



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO.1736 OF 2023
IN
SUIT NO.181 OF 2023**

Nina Anwar Merchant ... Applicant/Plaintiff
versus
Karim Ul Haq Meghani and Ors. ... Defendants

**WITH
INTERIM APPLICATION NO.1739 OF 2023
IN
SUIT NO.181 OF 2023**

Nina Anwar Merchant ... Applicant/Plaintiff
versus
Karim Ul Haq Meghani and Ors. ... Defendants

Mr. Zubin Behramkamdin, Sr. Advocate with Mr. Chaitanyaa Bhandarkar, Ms. Janavi Kursija, for Applicant/Plaintiff.

Mr. Tejas Vora with Mr. Sagar S. i/by V. Acharya, for Defendant Nos.1 to 4.

Mr. Dilip Rai i/by Mr. D.R.Mishra, ,for Defendant Nos.5 and 6.

Mr. Shailesh Shah, Sr. Advocate i/by Mr.A.M.Rajabally, for Defendant Nos.10 and 11.

Mr. S.K.Dhekale, Court Receiver, High Court, Bombay present.

Mr. N.C.Pawar, Officer on Special Duty, Court Receiver Office, present.

Ms. E.S.D'Souza, Section Officer, Court Receiver Office present.

CORAM: N.J.JAMADAR, J.

CLOSED FOR ORDERS : 23 JULY 2024

PRONOUNCED ON : 23 SEPTEMBER 2024

ORDER :

1. The instant suit is for administration of the estate of late Gulshan Rehman Meghani, in accordance with her last Will and Testament dated 8 July 2020. The applicant/Plaintiff has taken out these Interim Applications for

diverse interim reliefs, primarily, to protect the estate of the deceased.

2. The background facts can be summerized as under :

2.1 Late Gulshan Rehman Meghani, the testatrix, was a Shia Imami Ismaili Khoja Muslim. The testatrix passed away on 16 October 2020, issueless. Rehman Meghani, the husband of the testatrix, predeceased her. Rehman had several disputes with his younger brother Kabirdin Meghani, father of Defendant Nos.1 to 3. Rehman Meghani was the sole and absolute owner of Flat No.A-82, 8th Floor, Yuwan Apartments, Mount Mary Road, Bandra Mumbai. Rehman Meghani, during his life time, resided in the said flat along with the testatrix and his sister Dilashad – Defendant No.6.

2.2 Rehman Meghani passed away intestate on 4 March 2009, issueless. The testatrix and three sisters of Rehman, namely, Dilshad – Defendant No.6, late Roshan Bandeali Rupani and late Shahbai Abdul Aziz Harji succeeded to the estate of Rehman Meghani. Disputes arose between the testatrix, Dilshad – Defendant No.6, Roshan and Shahbai. Disputes were amicably resolved and a Deed of Family arrangement was executed on 19 December 2009. Under the terms of the said family arrangement, all the properties that were referred to and described in clause 2 read with Part A of Annexure II, Part B of Annexure II, Part C of Annexure II and Part D of Annexure II were to vest absolutely in the testatrix. Defendant No.6 Dilshad would vacate the said flat No.A-82 and the testatrix would be in sole and exclusive use, occupation

and possession of the said flat. All the residuary assets of Rehman Meghani would also belong to and vest in the testatrix. The said Deed of family arrangement was acted upon by all the parties.

2.2 The Plaintiff avers, on 24 August 2020, the Plaintiff located the last Will and Testament dated 8 July 2020 of late Gulshan Meghani, the testatrix. The Plaintiff was appointed as an executor under the said Will along with Altaf Huseinali Merchant – Defendant No.7. The latter has not manifested any intention to act as an executor and has, in effect, renounced the executorship. The Plaintiff and Defendant No.16, her sister are the beneficiaries under the said Will along with Defendant Nos.1 to 5, 7, 9 to 13, 17 and 18, the other beneficiaries thereunder.

2.3 In the meanwhile, the Plaintiff alleges that the Defendants, especially Defendant Nos.1 to 4 and Defendant No.10 have siphoned off the funds of the testatrix. Various acts of commission and omission are attributed to Defendant Nos.1 to 4 and Defendant No.10. The Plaintiff further asserts, Defendant Nos.1 and 2 have filed Testamentary Petition No.1413 of 2010, as a counter blast to the Testamentary Petition (L) No.8514 of 2020 filed by the Plaintiff for Probate of the last Will and Testament of the testatrix, and have prayed for Letters of Administration to the property and credits of late Rehman Meghani.

