

Ajay

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

WRIT PETITION NO. 6561 OF 2024

Suchita Jagdish Mathur

Petitioner

.. (Orig. Plaintiff)

Versus

Proachie Hemang Mehta and Ors.

.. Respondents

-
- Mr. Kalpesh Joshi a/w. Mr. Narendra Devansh and Ms. Sanna Jamadar i/by Kalpesh Joshi and Associates for Petitioner.
-

CORAM : MILIND N. JADHAV, J.

DATE : MAY 07, 2024.

P.C.:

- 1.** Heard Mr. Joshi, learned Advocate for Petitioner.
- 2.** Present Petition assails order dated 18.03.2024 passed by the Trial Court. By virtue of the impugned order, the Trial Court has held that the Suit filed by the Writ Petitioner – Plaintiff is not maintainable as the principal relief prayed for by the Writ Petitioner – Plaintiff cannot be granted by the Trial Court. The impugned order is at page No.18 of the Writ Petition.
- 3.** It is seen that Writ Petitioner – Plaintiff has filed Suit for various reliefs viz., administration, declaration and injunction. Simultaneously, Writ Petitioner – Plaintiff has filed a Petition in this Court for seeking Letters of Administration in respect of the Suit

properties of the deceased.

4. To appreciate the Suit filed by Writ Petitioner – Plaintiff, it is necessary to consider the reliefs prayed for by the Writ Petitioner in the Suit filed before the Trial Court. There are total 12 prayers prayed for by the Plaintiff. For convenience, only the final prayers are taken into consideration. The first 5 prayers are final prayers. The gist of these 5 prayers is as under:-

- “(a) *This Hon'ble Court be pleased to appoint the Plaintiff as the Administrator of all movable and immovable properties of the Deceased as mentioned in Exhibit – C hereto.*
- (b) *This Hon'ble Court be pleased to order and direct Defendant No. 1 to disclose all the movable properties of Late Phiroze comprising of shares, securities, gold and diamond jewellery as Defendant No. 1 took charge of the same being the daughter of Late Phiroze and executrix of the estate of Late Phiroze.*
- (c) *This Hon'ble Court be pleased to declare that Defendant No. 1 is not entitled to any past, present and future dividends in respect of the Mutual Fund Units (more particularly provided in Exhibit – C hereto) allotted by the AMCs being Defendant Nos. 4 to 8 that have been held in the joint names of the Deceased and Defendant No.1;*
- (d) *This Hon'ble Court be pleased to restrain Defendant No. 1 by an order of permanent injunction from claiming any past, present and future dividends in respect of the Mutual Fund Units (more particularly provided in Exhibit – C hereto) allotted by the AMCs being Defendant Nos. 4 to 8 that have been held in the joint names of the Deceased and Defendant No.1;*
- e) *This Hon'ble Court be pleased to restrain Defendant Nos. 4 to 8 by an order of this Hon'ble Court by transferring, transmitting the Mutual Fund Units (more particularly provided in Exhibit – C hereto) in favour of Defendant No. 1 being the surviving joint holder till the pendency of the said Testamentary Petition being (L) No. 1582 of 2024.”*

5. From the above it is seen that Writ Petitioner – Plaintiff has prayed for appointment of administrator, disclosure of all movable and immovable properties of the deceased, disclosure relief against Defendant No.1, declaratory relief against Defendant No.1 and injunctive relief against Defendant No.1. There is a further injunctive relief against Defendant Nos.4 to 8 from transferring any benefit to Defendant No.1.

6. Plaintiff claims to be the sole beneficiary under the last Will and Testament of the deceased Enakshi Pheroze Pestonjamas who died testate on 26.09.2023. Deceased was the elder sister of the Writ Petitioner – Plaintiff. Deceased left her last Will and Testament dated 04.12.2010 bequeathing all her properties to Writ Petitioner – Plaintiff as the sole beneficiary. Writ Petitioner – Plaintiff has filed a Petition for grant of Letters of Administration with Will annexed in respect of the estate of the deceased bearing Lodging No.TPL/1582/2024 in this Court on 02.12.2023. The Defendant is the daughter of the pre-deceased husband of the deceased.

