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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 4961 OF 1994
WITH
NOTICE OF MOTION NO. 1475 OF 2014

Kirtikumar Rasiklal Ajmera & Ors. ...Plaintiffs
Versus
Mrs. Kalpana Bhupat Ajmera & Ors. ...Defendants

Mr. Y.R. Shah, *for the Plaintiffs.*
Mr. L. Narayanan, *i/b M/s. Narayanan & Narayanan, for the*
Defendants.

CORAM: G.S. PATEL, J
DATED: 12th January 2015

PC:-

1. This is a Notice of Motion under Rule 90 of the High Court (Original Side) Rules for an *ex parte* decree for want of written statement. Learned Advocate for the Defendants states that his record indicates that a written statement was filed a long time ago. He has in his papers a copy of a written statement that indicates a date of April 1998. However, the record and proceeding indicates that till the end of 1999, undertakings were being given to the Prothonotary & Senior Master to file a vakalatnama and in early

2000 the vakalatnama of M/s. Narayanan & Narayanan came to be filed. If that be so, I cannot see how the written statement of 1998 could ever be said to be on file since there appears to be no vakalatnama filed by the previous Advocate Mr. D.H. Nanavati. After the year 2000, the Defendants have remained unrepresented.

2. Learned Advocate for the Defendants also states that he intends to file a Notice of Motion for stay of the suit. Matters cannot be delayed on the basis of applications yet to be filed. There is no affidavit in reply to the Notice of Motion although it was served as far back as on 14th November 2014. Even now there is no written statement on file. Even today, learned Advocate for the Defendants is not in a position to file his written statement. At the very least, I would have expected that a written statement should have been kept ready today. There is no reason to deny the Plaintiffs' reliefs.

3. The Notice of Motion is made absolute in terms of prayer clause (a).

4. The Suit is decreed against the Defendants in terms of prayer clauses (a) to (e) with costs.

5. Drawn up decree is dispensed with.

6. This is a Suit for partition. No preliminary decree has yet been passed. The respective shares of the Plaintiffs and Defendants shall be as claimed in the plaint.

7. The Commissioner for Taking Accounts shall forthwith proceed to value the suit property described in Schedule "A" to the plaint. That valuation shall be completed within eight weeks from today.
8. The Court Receiver, High Court, Bombay will appoint a Surveyor or Architect from the panel of the Court Receiver for the purposes of surveying the suit property and reporting a mode of partition of the property by metes and bounds if at all possible. That report will be filed within eight weeks from today.
9. The costs of the Commissioner for Taking Accounts, as also for the Architect or Surveyor will be borne by the Plaintiff.
10. List the matter for further directions on the Receiver's Report after both the reports are ready.

(G. S. PATEL, J.)