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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 2168 OF 2014
IN
SUIT (L) NO. 898 OF 2014

Mrs. Meena Kashyap Javeri	...Plaintiff
<i>Versus</i>	
Mr. Vikram Himatlal Javeri & Ors.	...Defendant

Mr. Naushad Engineer, *with Ms. Pratiksha Mody, Ms. Kinjal Patel, i/b M/s. K. Ashar & Co., for the Plaintiff.*
Mr. C.S. Shidore, *i/b M/s. Vijaykumar & Co., for Defendant No. 1.*
Ms. Snehal Modi, *for Defendants Nos. 2 to 4.*
Mr. N.V. Bandodkar, *IInd Assistant to Court Receiver, with Mr. A.D. Kamble, Master (Administration), representatives of the Court Receiver.*

CORAM: G.S. PATEL, J
DATED: 3rd February 2015

PC:-

1. The dispute is between family members and relates to Flat No. 61, 6th Floor, Shivner Apartment, 84-B, Nepean Sea Road, Mumbai – 400 006. This flat originally belonged to one Jaswantiben Javeri. She was the mother of the Defendants and the mother-in-

law of the Plaintiff, whose husband (Jaswantiben's son Kashyap) passed away before her.

2. By a previous order dated 13th November 2014, I asked the Court Receiver's representative to appoint an Architect or Surveyor to find out if it was possible to partition the flat between the Plaintiff and 1st Defendant, then the only two contesting parties. Since then, Defendants Nos. 2, 3 and 4 have been joined as party-Defendants. These are the married sisters of the 1st Defendant. All three reside abroad.

3. The Court Receiver has prepared a Report with a layout plan by M/s. Nadkarni & Company. This *prima facie* shows an efficient division of the flat. However, this only accounts for the claims of the Plaintiff and the 1st Defendant. I am using this plan as a reference in this order. Consequently, a copy of this plan is to be annexed to this order. The first layout on the left of the plan shows the existing position. Bedroom No. 1 is used by Defendant No. 2 as and when she visits Mumbai. It is not in dispute that the Plaintiff occupies and uses Bedroom No. 4. The 1st Defendant claims to use Bedroom No. 2 (for his three children) and Bedroom No.3 (for himself and his wife). There is some controversy as to whether Defendant No. 2 uses Bedroom No. 1 or Bedroom No. 3, but this is immaterial for our purposes since it is admittedly not used by the Plaintiff.

4. The Plaintiff's claim in the Suit is based on a Gift Deed dated 16th January 1991, Exhibit "B" to the plaint. This is not an accepted document. It is admittedly not a registered document. Its

validity is very seriously disputed by all the Defendants. I do not think that it is possible on the basis of this document to create a situation by which the existing position, as I have noted above, and that includes the periodic usage of bedroom No. 1 by Defendant No. 2, can irrevocably be altered by partitioning the flat at this stage. That would amount to decreeing the Suit.

5. The Defendants do not dispute that the Plaintiff has a 20% share in the estate of Jaswantiben, including the flat. They do not accept that she has any larger share in this flat. It is for the Defendants to assess whether it is at all possible for them to acquire the Plaintiff's right at least to the extent of 20% share in the flat so as to bring to an end to the present dispute.

6. That being said, I do not see how it is possible to grant the Plaintiff reliefs sought in the present Notice of Motion. Prayers (a), (b)(i), (iii) and (iv) are all in the nature of directions regarding day-to-day living arrangements and transactions between the Plaintiff and 1st Defendant. No purpose will be served by addressing these questions. The 1st Defendant is personally present in Court. Through his Advocate, he makes a statement and gives an undertaking that without leave of the Court, he will not create any right, title or interest in respect of any part of this flat alone with the close / rival garage described in Exhibit "A" to the plaint. This statement is accepted as an undertaking to the Court.

7. The 1st Defendant also states that he does not have with him any of the Plaintiff's personal papers, documents etc. Of those listed in Exhibit "L" to the plaint, the 1st Defendant says he has

returned or handed back every one of them and has in his possession or custody no documents pertaining to the Plaintiff. This statement is also recorded and noted.

8. There is no question of granting prayer (d) in the present form. It more properly belongs in an administration Suit and not in a partition action.

9. With these observations and directions, the Notice of Motion is disposed of with liberty to the parties to apply should circumstances change.