2.4 The Plaintiff avers, since at the time of death of late Rehman

Meghani, Kabirdin Meghani, brother of Rehman Meghani, had predeceased him, Defendant Nos.1 and 2 cannot succeed to the estate of late Rehman. Thus, Defendant Nos.1 and 2 as also Defendant Nos.3 and 4 have no interest whatsoever in the estate of late Rehman Meghani. Alleging that Defendant Nos.1 and 2 have fraudulently obtained the Succession Certificate in respect of the securities of late Rehman Meghani, under the Succession Certificate dated 24 September 2019, the Plaintiff has, inter alia, sought decree for administration of the estate of the testatrix, by and under the directions of this Court in accordance with her last Will and Testament dated 8 July 2020, to pass a preliminary decree declaring shares of the beneficiaries as per the last Will and Testament, to declare that Defendant Nos.1 to 4 have no right, title and interest of whatsoever nature in Flat No.A-82 and the consequential reliefs.

2.5 During the pendency of the suit, the Plaintiff has filed these applications for diverse interim reliefs. When IA No.1739 of 2023 was listed before this Court on 27 June 2022, this Court was persuaded to appoint the Court Receiver only for the limited purpose of taking an inventory of the articles, documents and any movable property of the deceased lying in Flat No.A-82. In addition, this Court directed that there shall be an injunction restraining Defendant Nos.1 to 4 from in any manner creating any third party rights and/or interest and/or parting with possession of the said Flat NO.A-82.

2.6 In IA No.1736 of 2023 by an order dated 27 June 2022, this Court was persuaded to grant ad-interim reliefs in terms of prayer clauses (d), (f), (g), (h), (i), (j) and (k). The Defendants were directed to file affidavits of disclosure in terms of prayer clause (d) within a period of four weeks thereof. Finding that the disclosures made by Defendant No.10 was not satisfactory, by an order dated 2 May 2024, Defendant No.10 was directed to file a detailed disclosure in terms of paragraph No.12 of the order dated 27 June 2022. Additionally, ad-interim reliefs were granted in terms of prayer clauses (l) and (m) as well. Respondent No.3 DCB Bank was further directed to permit the applicant to access the two accounts only for the purpose of paying taxes concerning the estate of the deceased. Eventually, the affidavits of disclosure came to be filed on behalf of Defendant No.10 and 11 on 27 June 2024.

3. The Defendants have resisted the prayers in the Interim Applications by filing the affidavits in reply. Defendant No.1 has filed affidavits on behalf of himself and Defendant Nos.2 to 4. It is contended that the Plaintiff is guilty of *suggetio falsi and suppressio veri*. The claim of the Plaintiff suffers from delay and laches. The Plaintiff has no locus to institute the suit. She is not related to the deceased or Rehman Meghani by blood. She is neither an heir nor a next-of-kin of Rehman Meghani. The Plaintiff is, thus, not entitled to institute the suit for administration of the estate of the testatrix, on any ground. The Plaintiff being the daughter of Anwar, brother of the testatrix, has propounded

the last Will dated 8 July 2020, which has been challenged not only by Defendant Nos.1 to 3, Defendant Nos.5 and 6, but also by Defendant No.10, who is a full brother of the testatrix. As the Will propounded by the Plaintiff is seriously contested, the Plaintiff is not entitled to institute a suit for administration on the strength of the said Will.

4. The Defendants contend, the Plaintiff has yet not deposited the original Will allegedly executed by the testatrix on 8 July 2020 with the Office of the Prothonotary and Senior Master. Nor the Probate Petition has yet been numbered. Therefore, the suit for administration of the estate of the testatrix on the strength of the said Will, which had not seen the light of the day, does not deserve to be countenanced. The Defendants have denied the adverse allegations in the Plaint and the Application.

5. In IA No.1739 of 2023, the resistance of Defendant Nos.1 to 4 broadly proceeds on identical grounds. The locus of the Plaintiff to institute the suit has been put in contest. The Plaintiff is, thus, not entitled to any interim reliefs.

