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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

TRUST PETITION NO.7 OF 2015

The Trustees, Maria Perpetua Nazareth Trust ...Petitioner
vs
Joseph De Souza And 5 Ors. ...Respondents

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Mr. Gandhar Raikar, for the Petitioner.

Mr. R.S. Tripathi, for Respondent Nos. 1 to 3.

Mr. Rishabh Shah, a/w. Ms. Shirin Shaikh, i/b. Raval Shah & Co., for Respondent Nos. 4 and 6.

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CORAM : S.C. GUPTE, J.

DATED : 16 MARCH, 2018

P.C. :

. Heard learned Counsel for the parties. This trust petition seeks opinion of the Court under Section 34 of the Indian Trust Act, 1882.

2. That this trust exists and is covered by the will of the predecessor of the parties, Maria Perpetua Nazareth, are not disputed facts. Maria, the Testatrix, was the owner of immovable property known as "Sweet Home" with a residential bungalow standing thereon at Santacruz, Greater Mumbai. During her lifetime, she executed a lease with one S.V. Kulkarni for construction of flats in a part of the suit

property, retaining the bungalow for herself. The ground floor of the bungalow was tenanted, whilst the first floor was occupied by the Testatrix. On 1 July 1974, the Testatrix executed a will, which contained the subject trust. The will has since been probated. The Petitioners are trustees of this private trust. For the purposes of understanding the implications of the trust, a family tree of the Testatrix is set out below :-

Family Tree

Maria Perpetua Nazareth (Testatrix)

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_________________________________________|__________________________________________
|                              |                    |                               |
|                              |                    |                               |
Rosie (deceased)     Carmine (deceased)   Cathrine (deceased)       Anthony (deceased)
  (UM)                     (UM)                                     married to Martha
13/10/2002                                      |                      (R-6) Alive
                                                |                          |
                                                |                          |
                                                |                     Francisca (R-4)
                                                |                     Alive, Married to
________________________________________________|                     ex-trustee Ralph
|               |              |                |                          |
Joseph         Jude          James          Christine                      |
R-1            R-2            R-3              R-5                 Leah & Averyl D'souza
                                                                        both Girls
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3. In terms of the will of the Testatrix, one half portion of the net rents and income of the property, which would come into the hands of the trustees, was bequeathed by the Testatrix to her daughter Rosie for and during her lifetime. After her death, the trustees were enjoined to make over undivided half of the corpus to the three sons of the Testatrix's daughter, Cathrine, namely, Joseph, Jude and James, who are Respondent Nos. 1 to 3 to the present trust petition. The portion of the corpus was to be made over to these three jointly and not as tenants in common. The other one half of the net rents and income of the property

was directed to be bequeathed to the Testatrix's son, Anthony, for and during his life. After his death, the trustees were enjoined to pay one half of the net rents and income to his daughter Francisca during her life. (The will further provided that if another child or children should have born during Antony's marriage, one half of the net rents and income reserved for his daughter Francisca were to be equally divided amongst all his children. Respondent No.4, Francisca, is the only child of Anthony.) On the expiry of her life interest, the trustees were directed to make over undivided one half of the corpus of the property to Maria Christine, the daughter of Cathrine absolutely. Nothing was left to her daughter Cathrine by the Testatrix. As far as the provisions of this will and the trust created thereby are concerned, these do not admit of any doubt or controversy. In the backdrop of these provisions, the Court's opinion is sought on two vital points. Firstly, the trustees seek an opinion on the entitlement of the parties, namely, Respondent Nos. 4 and 6 (i.e. Francisca and her mother Martha) on the one hand, and Respondent Nos 1 to 3 (Joseph, Jude and James, sons of Cathrine) on the other hand, to share the residence. Secondly, they seek an opinion on the permissibility and advisability of redevelopment of the trust property as the most beneficial way of administering the trust.

4. It is clear that the event for distribution of one half of the corpus, the income of which was to be paid to Rosie during her lifetime, has occurred as a result of the death of Rosie. At the same time, the event for distributing the other half of the corpus to Christine, the daughter of Cathrine, has not occurred so far, since Francisca is alive. One half net profits and income of the property still needs to be paid to

Francisca and there is no question of distributing the corpus as yet to anyone. Faced with these consequences, the two opinions noted above are sought.

5. Since one half of the corpus needs to be distributed, whilst the other half needs to be protected so as possibly to earn income for Francisca during her lifetime, redevelopment of the property by exercising powers of administration of the trust of the trustees appears to be in order. At the same time, since Francisca continues to use the first floor of the property for her residence, any scheme of redevelopment must ensure her residence as part of it during her life time. Since the other half of the corpus would, in such a case, be distributed to Respondent Nos.1 to 3, there is no question of providing for their residence except possibly as part of their entitlement under the re-development.

6. In the premises, the most appropriate way to administer the trust in keeping with the will of the Testatrix, which provides the mandate of the trustees, is to have the property redeveloped. The redevelopment proposal, however, should be handled by the trustees in a manner so as to ensure a residence for Francisca during her lifetime. Such residence must be commensurate with the present residence occupied by her in the suit property. The trustees may also ensure that one half of the total value coming to the share of the owners for and towards the redevelopment must be made over to Respondent Nos. 1 to 3 and the balance half, including the residence of Francisca provided for as above, and which residence must form part of that balance half, is

retained by the trustees for use of the profits and income thereof of Francisca during her life time. Part of such use will be by way of use of residence and part by payment of income derived from the corpus amount, if any, over and above the value of the residence coming from out of the redevelopment.

7. The opinion sought by the Petitioners under Section 34 is given accordingly.

(S.C. GUPTE, J.)