

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****ORDINARY ORIGINAL CIVIL JURISDICTION****NOTICE OF MOTION NO. 190 OF 2014****IN****SUIT NO. 384 OF 2012**

Mrs.Madhuri Pratap Varde

...Plaintiff / Applicant

vs.

Mr.Pratap Jaywant Varde &amp; Anr.

...Defendants

Mr.Shailesh Naidu, Ms.Neha Bhatt i/b. M/s.Bilawala &amp; Co. for Plaintiff.

Mr.A.S. Daver with Mr.Rakesh i/b. M/s.M.V. Kini &amp; Co. for Defendant No.2.

**CORAM : S.C. GUPTE, J.****18 MARCH 2015****P.C. :**

This Notice of Motion seeks an interim injunction *inter alia* against Defendant No.2 restraining it from taking any further action in respect of the suit flat or from disturbing the peaceful occupation and possession of the Plaintiff of the suit flat. The facts of the Plaintiff's case may be briefly stated as follows :

2           The Plaintiff and original Defendant No.1 (since deceased) were husband and wife. The suit property, which consists of a flat, being Flat No.1 in the building "Meherabad" at Bhulabhai Desai Road, Mumbai together with the share certificates of the society in respect of the flat, belonged to Defendant No.1. It is the case of the Plaintiff that in consideration of the Plaintiff having suffered a loss by pledging her ornaments and encumbering her property at Bangalore to enable Defendant No.1 to seek a financial accommodation from one Banque Nationale De Paris (French Bank), original Defendant No.1 had agreed to compensate the Plaintiff by transferring the suit flat in her favour. It is the case of the Plaintiff that on or about 7 May 1994, an oral family arrangement was arrived at between the Plaintiff and Defendant No.1, whereby Defendant No.1 relinquished all his right, title and interest in respect of the suit flat in favour of the Plaintiff. It is the case of the Plaintiff that in pursuance of this family arrangement between the parties, original Defendant No.1 executed a last will and testament

on 7 May 1994 recording *inter alia* that he had already relinquished his right, title and interest in favour of the Plaintiff. It is submitted that thereafter the terms of the family arrangement were reduced into writing for future reference and record on 23 July 1998 under a writing styled as "Memorandum of Family Agreement". Under this Memorandum of Family Agreement, Defendant No.1 reiterated and confirmed the oral family settlement / agreement of 7 May 1994 relinquishing of his right, title and interest in respect of the suit flat in favour of the Plaintiff, as noted above. The Plaintiff, thus, claims to have become an exclusive owner of the suit flat and, accordingly, seeks a declaration to that effect in the present suit. Defendant No.2 – Bank of India – has proceeded to take steps under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) in respect of the suit flat, in enforcement of the security created in its favour in respect of the flat by original Defendant No.1. Defendant No.2 has already taken symbolic possession of the suit flat and has now issued an auction notice for sale of the suit flat in newspapers of 16 February 2015. By this suit, the Plaintiff seeks to restrain Defendant No.2 from taking any further steps in pursuance of the Securitisation notice, claiming ownership in respect of the suit flat.

3           The rights claimed by the Plaintiff to the suit flat are on the basis of a purported oral family arrangement between the Plaintiff and original Defendant No.1. Such oral family arrangements are entered into by members of a Hindu family in respect of the property belonging to the family. The arrangements are on the footing that the family members, who are party to the family arrangement, have an antecedent title to the property of the family, though the shares of family members are not defined or specified. With a view to avoid litigation between family members and bring peace in the family, the members of the family jointly agree to distribution of the property amongst themselves by an oral arrangement. That is the basis of a family arrangement. In the present case, the Plaintiff cannot be said to have any antecedent title to the suit flat. The suit flat admittedly belongs to original Defendant No.1 and is his self acquired property. It is the case of the Plaintiff that in consideration of the Plaintiff having allowed pledging of her ornaments and creation of security in respect of her own property, original

Defendant No.1 had proposed to transfer the suit flat in favour of the Plaintiff and it is in pursuance of this proposal that the so called family arrangement was entered into between the Plaintiff and Defendant No.1. Such an agreement cannot be termed as a "Family Arrangement" and none of the incidents of a valid family arrangement can apply to such so called family arrangement. *Prima facie* neither the oral family arrangement pleaded in the suit nor the writing styled as "Memorandum of Family Agreement" can be said to create any right, title and interest in respect of the suit flat in favour of the Plaintiff.

4                    Mr.Naidu, learned Counsel for the Plaintiff submitted that in pursuance of this family arrangement, original Defendant No.1 even proceeded to execute share transfer documents in respect of the suit flat, and submit a share transfer application to the society before the mortgage in respect of the suit flat was created in favour of Defendant No.2. Even a document, such as the purported share transfer application, has no legal efficacy and cannot be said to have created any right, title and interest in favour of the Plaintiff.

5                    In that view of the matter, there is no *prima facie* case made out by the Plaintiff that she has any right, title or interest in respect of the suit flat. The Plaintiff having failed to make out any *prima facie* case, there is no question of this Court considering the question of balance of convenience. Thus, there is no merit in the Notice of Motion and the same is dismissed. There shall be no order as to costs.

6                    On the application of learned Counsel for the Plaintiff, the hearing of the suit is expedited. The suit is not being contested by Defendant Nos.1(a) and 1(b), who have been substituted in place of original Defendant No.1. Written statement is already filed by Defendant No.2. Place the suit for framing of issues on 27 March 2015. Further directions about disclosure of documents and leading of evidence will be given on that date.

**(S.C. Gupte, J.)**