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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 1675 OF 2018
IN
NOTICE OF MOTION NO. 848 OF 2018
IN
SUIT NO. 455 OF 2017

Jogendrasingh A Gulabsinghani & Anr	...Applicants
<i>In the matter between</i>	
Zeenat Shiraz Kasam	...Plaintiff
<i>Versus</i>	
MA Battliwala & Ors	...Defendants
<i>And</i>	
Kavassery Anantha Krishnan Vishwanathan & Ors	...Respondents

Mr Rajendra Sorankar, *with Mr Anand Pai & Mr Durgesh Kulkarni, for the Plaintiff.*

Mr Shailesh Naidu, *with Mr Sayeed Mulani & Ms Shobhana Waghmare, i/b Mulani & Company, for the Applicant in Notice of Motion (L) No. 1675 of 2018.*

Mr Rahul Narichania, Senior Advocate, *with Mr Nilesh Gala, i/b Law Square, for Intervenor/Applicant in Notice of Motion No. 848 of 2018.*

Mr Sharan Jagtiani, *with Mr Arun Panicker & Mr Jacob Kadantot, i/b Nitin Parkhe, for Defendants Nos. 1 to 5.*

CORAM: G.S. PATEL, J
DATED: 29th August 2018

PC:-

1. Mr Naidu appears for the Applicants in the present Notice of Motion (for convenience, and though there are two applicants, “**Jogendrasingh**”). He agrees and undertakes that all objections will be removed and the Notice of Motion will be got finally numbered within one week from today.

2. The Notice of Motion in effect seeks that my order of 14th June 2018 in Notice of Motion No. 848 of 2018, where Mr Narichania’s clients, a group of tenants and developer, were applicants, be modified or recalled. This recall is sought ostensibly to protect the undivided 5.08% share that Jogendrasingh claims in one of the properties involved in this administration and partition suit.

3. First, a brief description on how parties are arrayed. For this, I had at first the somewhat questionable advantage of a family tree that seemed to me to strain the boundaries what was technologically possible in word processing software, with a font-size just short of the sub-atomic. Thankfully, this has now been replaced. A more legible version is taken on record, and this having been tendered by Mr Jagtiani, it is marked “J1” for identification with today’s date.

4. The family tree shows this. One Esmail Karim Battliwala, evidently a man of not inconsiderable means, owned several properties. Only one of these is important for our purposes. This is a building known as Kulsum Mahal on CTS Nos. 5713, 5711, 5709 to 5712 and 5717 of Village Kole Kalyan in Andheri. This is one of

three immovable properties mentioned in the plaint. There are other movables. In this Notice of Motion, I am only concerned with Kulsum Mahal property.

5. This is a structure of ground and two floors, and arguably an additional floor. That again is a controversy that need not detain us in view of what follows. Esmail was married to one Kulsumbai. Esmail died on 15th April 1959. Kulsumbai survived him for several years. She died on 18th June 1991. Esmail and Karim had five children, Noorbanu, Sakerkhanu, Salma, Shamim and Anwarali. We are not concerned with the Noorbanu, Salma and Shamim branches today. Anwarali died on 30th April 2015. His wife and their four children survived him. The daughter, Zeenat is the Plaintiff. Defendant No. 1 is one of her brothers, Munis. Defendant No. 2 is his wife. Defendant No. 3 is another brother, Allam. Defendant No. 4 is the Plaintiff's sister Rubina, and Defendant No. 5 is the Defendant's mother, Shabnam.

6. I have by a separate order passed today allowed the Plaintiff's Chamber Summons permitting her to add the names of Anwarali's siblings or their heirs but for the present purposes, I will proceed with the array of parties as it originally stood. Sakerkhanu, Anwarali's sister, died before him on 10th April 1999. She was survived by two daughters Yasmin, and Nazreen and a son Imran. They are not parties to the Suit.