6. Defendant Nos.5 and 6 have by and large adopted the defences raised by Defendant No.1.

7. Defendant No.10 – Farid, in the affidavit in Reply to IA No.1736 of 2023 has also contested the alleged last Will and Testament of the testatrix. In the additional affidavit in reply dated 27 June 2024 in IA No.1736 of 2023,

Defendant No.10 Farid, contends that Account No.00112200006392 with DCB Bank was opened in December 2015 jointly by the testatrix and Defendant No.10. The Plaintiff and Defendant No.16 have extracted a sum of Rs.15 to 20 Lakhs from Defendant No.10 on the pretext of the expenses for the treatment of the testatrix. After the demise of the testatrix, Defendant No.1 is solely empowered to operate the said account and no other person has any right to do so. At any rate, being the full brother and legal heir of the testatrix, only Defendant No.10 is entitled to operate the said account in the capacity of the only surviving full brother of the testatrix.

8. Defendant No.10 further contends, the testatrix had made it clear, as far back as in the year 2015, that the money deposited in the joint account was meant only for the Defendant No.10 and was kept to finance the acquisition of a decent flat for Defendant No.10. Defendant No.10 has endeavoured to furnish an account of the withdrawal of the sum of Rs.5,80,00,000/- from the said joint bank account. A sum of Rs.1 Crore was withdrawn to purchase a flat in Pune for Defendant No.10 and the expenses were also incurred for renovation of the said flat. Since Defendant No.10 has no regular source of income, he had also incurred the expenses towards the necessities of his life. An amount of Rs.3.50 Crores has been deposited in fixed deposits with DCB Bank and ICICI Bank. Thus, the allegations of siphoning off the funds are wholly untenable. On these, amongst other grounds, Defendant No.10 has

prayed for rejection of the applications.

9. I have heard Mr. Zubin Behramkamdin, learned Senior Advocate for the Applicant/Plaintiff, in both the applications, Mr. Tejas Vora, learned Counsel for Defendant Nos.1 to 4, Mr. Dilip Rai, learned Counsel for Defendant Nos.5 and 6 and Mr. Shailesh Shah, learned Senior Advocate for Defendant Nos.10 and 11, at some length. The learned Counsel took the Court through the pleadings and the material on record.

10. Mr. Behramkamdin, learned Senior Advocate for the Applicant/Plaintiff submitted that Defendant Nos.1 to 4, who are the heirs of the husband of the testatrix, are not otherwise entitled to succeed to the estate of the testatrix. After the death of Rehman Meghani, disputes between the heirs of Rehman, including the testatrix and three sisters of Rehman, namely, Dilshad – Defendant No.6, Roshan and Shahbai, were settled in accordance with the deed of family arrangement. The testatrix became the absolute owner of the properties which were allotted to her under Clause 2 of the said family arrangement, including the properties at Panvel and Flat No.A-82 at Bandra, Mumbai.

11. Attention of the Court was invited to the share certificate issued by Yuwan Apartments Society (Exhibit P) and the public notice issued by the Society in respect of the issue of duplicate share certificate in favour of the testatrix. Mr. Behramkamdin submitted that the claim of Defendant Nos.1 to 4

that, they are the heirs of the testatrix, in the capacity of the heirs of Rehman, the husband of the testatrix, is wholly misconceived.

12. As regards the resistance put forth by Defendant No.10, Mr. Behramkamdin submitted that the claim of Defendant No.10 to the amount standing to the joint account of the testatrix and Defendant No.10 is equally untenable. Being a nominee or survivor, Defendant No.10 cannot have any title to the amount standing to the credit of the joint account. Defendant No.10 held the said amount in trust for the legal representatives/heirs, who are otherwise entitled to succeed to the estate of the testatrix.

13. Inviting attention of the Court to the documents which evidence the sale of the Panvel property and credit of the amount of Rs.6 Crores in the joint account and the subsequent withdrawals/transfer of the amounts by Defendant No.10, Mr. Behramkamdin submitted that Defendant No.10 is enjoined to bring back the said amount. To this end, reliance was placed on a decision of a learned Single Judge of this Court in the case of **Shashikiran Ashok Parekh V/s. Rajesh Virendra Agrawal and Ors.**¹.

