the plaintiff's contention, the plaintiff is always at liberty to make appropriate application to the trial Court for accounts or for

such other reliefs. If such an application is made, the trial Court will undoubtedly consider the same on its own merits.

9. Appeal from Order is dismissed in the above terms. In view of dismissal of the Appeal from Order, Civil Application No. 310 of 2018 does not survive and the same shall stand disposed of.

(M.S.KARNIK, J.)