

(1999) 02 BOM CK 0038

In the Bombay High Court

Case No : Writ Petition No. 4557 of 1991

P.S. Rangnekar

APPELLANT

Vs

Vanita Mangesh Nadkarni and another

RESPONDENT

Date of Decision : 16-02-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96(3)
Contract Act, 1872 — Section 10

Citation : (1999) 2 BomCR 367

Hon'ble Judges : T.K. Chandrashekhara Das, J

Bench : Single Bench

Advocate : P.K. Dhakepalkar and H.T. Pawar, for the Appellant; G.R. Rege, for the Respondent

Judgement

T.K. Chandrashekhara Das, J.—The petitioner challenges in this writ petition the order passed on 11th October 1991 by the Bombay City Civil Court in Notice of Motion No. 5201 of 1991 in Short Cause Suit No. 2482 of 1991.

The short facts of the case are as follows :--

2. One Purnima A. Rangnekar filed a suit in Bombay City Civil Court, being Suit No. 1341 of 1990 against Sulochana Bhalchandra Aras for an injunction, restraining the said Sulochana from dispossessing the plaintiff from the portion of Bungalow known as "Shiv Niwas", situated at Mahant Road, Vile Parle (W), Bombay on the ground that there was a partnership between the said Purnima and the said Sulochana in respect of sale of Venkyh's Chicken Products. In the said suit, the said Purnima also took out Notice of Motion, and obtained order of status quo initially. The said Notice of Motion in the said suit was dismissed on merits. It is revealed that the said Sulochana, had entered into agreement of sale in respect of the said bungalow viz. "Shivniwas" with the Builders Shivbhoomi Leasing and Investment Private Ltd., and that there was a gift deed of the said bungalow and the said property gifted in favour of the deceased husband of the said Sulochana and the said Sulochana herself by her mother-in-law Anandibai

since deceased. The Notice of Motion in the said Suit No. 1341 of 1991 having been dismissed, the matter has been carried to the High Court. But the High Court rejected it and the matter further went upto the Supreme Court. During the course of the said litigation, the said Purnima executed a Power of Attorney in favour of the petitioner herein. It is alleged that the petitioner took pains and spent enormous sums of money to prosecute the Notice of Motion and Appeal and also to file SLP in the Hon"ble Supreme Court. During the course of the said Suit No. 1341/91, the said Purnima and her husband Avinash and her mother-in-law Shushilabai as also the petitioner came to know that the said property was allegedly gifted by the said Anandibai to the said Sulochana and her deceased husband. A suit being Suit No. 2482 of 1991 filed in the Bombay City Civil Court by the said Sushilabai against said Sulochana and said Shivbhoomi Builder and Mrs. Vanita Nadkarni. The said Sushilabai, who was the plaintiff, inter alia, stated that the deceased husband of the said Sulochana one Bhalchandra, Sushilabai herself and the said Vanita were equal share holders in respect of the said bungalow and the property viz., Shiv Niwas situated at Mahant Road, Vile Parle (E), Bombay- 57. It is further stated that the alleged gift deed sought to be relied upon by the said Sulochana, is a sham and bogus document and that the signature of said Anandibai, mother of Sulochana, Bhalchandra and Vanita was forged and that no title actually and factually was passed to the said Bhalchandra and Sulochana by virtue of the alleged gift deed. However, we were not very much concerned with these facts in detail for the purpose of this case.

3. At the hearing of the Notice of Motion in the second suit, talks for settlement were held and the same culminated in filing the consent terms. It was mutually decided by the Sushilabai, the plaintiff in the second suit and the said Vanita who was 3rd defendant in the second suit that the petitioner herein who is close relative of the plaintiff, should be also paid substantial amount since he had taken pains to prosecute the first suit filed by the said Purnima being Suit No. 1341 of 1991, which was carried upto Supreme Court. At the instance of the Builder, however, other defendants were also added, total number whereof came to 19. The consent terms were finalised on 2nd May 1991 and the same was filed in the second suit. We are not very much concerned about the details of the provisions of the consent terms also.

