

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

**NOTICE OF MOTION NO.2398 OF 2011
IN
SUIT NO.1933 OF 2011**

Averil Anny Jerome D'silva & Ors)....Applicants/Plaintiffs

V/s.

Mackbeth Annie Bonefielius D'silva & Ors.)....Defendants

Mr.Prasad Apte for the plaintiffs/applicants.

Mr.Cyrus Ardeshir a/w Ms.Vishakha Vaswani and Ms.Jainuddin
Khan i/by Gagrats for defendant nos.1, 2, 3(a) to 3(c) and 4 to 6.

Ms.Uma Shah i/by K.D.Shah for defendant no.7.

CORAM : K.R.SHRIRAM,J

DATE : 6.4.2017

P.C.:-

1 The Notice of Motion is for appointment of Receiver, injuncting the defendants from creating 3rd party rights or disposing of the suit property. The plaint was lodged on 21.4.2011. Notice of Motion was lodged on 11.8.2011 i.e., almost 4 months later. No ad-interim relief has also been granted even though the plaintiffs made an application. It is almost six years since the Notice of Motion was lodged and there is no fresh affidavit filed as to how the situation that prevailed in August-2011 has changed today warranting an order as sought in the Notice of Motion.

2 Moreover, the relief in the main suit is to set aside a

consent decree dated 14.12.2000 which means almost 11 years before the suit was filed. In my view, the relief as sought in this Notice of Motion cannot be granted. Notice of Motion dismissed.

3 Mr.Shah for defendant no.7 states that the written statement of defendant no.7 is already filed. Mr.Ardeshir states that the written statement of defendant nos.1 to 6 is ready and the same will be lodged in the registry during the course of today. Mr.Ardeshir also states that copy of the written statement will be served upon the advocate for the plaintiffs before the end of this week.

4 Suit be listed for issues on 25.4.2017, on which date parties will come with agreed draft issues and the separate list of issues on which they are unable to agree upon. In the meanwhile, parties shall also file their respective affidavit of documents and complete discovery and inspection and also exchange statement of admission and denial with reasons for denial.

(R.SHRIRAM,J)