

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
EXECUTION APPLICATION No. 210 of 2011
IN
SUIT No. 3782 of 1989

Ram T. Shahani ..Plaintiff
vs
Bhagwan T.Shahani & others ..Defendants.

Mr Raj Patel i/by M/s Hariani & Co. for defendant Nos. 2 and 6.
Mr Rupesh Lanjekar for defendant No.5A to 5C.
Mr Atul Damle i/by Vijay Kokitkar for defendant No.7.
Mr Parab, Representative from Dy.Sheriff, Bombay present.

CORAM : R.D.DHANUKA,J.
DATE : 6th August, 2013.

PC.

1) Matter is placed on board today for direction at the instance of defendant no.7. Learned counsel for the parties state that defendant nos. 1 and 3 have expired. Learned counsel for defendant nos. 2 and 6 states that defendant no.3 had executed a Will. An application was made by defendant nos. 2 and 6 to implead the executor under the said Will left by defendant no.3. This Court has rejected the application for impleadment of the executor. An appeal is preferred against the said order which is pending. Insofar as defendants no.1 is concerned, defendants no.7 had filed chamber order (909 of 2012) for deletion of defendants no.1 from the cause title of execution application. The said chamber order was opposed by defendants no.2 on the ground that Mr Ravi Sahani was pre-deceased son of defendant no.1 leaving behind his wife and daughter as his legal heirs and, therefore, legal heirs of Ravi Sahni i.e. wife and daughter would have shown as legal heirs of defendant no.1.

None of the parties could produce any documentary proof in respect of their rival submissions made before the Prothonotary and Senior Master about legal heirship of defendants no.1. By an order dated 15th July, 2013 Additional Registrar / Additional Prothonotary and Senior Master has referred the issue to this Court.

2) Learned counsel appearing for defendants nos. 2 and 6 submits that since appeal arising out of the order passed by this Court rejecting the application of defendant Nos. 2 to 6 for impleading the executor of the Will of defendant No.3 is pending, till appeal is disposed of, this execution application filed by defendant No.7 shall not be allowed to be proceeded with. It is submitted that similarly till legal heirs of the first defendant are brought on record, no further steps in this execution application can be taken.

3) Mr Damle, learned counsel appearing on behalf of the 7th defendant invited my attention to the consent terms dated 7th February, 2008 passed in Suit No. 3782 of 1989 by which all the parties including the plaintiff and the defendant No.7 had agreed to get 1/8th share each from the sale proceeds of the flat No.31, Block No.7, situated in building Shyam Nivas, Bhulabai Desai Road, Mumbai, after deducting expenses, brokerage etc. Learned counsel pointed out that all parties to the suit had agreed to have access to the said flat so that they would carry out true and correct valuation of the flat after giving reasonable notice. All parties were allowed to negotiate with the prospective buyers to get highest value for the said flat. As per clause (4) of the said consent terms all parties to the suit agreed to get 1/8th share from the sale proceeds of the shares and securities listed in the inventory of the

Court Receiver after bearing all expenses. This Court passed an order on 7th February, 2008 taking the said consent terms on record and passed a decree in terms of consent terms.

4. Learned counsel submit that 1/8th share of each party to the suit has been crystallized by consent terms. All the parties to the suit have also agreed that said "Shyam Nivas" flat shall be sold. It is submitted that merely because of the death of two defendants, their legal heirs even if brought on record cannot claim any share higher than the said shares that was claimed by their predecessor-in-title. Learned counsel submits that though consent terms were taken on record as far 7th February, 2008, property has not been sold. There is gross delay in sale of the flat in question and in execution of the said consent terms and decree passed by this Court. Learned counsel states that out of sale proceeds of the suit flat, 1/8th share pertains to defendant No.1 and defendant No.3 can be deposited in this Court so as to safeguard their interest.

5. As far as valuation report submitted by valuer on 3rd April, 2013 who were appointed by Deputy Sheriff of Mumbai, valuing the flat at Rs.62,00,000/- is concerned, learned counsel submits that defendant No.7. Defendant No.7 does not dispute the valuation of properties.

6. Learned counsel for defendant Nos. 2 and 6 however disputes the valuation report on the ground that learned valuer has considered ready reckoner of 2013 which cannot be considered as conclusive. It is submitted that the prevailing market rate in the locality in which the flat is situated is much more than the value

considered by the valuer.

7. On perusal of the consent terms filed by the plaintiff and all the defendants, it is clear that all the parties had arrived at an agreement that each of them would have 1/8th share from the sale proceeds of the suit flat situated in “Shyam Nivas” building. All parties were also allowed to negotiate with the prospective purchasers for getting higher value of the said flat. Parties were also allowed to have access to the said flat so that they could carry out true and correct valuation of the flat after giving reasonable notice. None of the parties have placed any other valuation report on record in respect of the said “Shyam Nivas” flat. Pursuant to the appointment of the valuer by the Deputy Sheriff of Mumbai, valuation report has been submitted on 3rd April, 2013. On perusal of the valuation report, it is clear that the learned valuer has visited the said flat and has taken measurement thereof. The said report also indicates that the valuer has considered two instances in paragraph 9 of the said report and has compared the said instances with ready reckoner of 2013. Considering other factors affecting valuation of flat such as location, accommodation, size, age, availability of car parking space, etc. learned valuer has considered valuation of the flat at about 3760/- per sq. feet and has suggested deduction of depreciation considering the age of construction. The valuer has valued the suit flat at Rs.62,00,000/ Except the oral argument advanced by learned counsel for the defendant Nos. 2 to 6 that the value of the suit flat would be much more than the value rendered by the learned valuer, no material has been placed on record before this Court for discarding such valuation report. In my view, valuation as

suggested by the learned valuer can be considered as reserved price in respect of the flat in question.

8. As far as objection about bringing legal heirs of defendant Nos. 1 and 3 is concerned, I am inclined to accept the submissions made by Mr Damle, learned counsel for defendant No.7 that share of all the defendants has already been crystallized in the consent terms. Even if the legal heirs would have been brought on record, such legal heirs could not have claimed any right higher than what their predecessor-in-title could have. Persons claiming to be legal heirs of defendant No.1 and 3 have not yet proved their heirship. The interest, however, of defendant Nos. 1 and 3 in the sale proceeds of the flat shall be protected. Question as to whether executor of the alleged Will of defendant No.3 shall be brought on record and/or other legal heirs of defendant No.1 shall have any claim in respect of the estate of the first defendant is concerned, those legal heirs can establish their legal rights independently and make their respective claim in respect of their shares in this Court. In my view, decree which has been passed in the month of February, 2008 cannot be stalled on such ground. The Deputy Sheriff of Mumbai is directed to proceed with the execution of the decree.

9. It is made clear that 1/8th share in respect of defendant Nos.1 and 3 shall be deposited in this Court in accordance with the consent terms arrived at between the parties and decree passed by this Court on 7th February, 2008.

10. No other directions are necessary at this stage.

(R.D.DHANUKA, J)