

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

APPEAL (L) NO.1 OF 2016
IN
NOTICE OF MOTION NO.189 OF 2015
IN
SUIT NO.133 OF 2015

- 1 Vikram Davendra Ahuja**
Adult, of Mumbai, Indian inhabitant,
residing at Flat Nos.252/253,
Maker Tower “B”, 25th Floor,
Near World Trade Centre,
Cuffe Parade, Mumbai – 400 005.
- 2 Nikunta Vikram Ahuja,**
Adult, of Mumbai, Indian inhabitant,
residing at Flat Nos.252/253,
Maker Tower “B”, 25th Floor,
Near World Trade Centre,
Cuffe Parade, Mumbai – 400 005. Appellants

V/s

- 1 Tania Vijaysingh Deol**
Adult, of Mumbai, Indian inhabitant,
residing at Plot No.22,
Road No.11, JVPD Scheme,
New India Society, Mumbai – 400 049.
- 2 Aryamansingh Vijaysingh Deol,**
A minor by his next friend
Tania Vijaysingh Deol,
residing at Plot No.22,
Road No.11, JVPD Scheme
New India Society, Mumbai – 400 049.
- 3 Dharamsingh Vijaysingh Deol,**
A minor by his next friend
Tania Vijaysingh Deol,
residing at Plot No.22,
Road No.11, JVPD Scheme
New India Society, Mumbai – 400 049.

- 4 Marlene Davendra Ahuja**
Adult, of Mumbai, Indian inhabitant,
permanently residing at
residing at Flat Nos.252/253,
Maker Tower “B”, 25th Floor,
Near World Trade Centre,
Cuffe Parade, Mumbai – 400 005
and presently residing at
Plot No.22, Road No.11, JVPD Scheme
New India Society, Mumbai – 400 049.
- 5 Ravi Kiran Aggarwal,**
Adult, of Mumbai, Indian inhabitant,
residing at Villa Orb,
18th Floor, Darabsha Lane,
Opp. Palm Beach School,
Off. Nepean Sea Road,
Mumbai – 400 036.
- 6 Subhash Chandra Nandkishore Goenka**
Adult, of Mumbai, Indian inhabitant,
residing at B-1, Jolly Market Apartment No.1,
Opp. World Trade Centre, Cuffe Parade,
Mumbai – 400 005.
- 7 Tax Recovery Officer (Central Range III),**
Department of Income Tax,
Old CGO Annexe, 10th Floor,
Maharishi Karve Road,
Mumbai – 400 020. Respondents

WITH
NOTICE OF MOTION (L) NO.6 OF 2016
IN
APPEAL (L) NO.1 OF 2016

Vikram Davendra Ahuja & Anr. Applicants

IN THE MATTER BETWEEN

Vikram Davendra Ahuja & Anr. Appellants

V/s

Tania Vijaysingh Deol & Ors. Respondents

Mr. Navroz Seervai, Senior Counsel, Mr. Rajiv Narula i/b M/s. Jhangiani Narula & Associates for the Applicants/Appellants.

Mr. Venkatesh Dhond, Senior Counsel a/w Mr. Ashish Kamat & Mr. Kunal Mehta, Mr. Gaurav Shah, Ms. Heena Daulat and Mr. Aditya Mehta i/b M/s. Negandhi Shah & Himayatullah, for the Respondent Nos. 1 to 3.

Ms. Yasmin Bhansali i/b M/s. Yasmin Bhansali & Co. for Respondent No. 5.

Mr. Ganesh Ambekar a/w Mr. Rajendra Jain i/b M/s. Thakore Jariwala & Associates, for Respondent No. 6.

Mr. P. C. Chhotary for Respondent No.7-Income Tax Department.

Mr. A.S. Tamannawar, Section Officer for Court Receiver is present.

CORAM : A.S. OKA &

A.A. SAYED, JJ.

