

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
TESTAMENTARY SUIT NO. 61 OF 2019
IN
TESTAMENTARY PETITION NO. 2611 OF 2017**

Monica Blaise Fernandes ...Plaintiff
Versus
Pierre Victor Fernandes ...Defendant

**INTERIM APPLICATION NO. 284 OF 2021
IN
TESTAMENTARY SUIT NO. 61 OF 2019**

Pearl Fernandes Navin & Anr ...Petitioners
Versus
Blaise Rosario Fernandes ...Deceased

**Mr Karl Tamboly, with Shoma Maitra, & Nikhil Apte, i/b Wadia
Ghandy & Co, for the Plaintiffs.
Mr BG Saraf, for the Defendant.
Ms Jyoti Chavan, AGP for the State.**

**CORAM: G.S. PATEL, J
DATED: 8th March 2021**

PC:-

Atul G.
Kulkarni
Digitally signed
by Atul G.
Kulkarni
Date:
2021.03.09
10:59:05 +0530

1. This is further to the order dated 27th January 2021. The necessary documents have not yet been executed.

2. I am making it clear that I am not permitting the Defendant, Pierre to seek advice from his Chartered Accountant as to the interpretation of my orders, let alone to purport to sit in appeal over it. That is not his job.

3. Mr Tamboly on instructions states that the transaction for transfer of the Defendant's inherited right, title and interest if any in the suit property, Lovely Home, is best effected under a sale deed which will be stamped and registered accordingly. It is, however, clear that the amount that the Defendant has received is his claimed share in a family estate. As such, it is equivalent to a legacy or inheritance received or an amount in lieu of an inheritance or legacy and is, therefore, a capital receipt in the hands of the Defendant. The Defendant is at liberty to treat it as such in his books of accounts.

4. The necessary document will be drawn up and I will permit the parties at their request to have it executed in Court on 10th March 2021. The Advocates for the Plaintiff will take an appointment for registration as soon as possible thereafter.

5. I have requested the assistance and intervention of Ms Chavan to inform the Sub-Registrar of Assurances and to instruct him to proceed with the transaction without further queries in this regard.

6. I am also making it clear that for the protection of Sub-Registrar of Assurances that the document in question and its

consequent stamping and registration are under orders of this Court should there be any further audit query, the Sub-Registrar of Assurances will be at liberty to say that he has not exercised any independent discretion in that regard. He was not permitted to do so by this Court. Should the audit authorities have any queries they are to direct them to this Court, or preferably not at all.

7. There is an Affidavit that is required to be submitted to the Cooperative Society to effect the transfer. The Defendant need not have any apprehensions about the contents of that Affidavit since it contains a number of recitals tracing the history of the flat in question. The Affidavit obviously does not alter the equities or create any independent rights or disabilities to either side.

8. There is a 1974 agreement of the original purchase of this flat. This is in the name of the parties' deceased father. An authenticated notarized true copy will be provided to the Defendant for his record.

9. The society is directed to effect the transfer of the flat and to make necessary endorsement in the share certificate as directed in the order dated 27th January 2021 and in this order without raising any further requisitions. The name of any intervening nominees are to be disregarded in that context.

10. List the matter on 10th March 2021 at 2.30 pm.

11. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production of a digitally signed copy of this order.

(G. S. PATEL, J)