

JSN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.2654 OF 2016
IN
SUIT (L) NO.895 OF 2016

Udayraj Chandanmal ...Plaintiff
Versus
Mr. Ghisulal Punamchandji Munot and ...Defendants
others.

Mr. Akshay Patil, *i/b Mayur Thorat for the Plaintiff.*
Mrs. Kavita Ambekar, *Ind Assistant to Court Receiver present.*

CORAM: G.S. PATEL, J
DATED: 16th September 2016

PC:-

1. The Court Receiver appointed in Suit No.4411 of 1985 filed in the City Civil Court *inter alia* in respect of the property situate at Survey No.1A, 221 (Part) City Survey No.587, 587/1 to 587 /11 of Taluka Kurla, Mumbai suburban District is continued till 14th October 2016.
2. That City Civil Court Suit was dismissed by an order dated 22nd June 1999. However that dismissal was only because the

Plaintiff in that Suit and his Advocate were absent on that date. It is not disputed that the present Plaintiff was the Defendant No.7 in the Suit, which was for partition. In such a suit, every party is a plaintiff and every party is a defendant. The Receiver, however, was not discharged on that day. He came to be discharged by the City Civil Court only on 4th April 2016 on separate application made for that purpose and of which the present Plaintiff was given no notice. It is for this reason that the Court Receiver is continued by today's order.

3. I note for the record the statement made by the Plaintiff that, after 4th April 2016, the contesting Defendants have purported to commence development of the property contrary to law and in defeasance of the present Plaintiff's rights.

4. I see no reason why the Plaintiff should have to move this Court in a fresh Suit when a partition suit *inter alia* in respect of this very property was already filed in the City Civil Court. In my view, it is neither proper nor permissible for a defendant in a partition suit which was dismissed for whatever reason to simply file a fresh suit for exactly the same reliefs. Being a partition suit, he was as much a plaintiff as the person who filed that suit. The present plaintiff, as Defendant No.7 to that suit in the City Civil Court, should move that Court for restoration of that suit and for continuation of the ad-interim relief. Otherwise, if such a practice is permitted, it will lead to an endless multiplicity of proceedings.

5. The present Plaintiff must therefore move the City Civil court for the restoration of that City Civil Court Suit No.4411 of 1985; for an order continuing the Receiver and for the grant of injunction. This application (or applications if more than one) will be decided on its (or their) own merits. Undoubtedly, the present Defendants will have to be served and given notice. I am confident that the City Civil Court will approach the matter in the correct perspective and, in particular, address itself to the question of whether a partition suit in which both sides are equally claimants should ever be allowed to be summarily dismissed for non-appearance of the plaintiff and his advocate. Such a partition suit may yet be pursued by a defendant. There is also no doubt that the City Civil Court will have to carefully consider the delay on the part of the present Plaintiff (defendant No. 7 before the City Civil Court) in bringing the application for restoration, receiver and injunction.

6. I must note that the present Defendants are unrepresented today though served. Defendant No.9 has refused service. The son of 1st Defendant is, however, present in Court. He has not engaged Advocates.

7. On this basis, the present suit is dismissed as withdrawn. There will be an order of refund of the full Court Fee.

8. The Court Receiver will make a report of the present status on site and place that report before the City Civil Court.

9. In view of this, the Notice of Motion does not survive and is disposed as infructuous.

(G. S. PATEL, J.)