

ITEM NO.205

COURT NO.11

SECTION IX

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).15400/2009

(From the judgement and order dated 30/06/2009 in AN No. 159/2009 & SN No. 2078/2008 & NOM No. 2441/2008 of The HIGH COURT OF BOMBAY)

ANJANA &amp; ORS.

Petitioner(s)

VERSUS

VAIKUNTHRAI @ YOGENDRA AMRATLAL BHATT & ANR.

Respondent(s)

(With appln(s) for exemption from filing O.T., permission to file additional documents, AMENDMENT OF MEMO OF PARTIES and prayer for interim relief)  
(For Final Disposal)

Date: 03/01/2011 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI  
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s) Mr. P.M. Shah, Adv.

For Respondent(s) Ms. Meenakshi Arora, Adv.  
Mr Mohit D. Ram, Adv.  
Mr. Poli Kataki, Adv.  
[for respondent no.1]

UPON hearing counsel the Court made the following  
O R D E R

I.A. No.5/2009 is allowed and the petitioners are granted leave to amend the memo of parties.

This petition is directed against order dated 30.6.2009 passed by the Division Bench of the Bombay High Court whereby the appeal preferred by the petitioners against interim order dated 11.11.2008 passed by the learned Single Judge in Notice of Motion

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No.2441 of 2008 filed in Suit No.2078 of 2008 was dismissed.

We have heard learned counsel for the parties and perused the record.

A perusal of the record shows that by an order dated 16.7.2008, the learned Single Judge had, after having satisfied himself that plaintiff (respondent No.1 herein) has been able to make out a prima facie case, appointed Court receiver and granted interim relief in terms of clause (c) of the prayer except the bracketed portion. After hearing the learned counsel for the parties and taking into consideration the fact that father of the parties had executed Will, which was probated in 1984, but the plaintiff had been deprived of his legitimate share for 24 years, the learned Single Judge held that it was fit case in which he should be appointed as an agent of the receiver appointed vide order dated 16.7.2008. The

operative portion of the order passed by the learned Single Judge reads as under:

"(a) The Court Receiver shall obtain vacant possession of the aforesaid share for the plaintiff from the defendants or any of them who may be found in possession.

(b) The Court Receiver shall take forcible possession, if peaceful possession is not given to the defendants.

(c) The Court Receiver shall be entitled to take police assistance, if required.

(d) The Court Receiver shall put the plaintiff in possession of two flats on the 3rd floor, the open terrace

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in the 2nd floor and two garages on the northern side of the suit property being Bhatt Bungalow on Plot No.5 J.V.P.D. Scheme, Vile Parle (West), Mumbai - 56 as his Agent without payment of any royalty or security."

The Division Bench dismissed the appeal filed by the petitioners by observing that the discretion exercised by the learned Single Judge does not suffer from any legal infirmity.

In our view, the order passed by the learned Single Judge was based on correct appreciation of the factual matrix of the case and application of the legal principles and the Division Bench did not commit any error by refusing to interfere with that order.

The special leave petition is accordingly dismissed. The interim order passed by this Court on 17.7.2009 is vacated.

However, it is made clear that the parties shall be free to apply before the High Court for early hearing of the suit.

(A.D. Sharma)  
Court Master

(Phoolan Wati Arora)  
Court Master