

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

**NOTICE OF MOTION NO.785 OF 2019
WITH
INTERIM APPLICATION (L) NO.2998 OF 2021
WITH
INTERIM APPLICATION NO.28 OF 2020
WITH
INTERIM APPLICATION NO.643 OF 2020
WITH
NOTICE OF MOTION NO.1452 OF 2019
IN
SUIT NO.3021 OF 2009
WITH
SUIT NO.3021 OF 2009**

Sanju alias Sanjay Shamrao Maskar ... Plaintiff
Versus
Raju Shamrao Maskar
And Others ... Defendants

.....
Mr. Tejas Vora i/b D.R. Mishra for the Plaintiff.

Mr. Aloukik Pai a/w Mr. Indrajeet V. Suryavanshi and Ms. Akhila Valsan i/b Thodul Law Associates for Defendant No.1.

Mr. Sagar Sheth i/b Mr. Sagar Kasar for Defendant No.6.

• • • • •

CORAM : S.C. GUPTE, J.

DATE : 18 MARCH 2021

(Oral Order)

. These five miscellaneous applications have been taken out by the respective parties to the suit, Notice of Motion No.785 of 2019, Notice of Motion No.1452 of 2019, Interim Application No.28 of 2020 and Interim Application (L) No.2998 of 2021 being applications of original Defendant No.1 and Interim Application No.643 of 2020 being original Plaintiff's application. All five misc. applications are being disposed of by this common order after hearing learned Counsel for the respective parties.

2 Learned Counsel for the Applicant/Defendant No.1 does not press Notice of Motion No.785 of 2019 and seeks leave to withdraw the same. None of the contesting parties has any objection to such withdrawal.

3 Notice of Motion No.1452 of 2019 is for revocation of leave granted under Clause XII of the Letters Patent to the Plaintiff for filing the present suit in this court. This leave was granted on the footing that a part of the immovable properties, in respect of which relief has been sought in the suit, is situated within the local limits of jurisdiction of this court and upon leave being granted under clause XII, the suit could be maintained in this court. This leave is sought to be revoked by Defendant No.1, purportedly on the ground that this court does not have jurisdiction to entertain the suit at all, whether

with or without leave.

4 Interim Application No.28 of 2020 is an application of original Defendant No.1 for variation of the original interim order passed in the suit, purportedly on the ground that there has been a change in circumstances and that the court should consider appropriate relief under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 (“Code”) as a result of such change. This Interim Application is considered together with Notice of Motion No.1452 of 2019 in the order passed below.

5 Interim Application (L) No.2998 of 2021 is taken out by original Defendant No.1 for amendment of his written statement with a view to add the various grounds urged in support of Defendant No.1’s application for revocation of leave as part of his written statement.

6 Interim Application No.643 of 2020 is the original Plaintiff’s application for appointment of receiver, purportedly on the ground that Defendant No.1 is likely to commit a breach of the original interim order passed by this court in the suit, as a result of what Defendant No.1 calls is a change of circumstances and which is the subject matter of his miscellaneous application, namely, Interim Application No.28 of 2020, referred to above. Consideration of this interim application will be a fall out of what is decided in the interim application of Defendant No.1 and the same, accordingly, will be dealt

with in the present order.

7 The parties to the suit are related to one Shamrao Ramchandra Maskar, father of both the Plaintiff and Defendant No.1 though through different mothers. Late Shamrao was married to one Tarabai, who is Defendant No.6 to the present suit. The Plaintiff is the only issue out of that wedlock. In 1965, Shamrao allegedly married one Shyamla, who was originally Defendant No.4 in the present suit, and who has since deceased. Her legal heirs being already on record, she has been deleted from the array of parties. There have been three issues out of this wedlock, all of whom are party defendants to the present suit, namely, Raju Shamrao Maskar, who is Defendant No.1, Mrs. Meena Vijay Kadam, who is Defendant No.2, and Mrs. Rekha Vijay Rachurkar, who is Defendant No.3. Mother of late Shamrao was also a party to the present suit as Defendant No.5, but having deceased during the pendency of the suit, her name has been deleted, since her legal heirs have already been on record as parties to the suit. The family tree of late Shamrao disclosing his relationship *qua* the parties is annexed as Exhibit 'A' to the plaint. Late Shamrao was a partner in a partnership firm by the name of M/s Petals Cosmetics. This firm was carrying on a business of manufacture and sale of cosmetics products. It was also said to be carrying out an ancillary business of development of properties. The Registered Office of the firm is at one of the two properties at Karad, Dist. Satara. As at the relevant time, that is to say, the date of his death, the late Shamrao

