

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1897 OF 2012

IN

SUIT NO. 2762 OF 2009

WITH

NOTICE OF MOTION NO. 3794 OF 2009

IN

SUIT NO. 2762 OF 2009

WITH

TESTAMENTARY SUIT NO. 91 OF 2011

IN

TESTAMENTARY PETITION NO. 734 OF 2009

WITH

CHAMBER SUMMONS NO. 1793 OF 2011

IN

SUIT NO. 2762 OF 2009

WITH

CHAMBER SUMMONS NO. 559 OF 2013

IN

SUIT NO. 2762 OF 2009

Francis James Almeida s/o Charles I. Almeida

...Plaintiff

Versus

Rosy C. Almeida wd/o Charles I. Almeida & 3
Ors.

...Defendants

Mr. Y.S. Bhate, *for the Plaintiff.*

Mr. D.H. Mehta, *with Mr. G.D. Utangale, i/b M/s. Utangale & Co.,
for the Defendants.*

CORAM: G.S. PATEL, J

DATED: 30th July 2015

PC:-

1. Mr. Mehta, learned Advocate for the Defendants has prepared a tabulation of the various properties mentioned in paragraph 13 of the plaint. Some of these properties, according to the Defendants, do not form estate of the deceased. The Defendants have also filed a Testamentary Petition. The schedule of the assets to that petition, according to the Defendants in this Suit, correctly reflects the estate of the deceased. Although this is disputed by Mr. Bhate, learned Advocate for the Plaintiff, for the purposes of the present Notice of Motion, I will proceed on the basis of the tabulation submitted by Mr. Mehta. A copy of this tabulation is also appended to this order.

2. The properties at Sr. Nos. I to IV are said to be the properties of the proprietary firm of the deceased. Defendant No. 4 is in possession as an agent of the Court Receiver appointed in the Suit. That position will continue.

3. As regards the property at Sr. No. 5, this is an ownership industrial plot at Khalapur, District – Raigad. According to Mr. Mehta, this property has been disposed of to a third party. No order in respect of that property is possible at this stage. The statement

by the Defendants that it was sold on 25th June 2007 by the deceased and the 4th Defendant is noted for the record.

4. The property at Sr. No VI is said to have been the joint property of the deceased and Defendant No. 1. The property is a Flat No. A/3 in Hit Niketan CHS, Bhandup, Mumbai. The flat is today in the name of the 1st Defendant. The 1st Defendant agrees and undertakes that she will not, pending further orders in the Court, alienate, encumber, part with possession, sell or dispose of this flat. That undertaking is accepted as an undertaking to the Court.

5. The property at Sr. No. VII is Flat No. 1504 of the Great Eastern Condominium, Kanjurmarg, Mumbai. It is said to have been initially held by the deceased and the 1st Defendant. It stands today in the name of the 1st Defendant. The 1st Defendant agrees and undertakes that she will not, pending further orders in the Court, alienate, encumber, part with possession, sell or dispose of this flat. That undertaking is accepted as an undertaking to the Court.

6. The property at Sr. No. VIII is a Flat No. A-504, Birchwood Hiranandani Gardens, Powai, Mumbai. According to the Defendants, this flat is the property of the 4th Defendant and the 1st Defendant and was never a part of the estate of the deceased. This statement is noted.

7. The property at Sr. No. IX is a flat in Highway Manor, Udupi, Karnataka. This is said to be the sole property of the 1st

Defendant and not a part of the estate of the deceased. This statement is noted.

8. The property at Sr. No. X is another flat in Highway Manor, Udupi, Karnataka. This is said to be sold in July 2008 by the 1st Defendant. This statement is also noted.

9. The property at Sr. No. XI is non-agricultural land at Karnataka, admeasuring 2788.10 sq. mtrs. or thereabouts. This is said to be the sole property of the 1st Defendant and this statement is also noted.

10. The property at Sr. No. XII is a Flat in Kukreja Complex, Bhandup, Mumbai. This was sold by the 1st Defendant and the 3rd Defendant in June 2004. That statement is also noted.

11. The immovable properties at Sr. Nos. XIII to XV are situated at Rabale, Navi Mumbai, being a factory plot. This is said to be a property of a partnership firm named Siddharth Engineering Company, the partners of which are the 1st Defendant and the 4th Defendant. This is also, according to the Defendants, not a part of the estate of the deceased. That statement is noted.