DATED : 07 JUNE 2016

ORAL JUDGMENT (PER A.S. OKA, J.):

1 The submissions of the learned Counsel representing for the parties were heard yesterday.

2 The challenge in this Appeal is to the order dated 7 December 2015 passed by the learned Single Judge on Notice of Motion No.189 of 2015 in a pending suit. The Notice of Motion was taken out by the first to third Respondents herein, who are the Plaintiffs.

3 With a view to appreciate the submissions canvassed across the bar, a brief reference to the facts of the case will be necessary.

4 The present Appellants are the first and second Defendants. They are husband and wife. For the sake of convenience, we are referring to the parties with reference to their status before the learned Single Judge. Mr. Davendra Ahuja was the father of the first Plaintiff and the first Defendant. We are referring to the said Davendra Ahuja as “the father”. The third Defendant is the widow of the Davendra Ahuja. We are referring to the third Defendant as “the mother”. The second and third Plaintiffs are the minor children of the first Plaintiff. The fourth Defendant is one of the two Executors appointed under the Will of the father. The fifth Defendant has been subsequently appointed as the Executor alongwith the fourth Defendant.

5 In the Suit, interalia, a relief is claimed of a decree of possession in respect of Flat Nos.252 and 253 on 25th Floor, Maker Tower 'B', Cuffe Parade, Mumbai 400 005 (for short “the suit flats”) and garage No.B-2D in the compound of the building. The case made out in the plaint is that the father was the owner of 2/3rd undivided share in the suit flats and the mother was the owner of remaining 1/3rd share.

6 It is pleaded in the plaint that the relationship between the father on one hand and the first to third Defendants and his other daughter Ms. Munisha was strained. It is alleged that the first and second Defendants had a particularly acrimonious relationship with the father.

On 20 August 2010, the father expired. Reliance is placed by the Plaintiffs on the alleged last Will of the father under which one Mr.Rohan Hemochand Jhaveri and fourth Defendant-Mr.Ravi Agarwal were appointed as the Executors. It is alleged in the plaint that for the reasons recorded in the Will, the first Defendant was disinherited. The claim made by the Plaintiffs is that the father bequeathed his undivided 2/3rd share in the suit flats to the second and third Plaintiffs. It is alleged that the father bequeathed his remaining assets to the first Plaintiff. The Will set up by the Plaintiffs' father is dated 20 February 2008.

7 It appears that subsequently there was a dispute between the first and second Defendants on one hand and the mother on the other hand. It is claimed that the mother was evicted from the suit flats.

8 It is alleged that there are large dues of income tax payable by the deceased father. Reliance is placed on registered Gift Deed dated 22 January 2011 executed by the mother by which she purported to gift her undivided 1/3rd share in suit flats to the first Plaintiff.

9 The case made out in the Plaint is that the first and the second Defendants have no right to occupy the suit flats. Notice dated 13 May 2011 was issued by the first Plaintiff through his Advocate to the first and second Defendants calling upon them to hand over peaceful possession

of the suit flats. Notice was replied by the first and second Defendants through their Advocate on 26 May 2011 contending that the suit flats were owned by Hindu Undivided Family of the father and they pleaded ignorance about the will and the gift relied upon by the Plaintiffs. As the first and second Defendants failed to vacate the suit flats, the present suit has been filed by the Plaintiffs for a declaration that the first and second Defendants have no right, title and interest in respect of the suit flats and that the Plaintiffs have become owners of the suit flats. Mandatory injunction was sought enjoining the first and second Defendants to hand over the vacant possession of the suit flats to the Plaintiffs. There are other consequential prayers made in the suit.

10 The Notice of Motion on which the impugned order has been passed was moved before the learned Single Judge on 22 January 2015 for grant of ad-interim relief. By an order passed on the same day, the learned Single Judge granted ad-interim injunction/relief against the first and second Defendants restraining them from selling the suit flats and creating any third party rights in respect of the suit flats. In the event of the first and second Defendants raising the issue of jurisdiction, a liberty was granted by the learned Single Judge to move the Court for further ad-interim relief. Notice of Motion was ordered to be listed for final hearing on 18 February 2015.