had 50 per cent share in the partnership, whereas Defendant No.1 and his mother, Shyamla, respectively, had 25 per cent share each in the partnership. The present suit is for administration of the estate of deceased Shamrao. The properties in respect of which such administration has been sought include individual properties of Shamrao as well as his 50 per cent share in the partnership firm. Whilst filing the suit, the Plaintiff sought leave of the court under Clause XII of Letters Patent on the ground that one of the immovable properties in respect of which administration was sought in the suit was a property situated within the local limits of jurisdiction of this court. By an order dated 8 October 2009, such leave was granted by this court. The suit was thereupon registered and numbered.

8 By an order dated 14 October 2009, passed by a learned Single judge of this court on an interim application made in the suit, *status quo* as of that date was directed to be maintained as and by way of ad-interim relief in relation to the suit properties, which were described in Exhibit 'B' to the plaint. The learned Single Judge, however, made it clear that the order would be without prejudice to the rights and contentions of the parties, and would not prevent any of the parties to the suit from using the suit properties for carrying out any existing business or affect any arrangement entered into during the course of such business. The Notice of Motion was finally heard by another learned Single Judge of this court, who, by his order dated 14 July 2016, disposed of the Notice of Motion by

continuing the order passed on 14 October 2009 as an interim order pending the hearing and final disposal of the suit. Various directions were also issued by the learned Single judge towards the trial of the suit.

9 It is the case of Defendant No.1 that this court lacks jurisdiction in the matter altogether and that the leave granted to the Plaintiff under clause XII of Letters Patent to file the present suit should be revoked. It is submitted that the suit, being an administration suit involving immovable properties, is nothing but a suit for land and this court has jurisdiction only in respect of those lands or immovable properties, which are within the jurisdiction of this court. It is submitted that so far as lands or immovable properties situated outside the local limits of the jurisdiction of this court are concerned, there is no question of grant of leave for filing of such a suit before this court. These averments, as noted above, also form part of the schedule of amendments, which Defendant No.1 proposes to introduce in his written statement, and which is the subject matter of his interim application being Interim Application (L) No.2998 of 2021.

10 Interim Application No.28 of 2020 taken out by Defendant No.1, on the other hand, seeks to vary the injunction order passed by the learned Single Judge of this court on 14 July 2016, noted above. It is submitted that the partnership firm has passed a resolution in its meeting held on 1 February 2019 *inter alia* resolving to shift its

existing business (of manufacture and sale of cosmetic products) from Satara and carry out development of the real estate at Satara, which anyway is said to be the firm's ancillary business.

11. Let me first take up the Notice of Motion of Defendant No.1 for revocation of leave before deciding his Interim Application for variation of interim relief due to change of circumstances. It is submitted by learned Counsel for Defendant No.1 that so far as a suit for land or other immovable property is concerned, clause XII of Letters Patent requires it to be instituted in this court, only if the land or property is situated within the local limits of ordinary original jurisdiction of this court. It is submitted that the suit for land not having been defined under the Letters Patent, its meaning would have to be gathered in the light of Section 16(1)(d) of the Code and its interpretation by our courts. Secondly, and in the alternative, it is submitted that it is only when such land or immovable property (i.e. a particular land or property) is partly situated within the local limits of the ordinary original jurisdiction of this court and partly outside such jurisdiction, that leave could be considered under clause XII of Letters Patent and not when there are different parcels of lands or immovable properties, one or some of which may be situated within such local limits and the other or others outside. Learned Counsel for Defendant No.1 relies on several judgments, both of this court and the Supreme Court and also of some other High Courts in support of his submission that a suit such as the present can only be entertained by

a court within whose territorial jurisdiction the property is actually situated.

