

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2852/2021

JIMMY DARA SUKHIA

Appellant(s)

VERSUS

ROSHANI FAROKH CHINOY & ORS.

Respondent(s)

O R D E R

A quarter of a century has passed in determining whether the licenser/late Dina Dara Sukhia is entitled to seek occupation of the portion occupied by the appellant, her son!

It is not necessary to go into the factual matrix in detail but suffice to say that in pursuance of the Will of the father of the appellant Mr. Dara Byramji Sukhia dated 9<sup>th</sup> September, 1955, the entire property was bequeathed to late Dina. However, learned counsel for the respondents point out that, be that as it may, the aforesaid plea has not found favour with the courts below as the rights of late Dina arose from survivorship and not under the Will. The appellant started occupying a portion of the suit property in 1965. It does appear that there was some straining of relationship between the appellant and his mother which gave rise to the termination of the license and institution of the proceedings in November, 1997 before the Small Causes Court, Pune in Civil Suit No.808 of 1997. She prayed for a decree of, inter alia, possession against the appellant. The appellant attributes this to his

brother-in-law i.e. Farokh, husband of his sister Roshani respondent No.1 herein, who was visiting his mother. We may also note that the appellant separately filed a suit for partition of properties in the year 1995 being suit No.430/1995 stated to be still pending before the Civil Judge, Senior Division, Pune.

We can hardly appreciate why for more than a quarter of a century this suit should remain pending and prima facie it does appear that the appellant has not really proceeded with the suit much, possibly on account of the present proceedings. It is pertinent to note that Dina passed away on 18.06.2003. Thereafter, the respondent No.1 herein claimed that Dina had executed an unregistered Will dated 20.06.1987, followed by a codicil to the same on 17.03.2002. Respondent No.1 was the executer and legatee of Dina's Will. After Dina's death, respondent No.1 was substituted as the plaintiff in 2007 in the suit before the Small Causes Court.

It is of significance that the proceedings arising from termination of the license are under the Provincial Small Cause Courts Act, 1887, which are really summary proceedings qua the issue of succession. We may also note that the cognizance of suits by Courts of Small Causes is restricted by the Second Schedule to the Act. If we turn to the Second Schedule, the relevant clauses are as under:-

- (11) a suit for the determination or enforcement of any other right to or interest in immovable property;
- (28) a suit for a legacy or for the whole or a share of a residue bequeathed by a testator, or for the whole or a share of the property of an intestate;

Aforesaid thus leaves little doubt about the fact that really speaking, aspects of interest in immovable property and who is the legatee arising from bequeathal of testator or intestate succession are not subject matters to be gone into by the Small Causes Court.

Section 26A of the Act provides for appeal against the decree of a Small Causes Court and that is why, aggrieved by an order passed on 17<sup>th</sup> September, 2009 an appeal was preferred which has also been dismissed on 26<sup>th</sup> February, 2013. That order was assailed by invoking the provisions of Article 227 of the Constitution of India which resulted in an adverse order against the appellant in terms of the impugned judgment dated 23<sup>rd</sup> December, 2013.

The crux of the argument of the appellant is that there were suspicious circumstances surrounding the Will of his mother, late Dina. That the heirs were the appellant, his sister Roshani and his brother Viraf who used to reside in London. Viraf passed away on 18<sup>th</sup> February, 2006 and not being married, his sister and the appellant were the only two legal heirs and thus he would, in any case, acquire interest in the property. Viraf is also stated to have executed a Will dated 19<sup>th</sup> February, 1998 making his sister the sole beneficiary.

We may also note that the matter has gone through certain intermittent stages with a large number of issues being framed, with additional issues being framed all at the behest of the appellant. The appellant thus invited the judgment on the validity of the Will of late Dina. Interestingly, he did not seek framing of an issue regarding the Will of late Viraf. The fact, however,

remains that the respondents produced evidence both in support of the Will of late Dina and of the will of late Viraf and established their right to proceed with the suit arising from the termination of the license instituted by their mother.

Who will take possession of the property in question arising from the termination of the license is the only aspect the Small Causes Court could have and should have gone into. In fact, learned counsel for the respondents fairly states by reference to Section 26B of the said Act that the finding rendered in the impugned order cannot finally determine the right of succession in respect of the property but suffice for the present proceedings entitling the respondent to take possession on termination of licence. The provision reads as under:-

“Section 26B. Saving of suits involving title,-

Nothing contained in this Chapter shall be deemed to bar a party to a suit, appeal or proceeding mentioned therein in which a question of title to any immovable property arises and is determined, from suing a competent Court to establish his title to such property.”

We are, thus, unequivocally of the view that the rights to the property would be determined in the suit filed by the appellant of vintage 1995 which has not proceeded further. However, we are not inclined to accept the plea of the learned counsel for the appellant that pending determination of that suit, the respondents should not be able to evict the appellant in the present proceedings. In the determination that is required under the provisions of the said Act for deciding the issue of the license, as seen in the findings of three courts, we have found no

material on record to take a different view from what has been taken by courts below.

Result of the aforesaid is that the appeal is dismissed but we make it clear that the impugned orders are not determinative of the findings qua the succession to the suit property and it would only entitle the respondents to take possession of the same. The title would be decided in suit No.450 of 1995.

We also consider it appropriate to direct the Civil Judge, Senior Division, Pune to expedite the trial of suit No.450 of 1995. We can hardly envisage a situation where for 26 years, a suit is pending at the first stage, and we have to decide the appeal and the second appeals which would arise thereafter. The Wills are stated to have been filed in those proceedings and thus the final determination of the validity of the Wills would be in those proceedings.

Needless to say that the parties will cooperate for an early trial to the suit and the trial court will endeavor to give a quietus to the issues before it preferably in a period of one year from date of communication of this order.

.....J.  
[SANJAY KISHAN KAUL]

.....J.  
[HEMANT GUPTA]

NEW DELHI;  
JULY 22, 2021.

ITEM NO.16 Court 7 (Video Conferencing)

SECTION III

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

Civil Appeal No.2852/2021

JIMMY DARA SUKHIA

Appellant(s)

VERSUS

ROSHANI FAROKH CHINOY & ORS.

Respondent(s)

Date : 22-07-2021 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJAY KISHAN KAUL  
HON'BLE MR. JUSTICE HEMANT GUPTA

For Appellant(s) Mr. Vinay Navare, Sr. Adv.  
Mr. Arun R. Pedneker, Adv.  
Ms. Mukti Chowdhary, AOR

For Respondent(s) Mr. Chander Uday Singh, Sr. Adv.  
Mr. Pratap Venugopal, Adv.  
Ms. Surekha Raman, Adv.  
Mr. Pratap Raman, Adv.  
Mr. Akhil Abraham Roy, Adv.  
Mr. Vijay Valsan, Adv.  
Mr. Amjid Maqbool, Adv.  
For M/S. K J John And Co, AOR

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

Civil Appeal is dismissed in terms of the signed order.  
Pending application(s), if any, shall stand disposed of.

(RASHMI DHYANI)  
COURT MASTER

(POONAM VAID)  
COURT MASTER (NSH)

(SIGNED ORDER IS PLACED ON THE FILE)