

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****NOTICE OF MOTION (L) NO. 3137 OF 2015****IN****SUIT (L) NO. 1198 OF 2015**

Madhuben Bhanubhai Nanavati

... Plaintiff

vs.

Bharat Bhanubhai Nanavati and another

....Defendants

Ms. Hina A. Mody for the Plaintiff.

Mr. Khushnood Akhtar along with Mr. Hitesh Thorat, Mr. Rehan Ansari, Ms. Pinny Pathak and Ms. Pradnya Meshram, instructed by Mr. Saeed Akhtar, for the Defendants.

Madhuben B. Nanavati, Plaintiff in person present.

Mr. Bharat Bhanubhai Nanavati, Defendant No. 1 present.

Mr. Hardik Bharat Nanavati, Defendant No. 2 present.

Mr. Manish Nanavati, Mr. Jayesh Nanavati, and Ms. Sudha Sheth, married daughter present.

CORAM: S.J. KATHAWALLA, J.

DATE : 27th JANUARY, 2016

P.C.

1. On 15th January, 2016, an order was passed in the above Notice of Motion and the matter was adjourned to 20th January, 2016. On the adjourned date, the Advocate for the Defendants requested the Court to keep the matter in Chambers and assist the parties to arrive at an amicable settlement.

2. Accordingly, the Plaintiff – Mrs. Madhuben Bhanubhai Nanavati, her

sons Bharat (Defendant No.1), Manish and Jayesh, her grandson Hardik (Defendant No.2) and her married daughter Ms. Sudha Prakash Seth are present in my Chamber.

3. Ms. Ila Nanavati, is the unmarried daughter of the Plaintiff. A video is shown to me, from which it becomes clear that though the Defendants have tried to persuade Ila to remain present in Court today, she has declined to do so. From the said recording it appears that Ila is having serious eye problems. She has also made it clear that she does not want to get out of the house which is indicative of her being in depression. One of the married daughters of the Plaintiff is also not present. The reason given is that she is unwell. Manish is handicapped and Jayesh too has certain health problems.

4. The Plaintiff has now informed the Court that she is 90 years old and from the last two months due to her ill health she is residing at Forjet Street i.e. at the matrimonial home of her daughter Ms. Sudha Sheth. She states that prior thereto she was residing in the suit flat along with Bharat, Manish and Ila. She states that her eldest son (Defendant No.1) has obtained her signature on certain documents and has thereby usurped her flat and gifted the same to his son i.e. her grandson (Defendant No.2). She further states that she should get back her flat from Defendant Nos. 1 and 2. From the questions put by this Court to the Plaintiff, it appears that her power to comprehend has diminished. Though she states that she wants her suit flat back from her son and grand-son, she also states

that she has sold the suit flat and has retained the moneys with her and shall disburse the amounts as per her wish. Manish and Jayesh have serious grievances against their sister Sudha Sheth and they have alleged that the above Suit is filed by their mother against their brother Bharat (Defendant No.1) at the instance and upon the instigation of their sister Sudha. They have informed the Court that they have no objection if the flat remains in the name of Bharat and/or his son Hardik. However their right to reside in the suit flat during their life time should be protected. Ms. Sudha Sheth has informed the Court that she has no objection if the Plaintiff, Manish, Jayesh and Ila reside in the suit flat throughout their lives but she and her married sister should get a share in the suit flat after the life time of the Plaintiff, Manish, Jayesh and Ila. Defendant Nos. 1 and 2 have stated that they are taking care of Manish, Jayesh and Ila. The suit flat was gifted by the Plaintiff to the Defendant No.1 of her own free will and volition. However the present suit is filed by the Plaintiff only at the instance/instigation of their sister Ms. Sudha Sheth who wants a share in the suit flat.

2. In view of the above, it appears that at least at this stage an amicable settlement in the matter is not possible. However, pending the hearing and final disposal of the Suit, the following workable order is passed by consent of the parties:

(I) The parties to the suit shall maintain status quo as of today, in

respect of the suit flat.

(II) The Plaintiff as well as Manish, Jayesh and Ila Nanavati shall continue to use and occupy the suit flat and their possession and occupation shall not be disturbed until further orders;

(III) The hearing of the suit is expedited;

(IV) The Defendants to file their written statement on or before 22nd February, 2016;

(V) All contentions of the parties are kept open;

(VI) Place the Suit for framing of issues on 29th February, 2016.

The Notice of Motion is accordingly disposed of.

Liberty to apply.

(S.J. KATHAWALLA, J.)