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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

NOTICE OF MOTION NO. 1919 OF 2010

IN

SUIT NO. 197 OF 2007

WITH

NOTICE OF MOTION NO. 3493 OF 2010

IN

SUIT NO. 197 OF 2007

Mona Hiroo Chainani & Ors.

...Plaintiffs

VS

Mr Dadi S. Mistry & Ors.

...Defendants

.....

Mr Zubin Behram Kamdin a/w K.H.Mody & Ms Aruna Mehta i/b S. Pathaki & Co.
for the Plaintiffs

Mr F.E.Devitre, Sr. Advocate i/b Mr Amol Doyode for Defendant Nos.1,2,7 and 8.

Mr Naushad Engineer a/w Mr Aditya Mehta, Mr Vineet Unnikrishnan i/b M/s
Federal & Rashmikant for Defendant Nos.3 to 6.

.....

CORAM : S.C. GUPTE, J.

DECEMBER 16, 2015

P.C. :

This suit contains a claim of a beneficiary under a private trust. It is the case of the Plaintiffs that under the Deed of Settlement, the original Plaintiff is entitled to 50 % of the share, right, title and interest in the corpus of the trust, the other 50 % share being held by Defendant No.3. The present Plaintiffs, who are claiming as heirs of the deceased original Plaintiff, pray that Defendant Nos.1,2,7 and 8 be ordered to transfer the said property to the Plaintiffs and Defendant No.3 as tenants in common with equal, equitable interest. There are two Notices of Motion taken out in the present suit. Notice of Motion No.1919 of 2010 seeks a temporary injunction against Defendant Nos.3 and 4 from creating any third party rights or parting with possession of the suit property described in the prayers. Notice of Motion No. 3493 of 2010 seeks a temporary injunction against Defendant Nos. 1,2,7 and 8 restraining them from taking any steps for development or redevelopment of the suit property or any part thereof.

suit on the part of the contesting Defendants. It is submitted that the Plaintiffs have prayed for a right to possess the suit property which is tenanted and hence involves questions arising under the Bombay Rent Act. If one has regard to the prayers in the suit, what the Plaintiffs seek is a declaration that the Plaintiffs are entitled to 50 % share, right, title, interest of the corpus of the trust together with the right to possess such 50 % interest. There is no prayer in the present suit for seeking actual and physical possession of their 50 % share unencumbered by the tenants. This position is not contested by the Plaintiffs. If that is so, there is no question arising in the present suit in respect of any tenancy created in the suit property or any of the provisions of the Bombay Rent Act. There is no need to frame any preliminary issue in this behalf.

3 The contesting Defendants in the affidavit of Defendant No.3 (which is adopted by the other contesting Defendants) admit that there had never been any intention or assertion by any of them to create any third party right in respect of the suit property and they have no intention to create any such third party right. So also, the Defendants have made a statement in paragraph 6 of the affidavit of Defendant No.3 in reply to Notice of Motion No.3493 of 2010 that there is no scope for any development in respect of the suit property. Learned Counsel for Defendant Nos.3 to 6 also confirm that there is no proposal or intention of developing the suit property on the part of the Defendants. Learned counsel for the Plaintiffs also states that the Plaintiffs also shall likewise not create any third party right in respect of the suit property or part with possession thereof or take any steps for development of the suit property. The statements are accepted. In view of these statements, there is no need to grant any of the prayers in the two Notices of Motion. The Notices of Motion are disposed of in terms of these statements. There shall be no order as to costs.

4 The suit is expedited on the request of all parties. Place the suit for framing of issues on 13 January 2016. The parties shall also prepare their respective affidavits of documents together with their compilations and keep the same ready by the next date.

(S.C.GUPTA J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/ Order.