14. Mr. Tejas Vora, learned Counsel for Defendant Nos.1 to 4 submitted that the assertion that the Defendant Nos.1 to 4 have committed trespass in Flat No.A-82 is wholly unsustainable. Laying emphasis on the fact that the alleged Will propounded by the Plaintiff, has been contested not only by

1 2012(4) Mh.L.J. 370

Defendant Nos.1 to 4, but the real brother of the testatrix and the said Will had not seen the light of the day, Mr. Vora further submitted that the Plaintiff has instituted the suit with an oblique motive to defeat the legitimate right of the Defendants to succeed to the estate of the testatrix in accordance with the law which governs the testatrix.

15. Mr. Vora urged with tenacity that since the testatrix was a Khoja Muslim, the succession to her estate is governed by the provisions of Hindu Law and not the Mahomedan Law. Therefore, the challenge to the right of succession of Defendant Nos.1 to 4 to the estate of the testatrix is devoid of substance. To bolster up these submissions, Mr. Vora placed reliance on the decisions of this Court in the cases of **Shivji Hasam and Ors. V/s. Datu Mavji Khoja**², **Hirabai V/s. Gorabai and Anr.**³, **Rahimatbai V/s. Hirabai**⁴ **Ca'ssumbhoy Ahmedbhoy V/s. Ahmedbhoy Hubibhoy and Anr.**⁵, **Ahmedbhoy Hubibbhoy V/s. Cassumbhoy Ahmedbhoy**⁶, **Aliyarkhan Amiyatkhan V/s. Rambhau Motiram**⁷, and a decision of the Supreme Court in the case of **Controller of Estate Duty, Mysore, Bangalore. V/s. Haji Abdul Sattar and Ors.**⁸.

16. Mr. Behramkamdin, learned Senior Advocate for the Applicant/Plaintiff

2 Bombay High Court Reports 294 (19=874) in Special Appeal No.316 of 1872

3 Bombay High Court Reports 295 Appeal No.255

4 The Indian Law Reports 34 Vol. III

5 The Indian Law Reports Vol. XII 280

6 The Indian Law Reports Vol XIII 534

7 793 (1947)

8 AIR 1972 SC 2229

joined the issue by canvassing a submission that the controversy sought to be raised on behalf of Defendant Nos.1 to 4 is set at rest by the judgment of the Division Bench of this Court in the case of **Aliyarkhan Amiyatkhan (supra)**, wherein it was enunciated that even after passing of the Shariat Act, 1937 a Khoja Muslim still continues to be governed by his customary law, which is Hindu Law as far as testate succession is concerned. Therefore, the resistance to the Plaintiff's claim based on the restricted capacity of the testatrix to dispose of the property by testamentary instrument under the Mahomedan law does not merit acceptance. Thus, the disposition under the alleged Will and Testament propounded by the testatrix can be legitimately given effect to.

17. Mr. Shah, learned Senior Advocate for Defendant Nos.10 and 11 urged that the instant suit is not a normal suit for administration of the estate of the testatrix. The foundation of the Plaintiff's claim is in the alleged last Will executed by the testatrix. The alleged last Will is yet to be proved. Therefore, the Plaintiff is not entitled to any interim reliefs. In any event, the joint account was opened with the mandate 'either or survivor'. Consequently, there can be no restraint on the operation of the joint account by Defendant No.10.

18. Mr. Shah further submitted that even on a demurer, Defendant No.10 is entitled to 50% of the balance in the said joint DCB Account maintained by the testatrix and Defendant No.10. Therefore, Defendant No.10 cannot be

restrained from dealing with the amount of Rs.3.50 crores which has been kept in fix deposits by Defendant No.10.

19. To buttress these submissions, Mr. Shah placed reliance on a decision of a learned Single Judge of this Court in the case of **JV Gokal Charity Trust, Mumbai V/s. Contrex Pvt. Ltd., Mumbai**⁹ wherein the learned Single Judge has culled out the principles of law following the Division Bench judgment of this Court in the case of **Krushandas Nagindas Bhate V/s. Bhagwandas Ranchhoddas and Ors.**¹⁰.

