

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

SUIT NO.55 OF 2006

Farida Dara Khambata and Ors.

.. Plaintiffs

vs.

Farokh Nauzer Kanga

.. Defendant

Mr.Rohaam Cama for the plaintiffs

CORAM : K. K. TATED, J.

DATE : SEPTEMBER 15, 2017

JUDGMENT:

1. Heard the learned counsel for the plaintiffs. None for the defendant.

2. In the present Suit this court (Coram: K.R.Shriram, J.) passed order on 28.7.2017 directed to place the matter on board for ex-parte decree as the defendant failed and neglected to file their written statement. Hence, matter is listed under the caption for ex-parte decree.

3. The suit is for declaration that the plaintiff no.1 is the sole and absolute owner of the suit property known as “Beau Rivage”, assessed by the Assessor and Collector of Municipal Rates and Taxes, Municipal Corporation of Greater Bombay, under 'D' Ward No.3547, Street No.36 Bhulabhai Desai Road, Mumbai and also for an order of injunction

restraining the defendants from interfering with the peaceful possession in respect of the suit property.

4. Plaintiff Farida Dara Khambata filed affidavit of evidence in lieu of examination in chief dated 26.11.2015. Plaintiff Farida Dara Khambata is personally present in court. She admitted the execution of the said affidavit on oath. The same is taken on record by order dated 1.9.2017 and marked as Exhibit 'A'.

5. Plaintiff in support of her case placed on record certified copies of documents which are marked as Exhibits as under:

S.No.	Nature of Document	Exhibit
1.	Consent Decree dated 25.11.1988 in Suit No.9 of 1986 passed by this High Court.	B
2.	Probate of will of Firoze Nauzer Kanga dated 16.3.1993 issued by High Court of Judicature at Bombay in Testamentary and Intestate Jurisdiction in Petition No.572 of 1992.	C
3	Deed of Transfer made and entered into at 23.3.1993 between Nauzer Kaikhashru Kanga on one part and Firada Dara Khambata on the other part.	D
4	Registered Gift Deed dated 7.6.2002 executed by Nauzer K. Kanga on one part and Farida Dara Khambata on the other part.	E
5	Declaration of Nauzer Kaikhushru Kanga dated 25.10.2001.	F

6	Probate of will of Nauzer Kaikhushru Kanga issued by High Court of Judicature at Bombay, Testamentary and Intestate Jurisdiction in Petition No.293 of 2006 dated 30.6.2008.	G
7	Certified copy of order dated 20.1.2006 passed by this court in Notice of Motion No.83 of 206 in Suit No.55 of 2006 in Suit (L) No.119 of 2006.	H
8	Certified copy of order dated 30.9.2008 passed by this court (Coram: A.A.Sayed) in Notice of Motion No.83 of 2006 in Suit No.55 of 2006.	I

6. It is the case of the plaintiff that she is the owner of the suit premises along with her brother, late father and mother. It is the case of the plaintiff that her parents have filed Suit bearing Suit No.9 of 1986 in this court against original defendant and his wife namely Banu Farrokh Kanga interalia due to their distasteful behaviour. In that Suit Consent Terms dated 25.11.1998 were filed and this court passed order. By the said consent decree it was declared interalia that plaintiff's parents were the owner of the suit property. By the said consent decree, the defendant, his wife and their children, servants and agents were restrained by perpetual injunction of this court from entering upon the said property or any part thereof by themselves except with the previous written permission of plaintiff's parents. In support of this contention plaintiff placed on record consent decree dated 25.11.1998 Exhibit 'B'. Plaintiff in her deposition stated that her mother Firoze Nauzer Kanga died on 24.9.1992, leaving her last will testament dated 1.12.1988 whereby she interalia, devised and bequeathed her $\frac{1}{2}$ share in the suit property to her. In support of his contention the plaintiff placed on record certified copy of probate dated

16.3.1993 issued by this court in Petition No.572 of 1992 Exhibit 'C'. He submits that by registered deed of transfer dated 23.3.1993 ½ share of the mother in the suit property was transferred in the name of plaintiff as per the will. In support of this plaintiff placed on record deed of transfer dated 23.3.1993, Exhibit 'D'. On the basis of this transfer deed, plaintiff became owner of ½ share in the suit property.

