Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 3 OF 2016

Vinod Kumar Kabra ...Petitioner
Versus
Saroj Harinarayan Karwa & Ors ...Respondents

WITH

CHAMBER SUMMONS NO. 71 OF 2019

IN

SUIT NO. 3 OF 2016

Mr Karl Tamboly, *with Aditi Bhansali, i/b Vashi & Vashi, for the Plaintiff.*
Mr Ishan Gambhir, *i/b Vigil Juris, for Defendants Nos. 1 to 4.*
Mrs Kanchan Rane, *Ist Assistant to the Court Receiver, is present.*
Mrs Jyoti Chavan, *AGP for Collector of Stamps.*
Ms Silpa Nair, *i/b M/s. Veritas Legal, for Central Depository Services (India) Ltd.*

CORAM: G.S. PATEL, J.
DATED: 11th December 2019

PC:-

1. This final order, though somewhat administrative, will now dispose the Suit in its entirety. It has been pending since early 2016 and has gone through very many twists and turns. The original Plaintiff, Savitri Devi was the mother of the present 1st Plaintiff, Vinodkumar Kabra; Defendant No. 1, Saroj; Defendant No. 2, Kiran; and Defendant No. 3, Pramodkumar. Savitiri Devi has since passed on. Vinodkumar was original Defendant No. 6. He is now transposed as Plaintiff No. 1 with his wife Preeti being Plaintiff No. 2.

2. Shortly stated, the entire purpose of previous orders was to effect a rollback of various transactions effected by Saroj, Kiran and Pramodkumar transferring assets from the holdings of Savitridevi, their mother (who was then alive), and the estate of Hemraj, their father (then recently deceased), to their own names. The purpose was to set matters back to one state in which they stood at the date of Hemraj's death. A detailed order interim was fashioned appointing a Chartered Accountant to examine the rival holdings, shares and transfers and to suggest a mechanism for doing this rollback. A lengthier examination of those orders is presently not necessary.

3. Under previous orders of the Court, the retransfers and transfer of shares have been effected in accordance with the agreed formula evolved by Mr Atul Desai, the Chartered Accountant in question. There is a significant holding now in the estate of Savitridevi Kabra which is held in a Demat account operated by the Court Receiver. Her savings account is similarly being operated by the Court Receiver.

4. Vinodkumar is propounding a Will of Savitridevi in Testamentary Suit No. 90 of 2019. He along with his wife claim to be the sole legatees. Saroj, Kiran and Pramodkumar say Savitridevi died intestate. The contest in that Testamentary Suit will, therefore, be whether Vinodkumar and his wife succeed entirely to Savitridevi's estate or whether it passes as on her intestacy in equal shares to Vinodkumar, Saroj, Kiran and Pramodkumar. I say this because even on the best case that can be advocated by Defendants Nos. 1, 2 and 3, Vinodkumkar would in any event be entitled to a 25% share, right, title and interest in Savitridevi's estate.

Re: Midway Apartments Flat Consideration

5. Under previous orders of the Court, Vinodkumar and Preeti purchased Savitridevi's flat in Midway Apartments. After making the necessary adjustments, Vinodkumar deposited an amount of Rs. 2,02,50,000/- in October 2019 towards the purchase price.

6. On a reconciliation of the accounts, it was found that Saroj, Kiran and Pramodkumar had to bring in an amount of Rs. 9.64 lakhs which they have done. There is a total amount of Rs. 2,12,14,511/- therefore, now lying in the Court.

7. Of this amount, it is accepted that an amount of Rs. 63,53,504.40 is Vinodkumar Kabra's share from his deceased father Hemraj's estate. There is no dispute about this. The Prothonotary and Senior Master will issue an instrument or transfer by RTGS to Vinodkumar Kabra of this amount from the deposit currently held in Court as aforesaid. The Prothonotary and Senior Master will act on production of an authenticated copy of this order. Vinodkumar's

Advocates will provide the necessary bank details for the transfer to the Prothonotary and Senior Master.

8. This leaves lying deposited in Court a cash amount of Rs. 1,48,61,007.40. Mr Tamboly for the Plaintiffs is correct in saying that, as noted above, at least 25% of this is indisputably the share of Vinodkumar Kabra since this is now the amount of money to the credit of Savitridevi Kabra's estate. The percentage is not disputed and the rest is arithmetic. So I see no difficulty in directing the Prothonotary and Senior Master to additionally transfer to Vinodkumar Kabra 25% of the amount of Rs 1,48,61,007.40 upon his making an application for that purpose.

