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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1360 OF 2017
IN
SUIT NO. 438 OF 2017**

Dharmesh K Doshi & Anr	...Applicants
<i>In the matter between</i>	
Dharmesh K Doshi & Anr	...Plaintiffs
<i>Versus</i>	
Jitendra R Doshi & Ors	...Defendants

Ms Armin Wandrewala, *with Manan Jaiswal & Ms Ashwini Jain,*
i/b MLS Vani & Associates, for the Applicants/Plaintiffs.
Mr Murtaza Somjee, *i/b Jerome Merchant, for Defendants Nos.1 and*
2.
Ms Radhika Vyas, *i/b AAK Legal, for Defendant No.3.*

CORAM: G.S. PATEL, J
DATED: 10th September 2018

PC:-

1. Although the matter is listed for ad-interim reliefs, by consent the Notice of Motion is taken up for hearing and final disposal.

2. The dispute is between the four branches of one family. The parties claim descent from one Rasiklal Doshi (“**Rasiklal**”) who died on 23rd September 2016, and his wife, Ansuya Doshi (“**Ansuya**”), who died before him on 23rd January 2004. The 2nd

Plaintiff, Jagruti Kamlesh Doshi (“**Jagruti**”) is the widow of one Kamlesh *Doshi* (“**Kamlesh**”) one of the children of Rasiklal and Ansuya. Dharmesh Doshi (“**Dharmesh**”) is Jagruti’s son. The 1st Defendant, Jitendra, is Kamlesh’s brother, another son of Rasiklal and Ansuya. The 2nd Defendant is his wife. There is a third branch of another son Jayesh *Doshi* (“**Jayesh**”), represented by the 3rd Defendant, Shalin, his son. The fourth branch is of the daughter, Dina Y Varia (“**Dina**”). The principal contest is between the Plaintiffs and the 1st Defendant.

3. Exhibits “B” and “C” to the Plaint describe various properties. The first of these is Flat No. 12 on the third floor of Neeta Building, 90, Marine Drive, Mumbai 400 002 and its associated Garage No.4. This flat originally stood and, despite an intervening attempt by the 1st Defendant, still stands in the name of Rasiklal. It is completely irrelevant when the application for transfer was made by the 1st Defendant. There is no dispute that it forms part of the estate of the deceased. A nomination, even if it exists, is not a testamentary disposition.

4. The other items in Exhibit “B” are immovable property in Gujarat known as Rasik Mansion and a house also in Gujarat. Exhibit “C” describes a Room No. 103 of about 124 sq ft on the first floor of Mahavir Building in Popat Wadi, Kalbadevi, Mumbai.

5. The Plaintiff obtained an ad-interim injunction (BP Colabawalla J) on 7th July 2017 in terms of prayer clause (d), which is a prayer for an injunction worded in the usual form.

6. Ms Wandrewala for the Plaintiffs submit that despite this, the 1st Defendant attempted to transfer the Neeta Building flat to his name, but that has now been reversed. The response is that there was a nomination in favour of the 1st Defendant and the application for transfer was made before the order of the injunction. In any case, with the *status quo ante* restored, the order of BP Colabawalla J must obviously continue for both the Neeta Building flat and garage. The reason, apart from anything else is that the 1st Defendant has now filed a Testamentary Petition No. 2184 of 2017 propounding a Will that he says was left by Rasiklal and of which he is, evidently, the most significant beneficiary. This is proposed to be contested. Service of citations is pending. I have, by consent of parties, separately taken up that Testamentary Petition for directions in that regard at least as regards the present Plaintiffs.

7. This is also a reason not to accept Ms Wandrewala's application that for the other properties at *Popat Wadi in Mumbai*, given that these are being put to very little use, if any, the properties should be, as she puts it, 'monetized', meaning at the very least should be let out so that they earn an income. I do not think such an order is possible having regard to the pendency of the Testamentary Petition. Ms Wandrewala is clear that her instructions are to oppose the Testamentary Petition.

8. Consequently, the statements made in paragraphs 34, 35 and 36 of the Affidavit in Reply of 1st Defendant are accepted as undertakings to the Court as being undertakings, viz., that the 1st Defendant will not without prior leave of this Court obtained after at least two weeks' notice alienate, part with possession or encumber

any of the other properties mentioned in Exhibits “B” and “C” to the Plaint. As far as Neeta Building premises and garage are concerned, there will continue to be an order in terms of prayer clause (d) of the present Notice of Motion. Paragraphs 34 to 36 are reproduced below for completeness and to avoid all controversy:

34. I am a retired person and I visit the Kalbadevi Property as its caretaker and because of my emotional connection with my now deceased father's property. Such visits are for a duration of no more than 2-3 hours a day. It is pertinent to note that the **I derive no commercial gains from such property and have neither taken any steps nor have I ever expressed any desire to use the premises for any commercial gains and any proposal from third persons in that regard has been turned down.** I have been bearing all expenses in respect of the maintenance and upkeep of the Kalbadevi's Property. **Furthermore, there has been no circumstance or factual evidence which would allude to me or Defendant No.2 intending to dispose of the said Kalbadevi Property.** Accordingly, there is no basis for the allegation that the Defendants Nos. 1 and 2 seek to sell or dispose of the said Kalbadevi Property or make any commercial gains there from.

35. **I state and submit the property situated at Balmandir Road, admeasuring about 479.5 sq mt on plot of land bearing CTS No. 3732, Jamjodhpur, Gujarat 360 530 (“Rasik Mansion”) is presently in the name of Rasiklal and was built at this behest. I have taken on steps whatsoever and intend to take no steps whatsoever, until the grant of the probate, to affect any change in name or to alienate, dispose, sell, or transfer the said Rasik mansion from the Rasiklal Estate.** The Rasik Mansion has been under the supervision of a

caretaker who has been engaged by the family for more than 15 years. I have been bearing all expenses in respect of the maintenance and upkeep of Rasik Mansion including the salary of the caretaker. Even after the death of Rasiklal, a *status quo* has been maintained in respect of the Rasik Mansion, save and except in case of day to day maintenance and removal/replacement of deteriorating items and the I have continued to bear all expenses. Furthermore, there has been no circumstance or factual evidence which would allude to me intending to dispose of the said Rasik Mansion or deriving any commercial gains there from. Accordingly, there is no basis for the allegation that I seek to sell or dispose of the said Rasik Mansion or make any commercial gains there from.

36. The property situated at House in Abdulla Jasub Building,, Thakker Bapa Road, Jamjodhpur, Gujarat 360 530 ("Abdulla Jusab Property") is an ancestral property and is presently in the name of Rasiklal. I have taken no steps whatsoever and intends to take no steps whatsoever, until the grant of the Probate, to effect any change in name or to alienate, dispose, sell, or transfer the Abdulla Jusab Property from the Rasiklal Estate. Even after the death of Rasiklal, a *status quo* has been maintained in respect of the Abdulla Jusab Property. Furthermore, there has been no circumstance or factual evidence which would allude to me intending to dispose of the said Abdulla Jusab Property or deriving any additional commercial gains there from. Accordingly, there is no basis for the allegation that I seek to sell or dispose of the said Abdulla Jusab Property or make any additional commercial gains there from.

(Emphasis added)

9. This is sufficient to dispose of the Notice of Motion, and it is disposed of in these terms.

10. I will separately make an order today by consent in Testamentary Petition No. 2184 of 2017.

(G. S. PATEL, J)

Note:- This order is modified as per order dated 12th October 2018 passed on speaking to the minutes. The corrections are shown in bold and Italics.