

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO. 1645 OF 2012
IN
SUIT NO. 1582 OF 2012**

Merkala T. Shetty

...Plaintiff

vs.

Ravindra T. Shetty & Ors.

...Defendants

Mr.Yogendra Kanchan for Plaintiff/Applicant.

Mr.Sunny Shah with Rashmi Bhandary I/b. Bhandary & Bhandary for
Defendant Nos.1 to 4.

CORAM : S.C. GUPTE, J.

DATE : 12 OCTOBER 2018

P.C. :

Heard learned Counsel for the parties.

2 This notice of motion is taken out by the original Plaintiff seeking interim injunction restraining Defendant Nos.1 to 4 from entering into the suit property or disturbing the possession of the Plaintiff in respect of the suit property. The suit property is a bungalow situated at Jyoti, 36/37, Bharat Tirtha Co-operative Housing Society Ltd., Shinde Wadi, Sion Trombay Road, Mumbai. The property was originally owned by the late wife of the Plaintiff herein and Defendant No.1, who is the son of the Plaintiff. (Defendant Nos.2, 3 and 4 are, respectively, the daughter-in-law, grandson and granddaughter of the Plaintiff. Defendant No.5 is a married daughter staying with the Plaintiff, who supports the Plaintiff.) The suit

property, which consists of two plots of land adjacent to each other and on which a building has been constructed, was originally owned partly by the deceased wife of the Plaintiff and Defendant No.1 (under lease deed between Bharat Tirth Co-operative Housing Society and themselves) and partly by the deceased wife of the Plaintiff alone (under a lease deed executed in her individual favour by Bharat Tirth Co-operative Housing Society) By a deed of assignment registered on 11 March 1987, Defendant No.1 is purported to have assigned his right, title and interest in part of the suit property (claimed under the first lease deed referred to above). to the deceased wife of the Plaintiff. It is the Plaintiff's case that his deceased wife accordingly became the sole owner of the suit property. She passed away sometime in 2009, leaving a last will and testament executed by her appointing the Plaintiff as the sole legatee in respect of the suit property. A probate petition has been filed in respect of that will. Defendant Nos.1 to 4 are contesting the will and the petition has been converted into a testamentary suit. The suit is pending hearing and final disposal before this court.

3 It is the Plaintiff's case that the Plaintiff is the sole owner of the suit property as a legatee under a registered will executed by his deceased wife in his favour and that Defendant Nos.1 to 4 are unauthorizedly seeking to disturb the Plaintiff's possession of the suit property. The Plaintiff, in the premises, seeks a declaration and perpetual injunction against Defendant Nos.1 to 4 restraining them from entering into the suit property and disturbing the Plaintiff's possession.

4 By a speaking ad-interim order passed on 10 May 2012, this

court has granted an ad-interim injunction in terms of prayer clause (a). That injunction has since been continued and operates till date.

5 On the facts recounted above, the Plaintiff is entitled to continuation of the ad-interim order as an interim order pending the hearing and final disposal of the suit. The Plaintiff claims title to the suit property on the basis of registered documents. The share certificate of the society in respect of the suit property is in the name of the Plaintiff and the Plaintiff has since been in possession of the suit property. On these facts, the Plaintiff is surely entitled to be protected insofar as the possession of the suit property is concerned.

6 Accordingly, the notice of motion is disposed of by confirming the ad-interim order granted on 12 May 2012 and continued since then.

7 Considering the facts and circumstances of the case and the relationship and ages of the parties, the hearing of the suit is expedited. The contesting Defendants have already filed their written statement in the suit. Place the suit for framing of issues on 25 October 2018. Parties to keep their draft issues ready on the next date.

(S.C. GUPTE, J.)