

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

NOTICE OF MOTION NO. 1188 OF 2019

IN

SUIT NO. 1930 OF 2009

Durgaprasad Ramniwas Poddar

.. Applicant/
(Defendant No. 9)

In the matter of :

Smt. Umarani Durgaprasad Poddar

.. Plaintiff

Vs.

Smt. Shantibai Sohanlal Jhuria

& Ors.

.. Defendants

Mr.Parimal Shroff, Mr. Sachin Tandey, Ms. Jaylaxmi Gaud, Ms. Siddhi Paradkar i/b Parimal Shroff & Co. for applicants/defendant Nos.6 and 7.

Advocate for defendant No.2 not submitted appearances.

Mr. Harshal Manik i/b Res Legal for defendant Nos. 3 and 4. (Not submitted appearances)

Mr. M.S. Bhandari i/b Ms. Pranjali M. Bhandari for defendant No.8 (Not submitted appearances).

Zohair H. Zaidy, Advocate for defendant No.9 not submitted appearances.

Mr. P.G. Lad for MHADA. (Not submitted appearances).

CORAM : N.J. JAMADAR, J.

DATE : 20th JANUARY 2020

P.C.

1. Heard the learned counsels for the applicant, defendant No.2 and defendant No.9.

2. The defendant No.9 has taken out this notice of motion, *inter-alia*, for the following reliefs :

“(i) for an order and direction to 2nd defendant to disclose nature or repairs, alterations and/or additions made by him in the premises in his occupation on the 1st floor of property of Poddar Bungalow hereinafter referred to the “said premises” shown in red colour on the plan marked letter “A”.

(ii) to appoint court commissioner to take inspection with assistance of an architect of the said premises in occupation of 2nd defendant on the 1st floor of property Poddar Bungalow to ascertain the nature of repairs, alternations and additions made therein by the 2nd defendant.”

3. The claim of defendant No.9 is that the defendant No.2, while the repair work of the subject property was underway by the contractor, under the guise of repairs has carried out some work in the premises and permanently closed the North Western Gate of the building. The said work was carried out by defendant No.2 independently of the work carried out by the contractors appointed by M/s. Shetgiri and Associates, Architect/Contractor for carrying out repairs as per the Courts order dated 2nd May 2016.

4. Hence, it is necessary, to ascertain the nature and extent of the work carried out by the defendant No.2. An affidavit in reply is filed

on behalf of defendant No.2.

5. The defendant No.2 has questioned the tenability of the notice of motion at the instance of defendant No.9, as the defendant No.9 has allegedly no right, title and interest. In paragraphs 7 and 8 of the affidavit in reply, defendant No.2 has made the following assertions :

“7 I say that it is in the interest of the suit property that the illegal additions and alterations carried out by all the occupants of the Suit property be identified and be demolished forthwith.

8 I further say that to identify the illegal additions and alternations, this Court be pleased to direct the concerned Municipal Officials/Architect/ or any concerned Authorities to inspect entire Suit property and report to this Hon’ble Court about illegal additional and change of user made by the occupants.”

6. It was submitted on behalf of defendant No.2 that the Court Commissioner be appointed to inspect the entire suit property and ascertain the alleged illegal additions and alterations carried out by all the occupants of the suit property. As the controversy at hand seems to be restricted to the alleged repair works carried out by defendant No.2, there does not seem any propriety in directing that the entire suit property be inspected. In view of the reply of defendant No.2, the

notice of motion can be legitimately allowed in terms of prayer clause a(ii).

7. Hence, the notice of motion is allowed in terms of prayer clause a(ii).

8. M/s.Shetgiri & Associates is appointed as a Court Commissioner to inspect the premises in the occupation of the defendant No.2, on the first floor of the suit property to ascertain the nature of repairs/alternations and additions, if any, allegedly made by defendant No.2. The applicant shall pay the charges M/s. Shetgiri & Associates for the inspection. The Court Commissioner shall give a prior notice to the parties before conducting inspection. The Court Commissioner is requested to make an endeavour to submit report to this Court within a period of four weeks.

9. The notice of motion stands disposed of.

[N.J. JAMADAR, J.]