



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR**

Appeal Against Order No. 40 of 2023

[Shri Hemant S/o Madanlal Fulsunge ..vs.. Smt. Usharani Wd/o Madanlal Fulsunge and ors.]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S. S. Sitani, Advocate for the appellant
Mr. M. M. Papinwar, Advocate for respondent no. 1
Mr. S. B. Mohta, Advocate for respondent no. 3
Mr. R. M. Bhangde, Advocate for respondent no. 2 (power awaited)
None present for respondent nos. 4 and 5

CORAM : ANIL L. PANSARE J.

Date of reserving the order : 18-4-2024

Date of pronouncing the order : 30-4-2024

The appellant – plaintiff is aggrieved by order dated 7-7-2023 passed below Exhibit 5 in Special Civil Suit No. 952/2018 pending in the Court of Civil Judge Senior Division, Nagpur to the extent of non granting prayer clauses C and D in the application filed below Exhibit 5. Prayer clauses C and D read thus :

*“C. During the pendency of the present suit, kindly restrain the Defendants, their agents, assigns, servants or any person claiming through them from withdrawing, transferring or disbursing the amounts kept in the fixed deposits as well as in the savings account as mentioned in **SCHEDULE-B** or from dealing with the said amount in any manner whatsoever.*

D. During the pendency of the present suit, kindly direct the Bank official of Bank of India and Central Bank of India to re-invest the F.D.R after its maturity in the matter in which the father of the Plaintiff had invested the amount and further direct them not to disburse its amount to anybody who is entitled to receive the

said amounts under the partition deed cum will dated 16/1/2017.”

2. Thus, the appellant is seeking injunction restraining respondents/defendants or any person claiming through them from withdrawing, transferring or disbursing the amounts invested in the fixed deposits as well as saving accounts. The respondent no. 1/defendant no. 1 is mother of appellant whereas respondent nos. 2 and 3 (original defendant nos. 2 and 3) are real sisters of the appellant. The other respondents are the banks in which the amount has been invested.

3. The appellant has filed a suit for declaration and perpetual injunction thereby restraining the respondents from acting beyond the Will executed dated 16-1-2017 by late Shri Madanlal Fulsunge.

4. Having heard both sides and having gone through the documents, particularly Will, the controversy revolves around the clauses in the Will. The crucial clause is number 7. The testator i.e. father of appellant and respondent nos. 2 and 3 as also husband of respondent no. 1 has mentioned that he has invested certain amount in F.D.Rs in the name of his wife i.e. respondent no. 1 and the part amount is lying in her saving account. The document called Will further indicates that the said amount and the interest accrued thereon is being utilized to meet their expenses. The amount will belong to them in their lifetime. After the death of his wife i.e. respondent no. 1, both the

daughters i.e. respondent nos. 2 and 3 will get Rs. 10 Lakhs each, however, in her lifetime, she will be entitled for the interest accrued on the invested amount. The balance amount in the account as also in F.D.R. which is in the name of testator and his wife will be utilized by the couple in their lifetime. They are entitled to spend the same in the manner they desire and nobody has any right over the said amount. After death of both i.e. testator and his wife, the daughters will get Rs. 10 Lakhs each and the balance amount lying in saving bank account and also in F.D.R. will be given to son i.e. appellant.

5. Having heard both sides, there are certain questions that will arise for decision during trial. Firstly, the Will is described as “partition deed and Will”. Secondly, there is no clarity as to the sum invested in F.D.R. in the name of testator and in the name of respondent no. 1 – wife. If the amount is invested in the name of respondent no. 1, will there be any authority vested with the testator to supervise and control the said amount by way of Will. He may be desirous of giving amount in a particular way but once the amount is invested in the name of wife, she would become owner of the same and, therefore, it will be challenging for the propounder of the Will to convince that the testator will be entitled to bequeath that part of the property as well which is owned by his wife.

6. The another issue is the testator in clear terms stated that in the lifetime, he and his wife will be entitled

to utilize the amount in the manner they desire. The clause also indicate that the testator's wife shall spend the amount of interest for her maintenance. After the death of the couple, respondent nos. 2 and 3 will be entitled to Rs. 10 Lakhs each. This amount has been invested in F.D.R. in the name of wife but is made part of the Will. At the end, the testator's desire is that the balance amount should be paid to the appellant.

7. Considering the tenor of the Will and clause no. 7, *prima facie* it appears that, in the lifetime, the couple has complete control over the amount invested. The testator has expired but the wife i.e. respondent no. 1 is alive. Strictly speaking, she will be entitled to utilize and spend the amount in the manner she desires. However, considering the wish of testator, the appellant may have the case at least in respect of amount, if any, lying in the name of testator. Since he has expired, the F.D.R. will be now liquidated in the name of nominee who will hold the amount as trustee/administrator of the Will. However, the amount lying in the name of respondent no. 1 may not be available at the disposal of any of the legal heirs, of course, subject to the sentiments of the testator which the legal heirs are expected to fulfill. It will be upon the respondent no. 1 to give effect to the sentiments of her husband, though she has legitimate right to spend the amount in the manner she desires.

8. In the circumstances, though the respondent no. 1 is *prima facie* entitled to spend the amount in the

manner she desires, the amount so spent shall be subject to maintaining account. The respondent no. 1 therefore shall keep details of the expenses and submit the same before the Court at the end of each month. This Court will expect her to spend the amount for her maintenance including medical expenses.

9. With the above observations, since the case *prima facie* tilts in favour of the respondents, I am not able to find fault with the order passed by the trial Court rejecting the prayer made by the appellant. There is, thus, no merit in the appeal. The appeal is dismissed.

(Anil L. Pansare, J.)