

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

**APPEAL NO.270 OF 2019
IN
NOTICE OF MOTION NO.476 OF 2012
IN
SUIT NO.422 OF 2012**

Smt. Renu Balwant Maru ... Appellant
(Orig. Plaintiff)
V/s.

Bhupendra Damjibhai Tank ... Respondents
& Ors. (Orig. Defendants)

**WITH
NOTICE OF MOTION NO.703 OF 2019
IN
APPEAL NO.270 OF 2019**

**AND
APPEAL NO.176 OF 2018
IN
NOTICE OF MOTION NO.476 OF 2012
ALONGWITH
NOTICE OF MOTION NO.499 OF 2014
IN
SUIT NO.422 OF 2012**

Hansa Chotalia & Anr. ... Appellants
(Orig. Def. Nos.5 & 6)
V/s.

Renu Balwant Maru & Ors. ... Respondents
(No.1 : Orig. Pltf. &
Nos.2 to 6 : Orig. Def.
Nos.1 to 4 & 7)

**WITH
NOTICE OF MOTION NO.682 OF 2018
IN
APPEAL NO.176 OF 2018**

Mr. Rohaan Cama i/by Mr. Rupesh Lanjekar for the Appellant in Appeal No.270 of 2019 and Respondent No.1 in Appeal No.176 of 2018.

Mr. A. V. Anturkar, Senior Advocate i/by Mr. Joel Carlos for Respondent Nos.1 to 4 in Appeal No.270 of 2019 and Respondent Nos.2 to 5 in Appeal No.176 of 2018.

Mr. Gaurav Mehta a/w Mr. Gobinda C. Mohanty i/by M/s. Mohanty & Associates for Respondent Nos.5 and 6 in Appeal No.270 of 2019 and for the Appellants in Appeal No.176 of 2018.

Mr. Vishwajit Sawant, Senior Advocate a/w Mr. Raju Yamgar and Mr. Manish Gitay i/by Manish P. Gitay for Respondent No.6 in Appeal No.176 of 2018.

Mr. Fredun de Vitre, Senior Advocate a/w Mr. Raju Yamgar and Mr. Manish Gitay i/by Manish P. Gitay for Respondent No.7 in Appeal No.270 of 2019.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATE : 31st AUGUST 2023

P.C.:

The present Appeals arise out of a common order dated 7th December 2016, by which the Learned Single Judge has disposed of two Notices of Motion, one taken out by the original Plaintiff i.e., Notice of Motion No.476 of 2012 and the other i.e., Notice of Motion No.499 of 2014 taken out by original Defendant Nos.5 and 6.

2. Mr. Cama, the learned Counsel appearing on behalf of the Appellant in Appeal No.270 of 2019 submitted that the captioned Suit has been filed by the original Plaintiff, who is the daughter of late Damodar Raghavji Tank (*"Damodar"*) *inter alia* for partition of the estate of her late father, Damodar. He submitted that one of the properties of the estate of the said Damodar was a piece of land admeasuring 5 Acres and 20 Gunthas. He then invited our attention to the Impugned Order and pointed out that the Learned Single Judge had dismissed both the Notices of Motion solely on the ground that the Plaint referred to Raghavji Tank, i.e., the late grandfather of the

original Plaintiff as a “deceased father” and Damodar as “deceased Damodar”. He submitted that basis this no reliefs could be sought for in the Plaint *qua* the estate of the late Damodar.

3. Mr. Cama then invited our attention to the Plaint and pointed out that from reading of the Plaint as a whole, it was beyond the pale of doubt that the Suit was for partition of the estate of Damodar and not Raghavji. In support of his contention, he invited our attention to prayer clause (a) of the Plaint, which reads thus :-

"(a) that this Hon'ble Court be pleased to declare that the property described in Exhibit "C" are properties left behind by the deceased father and the Plaintiff has 1/7th share in the same."

He then invited our attention to Exhibit 'C' to the Plaint, which specifically referred to the properties of Damodar.

4. Mr. Cama then submitted that the Learned Single Judge, instead reading and construing the Plaint as a whole, went on to observe as follows :-

"These are pleadings on the Original Side. They must be construed strictly. At any rate, even a 'holistic' reading will not assist Mr. Damle, and I must therefore decline his invitation."

The learned Counsel thus submitted that the Learned Single Judge, solely on the basis of this, held that the original Plaintiff was not entitled to the reliefs prayed for in the said Notice of Motion No.476 of 2012. Basis this, he submitted that the Learned Single Judge had gravely erred in dismissing both the Notices of Motion.

5. Mr. Anturkar, the learned Senior Counsel appearing on behalf of Respondent Nos.1 to 4 in Appeal No.270 of 2019 submitted that he had a preliminary objection to the present Appeals. He pointed out that the original Plaintiff had, since the passing of the Impugned Order, taken out an Interim Application for amendment of the Plaint to clarify the existing discrepancies. He submitted that in these circumstances there was no question of the original Plaintiff now proceeding with the present Appeal and submitted that the said Interim Application ought to be heard first.

6. Mr. De Vitre, the learned Senior Counsel appearing on behalf of original Defendant No.7/Respondent No.7-Developer in Appeal No.270 of 2019 submitted that the said Damodar had in his lifetime itself dealt with the said lands. He also joined in the submission made by Mr. Anturkar that the original Plaintiff having after the Impugned Order taken out an Interim Application for amendment of the Plaint, the same was required to be heard first.

7. Mr. Cama, the learned Counsel then submitted that he had no objection in proceeding with the Interim Application, however unless the Impugned Order was set aside, the original Plaintiff would effectively be precluded from applying for reliefs.

8. After hearing the learned Counsel for the parties and considering their rival contentions, we find that the Appeals can be disposed of in the following terms :-

- (i) The Appellant (original Plaintiff) shall move the Interim Application filed for *inter alia* amendment/clarification of the Plaint.

(ii) The Appellant (original Plaintiff) will be at liberty to press the said Interim Application, which shall be considered by the Learned Single Judge uninfluenced by the observations made in the Impugned Order.

(iii) Needless to mention that all the rights and contentions of the parties at the time when the Interim Application is heard, are expressly kept open.

9. The Appeals are thus disposed of in the aforesaid terms.

10. In view of disposal of the Appeals, Notices of Motion do not survive and the same are also disposed of accordingly.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)