12 Clause XII of Letters Patent is quoted below :

“Original jurisdiction as to suits.-And We do further ordain that the said High Court of Judicature at Bombay, in the exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try, and determine suits of every description, if, in the case of suits for land or other immovable property such land or property shall be situated, or in all other cases if the case of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court or if the defendant at the time of the commencement of the suit shall dwell or carry on business, or personally work for gain, within such limits; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at Bombay, or the Bombay City Civil Court.”

13 Leaving aside for the time being the authorities cited by learned Counsel, a bare reading of clause XII of Letters Patents, as it stands, in its plain grammatical meaning, makes it clear that the expression “either wholly or, in case leave of the court shall have been first obtained, in part”, appearing in clause XII qualifies both expressions, namely, “in the case of suit for land or other immovable

property shall be situated” and “in all other cases if the cause of action shall have arisen”, both of which immediately precede the former expression. In other words, in case of a suit for land or other immovable property, whenever such land or property is situated either wholly or in part, this court would have jurisdiction to entertain the suit for such land or other property - if it is situated wholly within the local limits of its ordinary original then without leave and if it is situated in part within such local limits, then with leave of the court. Even in other cases, which are not governed by Letters Patent but by the Code, in case of immovable property situated within the jurisdictions of different courts, such suit can be instituted in any court within the local limits of whose jurisdiction any portion of such property is situated, by virtue of section 17 of the Code. The jurisdiction of this court being, however, governed by the Letters Patent, it is the provisions of Clause XII, and not the Code, which are applicable for considering the maintainability of suits filed in this court. In other words, so far as suits in this court are concerned, if any part of the property, being the subject matter of the suit, is situated outside the limits of ordinary original jurisdiction of this court and some part within such jurisdiction, leave has to be obtained under clause XII before such suit is filed in this court. That appears to be the plain and simple mandate of the law governing this court’s jurisdiction, namely, clause XII of the Letters Patent.

14 Let us now see if any of the authorities cited by learned Counsel

for Defendant No.1 suggests otherwise. Learned Counsel, mainly, relies on the case of **Shiv Bhagwan Moti Ram Saraoji Vs. Onkarmal Ishar Dass**¹, which is said to be one of the early statements of the law on the subject, and which has since been followed in later judgments of this court. In the first place, the facts of **Shiv Bhagwan Moti Ram Saraoji** are wholly different from the facts of our case. In **Shiv Bhagwan Moti Ram Saraoji**, as at the date of the filing of the suit and application for leave under clause XII of Letters Patent, none of the immovable properties forming the subject matter of the suit was situated within the local limits of ordinary original jurisdiction of this court. What the Plaintiff appears to have done in that case was that he combined immovable properties (all of which were outside the local limits of jurisdiction) with movable properties, some of which were situated within the local limits of ordinary original jurisdiction of this court. It was on the strength of this part of the property being within the local limits that leave was sought for filing of the suit, which not only covered movables within and outside the jurisdiction of this court, but all immovable properties outside the jurisdiction of this court. It is in this context that the observations made by the two learned Judges of this court in **Shiv Bhagwan Moti Ram Saraoji** have to be considered. As observed by Chagla C J in his independent judgment, it is well settled that a suit for partition of immovable properties, which the suit in that particular case was, is but a suit for land and under clause XII of Letters Patent, this court would have

1 AIR 1952 Bom 365

jurisdiction in such a suit even if a part of such properties was situated within its jurisdiction. The learned Chief Justice was conscious of the various judicial pronouncements pointing at various possible constructions to which the language of clause XII lent itself. But, as the learned Chief Justice noted, the view accepted by this court was that in case of a suit for land, if leave was taken under clause XII, the court could entertain such suit if a part of the land or immovable property was situated within its jurisdiction. The learned Chief Justice also noted that in the case before the court, all immovable properties, of which partition was sought by the plaintiff, were situated outside the jurisdiction of this court as at the date of filing of the suit. (During the pendency of the suit, one of the properties, namely, a certain property at Vikhroli, came within the jurisdiction of this court as a result of extension of local limits of ordinary original jurisdiction of this court by a subsequent enactment.) The question, thus, to be considered in that case, as formulated by the learned Chief Justice, was, whether in a mixed suit for partition of immovable and movable properties, whether this court had no jurisdiction to entertain the suit to the extent that it sought partition of movables, even though such movables might be situated within its jurisdiction, though the court would refuse to try the suit to the extent it sought partition of immovable properties. The learned Chief Judge held that it was logically impossible to understand why this court would have no jurisdiction to entertain the suit when it sought partition of movables within its jurisdiction. So far as the immovable

