

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

**NOTICE OF MOTION NO.2609 OF 2012
IN
SUIT NO.2544 OF 2012**

Pearl Chesson ... Applicant/Org.Plaintiff
Versus
Sean Lawrence of Bombay And
Others ... Defendants

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Mr. Karl Tamboly a/w Mr. R.M. Jayakar i/b Jayakars for the
Applicant/Plaintiff.

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CORAM : S.C.GUPTE, J.

DATE : 31 JANUARY 2018

P.C. :

. This Notice of Motion is taken out in a suit for declaration of ownership to the suit property and perpetual injunction against Defendant Nos.1 and 2 from creating third party rights or parting with possession of the suit property, which is a flat co-joined with the adjacent flat owned by Defendant No.1. The Plaintiff apprehends that on the basis of a power of attorney executed by the Plaintiff in favour of Defendant Nos.1 and 2, the Defendants are likely to create such third party rights or part with possession of the suit property. By an order dated 22 October 2012, Defendant Nos.1 and 2 have been directed not to act on the power of attorney and not to enter into the co-joined flat, i.e. the suit flat owned by the Plaintiff and the adjacent flat owned by Defendant No.1, without obtaining prior permission of this Court.

2 Since at the hearing of the Notice of Motion thereafter, the Defendants raised an objection to the jurisdiction of this Court to entertain the subject matter of the present suit in view of the provisions of Section 7 and 8 of the Family Court Act, Defendant No.1 and the Plaintiff being husband and wife and the suit being related to their property, this Court by its order dated 16 January 2014 framed a preliminary issue concerning the jurisdiction of this Court and directed the parties to lead evidence. Whereas the Plaintiff has led documentary evidence on the issue, there is no evidence on the part of the Defendants. In fact, the Defendants throughout remained absent at the hearing of the preliminary issue. By an order dated 17 January 2018 the preliminary issue was decided in favour of the Plaintiff and the motion was posted for final hearing to today's date. Despite the Plaintiffs having given a special notice of today's hearing to the Defendants, none appears for the Defendants. The motion is, accordingly, heard in their absence.

3 It is not a matter of dispute that the Plaintiff and Defendant No.1 were married; they purchased two adjacent flats, namely, Flat Nos.I-601 and I-602, by separately entering into agreements for sale with the developer. Whereas Flat No.I-602 was purchased by the Plaintiff, Flat No.I-601 was purchased by Defendant No.1. Relations between the Plaintiff and Defendant No.1 being normal at the time of purchase of the flats, the common wall between the two flats was demolished and a new entrance door was constructed for the common area by removing the existing entry doors and making an opening in the wall. Ever since then, the Plaintiff and Defendant No.1 have been residing in Dubai and the flats were given on leave and licence as one unit from time to time. The last of such licences

expired on 29 February 2012. Since then the flats have remained unoccupied and under the lock and key of the Plaintiff. In course of time, i.e. on 5 June 2012, the marriage between the Plaintiff and Defendant No.1 was dissolved by a decree of divorce passed by Dubai Supreme Court.

4 It is the case of the Plaintiff that after this decree was passed, Defendant No.1 came to Mumbai and tried to break open the lock. In the premises, the Plaintiff has approached this Court for a declaration of her ownership of Flat No.I-602 and perpetual injunction against Defendant Nos.1 and 2 from (I) entering or any manner taking possession of co-joined Flat Nos. I-601 and I-602 without construction of a wall between the two flats and re-erection of separate doors to the two flats and (ii) disposing of or creating third party rights in respect of their own Flat No.I-601 without reconstruction of such common wall and re-erection of the doors.

5 From the records of the case placed before the Court, *prima facie* the Plaintiff has clearly made out her case of ownership of Flat No.I-602. The agreement for sale in respect of this flat, which is registered, is in the name of the Plaintiff. It is also clearly believable that in view of the matrimonial relationship between the Plaintiff and Defendant No.1, the common wall between the two flats, which were adjacent to each other, was demolished and the two flats were licensed as one unit to third parties, since the Plaintiff and Defendant No.1 continued to reside in Dubai. On these facts, the Plaintiff has clearly made out an overwhelming *prima facie* case for not only an interim injunction against the Defendants, but also for appointment of a receiver for the purpose of constructing a wall between the two flats. The Plaintiff and Defendant No.1 can use their respective flats, only if such

wall is reconstructed between the two flats and the common entrance is closed and separate individual entrances to the two flats are re-erected. In fact, there is an e-mail on record, which is addressed by Defendant No.1 to the Plaintiff, conveying his assent to the Plaintiff constructing such wall and separating the two flats so long as his flat is restored to its original layout. The Plaintiff has, for her part, in her correspondence offered to do so without prejudice to her rights and contentions. Mr. Jayakar, learned Counsel for the Plaintiff, agrees to abide by that statement.

6 On these facts, the Plaintiff deserves the relief of appointment of receiver so that the two co-joined flats are separated by reconstructing of the dividing wall and re-erection of two separate doors to the flats and also restoring Flat No.I-601 owned by Defendant No.1 to its original condition as at the date before the two flats were co-joined, at the Plaintiff's own expenses.

7 Accordingly, the Notice of Motion is made absolute in terms of prayer clause -(a) (excepting the bracketed portion). The Court Receiver shall see that Flat No.I-601 owned by Defendant No.1 is restored to its original condition in accordance with the sanctioned plan of the building. After separating the two flats, the Court Receiver shall hand over possession of Flat No.I-602 to the Plaintiff and Flat No.I-601 to Defendant No.1. Till the Court Receiver takes charge of the two flats and completes the work, there will be an ad-interim injunction in terms of clauses (i) and (iii) of the prayer clause -(a) of the Notice of Motion. There will also be an interim order in terms of clause (ii) of prayer clause -(a) of the Notice of Motion. The Court Receiver to carry out this exercise within a period

of six weeks from today.

8 Defendant No.3-society is directed to render such assistance to the Court Receiver for carrying out this order as may be necessary and as required by the Court Receiver. Needless to add this shall include furnishing of the sanctioned plan of the building to the Court Receiver.

9 Since there is no written statement in the suit on the part of the Defendants and the suit was in fact transferred to the list of undefended suit by an earlier order of the Prothonotary & Senior Master, let the hearing of the suit be expedited.

10 Place the suit for directions after six weeks.

(S.C. GUPTE, J.)