

SHARAYU.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 438 OF 2015

Mrs. Sunali Roopkumar Rathod ...Plaintiff
Versus
Sammeer Sheth & Ors. ...Defendants

Mr. Shyam Dewani, *for the Plaintiff.*
Mr. Vikram Nankani, **Senior Advocate**, *a/w Mr. Ashish Rao, i/b*
M/s. M & M Legal Ventures, for Defendant No. 1.
Mr. Shardul Singh, *a/w Mr. Ashish Rao, i/b M/s. M & M Legal*
Ventures, for Defendant Nos. 2 & 3.

CORAM: G.S. PATEL, J
DATED: 7th September 2015

PC:-

1. Mr. Nankani, for Defendants Nos. 1 and 2, points out that the Suit is for a declaration and injunction *simpliciter*. Under the provisions of Section 6(4)(j) of the Bombay Court Fees Act it ought to have been filed in the City Civil Court, irrespective of the claim. It has, however, been filed in this Court where it is listed along with Testamentary Petition No. 1203 of 2013, now renumbered as Testamentary Suit No. 1 of 2014. The 1st Defendant in the present Suit is also the sole Defendant in the testamentary action. The

Testamentary Suit is an application for Probate of the Will of one Jitendra Sheth, the father of the Plaintiff in the present Suit.

2. Although on a completely technical reading this Suit would indeed have to be sent to the City Civil Court or returned for filing in that Court, and the Plaintiff would have to then apply for its transfer back to this Court on sufficient cause being made out, I do not think this is necessary or that it in any way disadvantages any of the parties or determines any rights if the Suit is taken up in this Court. Much time has passed since the ad-interim stage. To put the Plaintiff through the process of filing and refiling afresh and applying for a transfer would undoubtedly cause her an entirely avoidable amount of hardship and delay in the matter. I am also mindful of the fact that the estate mentioned in the Testamentary Petition considerably overlaps the properties to which this Suit relates. It would, therefore, in my view be convenient to take up this matter in Court.

3. Mr. Nankani states that he seeks modification and perhaps even a recall of the ad-interim order dated 10th November 2014 (*R.D. Dhanuka J*). That order referred to and noted the statements made on behalf of the Defendants Nos. 1 and 2 and separately on behalf of Defendant No. 3. These statements relate respectively to an immovable property at Peddar Road, and TDR in respect of an immovable property at Chandivali. Whether or not the Plaintiff is entitled to these reliefs is yet to be decided since the Motion is pending. Advocates for both sets of Defendants make it clear today that they are unwilling to have these statements continue indefinitely. They made the statements that they did at that time in

the *bona fide* belief that the Motion would be taken up shortly. As it is, the Motion has been pending for almost a year. They apprehend, and perhaps with some justification, that a statement made in all fairness and in the expectation that the Motion would be finally disposed of within a few weeks will now endure for months and years together. This is a good reason to take the Motion itself to hearing and final disposal at an early date.

4. Mr. Nankani tenders an additional Affidavit in Reply on behalf of Defendants Nos. 1 and 2. It is returned for filing in the registry after it is properly paginated. The Plaintiff's Rejoinder, including to this Additional Affidavit, must be filed on or before 11th September 2015. No further Affidavits without leave of the Court.

5. List the matter on 21st September 2015 high on board.

(G. S. PATEL, J.)