

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

**SUIT NO.1384 OF 2011
WITH
LEAVE PETITION NO. 11 OF 2011
WITH
NOTICE OF MOTION NO. 1449 OF 2011
WITH
NOTICE OF MOTION NO. 1931 OF 2011
IN
SUIT NO. 1384 OF 2011**

Shashipal Shankar & Ors. .. Plaintiffs
Vs.
Shirin C. Vazifdar & Ors. .. Defendants

Mr.Cyrus Ardeshir a/w. Mr.Nilesh Modi i/b Rustamji and Ginwala for plaintiff and for applicant in NMS/1931/2011.

Ms.Farzana Behramkamdin a/w. Ms. Bharti Bhansali i/b FZB and Associates for defendant nos.1 and 2.

Mr.Yash Tiwari i/b R.D. Tanna for defendant nos.3 and 4.

Mr.Nilkanth D. Batule for defendant no.5 and for applicant in NMS/1449/2011.

Mr.Roop Vasudeo for defendant no.7.

**CORAM : K.R.SHRIRAM, J.
DATE : 6TH FEBRUARY, 2017**

P.C.

1 This notice of motion No.1931 of 2011 has been taken out by the plaintiffs for various reliefs including appointment of Receiver. Defendant nos.5 and 6 have taken out a notice of motion No.1449 of 2011 alleging that

this Court does not have jurisdiction and praying for framing of preliminary issue under Section 9A of the Code of Civil Procedure, 1908.

2 The preliminary issue is, therefore, framed as under :-

(i) Whether this Court has jurisdiction to receive, try and dispose of this suit so far as defendant nos.5 and 6 are concerned?

3 In view of the above, notice of motion No.1449 of 2011 stands disposed.

4 Shri Ardeshir appearing for the plaintiffs submits that notwithstanding framing of this preliminary issue, the Court be pleased to grant an interim relief so far as the property at Exh.'B' is concerned by appointing a Receiver since there are encroachers into the said property. The counsel appearing for the defendants also agree that the Receiver is required to be appointed so that the property does not get encroached or taken over by the encroachers anymore. Exhibit 'B' reads as under :-

EXHIBIT "B"

DESCRIPTION OF KHANDALA PROPERTY

All that piece and parcel of land, hereditaments and premises situated at Khandala bearing CTS Nos.11 and 12, R.L.Nos.104 and 104A of Village Khandala, Taluka Maval,

District Pune, admeasuring about 26,927 square yards or thereabouts together with a bungalow, a studio and two cottages and other buildings standing thereon.

Therefore, the counsels, without prejudice to their rights and contentions in the suit, request that the Receiver be appointed.

5 Therefore, the Court Receiver is appointed as a Receiver of the property mentioned at Exh. 'B' to the plaint. The Receiver to take physical possession of the property and submit a report within three weeks. The Receiver also to mention in the report the present condition of the property and also who are all in possession/occupation of the property or in part thereof.

It is clarified that in the first stage the Receiver to take only symbolic possession only to the extent of the property which is occupied by somebody and physical possession so far as the vacant part of the property are concerned.

Shri Ardeshir appearing for the plaintiffs, on instructions, states that the plaintiffs will make arrangement for the Receiver to go to the property.

6 Ms.Behramkamdin for defendant nos.1 and 2 states that the order dated 24th January 2011 requires to be modified to the extent of the property described at Exh.'C', viz., Flat 8-2, 75, Ajanta Ideal Co-operative Housing

Society Ltd., Colaba, Mumbai 400005. Ms.Behramkamdin submits that defendant no.2 has filed an affidavit on behalf of defendant no.1 for herself and as a constituted attorney of defendant no.2, explaining why the order requires to be modified.

The Registry to accept the said affidavit.

Shri Ardeshir states that they have been served a copy of this affidavit only in Court today and requests the matter be stood over by two weeks to seek instructions.

7 Notice of motion No.1931 of 2011 and the suit be listed on 27th February 2017 for directions.

(K.R. SHRIRAM, J.)