

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

NOTICE OF MOTION NO. 1634 OF 2013

IN

SUIT NO. 911 OF 2013

Ms. Maria Antoinette Godinho

..Applicant

In the matter between

Ms. Maria Antoinette Godinho

..Plaintiff

v/s.

Mr. Sao Tome Collaco & Anr.

..Defendant/s

Mr. O. Sankaran Kutty a/w. Adv. Subhas A. Dias and Adv, Sanjay
Palekar for the Plaintiff/s

None for the Defendants.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 03 APRIL, 2019.**

P.C.

1. The Plaintiff herein has taken out this Notice of Motion for several reliefs which are stated in prayer clauses (a) to (d) of the Notice of Motion. The learned Counsel for the Plaintiff states that the Plaintiff does not want to press for the other reliefs, except to restrain the Defendant No.1 from creating third party right or encumbrance in respect of the suit premises.

2. The dispute is in respect of flat, admeasuring 690 sq. ft. situated on the ground floor of building named Prem Milan, Peter Dias Road, Bandra (West). The said flat shall be hereinafter referred

to as the 'suit premises'.

3. Heard Mr.Kutty, the learned Counsel for the Plaintiff. He states that by ad-interim order dated 16th December, 2018 this Court had passed the following order.

“1. The learned Advocate for the Defendant No.1 on instructions, states that the suit Flat is occupied by Defendant No.1 and his wife. He further states that the Defendnat no.1 and his wife shall not sell, alienate, encumber, part with possession and/or create third party rights in respect of the Suit Flat. The Statement is accepted.

2. Since it is the Plaintiff's own case that the Defendant No.1 is in occupation of the Suit Flat since 16.11.2011, no further ad-interim orders are passed. The Defendants to file their Affidavit-in-reply within four weeks from today. Rejoinder, if any, to be filed within two weeks thereafter. Place the Notice of Motion for hearing and final disposal on 10-02-2014”.

4. The said order is in operation till date. He urges that the said order be continued till disposal of the suit. On merits, the learned Counsel for the plaintiff submits that the plaintiff is the owner of the suit premises. The defendant has no right to the suit premises. He is a rank trespasser and hence he should be restrained from creating third party right or from creating any encumbrance on the suit

premises.

5. None present for the Defendant No.1 though opportunity was given.

6. I have perused the records and considered the submissions advanced by the learned Counsel for the Plaintiff.

7. The records prima facie indicate that by registered Agreement for Sale dated 24th April, 2003, the Plaintiff had purchased half undivided share in respect of the suit premises. The remaining half share was owned by Alleluia Godinho, uncle of the Plaintiff. Said Alleluia Godinho expired on 21st October, 2011. The Plaintiff claims that by Will dated 7th August, 2007, her Uncle Alleluia Godinho has bequeathed 50% of his share in the suit premises in her favour. The records also indicate that after the death of said Alleluia Godinho, the share certificate in respect of the suit premises has been transferred in the name of the Plaintiff.

8. The Plaintiff claims that she had lived in suit premises for a period of about one month after the death of her Uncle Alleluia Godinho. After performing all the religious rites of her Uncle, on 16.11.2011 she went to her residence at Andheri. On 17.11.2011 her neighbor informed her that she had seen lights in the suit premises and heard male voices. The Plaintiff visited the suit

premises on 18.11.2011 and found that the Defendant no.1 and his associate had trespassed into the suit premises.

9. The Defendant has claimed that in the year 2003, his wife and said Alleluia Godinha entered into a MOU in respect of Hotel West End. The defendant claims that he paid Rs.1,02,00,000/- to Alleluia Godinho towards purchase of the said flat. He says that an amount of Rs.30 lakhs was paid by cheque and the balance amount was paid in cash. He further claims that the amount towards purchase of the flat was given by him. He has also claimed that the Will is not probated. He claims that he was residing in the said flat alongwith said Alleluia Godinho.

10. The records prima facie indicate that the Plaintiff has 50% share in the suit premises and the balance 50% was of Alleluia Godinho. Said Alleluia Godinho has expired bequeathing 50% of his share in favour of the Plaintiff. There is nothing on record to indicate that said Alleluia Godinho had at any point of time put the Defendant no.1 in possession of the suit premises. The Defendant is not related to Alleluia Godinho. Said Alleluia Godinho has not transferred his rights in respect of the suit premises in favour of the defendant. Thus there is no prima facie material to show that the Defendant No.1 has any right, title or interest in the suit premises. This fact

prima-facie fortifies the contention of the plaintiff that the defendant is a rank trespasser. The rights of the plaintiff will be prejudicially and irrevocably affected if the defendant transfers, creates third party right or creates encumbrance on the suit premises. The plaintiff has therefore made out a prima facie case for grant of interim relief.

11. Considering the above facts and circumstances, the Defendant No.1 is restrained from selling the suit premises, or creating any third party interest, or any encumbrance on the suit premises, till disposal of the suit.

12. Notice of Motion is made absolute in above terms.

13. Place the suit for tendering draft issues.

(ANUJA PRABHUDESSAI, J.)