

Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 901 OF 2018
IN
SUIT (L) NO. 478 OF 2018

Sunil D Kakod	...Applicant
<i>In the matter of</i>	
Sunil D Kakod	...Plaintiff
<i>Versus</i>	
Ratan D Kakod & Ors	...Defendants

Mr Tejas Vora, with Mr DR Mishra, i/b GK Vora, for the Plaintiff /
Applicant.
Mr Dhananjay Pathak, for Defendants Nos. 1, 2 & 3.
Ms Sonali Salaskar, for Defendant No.5.

CORAM: G.S. PATEL, J
DATED: 3rd May 2018

PC:-

1. Heard.

2. There are Affidavits in Reply filed by 2nd and 3rd Defendants. These are the sisters of the Applicant-Plaintiff, their brother. All are children of the 1st Defendant. The 4th Defendant is a cooperative society and 5th Defendant is a real estate and development company. The dispute is in respect of a flat described

in Exhibit “A” to the Complaint at page 32. This is being redeveloped. An occupation certificate is awaited. The flat number is Flat No. 301/A/B, 3rd Floor, “E” wing, Rustomjee Seasons, Bandra (East), Mumbai 400 051. It is a redevelopment project and this flat has been allotted in lieu of the old Flat No. 617 in Building No. 65 of the 4th Defendant society.

3. The 1st Defendant’s two daughters, the 2nd and 3rd Defendants, live abroad in the Middle East. The 1st Defendant has chosen to live with them. The submission by the Plaintiff is that he be allowed to use and occupy Flat No. 301/A/B in the redeveloped building, Rustomjee Seasons, as an agent of the Court Receiver once it is ready for possession and occupation. Mr Vora on instructions makes a statement that should the mother, the 1st Defendant, ever want to come to Mumbai and stay in this flat, she will be allowed to do so unhindered. The statement is accepted as an undertaking to the Court.

4. The Affidavits in Reply deal with the merits of the Will being propounded separately, and do not address the question of equity as to why such an order should not be made. Clearly, the 2nd and 3rd Defendants have no need for this flat. On Affidavit, neither has demonstrated any such need. At any interim stage what is required to be done is to balance the competing equities, and to preserve the parties to the extent possible in status quo pending the final determination of the Suit. No conceivable prejudice is caused to 2nd and 3rd Defendants if such an order is made with the Plaintiff being an agent of the Court Receiver, as this will confer on him no right, title or interest in the property, and the property will be secured in

custodia legis. If on the other hand these reliefs are denied, the Plaintiff is likely to be very seriously prejudiced at several different levels.

5. Thus balance of convenience is in favour of the Plaintiff who has also made out a sufficient prima facie case. Justice and equity also demand that the following order should be made.

- (a) The 5th Defendant will deliver possession of the Rustomjee Seasons flat once the occupation certificate is in hand to the Court Receiver, High Court, Bombay.
- (b) The Court Receiver will then call upon the Plaintiff to execute a standard-form agency agreement but without payment of any royalty or security. It shall however, be specifically provided that all routine outgoings and maintenance will be to the account of the Plaintiff. He will not claim any equities on that ground.
- (c) On execution of that agency agreement in these terms, the Plaintiff will be put in possession of the Rustomjee Seasons flat.
- (d) The undertaking of the Plaintiff is accepted that should his mother, the 1st Defendant ever wish to visit or stay in Mumbai he will make adequate provision for her in the Rustomjee Seasons flat and will not deny her entry into or use of any part of that flat.

6. Mr Vora says this order will suffice to dispose of the Motion. The Motion is disposed of in these terms with liberty to the parties to apply.

(G. S. PATEL, J)