

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1331 OF 2018
IN
SUIT NO. 803 OF 2014

Rajiv D Nayak	...Applicant
<i>In the matter between</i>	
Uday D Nayak (since deceased) & Ors	...Plaintiffs
<i>Versus</i>	
Dattatray D Nayak & Ors	...Defendants

Mr Farhan Dubash, *with Mr Melvyn Fernandes, i/b Vaish Associates, for the Plaintiffs.*
Mr Tejas H Bhatt, *with Ms Saloni C Sathe, for Defendants Nos. 1, 2 and 3.*
Mr Shalabh K Saxena, *for Defendants Nos. 5 to 10.*
Mr Mikhail Behl, *i/b Mr Shalabh K Saxena, for Applicant / Defendant No.4.*

CORAM: G.S. PATEL, J
DATED: 4th September 2018

PC:-

1. The Motion is by 4th Defendant to be relieved of a statement recorded in the order dated 18th July 2014 (RD Dhanuka J) at page 13 by which the 4th Defendant was one of those who agreed not to create third party rights in any of the properties described in Exhibit

“D”. One of those properties is Survey No. 122, Hissa No. 1A, 1C, 2A, 2C, 3A and 3C at village Bolinj, Taluka Vasai, District Palghar. This appears at Sr. No.3 of Exhibit “B” to the Plaint. The 4th Defendant proposes to sell a 16.68% undivided share, right, title and interest in this property to a third party. The Plaintiff, strangely, says that the 4th Defendant has considerably more than this 16.68% share; the Plaintiffs say that the 4th Defendant has a 25% share in this Vasai property. The 4th Defendant is willing to restrict himself to a 16.68% undivided share and agrees and undertakes not to claim any additional share in this property. Viewed from this perspective, the Plaintiff is not in the slightest prejudiced by the application made by the 4th Defendant today.

2. The 1st Plaintiff has passed away. The real difficulty is that the 4th Defendant is sharing the same residential accommodation as the Plaintiffs Nos. 2 and 3. By common agreement, this is not a happy state of affairs. I am told that this is in fact the only reason for making this Notice of Motion in the first place. I need not go into the rival allegations and counter allegations in that regard.

3. I will make the Notice of Motion absolute in terms of prayer clause (a). I am given to understand that the 4th Defendant has a purchaser and will complete the transaction within two or three months. The 4th Defendant is present in Court. He agrees to make known the name and address of the purchaser. Mr Dubash on behalf of the Plaintiffs state that the Plaintiffs may also want to sell their share in the Vasai land. If so, he may approach the same purchaser. He however, has instructions to state that the Plaintiffs will not interfere with or obstruct the transaction between the 4th Defendant

and the third party purchaser. That statement is accepted as an undertaking to the Court.

4. List the Notice of Motion for directions on 10th December 2018.

5. The reason for keeping the matter on 10th December 2018 is the 4th Defendant's undertaking, which I accept, that upon completion of the sale, or at any rate within three weeks thereafter, the 4th Defendant will vacate the premises at B 901, Tirupati Apartments, Bhulabhai Desai Road, Mumbai 400 026.

(G. S. PATEL, J)