9. Mr Tamboly states that he is also entitled to the interest that has been earned and pro-rata computed on the Midway Apartments purchase price of Rs. 2,02,50,000/- which he brought into Court in October 2019. I am rejecting the Defendant's submission that he has only 25% interest in this interest claim. That simply cannot be. This was a purchase price that Vinodkumar paid and he has not used the money since then. He is surely entitled to that interest. The interest or income earned at actuals from the date of deposit till the date of remittance on the amount of Rs. 2,02,50,000/- is to be refunded or paid out by the Prothonotary and Senior Master to Vinodkumar Kabra.

Re: Share Transfers & Bank Accounts

10. As regards the share transfer, I am told that as between the Plaintiffs and the Defendants, and as between the Defendants and the estate of Savitridevi Kabra all necessary transfers have been effected. The last leg of this equalization is transfers between the Defendants inter se. These are present under some difficulty because there are previous orders of freezing of Demat accounts and all savings accounts.

11. It is now clarified that with this order all previous orders of freezing of all accounts stand vacated and all accounts whether demat, savings or otherwise and irrespective of the bank or the branch where they are held are free to be used. Both sides are at liberty to communicate an ordinary copy of this order to the Branch Managers of the respective banks. Those Branch Managers will act on production of an ordinary copy of this order without insisting on production of a certified copy.

12. The Court Receiver will continue in respect of Savitridevi's Demat Account and the savings bank account until final orders in Testamentary Suit No. 90 of 2019.

13. Savitridevi's Demat Account has about 45 different scrips. Again on the same principle as referred to earlier Vinodkumar is entitled to at least 25% of this entire holding. A list is tendered by Mr Tamboly which shows the details of the shares. This is taken on record and marked "T1" for identification with today's date. This lists the shares that are now to be transferred from Savitridevi's account to Vinodkumar's account, representing 25% of his entitlement to that holding. There is no objection to this either. The Court Receiver will issue necessary instructions to the holding bank/depositary referencing this particular list.

14. Savitridevi Kabra and Hemraj Kabra had certain other Demat account and bank accounts. The holdings in Demat Account No. 1202900000038140 are to be transferred to Savitridevi's Demat Account which is being operated by the Court Receiver. The amounts from Account No. 06461000003564 with Punjab & Sindh Bank, Prabhadevi Branch Mumbai 400 025 and Account No. 417452274 with Indian Bank, Nepean Sea Road Branch, Mumbai are also to be transferred to bank account No. 50382010098810 with Syndicate Bank, Prabhadevi Branch, Mumbai 400 025 operated by the Court Receiver. The Court Receiver has been given the necessary details. Liberty to the Court Receiver to seek directions if necessary.

Re: Balance 75% in the estate

15. The entitlement to the balance amount of 75% is subject to the final outcome of the Testamentary Suit No. 90 of 2019. The Plaintiffs are not to be understood to have accepted that Defendants Nos. 1, 2 and 3 are indeed entitled to that 75%.

Re: Stamp Duty

16. This leaves the question of stamp duty. One of the controversies earlier in the Suit was that on 13th March 2015 Savitridevi executed a Gift Deed in favour of Vinodkumar for this Midway Apartments flat. Vinodkumar paid a stamp duty of Rs. 6.3 lakhs on this. After the disputes arose and the suit was filed, one of the requirements of the rollback was to cancel this Gift Deed because just as the Defendants had to be reverted to a prior position in regard to the share holding, Vinodkumar also had to be reverted to an earlier position in regard to the flat. There was thus a consent decree of 26th October 2016 which in clause 9(a) held that the Gift Deed stood cancelled and was of no effect. The Sub-Registrar was ordered to refund the registration fees and stamp duty.

17. On 20th February 2018 Savitridevi and Vinodkumar executed a Deed of Cancellation. This was never registered. Subsequent attempts by Vinodkumar to obtain a refund were unfruitful.