11 It appears that after a preliminary issue of jurisdiction was raised by the first and second Defendants by invoking section 9-A of the Code of Civil Procedure, 1908 (for short 'the Code'), the Plaintiffs moved the said Notice of Motion for grant of further ad-interim relief on 27 July 2015. The learned Single Judge permitted them to carry out the amendment to the Notice of Motion. By further order dated 5 August 2015, the learned Single Judge fixed Notice of Motion on 17 August 2015 for considering the prayer for grant of further ad-interim relief.

12 By the impugned order, the learned Single Judge granted further ad-interim relief. The learned Single Judge, by the impugned order appointed the Court Receiver, High Court, as the Receiver of the suit flats with a direction to the Court Receiver to appoint the first Defendant as his agent to occupy the suit flats on payment of royalty but without any security and on other usual terms including undertaking and indemnity to be executed by both the first and the second Defendants. A direction was issued to the first Defendant to deposit the Agreement for Sale dated 19 April 1985 and the share certificate issued by the Society in respect of the suit flats with the Court Receiver. The Court Receiver was directed to fix the royalty on the basis of the Leave and License compensation that the suit flats can fetch in the market. The learned Single Judge fixed the matter for the hearing on preliminary issue of

jurisdiction under section 9-A of the Code. The learned Judge continued the ad-interim order dated 22 January 2015.

13 By an order dated 11 January 2016, a Division Bench of this Court directed that the Appeal shall be disposed of at the stage of admission and a limited ad-interim relief was granted directing the Court Receiver to take symbolic possession of the suit flats. However, a direction was issued to the Court Receiver not to finalize the amount of royalty payable by the first and second Defendants.

14 The learned Senior Counsel appearing for the first and second Defendants in support of the Appeal, invited our attention to the ad-interim order dated 22 January 2015 passed by the learned Single Judge on the said Notice of Motion. He invited our attention to the paragraph 3 of the said order and submitted that the said order specifically records that the relief as regards the appointment of Court Receiver in respect of the suit flats can be considered at the time of final hearing of the Notice of Motion. He urged that the learned Single Judge was of the view that at ad-interim stage, the grant of injunction against the first and second Defendants was sufficient. He submitted that only on the basis of liberty granted by clause (ii) of paragraph 3 of the said order, it was not open for the Plaintiffs to apply for further ad-interim relief/s of the appointment of the Court Receiver as there was already a

direction issued to consider the said prayer at the time of the final hearing of the Notice of Motion. It is contended that the prayer for appointment of the Court Receiver could be considered only at the stage of final hearing. He submitted that the order dated 22 January 2015 has attained finality. He pointed out that though it was not open for the Plaintiffs to pray for ad-interim relief of the appointment of the Court Receiver, by the impugned order, the learned Single Judge not only appointed the Court Receiver but has directed the first Defendant to pay royalty for occupying the suit flats as an agent of the Court Receiver. He pointed out that the royalty has been directed to be fixed on the basis of the leave and license compensation. He submitted that admittedly the first and second Defendants have been occupying the suit flats for last 28 years and, therefore, it is unjust to direct them to pay royalty at market rate. He invited our attention to the Affidavit-in-Reply filed by the first and second Defendants relying upon a family arrangement. He invited our attention to the averments made in paragraph 8 of the Affidavit-in-Reply. He pointed out the stand taken that the father had constituted a Hindu Undivided Family (HUF). He pointed out that as per the family arrangement arrived at in the year 2003 between the first Defendant, the mother and father, it was decided that the suit flats will be of his exclusive ownership and the mother will have a life interest to occupy the same along with the first Defendant. He pointed out that the family

