

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

NOTICE OF MOTION NO.766 OF 2015

IN

SUIT NO.351 OF 2015

WITH

SUIT NO.351 OF 2015

Mahendranath Vishwanath Jhingan ... Applicant/Plaintiff

Versus

Soumendranath Vishwanath Jhingon

And Others ... Defendants

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Ms. Anita Castellino I/b Bruno Castellino for the Applicant/Plaintiff.

Mr. Bapoo M. Malcolm for Defendant No.1.

Mr. Pritesh Bhagat @ Dilip Aras for Defendant No.2.

Mr. Siddharth Chhabria I/b Motiwalla & Co. for Defendant No.3.

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CORAM : S.C.GUPTE, J.

DATE : 24 JANUARY 2018

P.C. :

Heard learned Counsel for the parties.

2 This Notice of Motion is taken out in an administration suit. The suit is between brothers and concerns the property of their deceased mother. Their father has pre-deceased the mother. The property consists of a flat and some jewellery. The Plaintiff's case is that the mother died intestated without making a valid will. On the other hand, Defendant No.1's case is that she did make a valid will by which she bequeathed the flat to him. The validity of this alleged will is being contested also by Defendant No.2, the other brother of the Plaintiff and Defendant No.1. Be that as it may,

the position which obtains today is that the flat is in occupation of a third party as a 'licensee'. Defendant No.1 has already made an ad-interim statement on the last occasion, and it is recorded in the order dated 27 April 2017, that he had no intention to dispose of the flat or encumber the same or create any third party rights in respect thereof.

3 Learned Counsel for Defendant No.1 now states that this ad-interim statement may be continued but his client may be permitted to renew the licence in favour of the third party licensee. Learned Counsel states that in case this licence comes to an end and his client intends to create a new licence, he will give a notice to the other contesting parties and then create such new licence favour of a party offering the highest licence fees. Learned Counsel also states that his client shall deposit the entire licence fees in a bank account and meet the outgoings of the flat from out of the amount so deposited. Learned Counsel states that if there is any surplus, the same will be kept in a fixed deposit of any Nationalised Bank and held in such fixed deposit until further orders of the Court.

4 These statements adequately protect the interest of the Plaintiff as well as Defendant No.2 in the suit. No further interim reliefs need to be granted. Accordingly, the Notice of Motion is disposed of by accepting the statements of learned Counsel for Defendant No.1 as noted above.

5 Costs to be costs in the cause.

(S.C. GUPTE, J.)