Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 260 OF 2018
WITH
NOTICE OF MOTION NO. 444 OF 2018
AND
CHAMBER SUMMONS NO. 776 OF 2018
AND
NOTICE OF MOTION NO. 1188 OF 2018

Yashwanti Jaisinghrao Suryavanshi …Plaintiff
Versus
Girish Waman Firke & Ors …Defendants

Mr Sharan Jagtiani, *with Mr M Thorat, Mr Jayesh Mestry, i/b Anil D'Souza, for the Plaintiff.*
Mr UP Bobade, *i/b Mr Yatin Shah a/w Mr Niranjan Deshpande, for Defendant Nos. 1, 6 & 8.*
Mr AU Bobade, *i/b Mr Prakash G Goriya, for Defendant Nos. 2 & 3.*
Mr DR Shetty, *Court Receiver, present.*

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

PC:-

NOTICE OF MOTION NO. 444 OF 2018

1. By consent, the Notice of Motion is taken up for hearing and final disposal. I have heard Mr Jagtiani for the Plaintiff, Mr Bobade for Defendants Nos. 1, 6 and 8, and Mr AU Bobade for Defendants Nos. 2 and 3 at some length. This is the Plaintiff's Notice of Motion.

2. First, as to the array of parties. The Plaintiff, ("**Yashwanti**") and Defendant No. 7 ("**Rajshree**") are sisters. The dispute is about the estate of their deceased brother, the late Ghanashyam Gajanan Kalsekar ("**Barrister Kalsekar**"). He was a bachelor. He was a practising advocate, a barrister, and for perhaps half a century, a member of the Original Side's Bombay Bar Association. His brother, Purshottam, practised on the Appellate Side of this Court. Defendants Nos. 4 and 5 are said to be the witnesses to a Will that Barrister Kalsekar supposedly made. Defendant No. 1 ("**Firke**") is an outsider and, so the Plaintiff says, was a consultant engaged by her son, Kunal, with the limited remittance of making some corrections or updating some entries in the revenue and land records relating to Barrister Kalsekar's estate.

3. Firke and Defendant No. 6 ("**Chavan**") say they are the trustees of a Trust that finds mention not only in Barrister Kalsekar's Will but which they say he established in his lifetime, and which has been operational since then. Defendant No. 2 ("**Rakeshkumar**") and Defendant No. 3 ("**Ramvikas**") were

Barrister Kalsekar's domestic help or house servants. They claim to have received substantial legacies under his Will.

4. A brief background is necessary. Gajanan Bhimrao Kalsekar and Saraswati Gajanan Kalsekar had seven children: Shakuntala, Purshottam, Krishnarao, Ghanashyam (Barrister Kalsekar), Malini, Yashwanti and Rajshree. Gajanan died on 21st August 1959. Saraswati survived him for several decades and died on 12th June 1991. Of the children, Shakuntala, Purshottam, Ghamshyam and Malini were all unmarried. Shakuntala died on 15th April 1995; Purshottam passed on 7th July 2013; Malini died on 14th October 2014; and Barrister Kalsekar died on 20th May 2016. Krishnarao, the other son, was married to one Mangala. They had a son. All three have passed: Krishnarao died on 10th May 1969; Mangala died on 15th May 1985; and their unmarried son died on 26th December 2007. Thus of the original family, the only surviving members today Yashwanti and Rajshree, the Plaintiff and Defendant No.7. Rajshree had three daughters. Yashwanti has a son and a daughter, Kunal Suryavanshi and Madhuri Desai. Consequently, and this is important, during Barrister Kalsekar's lifetime, only he, Yashwanti and Rajshree were the surviving members of the Kalsekar family; and each had a one-third share.

5. There seems to be little dispute that during his lifetime Gajanan, the ancestor, acquired several properties. These include a bungalow known as Ritusamhar at 99, Hill Road, Bandra (West), Mumbai 400 050, CST No. B-566A on a plot of about 3,587 sq mtrs. There stands on this plot a ground and one upper floor structure (the land and building are collectively, "**the Ritusamhar**

property"). Then there is an open plot of land with no structure on it at CTS No. 186/5 of 2,163.89 sq mtrs at Lonavala (**"the Lonavala plot"**); another bungalow known as Shakuntala Villa at Survey No. 181 of about 3,498.46 sq mtrs (**"Shakuntala Villa"**); and at Charni Road, Shankarsheth road, Girgaon stands a tenanted structure known as 'Bhimrao House'. This has a basement, ground floor, a mezzanine and several upper floors. There are several tenants, though portions are presently vacant. It seems that the Bank of India has certain premises on the ground floor of this structure.

