

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COURT RECEIVER'S REPORT NO. 338 OF 2014
IN
SUIT NO. 891 OF 2010**

Zuleikha S. Hutchinson	...Plaintiff
<i>Versus</i>	
Mustafa Haji Abubakar Haji Eisa & 3 ors.	...Defendants

Mr. Bhavin Manek, *i/b Little & Co., for the Plaintiff.*
Mr. Nimay Dave, *with Ms. Faiza Dhanani, Mr. Umang Mehta, i/b*
Dhruve Liladhar & Co., for Defendant No. 1
Mr. Rajesh Dixit, *for Defendant No. 2.*
Mr. K.K. Trivedi, *Ist Assistant to Court Receiver.*

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

PC:-

1. This is a Court Receiver's Report in a Suit for administration of the estate of one Hazi Abubakar Haji Eisa. The Court Receiver was appointed of several properties by an order of 8th March 2011. For the purposes of present report, I am concerned first with one of those properties, namely, Mount View at Mahim, Mumbai.

2. There is a considerable dispute by the Plaintiff on one hand and the Defendants Nos. 1 and 2 on the other as to who, if anyone, was or is in occupation of the various blocks or quarters in this property. The result of this is that for several years the Court Receiver has not been able to collect any amount in respect of various premises in Mount View. Annexed at page 40 of the report is the list of various blocks and shops in Mount View. It is not in dispute that Room No. 1 is in possession of one Yusuf Penwala (a person also mentioned in the interim order dated 8th March 2011). Mr. Penwala is also known as Md. Yusuf Vali Mohammed. There is also no dispute that the ground floor is in occupation of Sakina Begum, the widow of Mohd. Ibrahim Abdul Kadar.

3. There is a serious dispute about Shop Nos. 1, 2 (ground floor), Room Nos. 3 & 4 on the first floor, half portion of open plot, CTS No. 1/1390 on the ground floor, Block No. 2, ground floor open plot and structure, and ground floor Garage No.2. Defendant No. 2 claims to be in occupation of Shop Nos. 1 and 2, Room Nos. 3 and 4 and the half portion of open plot, CTS No. 1/1390 on the ground floor. Defendant No. 1 claims to be in occupation of the first floor Flat No. 2 and the ground floor open plot and structure and ground floor Garage.

4. It is difficult, at this stage, to accept or reject the rival claims as to tenancy of these disputed portions of the Mount View property. It seems to me from the Court Receiver's Report that the actual physical possession of these premises has been ascertained by the Court Receiver's representative. Given that the Court Receiver has yet not disturbed the possession of the existing

occupants, he will continue to collect the compensation or rent as claimed to be payable by these very occupants till further orders.

5. It is clarified that the fact that some of the occupants claim the amount to be 'rent' does and will not conclude the rights of any of the parties in that respect. All contentions are kept open including specifically as to whether or not there is or are lawful tenancies created at any time of any of portion of this structure.

6. As regards Account No. S-330366-119 in CitiBank, D.N. Road Branch, Fort, Mumbai, this is an account in which Defendants Nos. 1 and 2 claim to have deposited certain amounts towards rent in respect of premises at Farouk Building and another property at Dharavi. These are amounts collected by Defendants Nos. 1 and 2. The account stand in the joint names of Defendants Nos. 1 and 2. The Court Receiver will immediately take charge of this account. No amount is to be disbursed from this account till further orders. There are to be no further transactions including by way of deposits in this account without leave of the Court. So that the account should not be declared as frozen or marked inactive, an authenticated copy of this order is to be given to the Manager of the CitiBank, D.N. Road Branch, Fort, Mumbai. The Court Receiver will submit a report as to the exact amount lying to the credit of this account so that suitable directions for investment can be passed.

7. It is also to be noted that the claims of Defendants Nos. 1 and 2 have been seriously contested by the Plaintiff. All these contentions are expressly kept open.

8. Costs of the Court Receiver to be borne equally by Defendants Nos. 1, 2 and 3 and the Plaintiff.

(G. S. PATEL, J.)