

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
SUIT NO.406 OF 2017
WITH
NOTICE OF MOTION NO.1852 OF 2017**

Asha Dushyant Maniar & Ors	..Plaintiffs
Vs.	
Mukesh Sankalchand Shah & Anr	..Defendants

Mr. Maheshkumar Gundeboina for Plaintiffs
(Ms Asha Dushyant Maniar Plaintiff No.1, Ms Mukta Jitendra Parikh-
Plaintiff No.2 and Ms Kalpana Umesh Gandhi-Plaintiff No.3 are present).
Mr. Asif Memon I/b K. S. Misra for Defendants
(Mr. Mukesh Sankalchand Shah – Defendant No.1 and Mr. Manoj Shah
Defendant No.2 are present)

**CORAM : K.R.SHRIRAM, J.
DATE : 15th MARCH, 2019**

P.C.:

1 Parties have amicably entered into the consent terms. There is a Testamentary Suit No.105 of 2018 in Testamentary Petition No.1292 of 2018, also pending between the parties. Plaintiffs and defendants have entered into a comprehensive settlement and the consent terms dated 15th March 2019, signed by plaintiffs, defendants and their respective advocates, is taken on record and marked "X" for identification. Mr. Gundeboina appearing for plaintiffs states that all three plaintiffs are present in court and identifies them. Mr. Memon appearing for defendants states that both defendants are present in court and identifies them.

2 Order in terms of consent terms, copy whereof is scanned and reproduced hereinbelow:

X *[Signature]*
12/1/19

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY & ORIGINAL JURISDICTION
SUIT NO. 406 OF 2017
AND
TESTAMENTARY SUIT NO 105 OF 2018
IN
TESTAMENTARY PETITION NO 1292 OF 2018

[Handwritten: Kalpana & Gandhi, Mukesh S. Shah, HSL]

1) ASHA DUSHYANT MANTAR	)
Aged about- 62 years, occ: House wife	)
Adult, Indian Inhabitant of Bombay,	)
Residing at -303, Vrajdhara, Rambaug Lane,	)
Nr Chamunda Garage, Poisar, Borivali (W),	)
Mumbai-400092	)
2) MUKTA JITENDRA PARIKH	)
Aged about 67 yrs, occ: House wife	)
Hindu, Indian Inhabitant of Bombay	)
Residing at 6, Dipen Apartment, Ganesh Galli,	)
B/H Gopal Tower, Nr Maninagar Station,	)
Maninagar, Ahmedabad-380008	)
3) KALPANA UMESH GANDHI	)
Aged about 64 yrs, occ: House wife	)
Hindu, Indian Inhabitant of Bombay	)
Residing at 702, Dwarka Thanawala Lane	)
Vile Parle (East), Mumbai - 400057	)
	), Plaintiffs
VERSUS	
1. MUKESH SANKALCHAND SHAH	)
Aged about 68 yrs, occ: Business	)

[Handwritten: HSL, Mukesh S. Shah, Kalpana & Gandhi, Sh. S. G, HSL]

Hindu, Indian Inhabitant of Bombay)
 Residing at 202 Ansuman Apartment)
 C D Barfiwala Marg, Juhu Lane)
 Andheri (W), Mumbai—400058)
 2. **Mannj Sankalchand Shah**)
 Aged about 60 yrs, occ: Business)
 Hindu, Indian Inhabitant of Bombay)
 Flat No.502 – Udyam Building,)
 Next to sony Mony, Opp Queens Lawn)
 Vile Parle (West), Mumbai – 400056)...Defendants

CONSENT TERMS

1. The Plaintiff No.1 to 3 has filed a suit for specific performance of Agreement for Family Settlement dated 19/09/2008 against the Defendant No. 1 & 2. Hereto annexed and marked as **Exhibit – "A"** is a copy of the Agreement for family settlement dated 19/09/2008.
2. It is agreed, record, declare and confirm by the Plaintiff's No. 1 to 3 and Defendant No. 1 & 2 (hereinafter referred as "all parties") herein that all the Immovable assets/Properties mentioned in the Assets of Smt. Suryaben Sankalchand Shah hereto annexed and marked as **Exhibit- "B"** will be distributed amongst the parties in the following manner:

i.	Plaintiff No. 1	:	13.34%
ii.	Plaintiff No. 2	:	13.33%
iii.	Plaintiff No. 3	:	13.33%
iv.	Defendant No. 1	:	30%
v.	Defendant No. 2	:	30%

Mannj Sankalchand Shah *Smt. Suryaben Sankalchand Shah* *Kalpesh S. Gandhi* *Shri. S. S. S.*

3

All Parties agree to abide by and discharge their respective obligations, and to do all that is required to give effect to the above transaction, and for the said purpose to make and execute such documents and do such acts as may be required to complete the sale in the manner as agreed by them.