4. It was agreed as per the said consent terms among the other things that the plaintiff and the defendants Nos. 3 to 19 to declare and state that in order to live amicably hereinafter and in order to complete the conveyance and hand over possession of the said plot of land with structures standing thereon without any litigation of whatsoever nature, the defendant No. 1 has agreed to pay to the plaintiff and her family members, i.e., defendant Nos. 4 to 11 and defendant No. 3 and her family members i.e. defendant Nos. 12 to 19 an aggregate sum of Rs. 21,00,000/- (Rs. Twenty one lakhs) as follows :--

Out of Rs. 21/- lakhs, Rs. 10,50,000/- should be paid by Bank Draft drawn in favour of the plaintiff No. 1 and it is made clear that the sole responsibility of

distribution of the said amount shall be upon the plaintiff. The plaintiff agrees and undertakes that she shall distribute the said amount and undertakes to indemnify the defendants Nos. 1 and 2 of any claim made by any of the defendants Nos. 3 to 19 hereafter. Defendants Nos. 3 to 19 hereby agree and declare that they shall not make any claim hereinafter as against the defendant Nos. 1 and 2 in respect of the amount paid to the plaintiff and agree and undertake that they shall hold the plaintiff responsible for the distribution thereof. The balance of Rs. 10,60,000/- shall be paid on or before 31st October 1991.

5. It is subsequently transpired that the distribution of the said amount has not been done as agreed between the parties. When the remaining amount of Rs. 10,50,000/- was deposited by the Builder, the defendant Nos. 3 to 11, namely, the respondents herein sought to withdraw the amount of Rs. 10,50,000/-.

6. When the suit came to be withdrawn and stood disposed of, the defendants approached the plaintiff and demanded payment of their share of the settlement, the plaintiff denied to the defendants 3 to 11 not only their share of the money but also told them that they have no claim whatsoever in the matter. Hence to enforce the undertaking given by the plaintiff to the consent terms, the defendants have moved the trial Court. According to the defendants Nos. 3 to 11 as per Item No. 17 in the consent terms they are entitled for a sum of Rs. 10,50,000/- being the members of the branch represented by defendant No. 3, who is having equal share with the plaintiff as well as defendant No. 1. In the Notice of Motion, the lower Court has examined the terms of the settlement at Item No. 17. The lower Court has come to the conclusion that the plaintiff has already received the amount of Rs. 10,50,000/- from the defendant No. 2 through defendant No. 1 and the remaining amount as per Clause (b) of Item No. 17 is to be paid to the plaintiff by the defendant No. 2 through defendant No. 1. The lower Court has observed that the plaintiff was trying to take advantage of the situation and as the Court has accepted all the undertakings given by the parties under the consent terms, the lower Court has held that it is bound to protect the interest of defendant Nos. 3 to 11 who are entitled to the balance amount of Rs. 10,50,000/-. The lower Court also found that the defendants have not received a single pie in terms of the consent terms. Therefore, by the impugned order the defendant Nos. 1 and 2 are directed to deposit the balance of Rs. 10,50,000/- in the Court on or before 31-10-1991 and it is also directed that on such deposit, the defendants Nos. 3 to 11 are entitled to withdraw the same to the satisfaction of their claim as agreed in the consent terms. This order is under challenge in this writ petition.

7. I have heard the arguments of the Counsel for the petitioner and the respondents. I have also examined the consent terms at Item No. 17 entered between the parties. On going through the records of the case and hearing the argument, I do not find any illegality in the order passed by the Court below. The learned Counsel for the petitioner Shri Dhakepalkar has submitted that if the

impugned order allowed to be worked out, the petitioner herein would be left with no remedy and since he is party to the said settlement, he is also entitled to a share. Shri Rege, the learned Counsel for the respondents brought to my notice an affidavit filed by the petitioner in Notice of Motion No. 5102 of 1991 in S.C. Suit No. 2482 of 1991. In the nature of Contentions raised in that affidavit in-reply, I do not think that the petitioner is entitled to any share of the amount of Rs. 21 lakhs. In the affidavit, he did not make out any right to share the said amount except that he is a party to the consent terms. Only contention that has been highlighted in that affidavit is that it is he who is responsible for the settlement and he had conducted all the litigations against the builder on behalf of the defendants Nos. 3 to 11 and other parties, spending lot of money and as he is also a party to the consent terms, he is entitled to the amount. However, he did not say at what share he is entitled to that amount. If any money is spent by the petitioner, that is the matter for a separate suit for accounts against all the parties concerned. What is the quantum of amount he is entitled to from the defendants or from the other parties, is the matter to be decided by an independent proceedings. However, in this proceedings, as observed by the courts below, he has no right to claim any share in the amount in the deposit. In view of this position, I do not find any merit in the contentions raised in the writ petition.

8. In the result, the writ petition is, therefore, dismissed with no order as to costs. Interim stay vacated.

9. At this stage, the learned Counsel for the petitioner requests for stay of the order. In the circumstances of the case, the request will have to be rejected. I do so.

10. The Registrar of the City Civil Court, Bombay to act upon the copy of this order duly authenticated by the Sheristedar of this Court.

Petition dismissed.