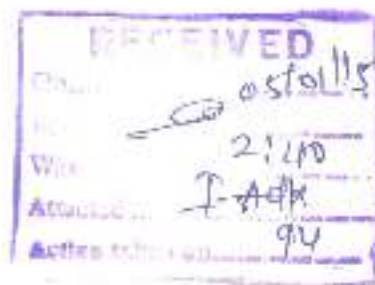
10. Although I have disposed of the Notice of Motion, in order to facilitate a possible settlement of the entire dispute and so that instructions can be taken from Defendants Nos. 2 to 4 as well, list the Suit for directions on 23rd February 2015.

(G. S. PATEL, J.)

REF : CR:2243;14;S

DATE : 3rd January, 2015

M/s. K. Ashar & Co.,
Advocates & Solicitors,
Meadows House, 4th & 5th Floors,
39, Nagindas Master Road, Fort,
Mumbai - 400 001



05 JAN 2015

Dear Sirs,

Re : Suggesting partition of Flat No. 81, 6th Floor, Shivner Apartment, situated at
84-B, Nepeansea Road, Mumbai - 400 006.

Ref : **Notice of Motion (L) No. 2168 of 2014**

In Suit (L) No. 898 of 2014

Moona K. Javeri - Plaintiff

V/s

Vikram H. Javeri - Defendant

This has reference to your letter No. M352c/0001/15 dated 2nd January, 2015, delivered to us by post this afternoon.

2. Replying the points raised in your aforesaid letter, we have to state as under :-

- (a) In paragraph 3 of our report dated 15.12.2014, we have inadvertently stated that "The suit flat consist of a living-room with enclosed balcony, a kitchen, a dining-room, three bed-rooms (two with enclosed balconies) and four toilets."

The correct description is, "The suit flat consists of a living-room (with enclosed balcony), a kitchen, a dining room, four bed-rooms (three with enclosed balconies) and four toilets, as shown in the plan annexed to the report."

- (b) Two partition walls - one between the living-room & bed-room-1 and the other between kitchen/dining-room & bed-room-2 are apparently been removed and replaced with wooden cabinet / wardrobe.

The plan annexed to the report shows the correct position.

- (c) The balcony (inadvertently omitted only in the description) is included in the calculation of area as stated in paragraph 5 of the said report.

: 2 :

- (d) As desired by you, we enclose herewith drawing No. F-2 dated 03.01.2015 showing room-wise carpet areas of the two divisions of the flat, as suggested by us. It may please be noted that the areas have been worked out by 'polyline method' in A-CAD drawing.

We trust the foregoing explanation would clarify your query.

Thanking you,

Yours truly,

K. B. N. N.

Encl : Drawing No. F-2 dated 03.01.2015

c.c. to :

- ✓ 1. The 2nd Assistant to
The Court Receiver,
High Court, Bombay,
Bank of India Building, 2nd Floor,
M.G. Road, Fort,
Mumbai - 400 023
2. Ms. Urvi Dave,
Advocate for Defendant No. 1,
82/4, Hendre Building
8th Mangalwadi, JSS Road,
Girgaon,
Mumbai - 400 004

with copy of drawing No. F-2 dated 03.01.2015.