18. Savitridevi died on 9th October 2018. About a year later on 23rd August 2019, I conducted a sale by open auction in Court of that flat. Vinodkumar was found to be the successful bidder at a price of Rs. 2.70 crores. He was required to deposit 75% of his successful bid of Rs 2.70 crores, i.e. Rs. 2,02,50,000/-. This is the very amount referred to earlier. On 10th October 2019, the Prothonotary and Senior Master issued a sale certificate in favour of the 1st Plaintiff.

19. Now what this cycle tells us is that the Midway Apartments flat went from Savitridevi to Vinodkumar by the Gift Deed, from

Vinodkumar back to Savitridevi by the Gift Deed's cancellation, then from Savitridevi on her death to her estate, and then from her estate through Court back to Vinodkumar. In all of this, Vinodkumar is being told that he must pay stamp duty at every turn. That cannot possibly be. The flat is only one. It may have been subjected to multiple transactions but even those multiple transactions are only one because the ultimate owner of the flat is only one, i.e. Vinodkumar Kabra. Wherever else the title to the flat may have been circulating, it has been ultimately come to rest only with Vinodkumar Kabra and nowhere else. It would be thoroughly unreasonable to expect any flat purchaser who has himself been subjected to the orders of the Court to continuously pay stamp duty for no fault of his own especially when the first of these reversals is caused by an order of the Court. On the principle that no act of a Court should prejudice any person, I obviously cannot countenance a situation where Vinodkumar Kabra would get no refund of the stamp duty, that he would in fact have to pay additional stamp duty on the Deed of Cancellation (which is the demand being made), and would then again have to pay stamp duty on the sale effected through Court, thus paying stamp duty three times for what is a single transaction.

20. Fortunately for almost everybody, Ms Chavan has been of the most able assistance. She points out that under Section 47 of the Maharashtra Stamp Act, and in particular Section 47(c)(1A) if the Court finds that a particular transaction is absolutely void from the beginning under Section 31 of the Specific Relief Act, the Collector may make allowance, i.e. may order a refund. Now obviously the order cancelling the stamp duty had to be an order under Section 31 of the Specific Relief Act. That it was followed by a formal Deed of Cancellation is inconsequential. The judicial finding is one that rendered the Gift Deed void ab initio.

21. With this Deed of Cancellation, therefore, the title of the Midway flat came to rest with the original owner, i.e. Savitridevi. On her death it passed to her estate. It is only thereafter under an order of the Court that the title has now passed finally to Vinodkumar Kabra.

22. There is undoubtedly stamp duty payable on the sale through Court and Mr Tamboly does not suggest for a moment that the stamp duty is not liable to be paid. He does request that there be an adjustment but this may not be possible because the stamp duty paid on the Gift Deed was in a much earlier financial year and accounting practices will make this exceedingly difficult.

23. I will accept Ms Chavan's statement that upon an application made within three weeks from today for refund of the stamp duty paid on the Gift Deed dated 15th March 2015, the Additional Collector of Stamps will effect the necessary refund, and will do so within four weeks of receipt of that application.

24. Equally, Mr Tamboly states that Vinodkumar will not await the refund before making payment of the stamp duty on the sale through Court. That payment of stamp duty at the rates prevailing on the date of sale will be paid within four weeks reckoned from today. There is no question of imposing any penalty or interest for any past period because the question of stamp duty and what was payable or what could be adjusted was pending before this Court until this date. In assessing the stamp duty payable, the Additional Collector will keep this factor in mind.

25. The Prothonotary and Senior Master will issue necessary clarification or a fresh sale certificate mentioning the area of the Midway Apartments Flat for the purposes of stamp duty.

26. I have previously directed the Defendants to execute necessary indemnities to fully effect the transfer the Midway Apartments flat to Vinodkumar. They agree that this will be done subject to any agreed changes in the draft indemnity already received. The statement is noted and accepted.

FINAL DISPOSAL

27. With this the Suit is over and no further directions are presently required. The Suit is disposed of.

28. In view of disposal of the Suit, all pending interlocutory applications are disposed of as infructuous.

29. Refund of the Court fees in accordance with the Rules. For the purposes of Section 43 of the Maharashtra Court Fees Act and the proviso to that Section, today's date is the date of making a claim for repayment. The Prothonotary & Senior Master will issue a certificate for a refund of Court Fees computed according to the

Rules. He will act on production of an authenticated copy of this order without requiring a separate application.

(G. S. PATEL, J)