20. To begin with, the relationship between the parties. Rehman Meghani had five siblings, Kabirdin; brother, and Shahbai, Roshan Bandeali, Nabatkhanoo Merchant and Dilshad Meghani; sisters. Defendant No.4 is the wife of Kabirdin. Defendant Nos.1 to 3 are the children of Kabirdin. Kabirdin predeceased Rehman. Likewise, Nabatkhanoo predeceased Rehman. Gulshan Meghani, the testatrix had two brothers, namely, Farid – Defendant No.10 and Anwar, father of the Plaintiff and Defendant No.16.

21. Prima facie, there is material on record to indicate that upon the demise of Rehman, disputes arose between Gulshan, Rehman's widow, and Shahbai, Roshan and Dilshad – Defendant No.6, the sisters of Rehman. Disputes were resolved amicably under a Deed of family arrangement (Exhibit D). I will advert to the distribution of the assets of late Rehman Meghani

9 2017(4) AIR Bom R 81

10 AIR 1976 Bom 153

amongst his heirs, a little later.

22. At this stage, it is necessary to examine whether the heirs of Kabirdin, the brother of Rehman, were entitled to succeed to the estate of Rehman. For this purpose, it is also necessary to ascertain the law, which governed the succession to the estate of Rehman. As both Mr. Behramkamdin, learned Senior Advocate for the Applicant/Plaintiff and Mr. Vora, learned Counsel for Defendant Nos.1 to 4, have placed reliance on the decision of the Division Bench of this Court in the case of **Aliyarkhan Amiyatkhan (supra)**, it may be apposite to refer to the enunciation of law therein as the said decision also notes the previous pronouncements on which reliance was placed by Mr. Vora.

23. In the case of **Aliyarkhan Amiyatkhan (supra)**, Devchand, a Khoja Mahomedan, died on 26 January 1927, leaving behind widow Lakshmibai and Hirabai, a daughter. By his Will, Devchand bequeathed all his property to Hirabai. The latter died on 27 July 1931. However, before her demise, Hirabai had bequeathed her property to her husband. Lakshmibai, the widow of Devchand, after the death of Hirabai, executed a Deed of Gift and gave the property to the trustees of a mosque. The husband of Hirabai sold the property to the Plaintiff therein.

24. In the backdrop of the aforesaid facts, a contention was raised on behalf of the Defendant – trustee of the mosque that Devchand, being a

Mohamedan, his testamentary capacity was restricted and he could not have disposed of the whole of his property by Will. In contrast, the Plaintiff – purchaser contended that Devchand being a Khoja, in matters of testate succession, Devchand was governed by Hindu law and not by Mahomedan law.

25. The Division Bench enunciated the law as under :

“3. Now, by a series of authorities it has been well-established that before the Shariat Act was passed in 1937, a Khoja Mahomedan was governed in matters of succession and inheritance by Hindu law on the ground of custom. The Shariat Act brought about this change, viz. that to the extent that the Khoja was governed by Hindu law in matters of intestate succession, the custom was overridden and after the passing of the Act no was to be governed by Mahomedan law. But his customary law qua testate succession remained unaffected by the Shariat Act. Therefore, even after the passing of the Shariat Act, a Khoja still continues to be governed by his customary law, which is the Hindu law, as far as testate succession concerned.

6. Therefore, the position today is that if a Khoja living in the Bombay Presidency wants to put forward the contention that in testate succession he is governed by Mahomedan law and not Hindu law, the burden is on him to establish affirmatively that he is so governed according to a special usage. The custom that a Khoja is governed by Hindu law in matters of testate succession is so well-established and so frequently judicially noticed that it is no longer necessary to prove that custom again. Rather, as I was point out, the burden is now thrown on the person who alleges usage contrary to this well-established custom. In this case, no allegation was made by the defendants that Devchand was

governed by Mahomedan law as a result of some special usage,
and no issue to that effect was raised.” (emphasis supplied)

26. The Division Bench has, thus, enunciated in clear and explicit terms that despite the enactment of Shariat Act, 1937, the customary law qua testate succession remained unaffected. Even after passing of the Shariyat Act, 1937, a Khoja Muslim still continued to be governed by his customary law, which is Hindu law, as far as testate succession is concerned. If a Khoja living in Bombay Presidency wants to put forth a contention that in testate succession, he is governed by Mahomedan law and not Hindu law, the burden is on him to establish affirmatively that he is so governed according to a special usage. The custom having been so well-established, it was no longer necessary to prove that custom again.

