

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

**NOTICE OF MOTION NO.1871 OF 2016
IN
SUIT NO.2548 OF 2010**

Nirmalaben K. Parekh & Anr.Applicants/Plaintiffs

V/s.

Gautam D. Parekh & Ors.Defendants

And

Divyakant Mehta & Anr.Respondents

Mr. Amit S. Potnis i/b. M/s. Tamhane & Co. for the plaintiffs.

Dr. Birendra Saraf a/w. Mr. Akshay Naik i/b. Argus Partners for the defendant nos.1A to 1C.

Mr. Bipin Joshi for the respondent no.2.

CORAM : K.R.SHRIRAM,J

DATE : 1st AUGUST, 2016

P.C.:-

1 Mr. Bipin Joshi, counsel appearing for the respondent no.2 states that the person who is shown as respondent no.2 expired sometime in 2005 and they had informed the same to the plaintiffs. The counsel for the respondent no.2 states that there are only two legal heirs of respondent no.2 and he will provide the names of the legal heirs of respondent no.2 during the course of today to the advocate for the plaintiffs.

2 Leave to amend the cause title of notice of motion is granted. The amendment to be carried out forthwith.

3 The relief being sought in the notice of motion is the subject matter of the partition suit between family members. Pursuant to orders of this court, room no.1 of which respondent no.2 is the tenant, was locked and the key was kept with respondent no.1, who is an advocate practicing in this court, as Escrow Agent. This application is taken out because rest of the property has been measured and only this room no.1 requires to be measured to decide whether the property can be distributed by metes and bounds.

4 Dr. Saraf, counsel appearing for the defendant nos.1(a) to 1(c) states that at some stage the lock of room no.1 was found to have been broken and pursuant to a complaint filed by respondent no.2 with the police, the defendants got a new lock placed on room no.1 and the key was given to respondent no.1, the Escrow Agent. The petition for quashing the FIR filed by respondent no.2 is pending in this court.

5 Therefore, it would meet the interest of justice, if order as under is passed since what is prayed for in this motion is only for taking measurement of room no.1 and nothing more. Therefore, the following order is passed :-

“(a) the respondent no.1 to remain present on 20th August, 2016 at 5.00 p.m. with the key of room no.1 and open the room for measurement of the room;

(b) on the same date, the respondent no.2(a) and 2(b) shall also remain present at the venue;

(c) the plaintiffs and the defendants representatives shall also remain present on the aforesaid date and time;

(d) the Prothonotary and Senior Master to depute somebody from the Associates of this court on 20th August, 2016 at 5.00 p.m. to ensure that only measurement of room no.1 takes place and to file a report thereto.

(e) the fees for the visit and to file a report is fixed at Rs.5000/- plus travel expenses. This amount to be shared 2/3rd by the plaintiffs and 1/3rd by the defendant nos.1(a) to 1(c).

(f) after the measurement is completed, respondent no.1 to lock the premises and retain the key with him.

6 It is made clear that the above mentioned date and time has been fixed as requested by the parties.

7 The notice of motion accordingly stands disposed with no order as to costs.

(K.R.SHRIRAM,J)