arrangement provided that the HUF property at Kailas Colony be sold and the sale proceeds thereof will be given to the first Plaintiff. In addition to the sale proceeds, the father had agreed to give a gift of Rs.15 crores to the first Plaintiff as suit flats were to be allotted to the first Defendant. He pointed out that there is a material placed on record to show that between 5 September 2003 to 14 October 2009, the first Plaintiff received the gift of Rs.14,01,00,000/- from the deceased father as per the family arrangement. In the Affidavit, the first Defendant has stated that Kailash Colony property was sold in August 2003 and that the sale proceeds thereof paid to the first Plaintiff. He submitted that apart from the setting out the details of the family arrangement, there was enough material placed on record to show that large amounts were paid by the father to the first Plaintiff on the basis of the family arrangement. He pointed out that the Suit (L) No.1212 of 2015 was subsequently filed by the first Defendant against the Plaintiffs and mother. The first Defendant produced Affidavits of two independent witnesses namely, Shri Ravi Iqbal Singh Ghai and Shri Arun Sawhney in the said suit. He pointed out that both the independent persons deposed in support of the family arrangement pleaded by the first and second Defendants. He invited our attention to the reasons recorded by the learned Single Judge while dealing with the said two Affidavits. His submission is that there was no reason at ad-interim stage to discard the said two Affidavits. He

invited our attention to the findings recorded by the learned Single Judge in the impugned order. He submitted that though there was enough material on record to show that the family arrangement was acted upon, the learned Single Judge rejected theory of family arrangement on the ground that the same was not credible. He urged that considering the defence pleaded of the family arrangement and considering the prima-facie material produced by the first and second Defendants, while deciding the prayer for ad-interim relief, the reliance placed on family arrangement could not have been rejected. He submitted that as far as alleged income tax dues of the deceased father are concerned, there are other large properties of the father both movable and immovable which are available and, therefore, the dues can be realized from sale proceeds. He pointed out that in any event, the learned Single Judge has made it clear that the Income Tax Department can always proceed in accordance with law. He submitted that apart from the fact that the learned Judge could not have considered the prayer for further ad-interim relief on merits, there was no reason to discard the family arrangement and to pass such a drastic ad-interim order. He submitted that the first Defendant will not be in a position to pay the royalty fixed at the market value and, therefore, the impugned order will result in eviction of the first and second Defendants from the suit flats though they have been occupying the suit flats for last 28 years.

15 The learned Senior Counsel appearing for the Plaintiffs urged that by a raising frivolous contention of the bar of suit, the hearing of the Notice of Motion has been prolonged and that is why the learned Single Judge was justified in passing an order granting further ad-interim relief. The learned Counsel representing the Income Tax Department relied upon the Affidavit of Mr. Ameeta A. Lad, Tax Recovery Officer-17, Mumbai and submitted that though the outstanding demand is of more than Rupees four crores exclusive of interest and penalty, only a sum of Rs.5,47,492/- could be recovered by the Income Tax Department. The learned Senior Counsel appearing for the Plaintiffs states that subsequent to filing of the Affidavit, a sum of Rs.85,00,000/- has been recovered. He stated that the total amount payable to the Income Tax Department is approximately Rs.7 crores. Learned Senior Counsel appearing for the original Plaintiffs submitted that on one hand the tax dues are mounting, and on the other hand the first and second Defendants continue to occupy the suit flats without payment of any amount.

16 We have carefully considered the submissions. The first question is whether the Plaintiffs could have pressed for the grant of further ad-interim relief of appointment of the Court Receiver and whether learned Single Judge could have considered the said prayer in the light

of the observations made in the paragraph 3 of the order dated 22 January 2015. For that purpose, it will be necessary to make a reference to the said order passed by the learned Single Judge. We may note here that the suit was lodged on 16 January 2015 and immediately thereafter, on 22 January 2015, the learned Single Judge was moved for grant of ad-interim relief in the Notice of Motion. Paragraph 3 of the said order reads thus:

