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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 209 OF 2018

IN

SUIT NO. 96 OF 2018

Mansur Taherbhai Petiwalla ...Applicant

In the matter between

Mansur Taherbhai Petiwalla ...Plaintiff

Versus

Shabbir Husein Taherbhai Petiwalla & Ors ...Defendants

WITH

CHAMBER SUMMONS (L) NO. 973 OF 2018

IN

SUIT NO. 96 OF 2018

Mansur Taherbhai Petiwalla ...Applicant

In the matter between

Mansur Taherbhai Petiwalla ...Plaintiff

Versus

Shabbir Husein Taherbhai Petiwalla & Ors ...Defendants

Mr Sharan Jagtiani, with Mr Ravish Mishra, i/b VB Dhingreja, for
the Plaintiff in Notice of Motion No. 209 of 2018, Chamber
Summons (L) No. 973 of 2018 and Notice of Motion No. 211 of
2018.

Mr Gautam Ankad, with Ms Mahalaxmi Ganapathy, i/b ALMT
Legal, for Defendants Nos. 1 & 5 in Notice of Motion No. 209 of
2018 and for Defendants Nos. 1 to 3 in Notice of Motion No. 211
of 2018.

CORAM: G.S. PATEL, J

DATED: 27th July 2018

PC:-

1. The Chamber Summons seeks an amendment to the Complaint in terms of the schedule annexed to the Chamber Summons. The second prayer is for a widely-worded restraint against all properties belonging to the deceased Rukhanbai Taherbhai Petiwalla (“**Rukhanbai**”), including the properties in Exhibit “A” to the Complaint. As regards prayer clause (b), I will restrict this order to one property and that is Flat No. 5B, on the 5th floor, of a building known as Clover Apartments, New Pushtikar Cooperative Housing Society Limited, 29 Cuffe Parade, Colaba, Mumbai 400 005. There is also an associated garage No. 5B.

2. As regards the amendment, Mr Jagtiani for the Plaintiff states that this has been necessitated on account of certain disclosures that were made by Defendants Nos. 1 and 5 in their Affidavit dated 8th March 2018. Keeping all contentions open, I will allow the Chamber Summons for amendment in terms of the schedule annexed to the Chamber Summons. Amendment to be carried out on or before 13th August 2018. A copy of the amended Complaint is to be served on the Advocate for the Defendants on or before 24th August 2018. The Suit itself will be listed for directions on 29th August 2018.

3. As to the question of interim relief, *prima facie* there is a dispute as to whether the deceased Rukhanbai’s one fourth share in Flat No. 5B (in which I will refer to the garage as well) was or was

not transferred in her lifetime. There is a dispute as to several documents. The case of Defendants Nos. 1 and 5, briefly stated, is that the deceased transferred her one fourth share in Flat No. 5B and its garage to her grandson and that this was to the knowledge of both the Plaintiff and Plaintiff's wife. Mr Ankad says that the Plaintiff and his wife both signed documents in acknowledgement of this and, further, that there was a family arrangement by which Rukhanbai's one fourth share was transferred in her lifetime. This transaction is disputed by the Plaintiff. He denies the authenticity of his signature and his wife's signature on those documents. Mr Jagtiani says that there is *prima facie* evidence of tampering with some documents.

4. I do not think that it would be fair to either side to enter into any larger controversy at this stage. All contentions must expressly be kept open. I will, however, proceed on the basis that a one fourth interest in the flat must be safeguarded pending the final disposal of this Notice of Motion of the Suit.

5. The other questions are evidently matters of evidence and trial. I do not think that there is a case made out for the appointment of a Court Receiver. The Defendants Nos. 1 and 5 are in occupation of Flat No. 5B and the garage since 1984.

6. On instructions Mr Ankad makes a statement that without leave of the Court obtained at least after two weeks' prior written notice to Mr Dhingreja who is on record for the Plaintiff, the Defendants Nos. 1 and 5 will not part with possession, alienate,

transfer or encumber, an undivided one fourth right, title, share and interest in Flat No. 5B and its associated garage. The statement is noted and accepted.

7. In my view this is sufficient to dispose of both the Notice of Motion No. 209 of 2018 and the Chamber Summons (L) No. 973 of 2018. Both stands disposed of in these terms. There will be no order as to costs.

8. This order will not affect the merits of any other litigation between the parties.

(G. S. PATEL, J)