

JSN

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COURT RECEIVER'S REPORT NO.246 OF 2011
IN
SUIT NO.2471 OF 1984**

Jitendra N. Trivedi	... Plaintiff
<i>Versus</i>	
R.N. Shah and Others.	... Defendants

Ms. Rina Pujara, *for the Plaintiff.*
Mr. Vishal Kanade, *i/b Drupad Patil for Defendant No.2.*
Mr. S.C. Naidu, *with Mr. Aniket Poojari i/b C.R. Naidu and*
Company for Defendant No.5.
Mr. Samir B. Pawar, *i/b Girish K. Vora for the Defendant No.6.*
Mr. M.R. Mandawgade, *Officer on Special Duty, Court Receiver.*

CORAM: G.S. PATEL, J
DATED: 29th August 2016

PC:-

1. The Suit itself was disposed of by filing Consent Terms on 24th December 1999. The Court Receiver stood discharged. However, he continued to be in possession of an immovable property situated at Kandivali and which was previously the property of the partnership firm in question. Defendant No.2, for whom Mr. Kanade appears, is a newly added Defendant. He is the assignee of the right, title and interest of the legal heirs of the original Defendant No.2, since deceased; the heirs of Defendant No.3; and an assignee of the interest of Defendants Nos. 7 and 10.

Mr. Kanade says that it is his client who has spent on fencing and maintaining the property.

2. It is agreed before me that the property requires to be divided by metes and bounds in accordance with the shares of the parties and in the manner set out in the Consent Terms of 24th December 1999. Such a sub-division is specifically mentioned in Clause 22 of the Consent Terms at pages 28 and 29 of the Court Receiver's Report.

3. Today, the Court Receiver seeks directions as to the handing over the Kandivali property. I understand this to mean a direction regarding the persons to whom he should deliver the possession of that property. It seems to me unworkable to order possession to be delivered to any one of these parties to the exclusion of the others. The Plaintiffs, Defendant No.5 and Mr. Kanade are agreed that joint possession should be handed over to all these parties. In addition, Mr. Kanade's client claims to be a contractor and to have certain rights in that capacity as well, though that claim is disputed, and need not detain us on the question of sub-division or of possession.

4. A faint submission is made on behalf of Defendant No.6 that he should be given exclusive possession. Why this should be done I am not told, and, in any case, it seems entirely unreasonable given the Consent Terms, which have never been modified or set aside at any stage.

5. The Court Receiver's Report is disposed by directing the Court Receiver to hand over possession to all the parties, *viz.*, the Plaintiffs, the newly added Defendants No. 2, Defendant No. 5 and Defendant No. 6 jointly. Those parties will then make the necessary arrangements between themselves for the implementation of the Consent Terms and the division of the property by metes and bounds.

6. The Court Receiver's Report is also made absolute in terms of prayer clause (c). All to whom possession is given will pay those costs.

(G. S. PATEL, J.)