6. The 8th Defendant to the Suit is one SRR Estates and Financials Private Limited (**"SRR"**). 95% of its equity was admittedly in the name of the deceased Barrister Kalsekar. The remaining 5% is with Yashwanti's daughter, Madhuri, and Yashwanti and Rajshree's deceased sister Malini in equal shares. SRR in turn holds Flat No. 42 of about 1,690 sq ft in the Kshitij Cooperative Housing Society Limited at Hill Road, Bandra (West), Mumbai 400 050 ("**the Kshitij flat**"). It is here that Barrister Kalsekar lived for many years, right until his demise. Then there are also certain fixed deposits and bank accounts.

7. Broadly stated, the case of Yashwanti and Rajshree is that from the original family of nine members, the two sisters, the only surviving members of the Kalsekar family, have a 50% undivided share in the properties, for the other branches had no lineal descendants. Before Barrister Kalsekar died, he and his two sisters would have had a 1/3rd share each in all these properties. They dispute his Will, of course, which entirely excludes them.

8. As I have noted, Purshottam died on 7th July 2013. Yashwanti filed Testamentary Petition No. 1188 of 2013 seeking Letters of Administration to his estate.

9. Yashwanti says that she lives in and occupies the Ritusamhar Bungalow while Barrister Kalsekar used the Kshitij flat. There is something of a history about the development of the Kshitij CHSL and how after the developer completed the structure, the Kalsekar family that made the land available was allotted a flat but in the name of SRR, 95% of the equity of which was hold by Barrister Kalsekar.

10. For some time before he died Barrister Kalsekar was extremely unwell. He required a wheel-chair. He was severely diabetic. I am not, at this stage, assessing the merits of the rival claims as to whether the Will that he is said to have made was validly made and whether the allegations one against the other about neglect or undue influence are even *prima facie* proved.

11. It is not in doubt that Firke is thoroughly an outsider to the family at least by blood. What he says, however, is that it was he and he alone who was Barrister Kalsekar's primary and in fact sole care-giver right until his demise. He was assisted by Rakesh Kumar and Ramvikas, Defendants Nos. 2 and 3, Barrister Kalsekar's servants.

12. There is some correspondence and documentation to indicate that Firke, a civil contractor doing maintenance work at Kshitij CHSL, somehow got in touch with the Yashwanti's son, Kunal, who

asked to look into an updating of the land and revenue records pertaining to the Kalsekar family properties. Again, I am not assessing the correctness or validity of these exchanges. There are emails and whatsapp messages which will all undoubtedly have to withstand cross-examination and proof. Little purpose would be achieved by examining these because I do not think even a *prima facie* view is at all possible on these documents. I only need to note here that according to Firke, Barrister Kalsekar executed a Will dated 16th April 2016. In this, he left 50% of his 1/3rd share in the Kalsekar properties to something called the GK Trust which was, oddly enough, a private trust but committed to public or charitable works. The remaining 50% of his 1/3rd share was distributed between Rakesh Kumar and Ramvikash, his servants. His sisters were entirely excluded. According to Mr Bobade this was not a Trust merely left to be created in the Will. It was set up by a separate deed of settlement of Trust dated 5th May 2016 while Barrister Kalsekar was still alive. Mr Jagtiani for the Plaintiff says this was done barely three weeks before Barrister Kalsekar passed on 20th May 2016. To this, Mr Bobade's (somewhat predictable) response is, "and what of it?" For it is sufficient, he says, that Barrister Kalsekar set up the trust in his lifetime.

13. Mr Jagtiani's point is that the trust has no named beneficiaries. It cannot be, in that sense, a hybrid vehicle of this kind, one that remains private, but simultaneously also stays out of the reach of the Maharashtra Public Trusts Act. This contention is best reserved for another day and perhaps for another proceeding. It has very little to do with the question of maintenance of the estate in

status quo which, viewed from any perspective, is the Court's concern at the interim stage.

14. The Kshitij flat is apparently well-equipped. It has in it, as one or perhaps expect from a man of learning and letters several thousand volumes, but not all of these are related to law. At the request of parties, I recently directed Mr Pawar, Section Officer from High Court Judge's Library to inspect the library and make a complete inventory of it. He has done an outstanding job and now prepared a comprehensive compilation of every volume in that library. Much of it, I find is general reading both in English and in Marathi.

15. Mr Bobade's submission, first as regards the Kshitij flat, is that Firke should be allowed to occupy the same along with the servants Rakesh Kumar and Ramvikas because that is what, according to him, Barrister Kalsekar desired. He says Firke will pay the outgoings and maintain the flat, and the library will be made available freely to the public as a service. This submission is most strenuously opposed by Mr Jagtiani.

