

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

CIVIL APPLICATION (O) NO. 118 OF 2018

IN

CIVIL APPLICATION NO. 220 of 2017

IN

CIVIL REVISION APPLICATION NO. 938 OF 2012

Mrs. Rose Mario Pereira

...Applicant

Versus

Mr Cyril Joseph Mascrenhas & Ors.

...Respondents

Abhas Mookhtiar a/w Nisarg Mehta- Advocate for the applicant.
Sanjiv Sawant – Advocate for the respondent 3A to 3C.
Nachiket Khaladkar – Advocate for the respondent R-1 & 2

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 5th AUGUST 2019.

P.C. :

The applicant is a tenant, and the respondents are the landlords. Though the property belonged to a common ancestor, now three branches are the co-owners of that property. After suffering the concurrent findings of eviction, the applicant-tenant filed this Civil Revision Application. In the Civil Revision Application, one of the co-owners—that is, Peter Anthony Enthiado, who is no more—filed Civil Application No. 645 of

2014 seeking interim compensation from the applicant-tenant. In fact, he did not show the other two branches in his application. As a result, the Court, through its order dated 16.02.2016, directed the tenant to pay Rs. 10,000/- per month directly to Peter.

2. Later the other two branches came up with Civil Application No. 220 and 221 of 2017. They brought to the Court's notice that they too were entitled to their respective shares in the compensation. Then, through a common order dated 18.09.2017, this Court directed the applicant-tenant to pay Rs.3,000/- to each of the two branches and the balance Rs. 4,000/- to Peter. In the course of time, Peter died. Now, the two branches have come up another set of Civil Applications—Civil Application Nos.117 of 2018 and 118 of 2018. They want the deceased Peter's legal heirs to re-deposit proportionate to their respective shares from the amounts Peter had received directly from the tenant as interim compensation.

3. Pending the Civil Applications, the tenant filed Civil Application No. 274 of 2018. He wanted to deposit the monthly compensation directly in the City Civil Court, perhaps wary of the disputes among the co-owners. And this Court, through an order dated 24.11.2018, permitted the tenant to deposit the amount as he had sought. As a result, the tenant, now, continues to deposit Rs.10,000/- as interim compensation in the Civil Court.

4. In Civil Application No. 117 and 118 of 2018, the two

branches assert that Peter's legal representatives must re-deposit their shares. Each branch's share comes, according to them, to Rs. 3,39,500/-. Of course, Peter's legal representatives deny their liability or the other two branches' entitlement in the amounts the tenant had already deposited.

5. At any rate, now the tenant has been depositing the amount before this Court. The amount thus being deposited has got accumulated and has become a corpus, to be distributed, perhaps, ratably among the three branches, once the proceedings terminate.

6. So I see no need for the Court to give any mandatory direction requiring Peter's branch to re-deposit the amounts the other two branches are entitled to. Instead, once the proceedings terminate, the Court may distribute, from the corpus now being formed, the amounts to all the three branches. At that time, the Court will keep in view the amounts Peter's branch has already received. Thus, it is a matter of adjustment.

I accordingly close the Civil applications without prejudice to the rival contentions among the three branches as to their respective entitlement over the compensation the tenant has been depositing.

[DAMA SESHADRI NAIDU, J.]