“3. The Plaintiff has today made an ad-interim application seeking appointment of Court Receiver in respect of the suit flats and also for an injunction restraining the Defendant Nos.1 and 2 from selling, alienating, encumbering, parting with possession an/or creating third party rights in respect of the suit flats. In my view, the relief as regards appointment of Court Receiver in respect of the suit flats can be considered at the time of the final hearing of the Notice of Motion. At this stage an injunction restraining the Defendant Nos. 1 and 2 from creating third party rights in respect of the suit flats will protect the rights/interest if any of the Plaintiff and Defendant no. 3 in the suit flats. Hence I pass the following ad-interim order:

- (i) The Defendant Nos. 1 and 2 are restrained by an order and injunction of this Court from selling, alienating, encumbering, parting with possession an/or creating third party rights in respect of the suit flats, more particularly described in Exhibit “A” to the Plaint;*
- (ii) In the event of the Defendant Nos. 1 and 2 contending that this Court has no jurisdiction to entertain and/or try this*

suit, the Plaintiff shall be entitled to move this Court for further ad-interim relief/s.

(iii) *The Defendants shall file their affidavit in reply on or before 2nd February, 2015. Rejoinder, if any, be filed by the Plaintiff on or before 13th February, 2015.*

(iv) Place the above Notice of Motion for hearing and final disposal on 18th February, 2015, subject to numbering.”

(underlines supplied)

17 It is true that in paragraph 3, learned Single Judge observed that according to him, at that stage, grant of injunction against the first and second Defendants was sufficient and the prayer for appointment of Court Receiver can be considered at the time of final hearing of the Notice of Motion. However, clause (ii) of the operative part of the order makes it very clear that if a preliminary issue of jurisdiction under section 9A of the said Code is raised, the Plaintiffs shall be entitled to move for grant of further ad-interim relief. The reason for grant of liberty was obvious. In view of the mandate of section 9A of the said Code, an Application for grant of interim relief cannot be finally decided unless the preliminary issue framed in accordance with sub section (1) of section 9-A of the said Code is decided. It cannot be disputed that the hearing and disposal of the preliminary issue takes a long time and that is the reason why the learned Single Judge specifically observed that in the event a preliminary issue of jurisdiction is raised by the Defendants, the Plaintiffs can apply for grant of further ad-interim relief. Therefore, in view of the

liberty granted by the learned Single Judge, as the first and second Defendants admittedly raised a preliminary issue of jurisdiction under section 9-A of the said Code, the Plaintiffs could have always moved the Court for grant of further ad-interim relief of appointment of the Court Receiver and other prayers which were already a part of the Notice of Motion. We may note here that the preliminary issue of jurisdiction is not yet decided and therefore, the Notice of Motion cannot be heard finally which was to be heard on 18 February 2015.

18 On merits, the case of the Plaintiffs was resisted by the first and second Defendants by relying upon a family arrangement of 2003 which is pleaded in paragraph 8(e) of the Affidavit-in-Reply to the Notice of Motion. The said Defendants claimed to have become the owner of the suit flats on the basis of the family arrangement. At this stage, we may note that before filing the suit, the Advocate for the Plaintiffs issued a Notice dated 13 May 2011 calling upon the Defendants to vacate the suit flats on the basis of allegation that the gratuitous use and occupation of the suit flats by the first and second Defendants has been terminated. There was a Reply issued by first and second Defendants through their Advocate on 26 May 2011. In the said Reply, the first and second Defendants disputed the claim of the Plaintiffs that the father had 2/3rd share in the suit flats and the mother had 1/3rd share in the suit flats. In

paragraph 8, a specific contention was raised by the first and second Defendants that there is no writing or family arrangement or any document showing that the shares of the father and mother were $\frac{2}{3}^{\text{rd}}$ and $\frac{1}{3}^{\text{rd}}$ respectively. We must note here that admittedly there is no reference whatsoever in the said Reply dated 26 May 2011 to the existence of any family arrangement which was subsequently pleaded by the first and second Defendants by way of filing of Reply dated 16 February 2015 to the Notice of Motion.