7. In the above background, the impugned order passed by the Trial Court holds that since the Suit is filed for administration, declaration and injunction, the jurisdiction to issue Letters of Administration is within the original jurisdiction of the High Court only. It further holds that since Plaintiff has already applied for grant

of Letters of Administration in the High Court, filing of Suit seeking relief for administration of the properties of the deceased and other consequential reliefs in the City Civil Court is not maintainable as the principal relief claimed by Plaintiff cannot be granted by the Trial Court.

8. Mr. Joshi, learned Advocate appearing for the Writ Petitioner – Plaintiff would argue that though the Testamentary Petition for grant of Letters of Administration is filed in the High Court, Plaintiff desires to seek substantive reliefs for administration of the properties belonging to the deceased in the interregnum and until the decision in the Testamentary Petition is made. He would submit that in the Petition seeking grant of Letters of Administration, Plaintiff cannot apply for reliefs for seeking administration of the properties of the deceased and consequential or interlocutory reliefs.

9. It is argued on behalf of the Plaintiff that the Administration Suit filed before the Bombay City Civil Court is much wider in its scope than any other Suit and / or compared to the Testamentary Petition filed in the High Court for grant of Letters of Administration.

10. Mr. Joshi, learned Advocate for Petitioner – Plaintiff would submit that under the Testamentary and Intestate Jurisdiction, civil rights to properties between parties cannot be adjudicated by the High Court in its Testamentary jurisdiction since the High Court entertaining

such a jurisdiction cannot adjudicate upon the title of the testator or the deceased person. He would submit that it is only in an Administration Suit that parties can question the title of the testator or seek reliefs of every nature with respect to Administration of the estate / properties of the deceased, which otherwise is not possible in a proceeding related to grant of Letters of Administration.

11. What Mr. Joshi has argued is that the scope of an Administration Suit is much wider as it would involve third parties including creditors and debtors of the deceased who may be relatable and involved with the properties belonging to the deceased, against whom appropriate interlocutory injunctive orders would be required to be passed.

12. Another aspect of the Administration Suit filed by the Plaintiff pertains to the pecuniary jurisdiction of the Bombay City Civil Court. Mr. Joshi has drawn my attention to the provisions of Section 3 of the Bombay City Civil Court (Amendment) Act, 2023 wherein the said Court is vested with the jurisdiction to receive, try and dispose of all other proceedings of a civil nature (not exceeding Rs.10 Crores in value) arising within the jurisdiction of Greater Bombay, except Admiralty Suits, Testamentary Suits, Parsi Suits and Intellectual Property Rights Suits as stated therein. In that view of the matter, he would submit that Suits of all nature whether going with

nomenclature of “Administrative / Administration Suit” or not are required to be adjudicated by the Bombay City Civil Court unless hit by the bar of pecuniary jurisdiction of by the exclusion clause.

13. Next, he would submit that provisions of the Bombay High Court (Original Side) Rules do not suggest that an Administration Suit is to be filed exclusively in the High Court only or it is a part of Testamentary and Intestate Jurisdiction. He would submit that proceedings filed under Chapter XXVI of the Bombay High Court (Original Side) Rules under its Testamentary and Intestate jurisdiction do not bar or affect filing of an Administration Suit under Order XX Rule 13 of the CPC in the Bombay City Civil Court which is the Principal District Court for exercising jurisdiction of the City Civil Court subject to its pecuniary and territorial jurisdiction in the present case. According to him, merely because the Plaintiff has filed a proceeding for obtaining Letters of Administration in respect of the estate of the deceased in this Court, that reason alone cannot preclude him from filing the Administration Suit in the Bombay City Civil Court. Hence the impugned order deserves to be set aside.

14. It is seen that the impugned order dated 18.03.2024 holds that Suit is filed for administration, declaration and injunction by the Plaintiff but in view of the Plaintiff having filed a proceeding for obtaining Letters of Administration in respect of the property belonging

to the deceased, the Administration Suit filed for administration, declaration and injunction is held to be not maintainable in the City Civil Court. It is seen that in Testamentary and Intestate Jurisdiction, civil rights to properties between parties undoubtedly cannot be decided since the Court entertaining such Testamentary Jurisdiction does not and cannot adjudicate upon the title of the testator or that of the deceased person qua the properties.

