

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

NOTICE OF MOTION NO.1956 OF 2010

IN

SUIT NO.1944 OF 2010

Joseph James Miranda

....Applicant/Plaintiff

Vs.

Noella Donald Miranda and Ors.

....Defendants

Mr. Vyom Shah a/w. Ms. Shefali Alvaro i/b. Divya Shah Associates for the applicant/plaintiff.

Mr. Chetan Kapadia a/w. Ms. Loshika Bulchandani i/b. Mr. K.D. Abhichandani for the defendant nos.4 to 6.

CORAM : K.R.SHRIRAM, J.

DATE : 9th FEBRUARY, 2017

P.C.:

1 The counsel for the plaintiff states that as regards prayer clause – (b) is concerned, the court did not agree for appointment of Commissioner but nevertheless a preliminary decree for partition of the property has been passed. Mr. Kapadia agrees.

2 What remains is only prayer clause – (a), which is only against defendant nos.1,2 and 3. The defendant nos.1,2 and 3 are not present to oppose the notice of motion.

3 Mr. Kapadia states that the father of defendant nos.1,2 and 3 had sold his share in the property to defendant nos.4,5 and 6 and there is an on going arbitration between defendant nos.1,2 and 3 on one side and defendant nos.4,5 and 6 on the other side. Mr. Kapadia further states that

the court may go ahead and grant the relief against defendant nos.1,2 and 3 but if in the arbitration proceedings defendant nos.4,5 and 6 succeed and get an award in their favour at that stage, this order should not come in the way of defendant nos.1,2 and 3 in complying with the award.

4 Today there is no award in favour of defendant nos.4,5 and 6. Therefore, it is purely speculative. It is clarified that if and when there is a final and binding award in favour of defendant nos.4,5 and 6 against defendant nos.1,2 and 3 and at that stage if it appears that this order is coming in the way of performing the obligations under the award, the defendant nos.4,5 and 6 may move this court for appropriate reliefs by giving atleast four weeks notice to the plaintiff and defendant nos.1,2 & 3.

5 The notice of motion is accordingly disposed in terms of prayer clause – (a) which reads as under :

“(a) that pending the hearing and final disposal of the suit, the defendants, their servants and agents and/or any other persons claiming through or under them be restrained by an order and injunction of this Hon'ble Court;

(I) from selling, alienating, encumbering, disposing off or creating any third party interest and/or parting with possession and/or dealing with the suit property, in any manner whatsoever, more particularly described in Exhibit 'A' annexed to the plaint or any part or portion thereof;

(II) from disturbing in any manner whatsoever the plaintiff's use, occupation and enjoyment of the suit property and from creating any nuisance and annoyance whatsoever on the suit property, more particularly described in Exhibit 'A' annexed to the plaint or any part or portion thereof;

(III) from demolishing any structures standing on the suit property and/or from interfering or obstructing the peaceful enjoyment use, occupation and possession of the plaintiff in any manner whatsoever in respect of the suit property, more particularly described in Exhibit 'A' annexed to the plaint or any part or portion thereof.”

6 Mr. Kapadia states that Mr. K.D. Abhichandani has recently been appointed and will be filing Vakalatnama on behalf of defendant nos.4 and 5 as well and the same will be filed within one week from today. The statement is accepted.

(K.R. SHRIRAM, J.)