7. Zeenat came to Court seeking partition of Anwarali's estate. She did so (evidently) on the basis that she had a share in that estate.

She based her claim at least in part on an un-probated Will she claimed Anwarali had made on 4th November 2010, and a copy of which is at Exhibit “A”, from pages 39 to 44 of the plaint. Importantly, for the purposes of the present Notice of Motion, Zeenat’s unambiguous case in the plaint was that Kulsum Mahal fell entirely in the estate of Anwarali. this is clear from paragraph E(I) at page 5 of the plaint, which reads thus:¹

“E. The Plaintiff states that the deceased **father was also the owner and/or absolutely seized and possessed of and/or otherwise well and sufficiently entitled to the following immoveable properties (collectively referred to as “the suit properties”):**

(I) **Building No. 200 A known as Kulsum Mahal** on land bearing Survey No. 139, Hissa No. 19, corresponding CTS No. 5709 to 5718 of Village Kolkalyan, Taluka Andheri, situated at the Kalina Kurla Main Road, Santa Cruz (East), Mumbai 400 029 (**herein after referred to as the suit property no. 1).**”

(Emphasis added)

8. Paragraph 1 of the plaint says that it is filed for partition of the Plaintiff’s share in the suit properties. This necessarily includes Kulsum Mahal.

9. On 14th June 2018, I had before me Notice of Motion No. 848 of 2018. I took it up by consent for hearing and final disposal. It was

1 For a discussion on the invariable uselessness of “and/or”, and why it is never necessary, see order dated 27th August 2018 in *Manoharlal Lalchand Nagpal v Madan Tikamdas Dembla*, Testamentary Suit 82 of 2008.

filed by 13 tenants of Kulsum Mahal. They are represented today by Mr Narichania. They said then, as they do now, that the building was 55 years old, dilapidated and dangerous, and that a recent structural audit report recommended its demolition and reconstruction. I noted photographs shown to me that day evidenced visible structural distress. I also noted in paragraph 4 that there was apparently a mention of a Memorandum of Understanding with Applicant No. 14, Supreme Realtors for the redevelopment of the building.

10. Up to this point, therefore, there was a three-way contest between the Plaintiff, the Defendants and the tenants. The Plaintiff was so far only seeking to secure her share *inter alia* in Kulsum Mahal, saying that this was part of Anwarali's estate. In paragraph 5, I noted that none could have any real objection to the redevelopment and reconstruction by Supreme Realtors on adherence to the MoU of October 2015. The Defendants agreed to stand by that. Lastly, I noted that an order permitting redevelopment was in the interest of all. I allowed the Notice of Motion keeping contentions open, noted that all signatories to the MoU agreed to be bound by it and disposed of the Notice of Motion in those terms.

11. A little over a month later, stewarded by Mr Naidu, Jogendrasingh entered the frame. He claimed that he had a 5.08% ownership title in Kulsum Mahal. He did not derive this share from Anwarali or any of his descendants. On the contrary, his claim came through a descendent of the Sakerkhanu branch. He said Kulsum Mahal was owned by Esmail Karim Battliwala (the ancestor), and

devolved on his heirs. Sakerkhanu's branch drew down a share in that estate, including Kulsum Mahal. That share then descend to Sakerkhanu's two daughters and a son. One of these daughters was Yasmin. She entered into an agreement with one Navkar Infra Developers, and Navkar Infra in turn by a registered document conveyed its interest to Jogendrasingh. With this, the battle for Kulsum Mahal now became a four-cornered fight.

