

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO.1130 OF 2015
IN
SUIT NO.741 OF 2013
WITH
NOTICE OF MOTION NO.1616 OF 2017
(NOT ON BOARD)**

Meghnath K. Ghosh ... Applicant

In the matter between

Meghnath K. Ghosh ... Plaintiff

Versus

Indranath K. Ghosh And Others ... Defendants

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Mr. Mayur Khandeparkar a/w Mr. M.S. Dehlvi I/b Dehlvi & Co. for the Applicant/Plaintiff.

Mr. Abhishek Bhandari I/b K. Balakrishnan for Defendant No.1.

Mr. Tukaram Shendge I/b Amit Sale for Defendant Nos.2, 3 And 4.

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CORAM : S.C.GUPTE, J.

DATE : 18 JANUARY 2018

P.C. :

. The present Notice of Motion is taken out in a Suit which is dismissed as against Defendant Nos.1 and 5 for non-service of writ of summons. The Plaintiff has taken out another notice of motion for recall of that order and restoration of the suit. That notice of motion, being Notice of Motion No.1616 of 2017, is not on board. It is, however, mentioned and taken on board by consent of the parties. By consent of Defendant No.1 (Defendant No.5, who is not before the Court, being only a formal party),

Notice of Motion No.1616 of 2017 is made absolute in terms of prayer clauses -(a) and (b). The suit is restored as against both Defendant Nos.1 and 5. In case the Plaintiff proposes to prosecute the suit against Defendant No.5, a fresh writ of summons be issued to Defendant No.5 returnable after four weeks from today.

2 Learned Counsel for Defendant No.1 tenders his written statement, the same is taken on record.

3 The suit is for partition and separate possession of the property, wherein Plaintiff claims to have 3/4th share. The suit property originally belonged to the deceased father of the parties, who are brothers and their family. The Plaintiff and Defendant Nos.1 and 2 are brothers; Defendant No.3 is the wife of Defendant No.2, whereas Defendant No.4 is the daughter of Defendant No.2. It is the Plaintiff's case that he originally had 1/4th share in the property, other 3/4th share being jointly held by the two defendants (Defendant Nos.1 and 2) and the mother of the parties. It is his case that their mother's 1/4th share in the suit property was bequeathed to him under a will executed by the mother. This will has been duly probated. It is also the case of the Plaintiff that 1/4th share of Defendant No.2 has been relinquished by him in favour of the Plaintiff. An affidavit affirmed by Defendant No.2 is placed on record concerning such relinquishment. Defendant No.1 also supports the Plaintiff's case on such relinquishment. On these facts, the Plaintiff prays for interim reliefs in Notice of Motion No.1130 of 2015. It is the Plaintiff's grievance that Defendant Nos.2, 3 and 4 have unauthorisedly locked one room of the suit flat and have been creating nuisance by encroaching upon the suit

property. There is an ad-interim order passed by this Court restraining Defendant Nos.2 to 4 from creating any acts of nuisance in the suit property. The Plaintiff now prays for an order directing Defendant Nos.2, 3 and 4 for breaking open of the lock unauthorisedly put by them on one of the rooms in the suit flat.

4 Learned Counsel for Defendant Nos.2 to 4 claims that Defendant No.4 is presently using the locked room in the suit flat. This position is contested by the Plaintiff. The Plaintiff offers to resolve the controversy by submitting to valuation to be made of the suit property by this Court and payment of 1/4th share of Defendant Nos.2, 3 and 4.

5 Notice of Motion No.1130 of 2015 is, accordingly, presently stood over to 16 February 2018. In the meantime, the Prothonotary & Senior Master of this Court shall appoint a valuer from his panel for valuing the suit flat. All parties including Defendant Nos.2 to 4 are directed to co-operate with such valuer and facilitate inspection and valuation of the whole of the suit property by the valuer. A report of the valuer shall be placed before the Court latest by 15 February 2018. As and when the valuer inspects the suit property, a notice shall be given to all the parties through their respective Advocates. The parties shall arrange to facilitate inspection of the suit property by the valuer on that date. This Court shall consider on the next occasion, after hearing the parties, whether a preliminary decree should be passed and further, whether 1/4th share of Defendant Nos.2 to 4 should be disbursed in the matter suggested by the Plaintiff. The costs of the valuation shall be borne by the Plaintiff.

6 Stand over to 16 February 2018.

(S.C. GUPTE, J.)