27. The position in law which thus emerges is that there is an essential distinction between the law which governs a Khoja Muslim in the matter of testate and intestate succession. In case of intestacy, Khoja Muslim would be governed by the principles of Mahomedan law. In case of testamentary succession, he would be governed by the principles of Hindu Law as the customary law is not affected by the Shariyat Act, 1937.

28. On the aforesaid touchstone, reverting to the facts of the case, it may be appropriate to consider the claim of Defendant Nos.1 to 4 based on intestacy. As noted above, Kabirdin, the predecessor in title of Defendant

Nos.1 to 4, predeceased Rehman, husband of the testatrix. Resultantly, the children and widow of Kabirdin were excluded by the other surviving siblings of Rehman, Shahbai, Roshan and Dilshad – Defendant No.6. The disputes between the surviving sisters of Rehman and the Testatrix, Rehman's widow, to the estate of Rehman, were resolved under the family arrangement.

29. Prima facie, it appears that, when the succession opened, upon the death of Rehman, the heirs of Kabirdin, Rehman's predeceased brother, were not entitled to succeed to the estate of Rehman. Conversely, if the matter is appraised through the prism of testamentary succession as the Plaintiff has propounded the alleged last Will and Testament of Testatrix, who is the maternal aunt of the Plaintiff, the provisions of Hindu Law would govern the testamentary succession. Restrictions in the matter of testamentary disposition either in the quantum of the property which could have been bequeathed or the bequest in favour of the heirs, under the Mahomedan Law, do not operate. The testatrix being governed by the provisions of Hindu law, in the matter of testamentary succession, would be entitled to dispose of her property untrammelled by the limitations which operate in case of testamentary disposition under the Mahomedan law.

30. If the deed of family arrangement (Exhibit O) is considered in the light of the aforesaid governing legal position, it appears that two of the properties over which there is a major dispute, namely, the property at Panvel and Flat

No.A-82, Bandra, Mumbai, seem to have been specifically allotted to the testatrix along with other properties shown in Clause No.2. It appears that the property at Panvel was sold by the testatrix and the sale proceeds were credited to the joint account of the testatrix and Defendant No.10.

31. As regards Flat No.A-82 at Bandra, it appears that during the lifetime of Rehman and Kabirdin, they had made a joint declaration that the said Flat No.A-82 be registered in the name of Rehman and Flat No.83-A be registered in the name of Kabirdin. Subsequently, after the demise of Rehman and pursuant to the family arrangement, Flat No.A-82 came to be registered in the name of Gulshan, the testatrix.

32. At this juncture, the fact that the Defendant Nos.1 to 4, prima facie, were not entitled to succeed to the estate of late Rehman, when succession opened bears upon their claim over Flat No.A-82 as well. Even on the basis of intestate succession, Defendant Nos.1 to 4 will have to surmount an impediment of establishing that they were entitled to succeed under the principles of Mahomedan law as, in the matter of intestacy, post Shariat Act, 1937, a Khoja Muslim would be governed by Mahomedan law. From this standpoint, the claim of the Plaintiff that the Court Receiver be appointed in respect of Flat No.A-82 appears sustainable.

33. By an order dated 27 June 2022, the Court Receiver was appointed for the limited purpose of taking inventory of the articles, documents and any

movable property of the deceased lying in Flat No.82-A and to take possession of the documents of the deceased. Accordingly, the Court Receiver has prepared an inventory of articles and movables, including the documents belonging to the deceased (List A) and the documents belonging to the husband of the testatrix – deceased (List B). By a further order dated 2 May 2024, this Court directed the Court Receiver to take possession of the documents of the husband of the deceased (list B). Pursuant to the aforesaid orders, the Court Receiver has taken in his custody the documents (List A and B).

34. In these circumstances, it may now be expedient in the interest of justice to appoint Court Receiver in respect of Flat No.82-A, Yuwan Apartment, and direct him to take symbolic possession thereof and also initiate steps to appoint an agent of the Court Receiver.

