

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 95 OF 2018
IN
TESTAMENTARY SUIT NO. 220 OF 2017**

Kavita Vijay Sakat	...Applicant
<i>In the matter between</i>	
Kavita Vijay Sakat	...Plaintiff
<i>Versus</i>	
Suryakant M Dhamnaskar	...Defendant

Mr V Topkar, i/b Vaishali Bhilare, for the Plaintiff.
Mr DS Joshi, for the Defendant.
Mr PG Lad, with Ms Sayali Apte, for MHADA.

CORAM: G.S. PATEL, J
DATED: 16th July 2018

PC:-

1. There is a contest between the Plaintiff and the Defendant in respect of the Tenement No. 601, Gala No.5/C, 6th Floor, in the reconstructed building at Cotton Green, Mazgaon. The reconstruction is in the premises of the erstwhile Mumbai Mill.

2. The father of the Plaintiff and the Defendant was a mill worker and was allotted these premises. There is a contest between the Plaintiff and the Defendant as to his last Will and Testament.

Both of them seek rights to this very flat. Each propounds a different Will.

3. MHADA has been joined as Respondent to the present Notice of Motion. In order to preserve the rights of the parties, MHADA agrees not to cancel the provisional allotment made in respect of this Tenement No. 601 without a specific order of this Court.

4. A decision on the rival Wills will necessarily govern the rights of the Plaintiff and the Defendant in respect of the flat.

5. Since the Plaintiff and the Defendant are both agitating rival rights in respect of the same tenement, they are liable in equal shares to pay all the necessary charges and outgoings. Further, it will be difficult at this stage to direct only one of the parties to submit the necessary documents to comply with the MHADA's requirement. Therefore both the Plaintiff and the Defendant will submit the necessary documents to MHADA and these will be kept on file till further orders of the Court.

6. Liberty to both the Plaintiff and Defendant to apply for appropriate reliefs to give the allotted flat on leave and license to a third party so that it is at least maintained and preserved.

7. The Motion is disposed of in these terms. No costs.

(G. S. PATEL, J)