

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COURT RECEIVER'S REPORT NO. 7 OF 2018
IN
TESTAMENTARY SUIT NO. 2 OF 2004
IN
TESTAMENTARY PETITION NO. 633 OF 1989**

Chandrakant Jayantilal Shah	...Plaintiff
<i>Versus</i>	
Lalitchandra Jagjivandas Juthani & Anr	...Defendants

Mr Brijesh Upadhyay, *i/b Girin Pandit, for the Plaintiff.*
Mr Shyam Kapadia, *with Darshan Mehta, Naresh Chaddha & Niket*
Jani, i/b Dhruve Liladhar & Co., for the Defendant.
Mrs KY Ambekar, *Ist Assistant to the Court Receiver, is present.*

CORAM: G.S. PATEL, J
DATED: 15th January 2018

PC:-

1. Heard. There are rival Wills being propounded. Mr Upadhyay appears for the Plaintiff in Testamentary Suit No. 2 of 2004. This propounds the later of the two Wills. Mr Kapadia appears for the Plaintiff in Testamentary Suit No. 19 of 2005.

2. It appears that a Court Receiver was earlier appointed on the application of the Defendant in Testamentary Suit No. 2 of 2004

but on 4th July 2012, in view of the provisions of the statute and decisions of this Court, the Receiver came to be discharged.

3. The property in question is known as Gandhi Bhuvan, Plot No. 45, Chembur, Mumbai 400 071 and it consists of three floors and garages. One room, Flat No. 4, was in possession of the deceased at the time of his death. The other premises in the building are tenanted. The Court Receiver took possession on 5th February 2010. This was symbolic or formal possession alone but the tenants were depositing rent since till 2012. The Court Receiver's rent farming agency has not collected rent since.

4. It seems to me that while a Receiver cannot be appointed, the property must nonetheless be preserved in *status quo* in the interest of the Plaintiffs in both suits. This is all the more necessary since there are tenants. Otherwise the property is likely to suffer extensive waste and damage. The appointment of an Administrator might entail his taking over administration of the entire estate. I believe it is not only advisable but necessary to appoint a Curator for the limited purpose of collecting rent of the Gandhi Bhuvan property pending the final disposal of the Suits.

5. The Court Receiver can be appointed, not as a Receiver, but to function as a Curator for the limited purposes of rent collection. The Court Receiver will in the first instance write to all the tenants, enclosing a copy of this order, and demanding all unpaid rent up to date and then payment of monthly or quarterly rent until further orders of the Court. The rent to be demanded will include property

tax, water charges and permitted rent increases, if any. The amounts received by the Court Receiver towards rent are to be invested in accordance with the usual practices of that office.

6. All costs of the Court Receiver are to be borne by the Plaintiffs in both suits in equal shares.

7. The Plaintiffs in both suits are agreeable to this order.

8. No further directions are required at this stage.

9. The Court Receiver's Report is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)