12. The properties at Sr. No. XVI and XVII are old motor vehicles. Car at Sr. No. XVI is said to belong to the 4th Defendant exclusively and the car at Sr. No. XVII is said to have been bequeathed to the 1st Defendant in her lifetime. The Plaintiff expresses no particular interest in either of these vehicles.

13. The property at Sr. No. XVIII is a substantial amount of gold jewellery weighing, according to the Plaintiff, about 5000 grams. According to the Defendants, this was always sole property of the 1st Defendant. This is a position that Mr. Bhate opposes most strenuously. According to him, the 1st Defendant had neither the means nor werewithal to purchase this gold, and says that it always belonged to the deceased and is part of his estate. On the other hand, Mr. Mehta states that the jewellery has always been shown as the property of the 1st Defendant alone. According to Mr. Mehta, this jewellery was also disclosed in a Voluntary Disclosure Scheme by the 1st Defendant. Without further evidence at this stage and material to indicate that it form part of the estate of the deceased, it is not possible to pass any order in regard to this item.

14. The property at Sr. No. XIX in paragraph 13 of the plaint is a statement of shares, fixed deposits, bonds and investments etc. Particulars have been given in the plaint and they are also listed in the schedule to the Testamentary Petition. The Will sought to be propounded makes a bequest of these items to the 1st Defendant in her lifetime and thereafter to all the children, including the Plaintiff. At this stage, no order is necessary in respect of this.

15. Mr. Bhate proposes to file a Notice of Motion in order to impeach or challenge the various documents by which properties are said by the Defendants to have been transferred to third parties. Till that is done, no further orders can be passed in the present Notice of Motion. Mr. Mehta points out that the documents now sought to be challenged are disclosed and yet no steps have been

taken by the Plaintiff to impeach or challenge that documents. There is as yet no amendment to the Plaintiff.

16. In my view, it is not possible to prevent the Plaintiff from seeking an amendment if he so wishes. However, the Plaintiff must also be put to terms keeping in mind the fact that an adequate disclosure has been made and further that the documents disclosed by the Defendants, *prima facie*, indicate that they are all dispositions or sales or transfers by registered documents, many of which were executed in the lifetime of the deceased or very shortly after his demise. Consequently, the Plaintiff must, on or before 17th August 2015, not only move whatever application for amendment he seeks, but also obtain necessary orders of injunction. If he does not do so, the present order will operate as the final order in the Notice of Motion No. 3794 of 2009.

17. Further, in the event that the Plaintiff does not obtain appropriate orders by that date, the Defendants' Notice of Motion No. 1897 of 2012 will also stand made absolute in terms of prayer clauses (a), (b) and (c) except in regard to the documents at Sr. Nos. VI and VII of the chart appended to this order. In respect of those items, the order indicated above will continue.

18. The Chamber Summons No. 559 of 2013 is *simpliciter* adjourned to 26th August 2015.

(G. S. PATEL, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION No. 1897 OF 2012
IN
SUIT NO. 2762 of 2009

Francis James Almeida.	)	...	Plaintiff
V/s			
Mrs. Rosy Charles Almeida & Ors.	)	...	Defendants

SCHEDULE OF PROPERTIES MENTIONED IN PLAINT OF S-2762/2009

D.O.D. OF CHARLES ALMEIDA: 23RD OCT.2008

PLAINT DATE: 19TH OCT.2009

Suit Properti es mention ed in Para 13 of the Plaint at	PROPER TY	Value As per Plaint (Rs. In Lakh)	Purchase Value (Rs. In Lakh)	Date Of Purchas e	PURCHASE D BY	STATUS AS OF DATE	Relevant Page no. attached here	Relevant page no. attached in NMS 1897 of 2012
I to IV	Almeida Brother s,	77.22		-----	Deceased Mr. Charles Almeida	Agent of Court		FATHER'S PROPERTY Bequeathed as per Will to the Defendant

