

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.7 OF 2024
IN
INTERIM APPLICATION NO.2815 OF 2022
IN
SUIT NO.1427 OF 2019

Devika S. Jamdar

.. Appellant

Versus

Serika Lal Aggarwal & Ors

.. Respondents

ANJALI
TUSHAR
ASWALE

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by ANJALI
TUSHAR ASWALE
Date: 2024.07.05
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Mr.Karl Tamboly, with *Mr.Aadil Parsurampur* i/b *Indrajeet Kulkarni*, *Advocates for the Appellant.*

Mr.Gauraj Shah, with *Mr. V. A. Joshi* i/b *M/s Chitnis Vaithy & Co*, *Advocates for the Respondents.*

CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.

DATE: JULY 4, 2024

P. C.

1. The present Appeal has been filed challenging an Order dated 20th December 2023 passed by a Learned Single Judge of this Court rejecting Interim Application No. 2815 of 2022 taken out by the Appellant in the captioned Suit, for a judgment on admission under the provisions of Order XII Rule 6 of the Code of Civil Procedure, 1908.

2. After the Appeal was heard for sometime, we are of the view that the above Appeal can be disposed-off in the following terms:

(a) It is not in dispute that the valuation of the subject matter of the captioned Suit is above Rupees Ten Crores and as such, Suit No. 1427 of 2019 has been wrongly transferred to the Bombay City Civil Court at Bombay pursuant to the Bombay City Civil Court (Amendment) Act, 2023. We accordingly direct that the Suit shall be re-transferred to this Court with all its record and proceedings. The Registry of this Court is directed to take steps to ensure compliance with this direction within a period of four weeks from today. The Advocates for the parties shall render all necessary assistance to the Registry to ensure early compliance with this direction;

(b) Given the nature of allegations and relation between the parties, and the limited controversy in the Suit, we direct that hearing of Suit No. 1427 of 2019 stands expedited and we request the learned Single Judge to endeavour to dispose-off the Suit as expeditiously as possible.

(c) To ensure that the Suit is heard expeditiously, the following issues are framed in Suit No. 1427 of 2019:

- (i) Whether the Plaintiff proves that the Suit Flat viz. Flat No. 308 in Shalaka Cooperative Housing Society Ltd. formed part of the estate of the deceased Raghunandan Lal Aggarwal on the date of his death viz. 15th April 2017?
- (ii) Whether Defendant No. 1 proves that the deceased Raghunandan Lal Aggarwal had transferred his title in the Suit Flat being No. 308 at Shalaka Co-operative Housing Society Ltd. in favour of Defendant No. 1 in his lifetime?
- (iii) Whether Defendant No. 1 proves that she is the sole beneficiary in respect of the loan given by the deceased Raghunandan Lal Aggarwal to M/s Rare Enterprises?
- (iv) Whether the Plaintiff is entitled to a declaration that the Plaintiff and the Defendants, as legal heirs of the Deceased, are each entitled to a 1/4th undivided share in the properties set out in Exhibit B to the Plaint?
- (v) Whether the Plaintiff is entitled to a declaration that the occupation by Defendant No.1 of the suit Flat after the

deceased expired to the exclusion of the other heirs, is unlawful?

(vi) Whether the Plaintiff is entitled to a decree against Defendant No. 1 to deliver vacant and peaceful possession of the Suit Flat No. 308 to the Plaintiff for the purpose of administration of the estate of the deceased Raghunandan Lal Aggarwal?

(vii) Whether the Plaintiff is entitled to an order of accounts of the estate of the Deceased with details of income and profits derived from the estate of the Deceased and for the same to be administered as per orders of this Court?

(viii) Whether the Plaintiff is entitled to a decree of partition of the estate of the Deceased or that the same be sold and proceeds distributed amongst the heirs?

(ix) What order?

(x) What costs?

(d) Parties are directed to file their respective Affidavit of Documents within 2 weeks from the Suit being transferred from the Bombay City Civil Court at Bombay and file their statement of admission / denial of documents within 2 weeks thereafter.

(e) Parties are directed to file their list of witnesses with the Affidavits in lieu of Examination in Chief of all witnesses within 6 weeks thereafter.

(f) Suit No. 1427 of 2019 to be listed before the Learned Single Judge for directions by the Registry as soon as the same is transferred back to this Court as directed above.

(g) The framing of the issues as well as the directions given above, shall not preclude Respondent No.1 (Defendant No.1 in the Suit) to file any Interim Application before the learned Single Judge. If any such Interim Application is filed, the same shall be decided on its own merits and in accordance with law. It is further clarified that if the need arises, the learned Single Judge can also recast the issues and/or add additional issues, if need be.

3. Needless to state that we have not gone into the merits of the impugned order and the Suit shall be heard and decided being uninfluenced by the observations contained in order impugned before us.
4. The Appeal accordingly stands disposed-off.
5. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]