35. With regard to the reliefs against Defendant No.10, as noted above, the amount of Rs.6 Crores which was credited to the joint account was formed by the sale proceeds of the property of the testatrix at Panvel. Though, myriad defences have been raised by Defendant Nos.1 to 4, which wavered from one end to another, namely, Defendant No.10 is entitled to the amount standing to the credit of the said account being the survivor and that it was the desire of the testatrix that the entire amount standing to the credit of the said account should be paid to Defendant No.10, yet, the position in law, seems to be

absolutely clear. The mere fact that an account stands in the joint names does not imply that each of the holders is entitled to absolute property therein. A number of factors govern the title to the property in a joint account. If the second holder was merely a nominee and had not contributed to the corpus in the said account, the second holder becomes the trustee for the heirs of the first holder who had invested the amount.

36. The claim of the Defendant No.10 gives rise to the question of application of principle of advancement as the Defendant No.10 is the brother of the testatrix. On the first principles, it is necessary to note that the principle of advancement which applies in England to imply the presumption of a gift, to the second named surviving person, is not recognized in India.

37. A useful reference can be made to a decision of the Supreme Court in the case of **Bibi Saddiqa Fatima V/s. Saiyed Mohammad Mahmood Hasan**¹¹ wherein the Supreme Court adverted to two decisions of Privy Council in the cases of **Kerwick v/s. Kerwick**¹² and **Sura Lakshmiah Chetty and Ors. V/s. Kothandarama Pillai**¹³ wherein it was enunciated that the rule of the law of England that a purchase by a husband in the name of his wife is to be assumed to be a purchase for the advancement of the wife does not apply in India.

38. A useful reference in this context can be made to a decision of the

¹¹ 1978 (3) SCC 299

¹² (1920) 23 Bom LR 730

¹³ AIR 1925 PC 181

Supreme Court in the case of **Indranarayan V/s. Roop Narayan and Anr.**¹⁴

wherein in the context of a deposit of a certain amount made in the name of Defendant No.2 by her father in law, a contention was raised that the said deposit exclusively belonged to Defendant No.2 as it was a gift from her father in law. In that context, the Supreme Court postulated that the transfer with which the Supreme Court was concerned in that case cannot be construed a gift because the father in law continued to be the owner of the amounts in question till his death. There is no presumption of advancement in this country but yet if there had been satisfactory evidence to show that the transfers in question are genuine and further that the father in law intended that the amounts in question should go to the 1st defendant exclusively after his death, the Court would have held that the advancement put forward had been satisfactorily proved and the presumption rebutted.

39. In the case of **JV Gokal Charity Trust, Mumbai V/s. Contrex Pvt. Ltd., Mumbai (supra)**, after adverting to the aforesaid pronouncements and the Division Bench judgment in the case of **Krushandas Nagindas Bhate V/s. Bhagwandas Ranchhoddas and Ors. (supra)**, the learned Single Judge culled out the principles as under :

“45. **In Krushandas Nagindas Bhate v Bhagwandas Ranchhoddas & Ors (supra)**, Vaidya and Lentin JJ of this Court were considering a case involving a

14 1971 (2) SCC 438

bank deposit in joint names held 'either or survivor'. It seems to have been argued that Shambhu Nath was decided on a concession inconsistent with the law. The Division Bench negated this (paragraph 33 of the AIR report):

33. In view of his position in law, it cannot be said that what was conceded before the privy Council was inconsistent with law. We are of the opinion that it will ordinarily depend on the facts and circumstances of the case relating to the opening of the account showing the intention of the parties. If from the facts and circumstances of the case it could be held that the intention was to make the survivor the owner of the amount lying in the account, then he, and not the heirs, would be entitled to recover the amount. If the facts and circumstances of the case do not establish any such intention, although the holder of the joint account may be authorised to withdraw the amount, he would be bound to restore that amount to the heirs and legal representatives of the deceased joint holder. The bank may be discharged by payment to the survivor. But the survivor may, in the absence of an intention to make him the owner, be accountable to the heirs of the deceased joint holder. (Emphasis added)

46. This is the clearest possible enunciation of the principles involved: (a) discharge to the company (or bank) by looking to the survivor; (b) no presumption of ownership passing to the second named holder; (c) the liability of the survivor to heirs absent proof of the intention to pass title by survivorship; and (d) the exclusion of heirs in succession on proof of intention to pass title by survivorship."