19 In paragraph 19 of the said Reply to the suit notice, a specific contention was raised that the suit flats were the properties of the Hindu Undivided Family of the father and even assuring that there was a Will executed by the father, a bequest could have been made by him only in respect of his undivided share in the Hindu Undivided Family property. While giving the Reply to the Notice dated 13 May 2011, an opportunity was available to the first and second Defendants to plead the existence of the alleged family arrangement. However, the said Defendants did not plead the existence of any such family arrangement. In fact, their Reply states that there was no family arrangement and the suit flats continued to be HUF property. There is no explanation given by the first and second Defendants as to why such a family arrangement was not pleaded in the Reply to the suit notice. It is necessary to consider the worth of the stand

taken in the Reply dated 16 February 2015 filed by the first Defendant to the Notice of Motion. Nearly four years after sending the Reply to the suit notice, for the first time, a stand was taken by the first Defendant of the existence of a family arrangement. In paragraph 8 of the Affidavit-in-Reply, a specific stand was taken that there was a family arrangement in the year 2003. The family arrangement was pleaded in clauses (e) and (f) of paragraph 8 of the said Affidavit-in-Reply which reads thus:

“8.e) I say that in or about 2003, with regard to part distribution of family properties, a Family Understanding was arrived at between me, my mother and my father which was duly informed to the Plaintiff in the following terms:

- (i) That I along with my family will continue to stay in the Suit flat and the Suit flat will belong to me and my mother will have life interest in the same. It was further agreed that my mother, the Defendant No.3 will not sell, transfer or create third party rights in respect of her interest in the said flat;*
- ii) That the mother Marlene Davendra Ahuja (Defendant No.3) has been continued to stay with me and I was given responsibility to look after my mother.*
- iii) Co-parcenary property situate at “Kailash Colony” would be sold and sale proceeds thereof would be given to the Plaintiff. In addition to the sale proceeds of Kailash Colony Property, my father had agreed to give gift of Rs.15,00,00,000/- (Rupees Fifteen Crores only) to the Plaintiff in view of allotment of the Suit Flat to me.*
- f) I say that when the above family understanding of 2003 was arrived at between me and my father and my mother, one*

Mr. Ravikiran Agarwal who is named as the Executor in the alleged Will of my father dated 20th February 2008 was also present. I say that the said Mr. Ravikiran Agarwal is the Chairman of a company named M/s. Orbit Corporation Ltd. And my father was also on the Board of Directors of the said company by reasons of which, my father and the said Mr. Ravikiran Agarwal shared close business relations.”

20 Thus, the plea of family arrangement was belatedly pleaded by the first and second Defendants. In fact the said plea was clearly an after-thought. In Suit (L) No.1212 of 2015 subsequently filed by the first Defendant on 5 November 2015, a reliance was placed on Affidavits of Shri Rav Iqbal Singh Ghai and Shri Arun Sawhney. In the said Affidavits of these two persons, it was claimed that the said two witnesses were aware of the family arrangement pleaded by the first Defendant. In the Reply dated 16 February 2015 to the Notice of Motion, there is not even a reference to both the said persons. There is one more important aspect which needs to be considered. A copy of Suit (L) 1212 of 2015 filed by the first Defendant on 5 November 2015 is placed on record. It is necessary to make a reference to the averments made in paragraph 3 of the plaint. In clause (C) of the paragraph 3, the first Defendant came out with the specific case that deceased father was the owner of 2/3rd share in the suit flats. While issuing a Reply to the suit notice in the present suit, this fact was disputed by the first Defendant. In the suit filed by the first Defendant, a reliance is placed on the alleged family arrangement of

