

Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 2619 OF 2009

Pratap M Maniar (deleted) since deceased ...Plaintiff
Versus
Ranjit H Maniar & Anr ...Defendants

Mr Mannadiar, i/b Mannadiar & Co., for the Plaintiff.
Mr Sean Wassoodew, for the Defendants.

CORAM: G.S. PATEL, J
DATED: 22nd March 2019

PC:-

1. The original sole Plaintiff Pratap Himmatlal Maniar and the 1st Defendant Dr Ranjit Himmatlal Maniar were brothers. Pratap Maniar died pending suit. His heirs, i.e. his widow Mira and their two sons Jai and Karan have been impleaded.

2. The dispute pertains to two adjacent Flats Nos. 17 and 18 on the sixth floor of a building known as Vitthal Court at Kemps' Corner at Cumbala Hill on August Kranti Marg. Flat No. 17 is on the north and faces the road. Flat No. 18 is to the rear of the building on its southern side. The two flats are not of the same area. Flat No. 17 is larger than Flat No. 18 by about 70 to 80 sq ft. There is no dispute that the Defendant Dr Ranjit Maniar and his family live in and occupy the larger flat on the northern side, Flat No. 17 and that

the Plaintiff's family has the smaller flat to the south and rear, Flat No. 18.

3. Mr Mannadiar for the Plaintiff and Mr Wassoodew for the Defendants have for the last several weeks attempted to bring the parties together to a settlement. They have succeeded only partly, to this extent: That the parties seem to have agreed that the Defendants will continue to occupy the larger Flat No. 17 and the Plaintiffs will be in the smaller Flat No. 18. Each side has agreed to give up its claim against the other flat. What has not been agreed until today, however, is the compensation that the Defendants should pay to the Plaintiff for having the larger flat, i.e. for the difference between the area in the two flats.

4. When the matter was last before me, both sides told me roughly what their respective offers and demands were. I asked Mr Mannadiar and Mr Wassoodew to take instructions whether their clients were willing to leave the settlement figure to me and to take written instructions to this end. I placed the matter today for that purpose. Both Mr Mannadiar and Mr Wassoodew confirm that they have the necessary instructions in writing.

5. Mr Wassoodew points out that in 2016, the Defendant No. 1 paid an amount of Rs. 9,00,116/- to the Bank of Baroda to settle its claim against M/s Napha Pharma, partnership firm in which the original Plaintiff had a 70% share and in which the 1st Defendant had a 30% share. It was the 1st Defendant, Dr Ranjit Maniar, however, who made the full payment to the Bank of Baroda in settlement of

the claim against the firm. Mr Wassoodew submits that the amount of Rs. 6.3 lakhs which is the Plaintiff's 70% share of this debt/payment to the Bank of Baroda should also be adjusted since the Plaintiffs continue to hold the original Plaintiff's 70% share in the firm. The suggestion is reasonable.

6. Having regard to the figures that were given to me on the last occasion, I now fix an amount of Rs. 25 lakhs as payable by the Defendants to the three Plaintiffs in full and final settlement of all claims in this litigation. The amount of Rs. 6.3 lakhs mentioned above will be deducted from this payment of Rs. 25 lakhs since, viewed from any perspective, the Plaintiffs have already received the benefit of that payment. I note that I am not allowing any claim for interest on that amount of Rs. 6.3 lakhs although the payment was made in November 2016, over two years ago.

7. The Defendants will pay the adjusted amount in three equal shares to the three Defendants within six weeks from today.

8. This entire amount is payable by the Defendants to the Plaintiffs as compensation determined in the discretion of the Court and is, therefore, not income in the hands of any of the Plaintiffs.

9. The suit is disposed of in these terms by consent. There will be no order as to costs.

10. Both sides inform me that no further directions are required to be issued to the society and the society records as they stand

today reflect the foregoing position, i.e. with the names of the Defendant against Flat No. 17 and the names of the Plaintiffs against Flat No. 18.

11. I also been given an agreed sketch plan which I will take on record and marked 'X' for identification with today's date. I am told that the partition between two flats was made following an Appellate Order. This partition, it is agreed, will remain and will continue. To ensure that there is no controversy a colour scan of this sketch plan is appended to this order.

12. The suit is disposed of in these terms.

13. Refund of Court fees in accordance with the Rules.

(G. S. PATEL, J)

SKETCH PLAN