(emphasis supplied)

40. In the light of the aforesaid exposition of law, the claim of Defendant No.10 is required to be tested on two parameters. One, was there any contribution by Defendant No.10 to the said corpus. Second, was there any intention of the testatrix that the title to the corpus was to pass on to Defendant No.10.

41. On the first count, as is evident, the corpus of Rs.6 Crores was formed by the sale proceeds of Panvel property, which was allotted to the testatrix under the Deed of family arrangement. It is even not a case of Defendant No.10 that he had made any contribution to the said corpus. On the contrary, Defendant No.10 asserted that, among the siblings, his financial position was the weakest.

42. On the second count also, it is imperative to note, in the alleged last Will propounded by the Plaintiff, the testatrix had bequeathed 50% of the balance amount in the joint account to Defendant No.10. Two inferences become prima facie sustainable. First, the testatrix considered the corpus in the joint account to be her absolute property. Two, the testatrix did not bequeath the entire corpus to the Defendant No.10. In view of the aforesaid considerations, I find it difficult to accede to the submission of Mr. Shah that the Defendant No.10 is entitled to the said amount in the joint account, exclusively.

43. This Court was persuaded to grant ad-interim reliefs noting that the

amount of Rs.5,80,00,000/- was withdrawn from the said joint account by Defendant No.10 under three weeks of 3 November 2020, on which date the balance therein was Rs.6,66,785.75. As only a sum of Rs.3,50,00,000/- in the form of deposits with ICICI Bank and DCB Bank is still available, in my view, it would be in the fitness of things to direct Defendant No.10 to bring back the said amount along with interest accrued thereon and deposit the same in this Court.

44. Mr. Shah would urge that the Defendant No.10 be permitted to utilize some portion of the said amount. Defendant No.10 has already appropriated a substantial portion of the amount which stood to the credit of the joint account of the testatrix and Defendant No.10. Therefore, I am not inclined to accede to the submission of Mr. Shah. In any event, the amount which is to be brought back and deposited in this Court would enure for the benefit of the party/ies to the proceedings, who is/are ultimately held entitled to the same. I am, therefore, inclined to allow both the applications.

ORDER

IA No.1736 of 2023

- (i) The application stands partly allowed.
- (ii) Ad-interim reliefs granted in terms of prayer clauses (d), (f), (g), (h), (i), (j) and (k) are made absolute.
- (iii) Defendant No.10 is directed to bring back the amount of Rs.3.50 Crores deposited with DCB Bank and ICICI Bank Ltd. along with interest accrued

thereon, till the date of liquidation and deposit the same in this Court within a period of four weeks from today.

(iv) Upon deposit of the said amount, the Registry shall invest the said amount in an interest bearing account initially for a period of three years and renew the same thereafter.

IA No.1739 of 2023

(i) The application stands partly allowed.

(ii) Ad-interim order of injunction restraining Defendant Nos.1 to 4 from in any manner creating any third party rights and/or interest and/or parting with possession with Flat No.82-A, Yuwan Apartment, Bandra, Mumbai, save to the Court Receiver, if ordered, is made absolute.

(iii) The Court Receiver, High Court, Bombay, is appointed Receiver in respect of the subject flat.

(iv) The Court Receiver shall take symbolic possession of the subject flat. However, the Court Receiver shall not put a board over the Flat No.82-A as it is a residential premises.

(v) The Court Receiver is directed to invite Defendant Nos.1 to 4, one the one part, and the Plaintiff and Defendant No.16, on the other part, to submit their bids for the purpose of agency of the subject flat.

(vi) The Court Receiver is directed to appoint the party who offers highest bid in respect of the subject flat as an agent of the Court Receiver.

(vii) Such party will be appointed as an agent of the Court Receiver on usual terms and conditions, on payment of royalty and furnishing the security.

(viii) Liberty to the parties and to Court Receiver to seek further directions.

(ix) Interim Applications stand disposed.

(x) Court Receiver's Report Nos.233 of 2022 and 372 of 2024 accordingly stand disposed.

(N.J.JAMADAR, J.)