Suit Properties mentioned in Para 13 of the Plaintiff at	PROPERTY	Value As per Plaintiff (Rs. In Lakh)	Purchase Value (Rs. In Lakh)	Date Of Purchase	PURCHASED BY	STATUS AS OF DATE	Relevant Page no. attached here	Relevant page no. attached in NMS 1897 of 2012
	Factory land at Bhandup, Mumbai (Total Area of plot) Portion of Factory shed, Plant & machinery Goodwill	88.13 50.00 1000.0				Receiver Peter Almeida, Def. No.4		No.1 in her life time and thereafter to Defendant no.4 Rs. 134.00 Lac by the court approved valuer M/s. Nadkarni & Co.
V	Industrial plot at Khalapu	10.00	-----	-----	Deceased and Def. No.4 , Peter Almeida	SOLD ON 25.06.		Exhibit 'D' Page 42 for payments & date Page No.58 A for

Suit Properties mentioned in Para 13 of the Plaint at	PROPER TY	Value As per Complaint (Rs. In Lakh)	Purchase Value (Rs. In Lakh)	Date Of Purchase	PURCHASE D BY	STATUS AS OF DATE	Relevant Page no. attached here	Relevant page no. attached in NMS 1897 of 2012
	r Raigad					2007		7/12 extract.
VI	Flat No. A/3 in Hit Niketan CHS, Bhandup Mumbai	19.79		1980	Deceased and Rosy Almeida - Defendant no.1	Rosy Almeida Defendant no.1	Page 3 Share cert. of Hit Niketan Co. Op. Hsg. Sco. Dtd. 06/09/1980	
VII	Flat No. 1504 15 th Floor Great Eastern Condo minium Kanjur marg Mumbai	31.62	42.48	02.12.2006	Deceased and Rosy Almeida Defendant No,1	Rosy Almeida Defendant No.1	Page 4 -6 Statement s of Payments made to seller, Ameet Dalal. Page 7 Share Cert. of	

Suit Properties mentioned in Para 13 of the Plaint at	PROPERTY	Value As per Plaint (Rs. In Lakh)	Purchase Value (Rs. In Lakh)	Date Of Purchase	PURCHASE D BY	STATUS AS OF DATE	Relevant Page no. attached here	Relevant page no. attached in NMS 1897 of 2012
							Great Eastern Cond. Dtd. 01/11/2009 Page 22 Statement s of Receipts included in Sale Agreement t Deed	
VIII	Flat A-504 Birchwood Hiranandani Gardens, Powai Mumbai	54.34	7.57	1992	Peter Almeida & Rosy Almeida	Def.No.4 Peter Almeida & Def. No.1 Rosy Almeida	Page 63 Statement of Payments made to Hiranandani Builders towards purchase	Exhibits 'E' & 'F' Pages 77-205 Copies of Agreement to sale dtd. 11/03/1992 along with copies of Deed of Confirmation dtd. 09/04/1996

Suit Properties mentioned in Para 13 of the Plaint at	PROPER TY	Value As per Plaint (Rs. In Lakh)	Purchase Value (Rs. In Lakh)	Date Of Purchase	PURCHASE D BY	STATUS AS OF DATE	Relevant Page no. attached here	Relevant page no. attached in NMS 1897 of 2012
	.						of Flat. Page 64-65 Share Certificate of Birchwood Co. Op. Soc. Dtd. 10/02/1999	
IX	Flat on 3 rd Floor in Highway Manor, Udupi, Karnataka.	10.00	3.08	1997	Rosy Almeida	Rosy Almeida Defendant No.1		Exhibits 'G' Pages 206-223A Deed of Sale between M/s. J.D. Builders & Mrs. Rosy Almeida dtd. 04/12/1997
X	Flat on 3 rd Floor in	10.00	-----	-----	Def. No.1, Rosy Almeida	SOLD IN		