2003 as pleaded in the Affidavit in Reply filed in the suit present suit. However, for the first time in the said suit, it was pleaded that family arrangement was arrived at in presence of Shri Ravikiran Agarwal. In the Reply filed in the present Suit on 16 February 2015, the first Defendant did not state that the family arrangement was arrived at in the presence of the said Ravikiran Agarwal. The first Defendant pleaded in subsequently filed suit that one Mr. Arun Sawhney was aware of the family arrangement. This fact was also not pleaded in the Affidavit-in-Reply in the present suit. Therefore, prima facie, the stand taken by the first Defendant in the Reply to the present Notice of Motion about the existence of family arrangement cannot be believed at all. If there was really a family arrangement, that would have been first defence in the Reply to the suit notice issued by the first and second Defendants through their Advocate way back in the year 2011. As stated earlier, the names of two persons who were allegedly aware of the family arrangement were disclosed for the first time in the subsequently filed suit by the first Defendant. Surprisingly the said names are not disclosed in the Reply to the Notice of Motion. Therefore, the copies of the Affidavit of these two persons filed in the subsequent suit were not rightly relied upon by the learned Single Judge in the present Suit while passing the impugned order. Moreover, in the Reply to the suit notice, the first Defendant disputed that the father was having 2/3rd share in the suit

flats. In fact, in the Reply to the notice as well as in the Reply filed to the Notice of Motion, the first Defendant contended that the suit flats were a part of the assets of the Joint Hindu Family. In the suit subsequently filed by the first Defendant, he accepted that the father was having 2/3rd share in the suit flats. In the subsequent suit as well as in the Reply filed in the present suit, the first Defendant relied upon the fact that the first Defendant was made a nominee by the father in respect of the membership of the Society in relation to the suit flats. Subsequently the nomination was revoked. The first Defendant has himself annexed to the Affidavit-in-Reply to the Notice of Motion a copy of letter dated 8 November 2006 addressed to him by the father. The second and third paragraphs of the said letter read thus:

"I wish to inform you that I had nominated you as my nominee for my portion of 252/253 Maker Tower B premises as I was hospitalized to undergo bypass surgery in the second week of December 2003. By your good wishes and the support given by you, your mother, your wife and Munisha as well as the wishes of everybody, I have recuperated well and I am leading a healthy and normal active life for last three years.

Accordingly, I feel that there is no necessity to continue the nomination given in your favour. In view of the above, please note that by this letter I am revoking my nomination in your favour for my portion of 252/253 Maker Tower B premises and I am informing the Secretary of Maker Towers Society, accordingly."

21 Thus, way back on 8 November 2006, the father had asserted that he was the owner of a portion of the suit flats and he had nominated the first Defendant as his nominee in respect of his portion. The first Defendant never disputed the ownership of the father in respect of a part of the suit flats. Ownership was sought to be disputed for the first time by sending a Reply to the suit notice in the year 2011 by contending that the suit flats were part of the assets of the Hindu Joint Family.

22 On the other hand, the Plaintiffs have produced a copy of Agreement of Sale dated 19 April 1985 executed by the erstwhile owner of the suit flats jointly in favour of the father and the mother. The Plaintiffs have also produced a copy of the share certificate issued by the Society in the joint names of the father and mother. Copies of Income tax returns from the assessment year 1986-87 were filed on record showing that consistently the father claimed to be the owner of the $\frac{2}{3}$ rd share and the mother claimed to be the owner of the $\frac{1}{3}$ rd share. The first Defendant made an endeavor to dispute even the joint ownership of father and the mother by contending that the suit flats were a part of the assets of the Hindu Undivided Family.

23 We have already held that there were more than sufficient reasons to discard the plea of the family arrangement. The plea of family

arrangement is based on the contention that the suit flats are the assets of the Hindu Undivided Family. There is one more important aspect of the plea of the alleged family arrangement. The family arrangement, according to the first Defendant, provided that he became the owner of the suit flats but the mother was to have a life interest in the suit flats. Moreover, even according to the first Defendant, the family arrangement provided that the mother would continue to stay in the suit flats and that the first Defendant was responsible to look after the mother. Admittedly, the mother is not residing with the first and second Defendants in the suit flats from the year 2010 onwards. It is not the case of the first Defendant that from the year 2010, he paid any amounts to the mother for her maintenance or any attempt was made by the first and second Defendants to ensure that the mother comes back and stays with them. Even assuming that there was a family arrangement, the first Defendant has not acted upon the same. He has not looked after the mother and that the mother has not stayed with him right from the year 2010.

