

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5621 OF 1995

- | | | |
|--|---|-----------------------|
| 1. Mrs. Moti Dinshaw Irani |] | |
| 2. Mr. Jehangir Dinshaw Irani |] | .. Petitioners |
| <i>Versus</i> | | |
| 1. Mr. Phiroze Aspandiar Irani |] | |
| <i>Since Deceased – through LRs.</i> |] | |
| 1[a]. Ketty Firoze Irani |] | |
| 1[b]. Raiyomand Firoze Irani |] | |
| 1[c]. Sanober Firoze Irani |] | |
| 1[d]. Mehrooz Firoze Irani |] | |
| 2. Mr. Vinayak Shankarrao Pingle |] | .. Deleted |
| 3. Mr. Vilas Shankarrao Pingle |] | .. Deleted |
| 4. Smt. Subhadrabai T. Bhujbal |] | .. Deleted |
| 5. Smt. Sushilabai S. Dhadge |] | .. Deleted |
| 6. Mrs. Suman Vishwanath Girme |] | .. Deleted |
| 7. Mrs. Asha Prabhakar Dalvi |] | .. Deleted |
| 8. Mr. Kisan @ Krishnarao Rambhau Pingle |] | .. Deleted |
| 9. Mr. Mehmood M.H. Moledina |] | |
| 10. Mrs. Shirin Ismail Umar |] | |
| <i>Since Deceased – through LRs.</i> |] | |
| 10[a]. Riyaz Ismail Omer |] | |
| 10[b]. Zia Ismail Omer |] | |
| 11. Mrs. Hamida S. Omar |] | |
| <i>Since Deceased – through LRs.</i> |] | |
| 11[a]. Zafar Sattar Omer |] | |
| 11[b]. Zahid Sattar Omer |] | |
| 11[c]. Lubna M. Azad |] | |
| 12. Mr. Dara K. Irani |] | |
| <i>Since Deceased – through LRs.</i> |] | |
| 12[A]. Pesi Ardeshir Chindhya |] | |
| 12[B]. Marzban Fardoon Irani |] | .. Respondents |

Mr. A.V. Anturkar, Sr. Advocate, with Mr. Tanaji Mhatugade, i/by
Mr. Sugandh B. Deshmukh, for the Petitioners.

Mr. Prashant Naik, with Mr. A.R. Patil, i/by Mr. Sandeep Waghmare, for Respondent No.1[c].

CORAM : A.S. CHANDURKAR & JITENDRA JAIN, JJ

The date on which arguments were heard : 05TH JANUARY, 2024.

The date on which Judgment is pronounced : 25TH JANUARY, 2024.

JUDGMENT : [Per A.S. Chandurkar, J.]

1. In Special Civil Suit No.268 of 1978, the plaintiff nos.2(a) and (b) filed an application below Exhibit-151 praying therein that the alleged partition, stated to have been recorded on the basis of the representation made by Mr. P.A. Inamdar in his capacity as Attorney for deceased plaintiff no.2, be held to be illegal, void and invalid on the ground that the same was made by the Attorney to defraud plaintiff nos.2(a) and (b). A further prayer was made to restore the said lands to their original condition by evicting the occupants thereof. The Trial Court decided the said application below Exhibit-151 on 7th October 1995 by holding that during his lifetime, the plaintiff no.2 did not deny the execution of the document of Power of Attorney in favour of Mr. P.A. Inamdar. Further, no objection was raised to the alleged compromise that was referred to in Exhibits 52 and 53 in the year 1986, especially as the plaintiff no.2 was then alive and he had expired in the year 1992. By observing that plaintiff no.2 was aware of all these developments that had been occurred during his

lifetime, coupled with the fact that Special Civil Suit No.611 of 1994 that was filed by plaintiff nos.2(a) and (b) had been dismissed, the Trial Court rejected the application below Exhibit-151.

2. This order dated 7th October 1995 passed below Exhibit-151 in Special Civil Suit No.268 of 1978 is the subject matter of challenge in this Writ Petition. By an order dated 15th December 1995, this writ petition was directed to be heard along with First Appeal No.92 of 1996 that arose from the adjudication of Special Civil Suit No.611 of 1994. Accordingly, the writ petition has been heard along with the First Appeal.

. It is seen from the record that after the writ petition was filed, Special Civil Suit No.268 of 1978 came to be decided on 18th / 20th December 1996 and a decree in terms of the orders passed below Exhibits 53, 141, 151 and 191 came to be passed. The said proceeding has been numbered as Civil Appeal No.1022 of 2000, that is pending before the District Court at Pune. The order dated 27th October 2023 passed in this writ petition indicates that Civil Appeal No.1022 of 2000 is pending before the District Court, Pune in view of pendency of First Appeal No.92 of 1996.

3. On a perusal of the Memorandum of Appeal as filed in Civil Appeal No.1022 of 2000, it is seen that a substantive challenge has been raised to the decree passed in Special Civil Suit No.268 of 1978. The challenge

includes passing of the decree on the basis of the compromise recorded below Exhibits 52 and 53. We find that since Special Civil Suit No.268 of 1978 has been finally decided, the challenge raised to the order passed below Exhibit-151 by the Trial Court in Special Civil Suit No.268 of 1978 on 7th October 1995 can also be considered in the said civil appeal since the entire decree is under challenge. Adjudication of the present writ petition challenging the correctness of the order passed below Exhibit-151 in Special Civil Suit No.268 of 1978 would definitely prejudice the parties in the substantive appeal that is pending before the first Appellate Court. We, therefore, decline to consider the challenge to the order passed below Exhibit-151 in this writ petition and, instead, permit the petitioners, who are the appellants in Civil Appeal No.1022 of 2000, to raise a challenge to the order passed below Exhibit-151 in the said appeal. Thus, by keeping all points raised in the present writ petition open for being urged in Civil Appeal No.1022 of 2000, this writ petition is disposed of by discharging the Rule in the aforesaid manner. The parties shall bear their own costs.

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]