

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

***APPEAL (Lodg.) NO. 549 OF 2018
in
NOTICE OF MOTION NO. 444 OF 2018
in
SUIT NO. 260 OF 2018***

Girish Waman Firke & Ors.

... Appellants.

V/s.

Smt. Yashwanti Jaisinghrao Suryavanshi & Ors. ... Respondents.

Mr. U.P. Bobade a/w. Mr. A.V. Bobade and Mr. Niranjan Deshpande
I/b. Yatin R. Shah for the Appellants.

Mr. Gaurav Joshi, Senior Advocate a/w. Mr. Sunil Gangan, Mr.
Jayesh Mestry and Mr. Swapnil Shikhare I/b. Anil D'Souza for
Respondent No.1.

Mr. Naushad Engineer I/b. Dushyant Purekar for Respondent No.6.

***CORAM : NARESH H. PATIL, C.J. &
N.M. JAMDAR, J.***

DATE : 4 FEBRUARY 2019.

P.C. :-

This Appeal arises from the suit filed for administration of estate of late Ghanashyam Kalsekar, a Barrister practicing in this Court. Barrister Kalsekar left behind various properties, one of them

being a flat in Kshitij Co-operative Housing Society Ltd., Hill Road, Bandra (West), Mumbai. The Appeal concerns this residential flat.

2. The Suit is filed by the sister of Barrister Kalsekar. The Plaintiff has prayed for a declaration that she, alongwith her other sister – Defendant No.7, are the joint owners of the suit properties. They have also sought administration of the 1/3rd share of their deceased brother. They have sought a declaration that the alleged Will dated 16 April 2016 stated to be executed in favour of the Appellants is fraudulent and fabricated.

3. A Notice of Motion (L) No. 1682 of 2017 was taken out by the Plaintiff. On 31 January 2018 by consent of parties, the learned Single Judge, appointed a Court Receiver in respect of the properties, including that of the residential flat. A Notice of Motion No. 448 of 2018 was subsequently taken out. One of the aspect which the learned Single Judge considered in this Motion was regarding the occupation of the residential flat. The learned Single Judge did not accept the prayer of the Appellants that the Appellants be allowed to occupy the Flat as the agent of the Court Receiver. The learned Single Judge, by order dated 10 October 2018, directed that the flat be given out on a leave and license and the proceeds be deposited with the Court Receiver duly invested to the credit of the suit.

4. The Appellants are aggrieved by the rejection of the prayer and has filed the present Appeal

5. We have heard the learned Counsel for the Appellants and the learned Counsel for the Respondents.

6. The learned Counsel for the Appellants submitted that if the flat is given on leave and license basis, the Appellants are ready to pay the compensation fixed by the Court Receiver and they may be allowed to occupy the flat in question as an agent of the Court Receiver. He submitted that the Appellants can carry out the activities of the Trust from the residential flat and this arrangement will not prejudice anyone. He submitted that the Will is in favour of the Appellants.

7. This request has been opposed by the learned Counsel for the Respondents – Plaintiffs. They contend that the Appellant No.1 was only a Civil Contractor and taking advantage of the fact that Barrister Kalsekar was ailing, has fabricated various documents. They submitted that by this alleged Will, the property left to a Trust of which only the Appellants are the beneficiaries. It was contended that the Plaintiff and Defendant No.7 are the sisters of Barrister Kalsekar, who also have children and instead of leaving the property to the near relatives, it is inconceivable that Barrister Kalsekar choose

a Civil Contractor to bequeath the property. It was submitted that immediately upon Barrister Kalsekar's death, an amount almost to the tune of Rs.2.3 crores has been siphoned off on the ground that it is a gift. The learned Counsel submitted that the alleged Will is on the face of it a fraudulent one and this is nothing but a brazen attempt to grab the property, taking advantage of the situation. The learned Counsel for the Respondents submitted that the Appellants should not be allowed to enter the premises by such back-door methods.

8. We have considered the rival contentions. The learned Single Judge, who was trying the suit had to find an interim arrangement. The Court Receiver is appointed by consent in respect of the residential flat. The learned Single Judge has found it fit to give the flat on leave and license basis and to invest the proceeds. The learned Single Judge has rejected the prayer of the Appellants for appointment of an Agent of the Court Receiver. The use of discretion by the learned Single Judge cannot even remotely be suggested as perverse. In the facts and circumstances of the case and the case put by the Respondents, we do not find that the apprehension of the Respondents that the Appellants, if allowed to enter the premises would create various complications, in whatever capacity at this stage, is an unfounded one. The Appellants admittedly are not the relatives of late Barrister Kalsekar.

9. The learned Counsel for the Appellants then submitted that there are certain law books of Barrister Kalsekar, which need to be taken care of. As rightly pointed out by the learned Counsel for the Respondents that the Receiver being entrusted with the task of taking care of the property, would take necessary precautions. He submitted that at present the books are kept in proper care and custody.

10. Considering these circumstances, no relief can be granted in this Appeal. The Appeal is accordingly dismissed.

N.M. JAMDAR, J.

CHIEF JUSTICE