24 The Plaintiffs are relying upon a registered gift deed executed by the mother in the year 2011 by which she gifted her 1/3rd share to the first Plaintiff. There is a strong prima facie evidence on record to support the plea that the mother had 1/3rd share in the suit flats. Thus, prima facie, the first Plaintiff has become the owner of 1/3rd share in the suit flats. The Plaintiffs are relying upon the last Will and Testament of the father

under which a bequest of his $\frac{2}{3}$ share of the suit flats was made in favour of the second and third Plaintiffs who are the grand children of the father. An Application for grant of probate in respect of the said Will is pending. Even if the Will is ignored, as per the law of intestate succession, the first Plaintiff has $\frac{1}{4}$ th share in the undivided share of the father and the mother has $\frac{1}{4}$ th share. Hence, the share of first Plaintiff in suit flats will be $\frac{1}{3}$ rd (under the gift) plus $\frac{1}{6}$ th ($\frac{1}{4}$ th of $\frac{2}{3}$ rd) i.e. $\frac{1}{2}$. She will also get undivided share of the mother in the $\frac{2}{3}$ rd share of the father. The share of the first Defendant will be only $\frac{1}{6}$ th.

25 Considering the conduct of the first Defendant and considering the inconsistent stand taken by the first Defendant that the learned Single Judge has passed an order appointing the Court Receiver without disturbing the possession of the first and second Defendants. This was done after recording a prima facie finding regarding the failure of first and second Defendants to prove the existence of a family arrangement. Prima facie, there is more than sufficient evidence on record to show that suit flats were never a part of the assets of Hindu Undivided Family and in fact, the father had $\frac{2}{3}$ rd share in the suit flats and the mother had $\frac{1}{3}$ rd share in the suit flats. The first Defendant has not looked after the mother and she is not allowed to stay in the suit flats. We may note here that even as of today, the hearing on the preliminary issue of jurisdiction has not commenced.

26 At this stage, we may also make a reference to the stand taken by the Income Tax Department by filing a Reply to the Notice of Motion. The stand is that there is an outstanding demand of income tax of Rs.4,05,31,247/- exclusive interest under section 220(2) of the Income Tax Act, 1961 against the father. Going by the submissions made by the learned Counsel appearing for the Income Tax Department, even 25% of the principal amount has not been recovered. The total dues are of approximately Rs.7 crores. Thus, there is a prima facie material on record to show that there are income tax dues of the deceased father. The first Defendant continues to occupy the suit flats for several years without making any payment whatsoever.

27 Considering the fact that the final hearing of the Notice of Motion will be considerably delayed as the preliminary issue is yet to be heard, we find nothing wrong with the further ad-interim order passed by the learned Single Judge. According to us, the order is an equitable order. In Appellate jurisdiction, it is not possible to interfere with the said discretionary and equitable order of ad-interim relief passed by the learned Single Judge. The impugned order is based on consideration of material on record. There is no perversity. The order seeks to protect interests of all the parties.

28 The grievance of the first and second Defendants is that it is likely that a very high royalty amount will be fixed, and, therefore, if they are unable to pay the same to the Court Receiver, though they are occupying the suit flats for more than 28 years, they will be evicted. If the first and second Defendants are aggrieved by the quantum of the amount fixed by way of royalty, he can always move learned Single Judge for grant of an appropriate relief.

29 Subject to what is observed above, no case for interference is made out. Accordingly, the Appeal is dismissed. Pending Notice of Motion does not survive and the same is disposed of.

30 At this stage, the learned Counsel appearing for the first and second Defendants prays for continuation of ad-interim relief under order dated 11 January 2016. The said prayer is opposed by the learned Senior Counsel appearing for the original Plaintiffs.

31 Considering the fact that the ad-interim relief is operative from 11 January 2016, we direct that the same ad-interim relief will continue to operate for a period of eight weeks from today.

(A.A. SAYED, J.)

(A.S. OKA, J.)