16. It is true that Firke has filed Testamentary Petition No. 1983 of 2016 propounding Barrister Kalsekar's Will dated 16th April 2016. That is being opposed and will be contested. There is, therefore, no assurance as of today that it will succeed; equally there is no guarantee that it will fail. That trial will proceed separately on its own merits. The outcome of that litigation will engender diametrically opposite results. If the Will is proved then there is

complete exclusion of Yashwanti and Rajshree from Barrister Kalsekar's estate. If the probate Petition fails, then Firke, Rakesh Kumar and Ramvikas will have no stake or share whatsoever in the estate. This is true not only of the Kshitij flat but of all the other properties in which Barrister Kalsekar had even a fractional undivided interest.

17. I do not think that any portion of the application today requires me to assess the rival claims as to the validity of the Will or the claims of succession, or even to adjudge the conduct of the parties. Undoubtedly there is much to be said, and perhaps even more that will most energetically be said, on both sides. The only question before me how is the estate best preserved so that regardless of which of the two results obtains in the probate Petition, the estate is carefully safeguarded and husbanded, in such a way that the estate can suffer no loss, for the benefit of whoever it is who succeeds in the testamentary proceedings.

18. It is for this reason alone and no other, that I am unable to accept Mr Bobade's submission that Firke, Rakesh Kumar and Ramvikash should be allowed to occupy the Kshitij flat even as agents of the Court Receiver but wholly without compensation, royalty or security. That submission seems to me to be premised on the argument that the probate Petition is bound to succeed. Indeed Mr Bobade makes bold to say so. I fear he is getting a little ahead of himself. The road to a judgment in that probate Petition is long, and if what is before me is anything to go by, undoubtedly very rocky. What if Firke should fail? He cannot have enjoyed the property free, for that will undoubtedly come at the cost of both Yashwanti and

Rajshree. The opposing suggestion from Mr Jagtiani seems to me, therefore, more reasonable. It is that the flat should be given out on a leave and license to some person on reasonable terms as close to the market value as possible so that there are accretions to the estate. This income and earning from the Kshitij flat will remain with the Court Receiver, duly invested, to the credit of the suit. This, in my view, is the only way to ensure that none are prejudiced in the meantime while these suits wend their way to the final judgment after a trial.

19. Page 46 of the plaint is a list of the properties. The first of these is the Ritusamhar bungalow at Hill Road, Bandra. Yashwanti says that she is in possession of the ground and first floor of the bungalow. According to Mr Bobade, Barrister Kalskekar was in possession of the first floor. I do not think, at this stage, there is any case made out for disturbing the present state of affairs.

20. The movables in the Kshitij flat can be accommodated in the Ritusamhar Bungalow and Yashwanti will undoubtedly have to undertake to preserve and maintain these items, including the library. Here, she stands on a different footing *vis-à-vis* the Ritusamhar Bungalow than Firke does *vis-à-vis* the Kshitij flat. Even during Barrister Kalsekar's lifetime, Yashwanti and Rajshree had each a 1/3rd share in the Ritusamhar Bungalow and other estates. Barrister Kalsekar did not have the whole of it. Firke's claim is based on, and only on, the Will he propounds. Without it, he gets nothing. This is a material distinction between the two sides and it cannot be ignored and it is for this reason, therefore, that I do not find merit in Mr Bobade's submission at this stage that Yashwanti

and Rajshree, the two sisters, should be allowed to occupy the Ritusamhar Bungalow only as agents of the Court Receiver on payment of rent, or that it should be given out to a third party.

21. The Court Receiver will make necessary arrangements to have the movables in the Kshitij flat moved to the Ritusamhar Bungalow and will give the Kshitij flat on leave and license basis initially for a period of one year or three years as optimum.

22. Items Nos. 2 and 3 at page 46 are, respectively, the Lonavala plot and Shakuntala Villa. Yashwanti and Rajshree are using these properties as agents of the Court Receiver under an interim order dated 31st January 2018 (SC Gupte J). That will have to continue.

23. The commercial property known as Bhimrao House at Charni Road is one in which, as I have noted, the Bank of India has commercial premises on the ground floor. The Court Receiver has been collecting the monthly rent/compensation from the Bank of India and has been retaining it. Mr Jagtiani submits that the two sisters, Yashwanti and Rajshree are entitled to 2/3rds of the entire rent. Whether the individual tenants are directed to make payment in those proportions or the Receiver is directed to collect it makes no difference. But, according to him, there is no question that 2/3rds of the income must be paid over to the two sisters. Barrister Kalsekar's estate extends at best only to a 1/3rd share in the income and in that property. This seems to me entirely correct and I believe it is in the interest of both sides that the Court Receiver should be directed to collect the rents from all tenants of the entire building.

