

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****NOTICE OF MOTION NO.1912 OF 2012****IN****SUIT NO.1611 OF 2012****WITH****NOTICE OF MOTION NO.2255 OF 2012****IN****SUIT NO.1611 OF 2012****AND****NOTICE OF MOTION NO.606 OF 2013****IN****SUIT NO.167 OF 2013****(NOT ON BOARD)**

Aamir K. Farooqui And 2 Ors.

... Plaintiffs

Versus

Ahmedunisa S. Farooqui And 3 Ors.

... Defendants

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Mr. Rahul P. Jain, i/b. Alpha Chambers, for the Plaintiffs in Suit No.1611 of 2012 and Defendant Nos. 1 to 4 in Suit No.167 of 2013.

Mr. Akhilesh Dubey, a/w. Mr. Vagish Mishra and Mr. Uttam Dubey, i/b. Law Counsellors, for Defendant No.1.

Mr. J.P. Singh, for Defendant Nos. 2 to 4.

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CORAM**: S.C.GUPTE, J.****DATED****: 19 SEPTEMBER 2018****P.C.:**

. Two connected matters, namely, Suit No.167 of 2013 and Notice of Motion No.606 of 2013, which are not on board, are called out by consent and taken on board and heard with the Notices of Motion herein.

2. The present suit is for cancellation of a gift deed executed by Defendant No.1 in favour of Defendant Nos. 2 to 4 and for a perpetual injunction restraining the Defendants from dispossessing the Plaintiffs from the suit property and trespassing upon the suit property. The Plaintiffs claim to be purchasers of the suit property. Notice of Motion No.1912 of 2012 has been taken out by the Plaintiffs for an interim injunction restraining the Defendants from dispossessing the Plaintiffs. By an ad-interim order dated 20 July 2012, the Defendants were restrained from dispossessing the Plaintiffs. That order has subsisted for over six years. In the meantime, Defendant Nos. 2 to 4 have taken out their own notice of motion in the present suit praying for appointment of Court Receiver of the suit premises with directions to take back the possession of the suit premises from the Plaintiffs and put the Defendants in possession of the suit premises as agents of the Receiver without any royalty or security. No ad-interim relief was pressed by Defendant Nos. 2 to 4 in their notice of motion. Pending that notice of motion, Defendant Nos. 2 to 4 filed their own suit, being Suit No.167 of 2013. The Defendants took out a notice of motion in that suit, being Notice of Motion No.606 of 2013. An ad-interim application was moved in that notice of motion, when, by an order dated 5 March 2013, this Court recorded the statement of Defendant Nos. 1 to 4 (original Plaintiffs in the companion suit, i.e. Suit No.1611 of 2012) that they do not intend to dispose of the suit property or create any third party right in respect of the same. The statement was accepted by the Court. Even this statement has subsisted for more than 5½ years. It appears that in the meantime, a preliminary issue was framed by this Court in the companion suit, i.e. Suit No.1611 of 2012, concerning limitation. In view of the amendment by Amending Act (Maharashtra Ordinance No. XVIII of

2018), Section 9A of the Code of Civil Procedure applicable in the State of Maharashtra having been deleted from the statute, the hearing of the preliminary issue practicably does not survive. The parties have, however, in the meantime, gone ahead with recording of part evidence. The Plaintiffs in Suit No.1611 of 2012 have led their evidence on the preliminary issue.

3. Considering these circumstances, the following order is passed:-

(i) Notice of Motion No.1912 of 2012 is made absolute by confirming the ad-interim order passed by this Court on 20 July 2012, pending the hearing and final disposal of Suit No.1611 of 2012.

(ii) Defendant Nos. 1 to 4 in Suit No.167 of 2013 continue their statement recorded in the order passed by this Court on 5 March 2013. The statement is accepted and shall continue pending the hearing and final disposal of Suit No.167 of 2013.

(iii) The evidence recorded by the Court on the preliminary issue shall be treated as evidence of the Plaintiffs in Suit No.1611 of 2012. The Plaintiffs will be entitled to lead such further and additional evidence on the issue of limitation as well as other issues as and when the same are framed.

(iv) Suit Nos. 1611 of 2012 and 167 of 2013 shall be heard together and common issues will be framed in the suits. The hearing of the

suits is expedited.

(v) Place the suits for framing of issues on 11 October 2018. The parties to exchange draft issues before the next date.

(vi) The Plaintiffs in Suit No.1611 of 2012 shall be entitled to substitute the original gift deed dated 25 April 2002 and deed of confirmation dated 28 November 2005, together marked as Exhibit 'M', by a certified true copy of the gift deed and the deed of confirmation. Office shall, accordingly, keep on record the certified true copy tendered by the Plaintiffs as Exhibit 'M-1' and return the original to the Plaintiffs. The Plaintiffs undertake to produce the original as and when the same is required during the course of the trial.

(vii) Notice of Motion Nos.2255 of 2012 and 606 of 2013 are dismissed.