Suit Properties mentioned in Para 13 of the Plaint at	PROPERTY	Value As per Complaint (Rs. In Lakh)	Purchase Value (Rs. In Lakh)	Date Of Purchase	PURCHASED BY	STATUS AS OF DATE	Relevant Page no. attached here	Relevant page no. attached in NMS 1897 of 2012
	Highway Manor, Udupi, Karnataka					JULY, 2008		
XI	Nonagricultural land Kundapura, Karnataka	25.00	0.53	14.02.1996	Rosy Almeida Defendant No,1	Rosy Almeida		Exhibit 'H' Pages 224-241P Sale Deed of N.A. Plot at Anagali, Karnataka.
XII	Flat in Kukreja Complex, Bhandurp,	22.09	-----	-----	Def. No.1, Rosy Almeida and Def. No.3, Shanti Reddy	SOLD IN JUNE, 2004		Exhibit 'I' Pages 242-253 Sale Deed Between Rosy Almeida and Shanti Reddy with Narendra Chunnilal Mehta and Jayshree N. Mehta dtd. 19/06/2004

Suit Properties mentioned in Para 13 of the Plaint at	PROPER TY	Value As per Complaint (Rs. In Lakh)	Purchase Value (Rs. In Lakh)	Date Of Purchase	PURCHASE D BY	STATUS AS OF DATE	Relevant Page no. attached here	Relevant page no. attached in NMS 1897 of 2012
XIII to XV	Siddharth Engineering Company, Rabale, Navi Mumbai Factory plot Plant & Machinery Goodwill	1000.0 60.00 400.00	30.50	31.12.2002	Def. No.1, Rosy Almeida & Def. No.4, Peter Almeida	Def.No.4 Peter Almeida & Def. No.1 Rosy Almeida	Page 66 Statement of Payment on account of Siddharth Engineering Co. Pages 67-72 Bank Statements reflecting entries shown in above statements. Page 73 Certificate of	Exhibit 'J' Pages 254-274 Lease Deed Agreement dtd. 13/06/2003 Pages 275-280F Irrevocable Power of Attorney dtd. 19/05/1997 between Sushil Kumar Agarwal and Ramesh Mehta Pages 285-291 Agreement of Sale Deed dtd. 31/12/2002 between Sushil Kumar with Prakash Agarwal and Siddharth Engineering Co.

Suit Properti es mention ed in Para 13 of the Plaint at	PROPER TY	Value As per Plaint (Rs. In Lakh)	Purchase Value (Rs. In Lakh)	Date Of Purchas e	PURCHASE D BY	STATUS AS OF DATE	Relevant Page no. attached here	Relevant page no. attached in NMS 1897 of 2012
							Registrati on under Sales Tax Act. Of Shanti Engineerin g Co., Prop. Peter Almeida, date of effect 31/05/199 7 Pages 74- 89 Copy of Loan document of Siddharth Engg. Co.	

Suit Properties mentioned in Para 13 of the Plaint at	PROPERTY	Value As per Complaint (Rs. In Lakh)	Purchase Value (Rs. In Lakh)	Date Of Purchase	PURCHASED BY	STATUS AS OF DATE	Relevant Page no. attached here	Relevant page no. attached in NMS 1897 of 2012
XVI	Motor Vehicle Skoda	5.00		2005	Peter Almeida	Peter Almeida Defendant No.4	Page 90 Statement of Payment made for Skoda Car Pages 91-94 Bank Statement of Shanti Engg. Co. reflecting above entries.	Exhibit 'L' Pages 299-309B Copies of Document of Motor Vehicle.
XVII	Motor Vehicle Mahindra Bolero	4.0			The Deceased	Rosy Almeida Defendant No.1		Bequeathed as per Will to the Defendant No.1 in her life time and thereafter to all the children including the Plaintiff
XVIII	Gold Jeweller				Rosy Almeida	Defendant No.1		NOT A PART OF THE DECEASED ESTATE

Suit Properties mentioned in Para 13 of the Plaint at	PROPERTY	Value As per Complaint (Rs. In Lakh)	Purchase Value (Rs. In Lakh)	Date Of Purchase	PURCHASED BY	STATUS AS OF DATE	Relevant Page no. attached here	Relevant page no. attached in NMS 1897 of 2012
	y weighting 5000gms							VDIS Paper attached as Exh.1 in Affidavit in rejoinder dtd. 30/07/2013
XIX	Shares Fixed Deposits, Bonds & Investments	38.67			The Deceased	Rosy Almeida Defendant No.1		Bequeathed as per Will to the Defendant No.1 in her life time and thereafter to all the children including the Plaintiff

Note: Sr. Nos. V to XVI are mentioned in NMS 1897 of 2012 for deletion of property from plaint.