

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION**

**NOTICE OF MOTION NO.94 OF 2015
IN
TESTAMENTARY PETITION NO.767 OF 2015**

Anthony Varghese KannampuzhaApplicant/Petitioner

Vs.

Joseph Kannampuzha & Anr.Respondents

Ms. Parul Sharma for the applicant/petitioner.

Mr. C.K. Thomas for the respondent no.1.

CORAM : K.R.SHRIRAM, J.

DATE : 25th JANUARY, 2017

PC.:

1 This notice of motion is taken out for the reliefs mentioned therein, viz., (a) restraining respondent no.1 from selling, alienating, transferring, encumbering and/or creating any third party rights in respect of Flat No.9, 1st Floor, Dolly Apartments, Chincholi Phatak, Lower Govind Nagar, Malad (West), Mumbai 400 064 (the said flat); (b) restraining respondent nos.1 and 2 from taking any steps to transfer the Share Certificates in the name of respondent no.1; (c) and (d) for appointment of an Officer/Curator with respect to the said flat and to take possession of the said flat from respondent no.1 and hand it over to the Curator.

2 At the outset, the counsel for the petitioner states that prayer clause -(b) will not survive since the Share Certificates are already transferred in favour of respondent no.1 and as regards the remaining

prayers, admittedly the said flat was given on leave and license since 2006 until the deceased expired on or about 2nd April, 2015. Admittedly the respondent no.1 was collecting the rent for the said flat which stood in the name of the deceased.

3 It is the petitioner's case that respondent no.1 was misappropriating the rent collected to his own use. Whereas it is the case of the respondent no.1 that he and the deceased were living in another flat of a relative and using the rent received for their survival. These are contentious issues into which I am not inclined to go at this stage and in any event, do not come up for consideration in arriving at a conclusion whether the Will propounded by the petitioner is valid or not. There are rival nomination forms also relied upon but admittedly the Society – respondent no.2 has transferred the share certificates in favour of the respondent no.1 based on nomination form which was available in the Society's record and also as per the direction of Registrar of Co-operative Societies. The petitioner has been residing in Canada since many years and is also a Canadian citizen.

4 Taking into account the facts and circumstances of the case, I am not inclined to grant the reliefs as sought in the notice of motion. At the same time, the respondent no.1, should he wish to sell or alienate or encumber or create any third party rights in respect of the said flat, the

respondent no.1 shall before he enters into any agreement give atleast four weeks notice of the petitioner's advocate, at which stage it will be open for the petitioner to apply to this court for appropriate reliefs.

5 This notice of motion accordingly stands disposed.

6 Mr. Thomas, counsel appearing for the defendant no.1 seeks leave to file additional affidavit in support of Caveat. Leave granted. The said affidavit to be filed and copy served within two weeks from today.

7 Stand over to 27th February, 2017 for issues.

(K.R. SHRIRAM, J.)