

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

SUIT NO.915 OF 2014

Pramod Shridhar Shanbhag

....Plaintiff

Vs.

Radhabai Shridhar Shanbhag and Ors.

....Defendants

Mr. Shivaji Kurup i/b. Kurup Shivaji and Company for plaintiff.

Mr. Tejas Luniya i/b. Thodur Law Associates for defendant nos.1 and 2.

CORAM : K.R.SHRIRAM, J.

DATE : 2nd MAY, 2017

P.C.:

1 Mr. Kurup, counsel for plaintiff prays that the order dismissing the notice of motion no.1512 of 2014 on 27th April, 2017 be recalled. Mr. Kurup states that he was in some personal difficulty and by the time he reached the court, the notice of motion had been called out.

2 Therefore, order of 27th April, 2017 dismissing the notice of motion no.1512 of 2014 is recalled and notice of motion is restored to file.

NOTICE OF MOTION NO.1512 OF 2014

1 Heard Mr. Kurup, counsel for applicant on the notice of motion on merits.

2 The suit filed is for partition of the estate of one Shridhar Vaikunth Shanbhag. Defendant no.1 is the mother of plaintiff and defendant nos.2 and 3. Defendant no.1 is the widow of the deceased

Shridhar Vaikunth Shanbhag and plaintiff and defendant nos.2 and 3 are the sons of the deceased Shridhar Vaikunth Shanbhag and defendant no.4 is the Landlord in respect of tenanted premises situated at Old Mehta Niwas (presently Visaria House), Ground Floor, 22, Mahant Road, Vile Parle (East), Mumbai – 400 057 (said premises).

3 It is plaintiff's case that defendant no.1 though shown on record as tenant of defendant no.4 with respect to the said premises, actually the tenant was the deceased. It is also stated that the said premises has been surrendered to the Landlord and some compensation has been paid over by the Landlord. Plaintiff is seeking 1/4th share in the compensation given by the Landlord to defendant no.1 and in respect of other estates which are listed at Exhibit 'E' to the plaint.

4 The deceased expired on 21st December, 2010. The suit itself has been lodged only on 10th October, 2014. The notice of motion has been lodged on 25th November, 2014 and plaintiff never moved the court for any ad-interim relief. No further affidavit also has been filed to explain why the relief as sought in the notice of motion should be granted. In the plaint statement that defendants will defraud the plaintiff of his share, dispose of the estate, create third party rights on the estate, etc. has been made but these are general statements.

5 Mr. Kurup, counsel for plaintiff states that there is an averment in the plaint that he came to know about the surrender of the tenancy rights of the said premises in April, 2014. Still the suit has been lodged only in October, 2014. Notice of motion has been taken out on 25th November, 2014. No application for ad-interim order or urgent order was moved. Therefore, in my view, no case for granting interim relief has been made out. Notice of motion is dismissed.

6 From the office endorsement it appears that defendant nos.1,2 and 3 have filed written statement. Mr. Kurup also confirms the same. The office remark in the cause list states suit against defendant no.4 dismissed under Rule 87 pursuant to order dated 24th June, 2015 passed by the Prothonotary and Senior Master, High Court, Bombay.

7 Mr. Kurup, counsel for plaintiff tenders endorsement of the Sheriff's bailiff stating that original writ of summons has been served on defendant no.4 as well. Mr. Kurup states that plaintiff will file affidavit of service confirming service upon defendant no.4 within two weeks from today.

8 Should defendant no.4 wish to file any written statement, he may do so and serve a copy thereof within four weeks from today.

9 Registry to forward a copy of this order to defendant no.4.

Plaintiff shall also serve a copy of this order upon defendant no.4.

10 Suit to be listed for issues on 27th June, 2017.

(K.R. SHRIRAM, J.)