

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

APPEAL FROM ORDER NO. 1026 OF 2019

Smt.Omvati Liladhar Garg	...	Appellant
V/s.		
Smt.Lata Hemant Garg & Anr.	...	Respondents

Mr.S.R. Patel for Appellant.
Mr.A.M. Saraogi a/w. Mr.Anand Mishra for Respondent Nos.1 and 2.

CORAM : A.S. GADKARI, J.

DATE : 2nd January 2020.

PC. :

1] By the present Appeal, the appellant/original plaintiff is seeking expungement of observations made by the learned Judge of the Trial Court in para No.5 of the impugned Order dated 30th March 2019 passed in Notice of Motion No.3773 of 2018 in Suit No.1330 of 2018 filed by her. By the impugned Order, the Trial Court has granted interim relief in favour of the appellant in the said Notice of Motion No.3773 of 2018.

2] The learned counsel for the appellant submitted that, while granting interim relief, the Trial Court has made certain observations with respect to the ownership of the suit premises and has held that, it is owned by

the defendant No.1, despite the fact that, the appellant is wife of late Shri Liladhar Garg. He submitted that, due to the said observations, the appellant has been denuded of her valuable right to succeed the suit property after the demise of her husband, who expired in the year 1998. He therefore submitted that, the said observations and more particularly the observations regarding ownership of the suit property may be set-aside from the impugned Order.

3] The record indicates that, the husband of the appellant namely Shri Liladhar Garg expired in the year 1998, leaving behind his last Will and testament. By the said Will he has bequeathed the suit premises in favour of the respondent No.1, who is the daughter-in-law of the appellant and late Shri Liladhar Garg. The respondents had filed probate Petition No.722 of 1998 in this Court and probate has been granted on 16th April 2015 in the said Petition. The appellant thereafter preferred an application for revocation of the probate, which has been dismissed by this Court by its Order dated 28th August 2016. An appeal challenging the said Order has also been turned down by the Division Bench of this Court. It is thus apparent that, the Will executed by the late Shri Liladhar Garg has been duly affirmed by granting probate in that behalf by a Court of Competent jurisdiction. Thus, the respondent No.1 has become owner of the suit property in pursuance of the Will executed by late Shri Liladhar Garg and therefore, the observations made by the Trial Court in para No.5 of the impugned Order are in consonance with the Orders passed by this Court in the

said probate Petition No.722 of 1998 and other litigation filed by the appellant herein. Therefore, *prima-facie* the stand of the appellant/original plaintiff that, she is entitled to held the property in succession cannot be accepted and therefore, the appellant/original plaintiff cannot be treated as exclusive owner of the suit property.

4] In view of the above, I find no reason to expunge the remarks and/or observations made by the Trial Court in para No.5 of the impugned Order.

5] Appeal being *dehors* of merits is accordingly dismissed.

[A.S. GADKARI, J.]