3. It is further agreed, record, declare and confirm by all parties herein that the Consent of all parties is mandatory before proceeding with sale of any of the properties mentioned in the **Exhibit- "B"**. The purchaser/buyer of the aforesaid properties should transfer/pay the agreed amount in the account of all parties as per their respective share mentioned above in clause No. 2. All Parties agree to abide by and discharge their respective obligations, and to do all that is required to give effect to the transaction, and for the said purpose to make and execute such documents and do such acts as may be required to complete the sale. It is further agreed, record, declare and confirm by all parties herein that any proceed received with the sale of any of the properties mentioned in **Exhibit-"B"**, the Government Tax Liabilities, if any will be borne by respective beneficiary of the said consent terms for only their share received.
4. It is further agreed, record, declare and confirm by all parties herein that all the liabilities till 31st March 2019 will be borne by Defendant No. 1 & 2 with respect to all the properties mentioned in the **Exhibit -"B"**. No Claim would be made by the Defendant No 1 & 2 from Plaintiff No.1 to 3 with respect to the liabilities of any of the aforesaid properties till 31st March 2019.

Agreed
Shri. J. R. Rishi
Kalpna is smaller
Shri. S. J. Rishi

4

5. It is further agreed, record, declare and confirm by all parties herein that from 1st April 2019 whatever income arrived as rent after discharging all the liabilities including Municipal taxes, Society Maintenance, water tax etc. from any of the properties mentioned in the Exhibit –“B” the said amount will be disbursed on or before the 31st March of every year amongst all parties at mutually agreed time as per their respective entitlements as mentioned above in Clause No. 2.
6. It is further agreed record and declare and confirm by all parties herein that the Defendant No.2 has exclusive ownership right with respect to Flat No.502 –Udyam Building, Next to Sony Muny, Opp Queens Lawn, Vile Parle (West), Mumbai – 400056. None of the Plaintiff's No. 1 to 3 and Defendant No.1 has any right or claim or shall claim any right to any part of the aforesaid Flat in any capacity whatsoever.
7. It is further agreed, record, declare and confirm by all parties herein that any of the party pre-deceased the sale proceed of the properties mentioned in the Exhibit- “B” the respective share of that party will be distributed amongst their legal heirs equally.
8. The Will of Late Smt. Suryaben Sankulchand Shah executed and registered on 01/09/2014 with the Sub Registrar of Assurances, Mumbai shall not be acted upon in terms of the immovable properties.
9. The Testamentary suit No 105/2018 in Testamentary Petition No 1292/2018 shall be disposed off as withdrawn in terms of this said Consent terms.






10. The Properties which are already transferred by the authorities as well as societies in the name of Defendant No. 1 and 2 shall

be Re-Transferred in the joint names of all the parties. *The Defendants will stand the process from two weeks from today.*

11. It is agreed between Defendant No. 1 and Defendant No. 2 that

out of the sale proceed of the properties mentioned in Exhibit-

"B" the Defendant No. 2 undertake to pay a sum of Rs.

49,25,000/- (Forty Nine Lakhs Twenty Five Thousand Only) to

Defendant No. 1 from his share of Sale proceed of the properties

at Exhibit- "B" and None of the Plaintiff's shall be liable to

pay any amount to Defendant No. 1 and 2 from their share of

Sale proceed. The same amount of Rs. 49,25,000/- (Forty Nine

Lakhs Twenty Five Thousand Only) is paid by Defendant No. 2

to Defendant No. 1 pursuant to a writing of their father Late

Sankalchand. V. Shah who had borrowed the said amount from

the Defendant No. 1 out of his own personal income which is

accepted by Defendant No. 2.

12. The Plaintiff No. 1 to 3 shall withdraw all the complaints /

objections/ notices sent to all the authorities and society in

respect of the properties mentioned in Exhibit- "B" especially

the property at Godhara and Flat No.502 Udyam Building,

Next to sony Mory, Opp Queens Lawn, Vile Parle (West),

Mumbai - 400056.

13. The parties hereto agree and undertake to this Hon'ble Court

that they shall do all that is necessary to give effect the

provision hereof and to the agreements recorded herein. The

parties hereto further agree and Undertake to this Hon'ble court

that they shall not do any act which is Contrary to or

inconsistent with what is recorded herein.

3 All undertakings accepted.

14. Decree in terms of consent terms.

15. Refund of Court Fees as per Rules to Plaintiff's in Suit No. 406/2017.

16. Refund of Court fees as per rules to Defendant No. 1 in Testamentary Suit No. 103/2018 in Testamentary Petition No. 1282/2018.

17. No Order as to costs.

Dated this 15th day of March 2019


Advocate for Plaintiff's


Plaintiff No. 1


Plaintiff No. 2


Plaintiff No. 3


Defendant No. 1


Defendant No. 2


Advocate for Defendant No. 1 & 2

4 All statements accepted as an undertaking to this court.

5 All interim applications stand disposed.

6 All interim orders stand vacated.

7 Suit as well as the Testamentary Suit and Testamentary Petition stand disposed.

- 8 Refund of court fees in accordance with rules.
- 9 All to act upon authenticated copy of this order.

(K.R. SHRIRAM, J.)