

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

SUIT NO. 2936 OF 2006

Kamal Manilal Doshi & 2 Ors.	.. Plaintiffs
Vs.	
Manilal Sundarji Doshi & 6 Ors.	.. Defendants

Mr.Surin Usgaonkar for plaintiffs.

Mr.Farhan Dubash i/b Ms. Mulla and Mulla & Craigie Blunt & Caroe for defendant no.2.

**CORAM : K.R.SHRIRAM, J.
DATE : 29TH JUNE, 2016**

P.C.

1 Following the hearing held on 24th June 2016, Shri Usgaonkar, counsel appearing for the plaintiffs states that plaintiff nos.2 and 3 are ready and willing to withdraw the suit whereas plaintiff no.1 is not inclined.

2 Shri Dubash, counsel for defendant no.2 states that the prayers sought in the plaint have become infructuous and there is no need to keep the suit pending. The counsel further submits that the suit, so far as plaintiff no.1 is concerned, should be dismissed. Shri Dubash submits :

(a) prayer clauses (a) to (e) are infructuous since this Court, pursuant to a judgement pronounced on 7th March 2013 in Testamentary Suit No.7 of 2007, has held that Vilas Gauri Manilal Doshi had left behind a Will and the

Will has been probated. Shri Usgaonkar agrees with this. It is also stated that no Appeal has been filed and this judgement has become final. In the circumstances, prayer clauses (a) to (e) are infructuous.

(b) As regards prayer clause (f), Shri Dubash states that the Ujam Vilas Trust was formed by the parents of the plaintiffs and defendant nos.2, 3 and 4 in 1971 and the beneficiaries were six children. In prayer clause (f), the plaintiffs are primarily seeking to remove defendant nos.1 to 4 and/or such of them who are Trustees of Ujam Vilas Trust and the plaintiffs and/or other fit and proper persons be appointed as the Trustees and the said Trust, distribution of income etc.etc.

3 Shri Dubash submits that the Trust presently has no trustee. Shri Dubash submits that the Trust has no property in its name and is not generating any income. He also submits that the only property that the plaintiffs claim the trust had, was actually in the Benami name of the mother, but actually the property belonged to the father. Shri Usgaonkar does not contest these factual positions. In fact, Shri Dubash states that the father (deceased), who was defendant no.1, has in his Affidavit of Disclosure dated 9th April 2007 in this suit itself, pursuant to the orders passed by this Court, has confirmed the above facts. Shri Dubash also submits that all the assets belonging to the father is a subject matter of the

Testamentary Suit No.66 of 2015. Shri Usgaonkar also agrees with the same.

4 In the circumstances, in my view, nothing survives in prayer clause (f) as well. It is open for the plaintiffs to agitate the issue regarding the property which was in the name of the father in Testamentary Suit No.66 of 2015.

5 In view of the above, nothing remains in this suit. The suit, therefore, dismissed.

6 Interim application, if any, does not survive and accordingly disposed of.

Interim order, if any, stands vacated.

(K.R. SHRIRAM, J.)