

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

NOTICE OF MOTION NO.807 OF 2018

IN

SUIT NO.436 OF 2018

Meera Godbole)....Applicant/Plaintiff

V/s.

Ila Bipin Gandhi & Ors.)....Defendants

Mr.Amol Babanrao Kharat for plaintiff.

Mr.Rohan Cama a/w Mr.Shanay Shah and Mr.Dharshan Mehta I/by
M/s.Dhruve Liladhar and Co. for defendant no.1.

Mr.M.A.Shah I/by Auroma Law for defendant no.3.

CORAM : K.R.SHRIRAM,J

DATE : 28.6.2019

P.C.:-

1. Plaintiff has approached this Court for recovery of possession of a flat being flat no.13, Shashidhar Building, Dr.Rajabali Patel Road, Off Warden Road, Mumbai-400 026 (the suit flat) and for declaration that an indenture of ownership dated 1.9.2008 (the suit agreement) executed between defendant no.1 and defendant no.2, is null, void and not binding upon plaintiff. There are other ancillary reliefs also sought in the plaint, one of which is for an order and decree for partition and separate possession of the suit flat and for dividing the suit flat by metes and bounds and in the alternative, sell

the suit flat and pay over 50% of the suit consideration to plaintiff, which according to plaintiff will be Rs.7 crores and for a further compensation of Rs.5 crores along with compound interest towards damages. Since the ancillary reliefs included relief for partition and division of suit flat by metes and bounds and the roster of this Court does not include partition suits, and that came to light only after hearing the matter for some time, the Court pointed out to the counsel that there is an issue as to whether this Court can hear the matter. Mr.Cama for defendant no.1 and Mr.Kharat for plaintiff in unison informed the Court that they have no objection if the Court hears the Notice of Motion and disposes the same. This was after plaintiff was put to notice by Mr.Cama that his application is going to be not just for vacating the ad-interim relief but for dismissal of the Suit itself and on the grounds that plaintiff has played a fraud on the Court by suppressing material facts. In view of the consent of both the counsel, the Court proceeded to hear the matter.

2. Notice of Motion was heard from 11.30 A.M. till about 1.15 P.M. Both the counsel concluded the arguments and when the Court expressed its view in the matter and was about to dictate the order, Mr.Kharat requested to be excused for 5 minutes so that he could take instructions from plaintiff. Mr.Kharat came back and informed the

Court that his instructions are to withdraw the suit.

3. Suit dismissed as withdrawn. Refund of court fees in accordance with Rules. Interim application disposed. All interim orders stand vacated.

(K.R.SHRIRAM,J)