

Sharayu

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 505 OF 2013
IN
SUIT NO. 181 OF 2013

Zaed Ali Hasanali & Ors. ...Plaintiffs
Versus
Zaitoon Taherali Hasanali Nalwala & Ors. ...Defendants

Mr. R.A. Shaikh, *for the Plaintiffs.*
Mrs. Anita Lambay, *i/b M/s. Lambay & Co., for the Defendant No.1.*
Mr. V.Y. Sanglikar, *i/b Mrs. R.K. Mehta, for the Defendants No. 2*
and 3.

CORAM: G.S. PATEL, J
DATED: 2nd March 2015

PC:-

1. Heard.
2. The Notice of Motion seeks several reliefs against the Defendants in respect of an immovable property known as Gul-A-Hussain Building (now known as Prathamesh), CTS 527, 527 (1 to 4) at Plot No. 18 (Part), Town Planning Scheme No. I, Borivli West,

Mumbai. The property is entirely tenanted. Today there are 12 tenants including Defendant No. 3 and Defendant No. 2.

3. The 2nd Defendant claims to have acquired title to this property from one Taherali Hasainali Nullwala (“**Taherali**”). After his demise his sister one Sakinabai applied for Letters of Administration. She, too, passed away and the present Plaintiffs were brought on record, since the present Plaintiffs are the nephews of the deceased (i.e., Sakinabai’s sons).

4. Mr. Shaikh, learned Counsel for the Plaintiffs, claims that the 1st Defendant and Defendants No. 2 and 3 have illicitly dealt with the suit property which forms part of the estate of the deceased and therefore, various injunctive orders are necessary to prevent loss not only to the estate of the deceased, but also to the present Plaintiffs, who claim to have acquired title to that property (among other properties comprised in Taherali’s estate).

5. To begin with, there is some controversy about the role being played in this entire litigation by one Sayed Rehman Haji Abdulla Khan. This gentleman, who has verified the Complaint, is said to be or to have been the Constituted Attorney of Sakinabai, and presently the Constituted Attorney of the Plaintiffs. He also claims to have been Taherali’s Rent Collector. It seems not to be in doubt that this Rent Collector at some point himself acquired an interest in some of the assets comprised in Taherali’s estate, though not in the building that is presently the subject matter of dispute. It thus seems *prima facie* that the Constituted Attorney of the Plaintiffs has a vested interest in some portions of Taherali’s estate. It remains to

be seen whether his interest is adverse to that of the Plaintiffs themselves.

6. Mrs. Lambay, learned Advocate for the Defendant No. 1, contends that in fact the Plaintiffs have only been put up by Sayed Rehman Haji Abdulla Khan. I have, by an order dated 28th January 2015, briefly considered some of her submissions in a Contempt Petition filed by her. Those observations are, of course, limited to that Contempt Petition. It will always be open to 1st Defendant to establish at the time of final hearing of the Suit that Sayed Rehman Haji Abdulla Khan has improperly or illegally dealt with any portion of the estate of Taherali.

7. This in itself is not an answer to the Plaintiffs' case. However, as Mr. Sanglikar, the learned Advocate for the Defendants No. 2 and 3 points out *inter alia* with reference to a compilation that he has tendered, there is enough material to indicate that in his lifetime Taherali had dealt with or, at any rate, had agreed to deal with this very building and plot in favour of the 2nd and 3rd Defendant. Mr. Sanglikar points out that Taherali passed away on 16th August 2000. Well prior to that on 21st December 1999 a public notice was issued in three different newspapers in three different languages of Taherali's intention to transfer and sell this building to the 2nd and 3rd Defendants. There is an assessment record from the year 1999 in favour of 2nd Defendant in respect of this very building. In early 2000, the tenants of the building wrote to Taherali in response to the public notice seeking that the sale be made in their favour rather than the 2nd or 3rd Defendant. I do not think that it is at all correct or

tenable for the Plaintiffs to say that they have only now, i.e. at the time of the evidence of the 1st Defendant being taken in the Testamentary Petition for Letters of Administration, learned of the 2nd and 3rd Defendants' involvement in the ownership of the building in question.

8. Mr. Shaikh emphasises that the alleged consideration is so low as to be almost illusory and perhaps even false. That is a matter that requires evidence. *Prima facie* it would be difficult to put a complete restraint on the 2nd and 3rd Defendants from dealing with the property. The 2nd and 3rd Defendants have initiated several eviction proceedings against several tenants. These should also not be allowed to be compromised at the interim stage. Mr. Shaikh also points out that the 2nd Defendant claims simultaneously not only to have ownership of the property in question, but is also supposedly the attesting witness to a Will said to have been left by Taherali. In any case, whether or not there is a conflict and whether or not this affects the 2nd and 3rd Defendants' title to the property is a matter yet to be seen and is not something that lends itself to a summary adjudication at an interim stage.

9. Mr. Sanglikar on instructions makes a statement that pending the final hearing of the Suit, the 2nd and 3rd Defendants will not transfer, sell or dispose of the property i.e. Gul-A- Hussain Building (now known as Prathamesh), CTS 527, 527 (1 to 4) at Plot No. 18 (Part), Town Planning Scheme 1, Borivali West, Mumbai, without leave of the Court. It is clarified that they restraint against transfer does not restrain the 2nd and 3rd Defendants from continuing with

any proceedings already initiated against tenants or from adopting any fresh proceedings against any tenants. The 2nd and 3rd Defendants are also not restrained from accepting surrenders of tenancy or creating new tenancies. These will undoubtedly be subject to final orders in the Suit, including as to rendering of accounts. No further reliefs are possible at this stage. Notice of Motion is disposed of in these terms, with no order as to costs.

(G. S. PATEL, J.)