property which came to be included within the local limits of the jurisdiction of this court (by virtue of subsequent extension of such local limits as noted above, namely, the Vikhroli property) is concerned, the learned Chief Justice noted that though, on the date when the suit was instituted, this property did not form part of Greater Bombay and was not within the ordinary original civil jurisdiction of this court, this court was bound to take notice of the change in law and administer the law as it was when the suit came up for hearing and therefore, if the court had jurisdiction to try the suit when it came up for disposal, it could not refuse to assume jurisdiction by reason of the fact that it had no jurisdiction to entertain it at the date when it was instituted. As a result of this discussion, what the learned Chief Judge actually did was to set aside the order of the Single Judge dismissing the suit after revocation of leave under clause XII of Letters Patent. I do not see how this can possibly help Defendant No.1 in our case. In our case, a part of the immovable properties, which are the subject matter of the suit, is indeed situated within the local limits of ordinary original jurisdiction of this court and upon leave being granted, this court would have jurisdiction to entertain the suit in respect of all immovable properties, both within and without the local limits of jurisdiction of this court.

15 Even the judgment of Bhagwati J, who was the other Judge on the bench in **Shiv Bhagwan Moti Ram Saraoji**, makes this position

clear. The learned Judge agreed with the statement of law on the subject of leave by the learned Chief Justice. The learned Judge considered an additional submission on the part of the Plaintiffs. The submission was that leave under clause XII of the Letters Patent having already been granted both in regard to movable and immovable propertis comprised in the suit, upon this court being invested with jurisdiction to entertain the suit with regard to the Vikhroli property, that leave operated so as to invest this court also with jurisdiction to partition lands situated outside its jurisdiction. The learned Judge held that all immovable properties, including the property at Vikhroli, involved in that suit, were admittedly outside the jurisdiction and that it could not at all have been within the contemplation of the plaintiff at the time when he instituted the suit that he should obtain leave under clause XII of the Letters Patent on the basis of the suit being a suit for land. If that was the position, the learned Judge held, leave under clause XII, obtained at the commencement of the suit, could by no stretch of imagination be extended to include the claim for partition of immovable properties on the basis of the suit being initially a suit for land situated in part within jurisdiction. The Learned Judge, in the premises, agreed with the order proposed by the learned Chief Justice. Accordingly, per court, the decision of the learned Single Judge holding that the court had no jurisdiction was set aside. The plaintiff accordingly succeeded in sustaining the leave and jurisdiction of this court for partition of all movables, both within and outside the jurisdiction of this and of the

Vikhroli property which was within the jurisdiction of this court (by virtue of extension of local limits of ordinary original jurisdiction during the pendency of the suit).

16 The long and short of the above discussion is that both learned Judges in **Shiv Bhagwan Moti Ram Saraoji** appear to have accepted the proposition of law that if a part of the immovable property forming the subject matter of the suit, that is to say, one or more properties, which was or were the subject matter of the suit, was or were situated within the jurisdiction of this court and the other or others outside such jurisdiction, leave under clause XII of Letters Patent could appropriately be granted and the suit could be instituted in this court on the strength of such leave. The further judgments cited by learned Counsel for Defendant No.1 on this point, particularly, the cases of **Narendra Gorani Vs. Sumer Builders Pvt. Ltd.**² (Ld. Single Judge) **Sumer Builders Pvt. Ltd. Vs. Narendra Gorani**³ (in appeal by the Division Bench) and **The Indian Spinning and Weaving Co. Ltd. Vs. Smt. Climax Industrial Syndicate**⁴ decided by the Full Bench of our court, do not take the case of Defendant No.1 any further. These cases simply bear on the question as to how the expression “suit for land” appearing in clause XII of Letters Patent should be interpreted. We are not on this question at all. We are essentially proceeding on the footing, as suggested by learned Counsel

2 2013 SCC Online Bom.1341

3 2015 SCC Online Bom 516

4

for Defendant No.1, that this suit being a suit for administration of properties, including immovable property, is indeed a suit for land. The question before us is whether, having regard to the fact that some of the lands are situated within the jurisdiction of this court and some without, whether, upon leave being granted under clause XII of Letters Patent, the suit can be entertained by this court or not, and that, as I have noted above, is a clearly permissible course. Accordingly, leave was rightly granted and there is no question of its revocation. Notice of Motion No.1452 of 2019, accordingly, deserves to be dismissed.

