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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 808 OF 2017
IN
SUIT NO. 54 OF 1997**

Navin D Mehra	...Applicant
<i>In the matter between</i>	
Babubhai J Trivedi	...Plaintiff
<i>Versus</i>	
Sushma Virendra Pal Verma	...Defendant

**WITH
NOTICE OF MOTION NO. 813 OF 2017
IN
SUIT NO. 54 OF 1997**

Mr Rishikesh Soni, *i/b Nishith Sharma, for the Plaintiffs.*
Ms Sheela K Mistry, *for Defendants.*
Ms Rubia Taneja, *with Shama Taneja, for the Applicant.*

CORAM: G.S. PATEL, J
DATED: 17th July 2018

PC:-

1. Heard.

2. The Applicant, represented by Ms Taneja, filed this Notice of Motion in June 2017 and served it on the sole Defendant. According to the Plaintiff the Suit has been amended by an order of April 2002. There is no such order and the Suit is as it was filed with a sole Plaintiff and a sole Defendant.

3. The Applicant is not a party to the Suit. He is the owner of Flat No. 201, 2nd Floor, Building No.3 at Radhakrishna Nagar, Andheri (East), Mumbai. This building was one of several that were the subject matter of this Suit, Suit No. 55 of 1997 and Suit No. 3479 of 1997. Paragraphs 3, 5, 7 and 9 of the order of 18th October 2002 read thus:

3. In so far as Flat Nos. 103, 104, 201, 202, 203, 204, 301, 302, 303, 304, 401, 402, 403, 404, 501, 502, 503, 504, 601, 602 and 604 from building no.2 and Flat Nos. 101, 102, 103, 201, 202, 204, 301, 302, 303, 304, 403, 404, 502, 503, 504, 601, 602 and 604 from building no.3 are concerned there is no dispute between the parties that these flats have been sold/allotted to the persons who are presently occupying the flats.

5. It is made clear that these persons who shall be appointed as agents of the Court Receiver of the flats specified in clause 3 above, they shall be at liberty to dispose of the flats, if they so choose but before doing that they will have to intimate the Court Receiver and the parties of their intention to do so together with the documents of transaction and the name of the purchaser. In such an event the Court Receiver may appoint the purchaser as his agent to be in occupation of the flat.

7. In so far as the other flats are concerned, after the documents are submitted by the parties and the occupants, the Court Receiver shall prepare a report and seek further orders of the Court in relation to those flats within 8 weeks from today.

9. The persons who are directed to be appointed as agents shall be at liberty to apply for Court to vacate the office of appointment of Court Receiver of their flat after the Court Receiver submits a report as indicated below.

4. To begin with I find it extremely difficult to comprehend how two parties could by consent have got a Receiver appointed of any property belonging to third parties without joining those third parties as party defendants to the suit. But that seems to be water under the bridge, because the Affidavit in Support in paragraph 4 accepts that the Applicant handed over symbolic possession of the flat to the Court Receiver on 7th December 2002 and has since continued ostensibly as an agent of the Court Receiver but only on an undertaking. I say this because there is no agency agreement with the Applicant at all. The clauses of the order set out above make it clear that the appointment of a Court Receiver of these flats belonging to third parties was purely symbolic, so that the Court Receiver would have an accurate record of transactions in respect of those flats and nothing further. Clause 3 made it clear that neither the Plaintiff nor the Defendant claimed any right or possession or otherwise in respect of these flats owned by third parties. Clause 5 allowed the third parties to even dispose of their respective flats but with prior intimation to the Court Receiver. On receipt of documents, the Court Receiver was to prepare a report. The Applicant moved to the Court Receiver, but there was no follow up

action. Clause 9 made it clear, if there was any remaining doubt, that all those third party agents would be entitled to apply to Court to vacate the appointment of the Receiver in respect of their respective flat after the Court Receiver submitted a report.

5. If the Court Receiver has, despite requests, not obtained orders, then it is clearly open to the Applicant to file a Chamber Summons seeking this order.

6. Paragraph 6 of the Affidavit in Support states that the flat was purchased by the Applicant under an agreement of sale dated 26th April 1996. This is not only registered, but it is before the date of institution of any of these three Suits. The flat originally stood in the joint names of the Applicant's father Dunichand, the Applicant's mother Saroj and the Applicant himself. Dunichand died on 11th October 2005. Saroj died on 4th December 2003. The Applicant has been in continuous and uninterrupted possession of the flat.

7. Even otherwise it is pointed out in paragraph 10 that there are several other cases that have resulted in appropriate orders of this Court such as the order of 14th September 2005 of Mr Anoop V Mohta J (as he then was) in Notice of Motion No. 2417 of 2003. There is another order of the same date. One of the orders of Anoop V Mohta J is annexed at page 46. At that time the Advocate appearing for the Plaintiff in this very Suit expressly stated that there was no objection provided this was without prejudice to the Plaintiff's rights and contentions in the main Suit. That of course

goes without saying. The order also notes a previous order of 28th January 2004 that was similar in nature.

8. There is absolutely no reason why a similar order should not be made on this Notice of Motion. Accordingly, the present Notice of Motion is made absolute in terms of the prayer clause (a). This is without prejudice to the rival rights and contentions of the sole Plaintiff and sole Defendant in the Suit.

9. The Notice of Motion is made absolute in these terms. No order as to costs.

10. In view of the order passed in Notice of Motion No. 808 of 2017, Notice of Motion No. 813 of 2017 does not survive and disposed of accordingly.

(G. S. PATEL, J)