7. The learned Counsel for the plaintiff submits that, plaintiff's father executed gift deed 7.6.2002 of his remaining 50% share in the suit property in favour of plaintiff. In support of this contention, he relies on gift deed dated 7.6.2002 Exhibit 'E'. He submits that thereafter, the plaintiff's father died on 6.10.2002 leaving his last will and testament dated 25.10.2001 where by he bequeathed all his properties movable and immovable to plaintiff and it is stated in the said will that nothing has been given to the original defendant due to his behaviour. He further submits that, plaintiff's father has made a declaration dated 25.10.2001 Exhibit 'F' setting out clearly that the original defendant was not entitled to any right in the suit property. He submits that in view of these facts, plaintiff became the full owner of the suit property. He further submits that in the present proceeding, the plaintiff preferred Notice of Motion No.83 of 2006 in this court in which, by order dated 20.1.2006 restraining the defendants from disturbing the plaintiff's possession in respect of the suit property. In support of this contention, the learned Counsel for the plaintiff relied on Exhibits 'H' and 'I' i.e. certified copy of orders passed by this court.

8. The learned Counsel for the plaintiff submits that in the present proceeding, the defendant failed and neglected to file their written statement in respect of service and hence, they are entitled to ex-parte

decree declaring the plaintiff as a absolute owner of the suit property and injunction and restraining them from interfering with plaintiffs' possession of suit property.

9. After hearing the learned Counsel for the plaintiff and perusing the documents on record, the issue involved in the present suit is as under:

a) Whether the plaintiff proved that she is the absolute owner of the suit property known as "Beau Rivage", assessed by the Assessor and Collector of Municipal Rates and Taxes, Municipal Corporation of Greater Bombay, under 'D' Ward No.3547, Street No.36 Bhulabhai Desai Road, Mumbai. Yes

b) Whether the plaintiff is entitled decree of perpetual injunction restraining defendants from disturbing plaintiffs' possession of suit property Yes

10. Plaintiff by way of affidavit dated 26.11.2015 made out a case on the basis of consent decree Exhibit 'B', probate of will dated 16.3.1993 Exhibit 'C', and other documents Exhibits 'D' to 'T' that she is the absolute owner and in possession of the suit property. Earlier suit property was in the name of plaintiff's parents. Both the parents executed will, gift deed respectively and transferred the suit property in the name of plaintiff.

11. Considering these facts and the documents on record, it is crystal clear that the plaintiff has made out a case showing that she is the absolute owner of the suit property. She has also prayed for perpetual injunction. Hence, plaintiff has made out a case for allowing the suit in

terms of prayer clause (a) and perpetual injunction. Hence, following order is passed:

ORDER

(A) Suit is allowed in terms of prayer clause (a) which reads thus:

“(a) That it be declared that the Plaintiff no.1 is the sole and absolute owner of the Suit Property described in Exhibit A hereto and that the Defendants have no right, title or interest of any nature whatsoever in the Suit Property.”

(B) Defendants are restrained by an order of perpetual injunction disturbing the plaintiffs' peaceful possession in respect of the suit property as described in Exhibit-A to the plaint i.e. “Beau Rivage”, assessed by the Assessor and Collector of Municipal Rates and Taxes, Municipal Corporation of Greater Bombay, under 'D' Ward No.3547, Street No.36 Bhulabhai Desai Road, Mumbai.

(C) Liberty granted the plaintiff to make an appropriate application in the Registry for return of original documents by replacing with duly notarized copies thereof. Registry is directed to consider the same on its own merits.

(D) Decree be drawn accordingly.

(E) Cost of the suit.

(K.K.TATED, J.)