

Ladda

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION No. 718 of 2013.

IN

SUIT No. 2432 OF 2012

Mayura Pramod Dhume

..Applicant.

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S. Ladda
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In the matter between :-

Mayura Pramod Dhume

..Plaintiff.

Vs

Shailaja Madan Dua & Anr

..Defendants.

Mr. K. T. Kukreja a/with Ms. Rahat Kalpatri & Mr. Suraj L. Dube I/by Mr. Devang H. Shah for the Applicant/Plaintiff.

Mr. Rashid Khan a/with Ms. Priyanka Kothari I/by Mr. K.K. Jadhav for the Defendants.

Mr. Madan Dua, Defendant No.2 is present in Court.

CORAM : B. P. COLABAWALLA, J.

DATED :- 12th June, 2019.

P.C. :-

1) This Notice of Motion has been filed for appointment of a Court Receiver as well as for an injunction in respect of Flat No. 202A, Bafna Apartments, Vijaydeep Developers Co-operative Housing

Society Ltd., Plot No. 276, Mogul Lane, Mahim, Mumbai 400 016 [for short **“the suit property”**]. In addition to these prayers, the Motion also seeks for deposit of certain monies as more particularly set out in prayer clauses (c),(d) and (e) of the Notice of Motion. At the outset, I must state that as far as prayer clauses (c),(d) and (e) are concerned, they cannot be granted, at this stage, as it would virtually amounting to passing a decree in this Motion against the defendants.

2) The prayers in the suit are for a declaration that the plaintiff is the owner of the suit property and that the defendants are trespassers and have no right, title or interest of any nature whatsoever in respect thereof. A prayer for handing over vacant and peaceful possession is also sought (amongst other prayers for a money claim). The title is asserted by the plaintiff on the basis of a registered Will of Mrs. Kumudini Nilkanth Dhume who is the mother of defendant No.1 and the grand-mother of the plaintiff. According to the plaintiff, under the aforesaid Will, the suit property is bequeathed

solely to the plaintiff. A separate proceeding with reference to the aforesaid Will has already been filed in this Court which is pending and contested by the defendant No.1. It is a common ground before me that defendant Nos. 1 and 2 are in use, occupation and possession of the suit property.

3) After this matter was argued for some time, the learned Advocate appearing on behalf of the defendants, on instructions of the defendants, states that a Court Receiver in terms of prayer clause (a) of the Notice of Motion be appointed and the defendants be allowed to continue to use and occupy the suit property as an agent of the Court Receiver, on the payment of royalty, but without furnishing any security. The learned Counsel appearing on behalf of the plaintiff has fairly stated on instructions that the plaintiff has no objection on this course of action being adopted.

4) In view of the aforesaid consensus, the following order is passed :-

(i) Pending the hearing and final disposal of the above suit, the Court Receiver, High Court Bombay is appointed Receiver in respect of the suit property;

(ii) The defendants shall be allowed to use and occupy the suit property as an agent of the Court Receiver on the payment of royalty but without the payment of any security. The royalty shall be fixed and determined by the Court Receiver. The payment of royalty shall be fixed from the date of this order and not from the date when the Notice of Motion was filed;

(iii) The defendants undertake that they shall execute all the necessary documents including the agency agreement as required by the Court Receiver. In the event, the defendants commits default in either executing an agency agreement or in payment of royalty, the Court Receiver shall file a report in this Court, seeking further directions with regard to the suit property;

(iv) In addition to the appointment of the Court Receiver, the defendants are restrained by an order of injunction from creating any third party rights and/or interest in respect of the suit

property.

5) The Notice of Motion is disposed of in the aforesaid terms. There shall be no order as to costs.

(B. P. COLABAWALLA, J.)