12. To begin with, there is a serious problem as to whether Zeenat, the Plaintiff acknowledges Jogendrasingh's ownership, interest and title at all or not. Mr Sorankar appearing for Zeenat has some difficulty in striving, albeit valiantly, to remain forever ambiguous, by saying that Zeenat "did not know" and "could not say" whether Yasmin had any interest, and, therefore, whether Jogendrasingh acquired any interest. Mr Sorankar says "it is possible". But this is a sort of self-goal, if accepted because paragraph E(I) of the plaint as I have noted makes it plain that, according to Zeenat, the *whole* of Kulsum Mahal was one of the properties in the estate of Anwarali and, therefore, there was nothing that fell to Sakerkhanu's branch to descend to Yasmin for her to convey to Navkar Infra for it to sell to Jogendrasingh. Taking the plaint as it stands, Zeenat and Jogendrasingh would have to remain the most implacable of opponents. They could not possible have a joint or common interest. Accepting Jogendrasingh's case defenestrates Zeenat. Standing by her case in the plaint, she unseats Jogendrasingh. The case of one undermine the case of the other entirely. Yet on 25th July 2018, I found the Plaintiff that day most enthusiastically supporting Jogendrasingh. This introduced a wholesale ambiguity in the plaint and how to chart a course forward.

Therefore, on that date, I directed that no further reconstruction would continue until the Notice of Motion was finally heard after all filings be complete. This is that fateful day.

13. Jogendrasingh may base his claim on a variety of documents, but I am quite unable to see how in a Notice of Motion filed by the applicants/occupants of the building and Supreme Realtors he can enter as a owner to assert an ownership right. It is one thing if Jogendrasingh says simply that he claims occupancy of part of Kulsum Mahal; and he does, for Mr Naidu says that whether recognised by the Plaintiffs or the Defendants or not, Jogindrasingh occupies part of the 3rd floor of Kulsum Mahal. Mr Narichania for the tenants and Mr Jagtiani for the Defendants dispute that there is an authorised 3rd floor at all. Mr Narichania says that it is part of the terrace. Mr Naidu for his part says that the construction that his client claims to occupy on the 3rd floor is not illegal or unauthorised and is shown in the plans sanctioned by the MCGM. I am not entering into that controversy at all for the very simple reason that the mere fact that Jogindrasingh is in occupation or claims to be in occupation of even an inch of the building does not mean that the building is not dilapidated. The strength or weakness of Jogendrasingh's case is unrelated to the structural stability of the building. There is therefore no warrant to continue with the stay on reconstruction and redevelopment on this ground. All rights and contentions of Jogindrasingh as an occupant must be kept open, and they are. I am given to understand that Jogindrasingh has in fact filed proceedings in the City Civil Court at Dindoshi. He claims that there are mutation entries as well. He also claims that there are documents by which one or more of the Defendants have

acknowledged Jogindrasingh's right or share in the Kulsum Mahal property. The effects and consequences of these rival claims cannot be decided in this Notice of Motion. The limited question here is whether on Jogindrasingh's application reconstruction and redevelopment should be stopped although there is compelling evidence of deterioration and damage to the building. Whatever be Jogindrasingh's claims whether to re-allotment on reconstruction or to occupy a defined space, these are matters that will have to be adjudicated in an appropriate proceeding that Jogindrasingh must file and prosecute establishing title. He may do so on all grounds that are available to him.

14. There is no reason therefore to direct that reconstruction of this building should be stayed. None are prejudiced in view of these observations by the redevelopment of the building. On the contrary I should imagine that a successful completion of the project is in the interest of all.

15. I am not directing any of the parties to do or not do any particular act or execute any particular document in relation to the development agreement. They may adopt separate proceedings in that behalf. I say this because it is Mr Naidu's case that he is entitled to have agreement for permanent alternative accommodation as a precondition to handing over possession. His rights and possession are disputed by both Mr Jagtiani and by Mr Narichania. All parties are at liberty to take such steps as they need in that behalf depending on the factual position established on site. None of that falls for my determination today. The limited issue before me is whether my

order of 14th June 2018 should be recalled at the instance of Jogindrasingh or not. I think not.

16. The Notice of Motion (L) No. 1675 of 2018 is, accordingly disposed of with these observations.

(G. S. PATEL, J)