17 The question raised by Defendant No.1 in his Interim Application (Interim Application No.28 of 2020) is whether the circumstance of the firm of Petals Cosmetics having decided to shift its original business of manufacture of chemicals from Satara and instead develop the Satara property, amounts to a change of circumstances within the meaning of Order XXXIX Rule 4 of the Code. As at the date of the suit as also at the date when the Interim Application of the Plaintiff was decided (14 July 2016), the firm was carrying on the business of manufacture and sale of chemicals at Satara. The parties were directed by the learned Single Judge to maintain status quo in respect of the property, though the use of the property as on that date was protected by the learned single Judge, together with any arrangement made for the same business for the future. What this essentially meant was that despite the *status quo*

order, the firm was free to carry on its existing business of manufacture and sale of chemicals at its Satara premises together with all arrangements in connection with such business for the future; maintenance of *status quo* would not imply any bar in carrying out such business. The firm was, however, prevented from making any disposal of the property including its development under a development agreement. A unilateral decision by some of the parties to change the nature of the firm's business (even if such change was within the original objects of the firm as ancillary) cannot possibly be termed as a change of circumstances within the meaning of Order XXXIX Rule 4 of the Code. It is preposterous to suggest that an injunction restraining a party from disposing of property can be got over by a so-called change of circumstances brought about by that party's own decision to deal with the property differently. The Interim Application, thus, deserves to be dismissed.

18 Learned Counsel for Defendant No.1 urges one more contention in support of his case. Learned Counsel submits that afterall, what the Plaintiff is seeking is merely his share as a legal heir of the deceased partner and under Section 37 of the Partnership Act, all that he can have is a proportionate share in the business and profits of the firm or 6 per cent interest, at his option. This might have been a good argument before the learned single Judge when he decided the Plaintiff's Notice of Motion, but not before this court. If this court were to take this aspect into consideration and alter the *status quo*

order, that would amount to a review of the original order. That is neither the stated purpose of the present Interim Application nor is it within its framework. Even otherwise, in a review, a new argument, not advanced before the original court, cannot be entertained.

19 As for Interim Application (L) No.2998 of 2021, the same seeks to add various averments, which form part of the Defendant's motion seeking revocation of leave (Notice of Motion No.1452 of 2019). The trial has yet to begin; issues still have to be framed in the suit; and there is no reason why such amendment should not be permitted. This Interim Application, thus, deserves to be allowed, subject to the Plaintiff's right to put in a written statement in response to the amendment introduced by Defendant No.1.

20 Since the miscellaneous applications of Defendant No.1 (Notice of Motion No.1452 of 2019 and Interim Application No.28 of 2020) are being decided against him, there is no merit in considering the Plaintiff's own miscellaneous application for appointment of receiver (Interim Application No.643 of 2020). The very fact that Defendant No.1 is seeking leave of this court for variation of the original interim order passed by this court indicates that, far from breaching the original interim order, Defendant No.1 seeks to take steps that he proposes to take only after seeking appropriate orders from this court. In the premises, there is no need to consider appointment of a receiver of the Satara property.

21 Accordingly, the following order is passed.

- (i) Notice of Motion No.785 of 2019 is dismissed as withdrawn. No order as to costs ;
- (ii) Notice of Motion No.1452 of 2019 is dismissed. Costs to be costs in the cause ;
- (iii) Interim Application No.28 of 2020 is dismissed. Costs to be costs in the cause ;
- (iv) Interim Application No.643 of 2020 is dismissed. Costs to be costs in the cause ;
- (v) Interim Application (L) No.2998 of 2021 is allowed in terms of prayer clause (a). Amendment to be carried out within two weeks. Amended copy of the written statement to be served on the Plaintiff. In case the Plaintiff proposes to file any written statement/additional statement to deal with the amended written statement, he is at liberty to do so within four weeks of service of the amended written statement.

(S.C. GUPTE, J.)