15. In this regard, provisions of Order XX Rule 13 of the CPC in respect of decree in Administration Suit provides as under:-

“13. Decree in administration suit:-

(1) Where a suit is for an account of any property and for its due administration under the decree of the Court, the Court shall, before passing the final decree, pass a preliminary decree ordering such accounts and inquiries to be taken and made, and giving such other directions as it thinks fit.

(2) In the administration by the Court of the property of any deceased person, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being, within the local limits of the Court in which the administration-suit is pending with respect to the estates of persons adjudged or declared insolvent; and all persons who in any such case would be entitled to be paid out of such property, may come in under the preliminary decree, and make such claims against the same as they may respectively be entitled to by virtue of this Code.”

16. It is further seen that as per the Bombay City Civil Court (Amendment) Act, 2023, jurisdiction of the Bombay City Civil Court is clearly provided so as to receive, try and dispose of all Suits and other proceedings of a civil nature (not exceeding Rs.10 Crores) arising

within Greater Bombay, except Admiralty Suits, Testamentary Suits, Parsi Suits and Intellectual Property Rights Suits. Reference is also drawn to the decision of the Gujarat High Court in the case of *Bai Asmalbai w/o. Vora Mahamad Alli Vs. Esmailji Abulali and others*¹, wherein a decree passed by the Civil Judge, Junior Division, Balasinar was challenged in Appeal before the Assistant Judge, Nadiad. The Appeal came to be dismissed with a slight variation of the decree passed by the lower Court. In the Second Appeal proceedings, it was urged that the Suit for administration could not lie because there was also a prayer to hold that the sale deed executed by the deceased in the name of his wife was nominal and was executed as a result of undue influence. In Second Appeal, the Appellate Court modified the decree of the First Appellate Court and declared that the case was fit for Appeal to be filed and entertained under Clause 15 of the Letters Patent Act.

17. In view of the above, the Bombay City Civil Court being subordinate to the High Court and having its territorial and pecuniary jurisdiction clearly defined can receive, try and decide and dispose of an Administration Suit which is a Suit of a civil nature. Therefore I hold that the Bombay City Civil Court has territorial and pecuniary jurisdiction to try and dispose of an Administration Suit subject to its pecuniary jurisdiction and the exclusion clause. Merely because there

1 1963 SCC Online Guj 11

is a Testamentary Petition filed for seeking Letters of Administration in respect of the same estate of the deceased and pending before this Court, cannot be the reason for returning of the Suit Plaint by the Bombay City Civil Court. Such a stand cannot be countenanced and sustained for ouster of jurisdiction of the City Civil Court, subject to its territorial and pecuniary jurisdiction in view of the provisions of the Bombay City Civil Court (Amendment) Act, 2023. Merely because it is an Administration Suit it would be required to be filed in the High Court is an incorrect assumption. It is infact a Civil Suit seeking appropriate reliefs. In a proceeding for grant of Letters of Administration, the Plaintiff cannot seek interlocutory reliefs against third parties or administrative reliefs to manage the Suit properties. Hence the Suit filed by the Writ Petitioner – Plaintiff before the Bombay City Civil Court is held to be maintainable and shall be so registered and determined in accordance with law like any other Civil Suit.

18. In view of the above, the impugned order dated 18.03.2024 stands quashed and set aside.

19. The Suit filed by the Petitioner - Plaintiff is directed to be registered as an Administration Suit subject to its pecuniary and territorial jurisdiction and determined in accordance with law.

20. Copy of this order shall be placed before the Bombay City Civil Court, Mumbai. Once the copy of this order is placed before the Bombay City Civil Court, Mumbai, learned Bombay City Civil Court is directed to pass appropriate direction for registration of the Administration Suit filed by the Petitioner - Plaintiff.

21. If any interlocutory Application is filed in the Suit proceedings, the same shall be decided expeditiously by the learned Trial Court after hearing all concerned parties.

22. Needless to state that all contentions of all parties are expressly kept open.

23. With the above observations and findings, Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

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HANUMANT
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by HARSHADA
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