

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 982 OF 2017
IN
SUIT NO. 241 OF 2017**

Manoj Hardasmal Aidasani	...Plaintiff
<i>Versus</i>	
Ashok Hardasmal Aidasani & Ors	...Defendants

Mr Ravish Mishra, i/b Sapna S Kukreja, for the Plaintiff.

**CORAM: G.S. PATEL, J
DATED: 11th June 2018**

PC:-

1. It is in fairness pointed out that ad-interim reliefs were declined on 27th February 2017 (KR Shriram J). The Notice of Motion was directed to come up in normal course. The Notice of Motion was filed on 14th February 2017. It has since been served and there is an Affidavit of Serve. There is also a separate notice that has been served on the Defendants. The Affidavit of Service dated 20th February 2017 is on file. There is no Affidavit in Reply. The Defendants are absent though served.

2. The Suit itself is for partition. The Plaintiff and the Defendants are the heirs and legal representatives of one Hardasmal

Relumal Aidasani and his wife Kamla Hardasmal Aidasani, their parents. During her lifetime, Kamla purchased residential Flat No. 502 of about 8950 square feet on the 5th Floor of building known as Red Gate at Plot No. 148, St Alexius Road, Bandra (West), Mumbai 400 050. By an agreement dated 13th December 1986, the parties' father Hardasmal purchased a stilt car parking space No. 4 in that very building.

3. It seems that in 1984 the society issued share certificate in respect of the flat to the parties' mother Kamla. She died on 20th October 1990 and left no Will or Testamentary writing. Hardasmal died seven years later on 29th March 1997, also intestate.

4. The dispute is thus between the four legal heirs and children of Hardasmal and Kamla Aidasani and it relates particularly to this flat in the Red Gates Building. The Plaintiff says that he has been paying maintenance of the suit flat and although Defendants Nos. 1 and 2, his brothers used to, at some earlier point in time, reimburse their proportionate shares to him, they have ceased to do so.

5. The complaint of the Plaintiff is that for the last two years or so, Defendants Nos. 1 and 2 have paid nothing and there is an amount of Rs. 1,02,795/- that the Plaintiff has had to pay but which is actually the share of Defendants Nos. 1 and 2.

6. The Plaintiff does not dispute that all four are equally entitled to the 1/4th undivided share, right, title and interest each. In fact, it

is pointed out by Mr Mishra that on the share certificate there now appears the name of all four of the parties to the suit.

7. The Suit was filed at the time when Defendants Nos. 1 and 2, who are permanent residents of Gibraltar, were in Mumbai on their temporary visit, the Plaintiff expressed an apprehension that they would try and sale their share in the flat. It does not appear that any such attempt has been made by any of the Defendants since the Suit was filed. There is no complaint of any person attempt to forcibly enter the flat either.

8. The reliefs in the Notice of Motion are as follows:

"(a) pending the hearing and final disposal of the suit, the Defendants by themselves, their servants and/or agents be restrained by an order and injunction of this Hon'ble Court from, in any manner, dealing with or disposing of or parting with possession or creating any third party rights in the suit flat more particularly described in Exhibit "A" hereto;

(b) Pending the hearing and final disposal of the suit, this Hon'ble Court may be pleased to direct the Defendant Nos. 1 and 2 to deposit a sum of Rs. 1,02,795/- (Rupees One Lac Two Thousand Seven Hundred Ninety Five Only) in this Hon'ble Court being their share towards maintenance charges in respect of the suit flat and on depositing the same, the Plaintiff may be allowed to withdraw the same."

9. The Plaintiff is entitled to some protection *prima facie* in view of these facts but these prayers will need to be modified. Accordingly, the following order is passed.

- (a) Pending the hearing and final disposal of the Suit, the Defendants are restrained from disposing of, alienating, encumbering, creating any third party rights or parting with possession of any part of the suit Flat No. 502 of about 8950 square feet on the 5th Floor of building known as Red Gate at Plot No. 148, St Alexius Road, Bandra (West), Mumbai 400 050 without prior leave of this Court obtained after at least two weeks' prior written notice to the Advocates for the Plaintiff;
- (b) Equally, the Plaintiff's statement that he will not dispose of, alienate, encumber, create any third party right or part with possession of any part of this flat without leave of the Court obtained after similar notice to the Advocates for the Defendants is accepted and noted as an undertaking to the Court;
- (c) As regards the question of depositing the amount of outgoings, it only needs to be ordered that the Plaintiff will maintain a separate account of the amounts due from the Defendants in respect of their proportionate share in the Red Gate Building flat but will be at liberty to continue paying the society dues. Further since the Defendants have not paid their proportionate share of

the society dues, the Plaintiff will be at liberty at the final hearing of the Suit to claim such equities as are available to him in law in this regard on account of these payments being made;

10. The Notice of Motion is disposed of in these terms. No costs.

(G. S. PATEL, J)