Given the nature of these matters, I have very little doubt that other than the Bank of India, the rent from other tenants is probably negligible. But on the other hand, there will be significant outgoings including for maintenance, essential repairs and property and municipal taxes. The property must be maintained. It is for this reason that at this stage I do not want to direct monthly distribution of the gross collections of rent. It is unclear at present whether the aggregate rent collections are sufficient to meet all the outgoings for the property. I will instead direct the Receiver to collect the rent and make an appropriate report for directions at some stage after he has had an opportunity to assess the likely income over a sufficient period of time and the anticipated expenses over that period of time. The distribution to the two sisters and the retention of 1/3rd in the hands of the Receiver can only be after expenses and outgoings are met. Otherwise it will be very difficult to collect a pro-rata contribution from these three different sources.

24. If there are any premises that are vacant or fall vacant, the Receiver is at liberty to issue advertisements for giving these out on leave and license as well. He is at liberty to seek suitable directions from the Court for this purpose.

25. I am told that in Bhimrao House, a flat on the 5th floor and the entire 6th floor are currently vacant. The Receive will, in respect of these two premises, immediately first make a site inspection report. The reason I require this is to ascertain whether these premises require any essential repairs to make them habitable so that they can be successfully given out on leave and license.

26. The Receiver will be at liberty to accept the surrender of tenancy but will not effect any transfer of tenancy or license without prior leave of the Court.

27. As regards the 95% shares of SRR and the share certificate in the name of SRR, these are with Firke. He agrees that these will be deposited with the Court Receiver within two weeks from today.

28. Page 47 of the plaint is a statement of Barrister Kalsekar's fixed deposits and accounts including a PPF account and other accounts with the State Bank of India, Hill Road Branch. The Court Receiver will write to the Branch Manager of the State Bank of India, Hill Road Branch enclosing a copy of this order and stating that no withdrawals from those accounts or premature encashments are to be permitted without a specific order of this Court. If any fixed deposit matures, it will be automatically credited to the savings bank account of the deceased Barrister Kalsekar.

29. The Court Receiver will be at liberty to place a separate report for re-investing any amounts that mature. There are to be no withdrawals from Barrister Kalsekar's account without leave of the Court. It is further clarified that any deposits to the deceased's accounts including automated online deposits or remittances into the account are not prohibited and will be allowed. The Branch Manager will be provided a list of accounts at page 47 of the suit and these will be flagged by the branch manager appropriately in the bank computer system.

30. In addition, the Branch Manager of the State Bank of India, Hill Road Branch will provide the Court Receiver on request a complete updated statement of all holdings of the deceased's brother, Purshottam Gajanan Kalsekar, in that branch updated till as recently as possible.

31. The Branch Manager of the Bank of India, Hill Road Branch where the deceased Barrister Ghanashyam Gajanan Kalsekar had account No. 000410100052959 is requested to immediately render a statement to the Court Receiver of that and all other accounts. The Court Receiver is to be furnished with a complete statement of accounts including all deposits and withdrawals from 1st April 2013 until date. Copies of those bank statements will be given to the Advocates for the Plaintiff and Defendants Nos. 1 to 3.

32. There is also an Innova motor car that belonged to Barrister Kalsekar. The Court Receiver will take possession of the said vehicle, and will ascertain its market value in the used car market. Mr Firke, the 1st Defendant will deliver keys of the motor car to the Court Receiver.

33. In the pending Petition in respect of Purshottam Kalsekar's estate, his brother, Barrister Kalsekar had filed a Caveat. That Caveat has now lapsed upon Barrister Kalsekar's demise. The Petition by Yshwanti for Letters of Administration to the property and credits of Purshottam's estate is uncontested. Undoubtedly, Yashwanti and Rajshree will be entitled to a minimum of 2/3rds share collectively in that estate. I will give Yashwanti and Rajshree

liberty to apply but after the Court Receiver ascertained the amounts due under Bank accounts. This order may be read and used in support of any such application to be made in that proceedings.

34. Mr Anant Pawar, Section Officer, High Court Judge's Library did the inventory of the books at the deceased's residence. He was assisted by one person. Mr Pawar will be paid an amount of Rs. 25,000/- for his assistance and the person who assisted him in this work will be paid an amount of Rs. 15,000/-. This will be shared equally by the Yashwanti, Rajshree and Firke.

35. The Notice of Motion is disposed of in these terms. There will be no order as to costs.

NOTICE OF MOTION NO. 1188 OF 2018

36. After some careful arguments, Mr Jagtiani seeks leave to withdraw this Notice of Motion. The Notice of Motion is disposed of as withdrawn. No costs.

37. All contentions in the Notice of Motion are left open to the final hearing of the Suit.

(G. S. PATEL, J)