

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO. 612 OF 2016
IN
NOTICE OF MOTION NO. 4937 OF 2015
IN
S.C SUIT NO. 2943 OF 2015**

Shri Sanat Jivram Joshi

...Appellant

Vs.

Mehraj Abdul Gaffar & Ors.

...Respondents

Mr.J.V. Parmar with O.S. Kamwal for Appellant.

Mr.Sajjad H. Patel for Respondents.

CORAM : S.C. GUPTE, J.

DATE : 19 AUGUST 2019

P.C. :

This appeal from order challenges an order passed by the Bombay City Civil Court on a notice of motion taken out by the Appellant (original Plaintiff). The notice of motion was taken out in a suit for declaration of co-ownership in respect of the suit property. The Plaintiff claims to have 9.09% share in the suit property and seeks a partition by metes and bounds. The Plaintiff also seeks perpetual injunction against the Respondents (original Defendants) restraining them from dealing with the suit property without proving their rights before the competent court or obtaining proper representation in respect of their predecessor's share coming to them.

2 It is not in dispute that about 89.5% share of the suit property is now held by the Respondents. The Plaintiff has about 9.09% share in the

property, whereas the balance about 2% is held by other legal heirs of deceased Jivram Velji Joshi. So far as the Defendants' share in the suit property is concerned, they certainly have a right to deal with their share. So far as the Plaintiff's share is concerned, there is no question of the Defendants dealing with share. Learned Counsel for the parties are satisfied, if this clarification is issued by this court. It is ordered accordingly and the appeal from order is disposed of. No order as to costs.

(S.C. GUPTE, J.)