K. B. N. N.

*Sir (C.R.)
This reply referred to the
particular - the Court
of 115*

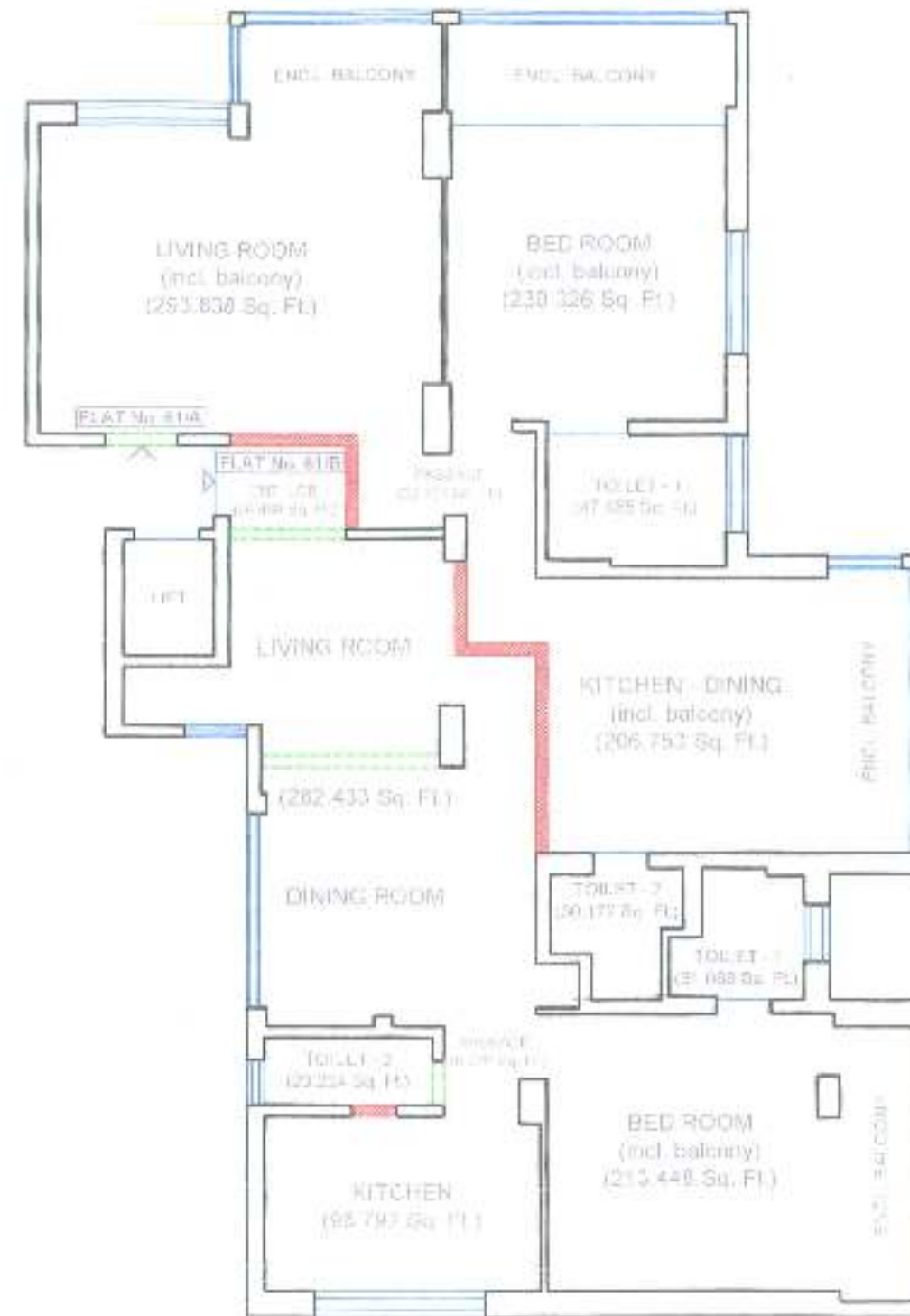
*For Be taken
on record
as copy to
submitted to
11/1/15
06/1/15*

Exhibit - 'A'

Coram: G.S. Patel, J
date 3rd feb 2015



PLAN OF THE FLAT - AS EXISTING



PLAN OF THE FLAT - SHOWING PARTITION

CARPET AREAS

FLAT NO. 61A 581.47E Sq. Ft.
FLAT NO. 61B 480.10E Sq. Ft.

NOTES

PORTIONS OF WALLS TO BE DEMOLISHED SHOWN IN GREEN DOTTED LINES
PROPOSED FROM WH LIGHT WEIGHT BLOCK MASONRY WALLS SHOWN IN RED (HATCHED)

PROJECT

PLAN SHOWING SUB-DIVISION OF FLAT NO. 61, 6th FLOOR, SHIVNER APARTMENTS,
SITUATED AT 84-B, NEPEANSEA ROAD, MUMBAI - 5.

REF : NOTICE OF MOTION (L) NO. 2168 OF 2014
SUIT (L) NO. 898 OF 2014
MEENA K. JAVERI - Plaintiff V/s: VIKRAM H. JAVERI - Defendant

JOB NO.

CR-2348145

DRN. NO.

7-2

SCALE

1" = 2'-0"

DATE

03/01/2015

NADKARNI & CO.
ARCHITECTS VALUERS
INTERIOR DESIGNERS

1-2, RAJ MAHAL,
M. M. CHHOTANI ROAD,
MAHIM, MUMBAI - 400 016.
TEL: (91-22) 2444 2842 FAX: 2444 5763
Email: info@nadkarni.co.in