

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****NOTICE OF MOTION NO.1332 OF 2019****IN****SUIT NO.2655 OF 2009**

Ashok Hariram Thakkar & Ors. ...Applicants
(Original Defendant Nos. 3 to 6)

In the matter between:

Kusum @ Krishna Rajesh Kothari ...Plaintiff
vs.
Mukesh @ Praveen Vasantkumar
Chandan And 5 Ors. ...Defendants

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Mr. Amrut Joshi, a/w. Mr. Zulfi Jariwala and Mr. Shabbir Jariwala, i/b.
Thakore Jariwala & Associates, for the Plaintiff.

Ms. Deepti Panda, a/w. Mr. Chetan R. Shah and Mr. Ramachandran N., i/b.
Narayanan & Narayanan, for Defendant No.1.

Mr. Aloukik Pai, a/w. Ms. Khushboo Agarwal, i/b. Indrajeet Suryavanshi, for
Defendant No.2.

Mr. Ashish Kamat, a/w. Mr. Kunal Mehta, Mr. Gautam Sahni and Mr.
Kayomars Kerawalla, i/b. Vesta Legal, for the Applicants/Defendant Nos. 3
to 6.

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CORAM : S.C. GUPTE, J.**DATED : 5 APRIL 2021****P.C. :**

. This notice of motion has been taken out by original Defendant
Nos. 3 to 6. The Plaintiff and the Defendants are related through common
ancestors, namely, one Jyoti Vasantkumar Chandan and Vasantkumar B.
Chandan, both having since been deceased. The suit seeks administration
and partition of the estate of the deceased. It also seeks directions in

particular to Defendant Nos. 1 and 2 to render accounts of the estate, whilst the same was under their control, use, occupation and possession as also to make appropriate disclosure towards rendering of such accounts. Pending hearing of the suit, the present notice of motion seeks appointment of a court receiver of the estate.

2. The Plaintiff is the daughter of the deceased, whilst Defendant No.1 is the son and Defendant No.2 daughter of the deceased. Defendant Nos. 3 to 6 are legal heirs of a predeceased daughter of the deceased. Defendant Nos. 7 to 9 are third party purchasers, who claim to have purchased part of the estate of the deceased from Defendant No.1.

3. The deceased mother of the parties, Jyoti Vasantkumar Chandan, expired on 10 November 1995, whilst the deceased father of the parties, Vasantkumar B. Chandan, expired on 28 June 2006. Whereas the mother died intestate, the father is claimed to have executed a last will and testament, which has since been propounded by Defendant No.1 in a probate petition filed by him. The petition has been, upon caveats being filed, converted into a testamentary suit, which is pending hearing and final disposal before this Court. The present suit was filed by the Plaintiff on 17 September 2009. The Plaintiff took out a notice of motion, being Notice of Motion No.3726 of 2009, in the suit inter alia seeking appointment of an administrator/receiver in respect of the estate of the deceased. On 21 September 2010, this Court passed an order in that notice of motion inter alia directing the parties to maintain status-quo in respect of the properties, being the subject matter of the present litigation. Defendant Nos. 1 and 2 were also directed to render accounts in respect of the estate of the deceased from June 2006 and till the date of the order within three months.

They were also directed to render quarterly accounts in respect of the estate during the pendency of the suit. It is the Plaintiff's grievance that in a flagrant breach of these directions, Defendant No.1 has sold two flats, forming part of the estate of the deceased, and let out some other flats, also forming part of the estate, from time to time, the last of such agreements being said to have been executed on 12 February 2018. It is also claimed by the Plaintiff that the Defendants have failed to comply with the direction of disclosure as also rendering of accounts in respect of the estate of the deceased. Learned Counsel for the Applicants/Defendant Nos. 3 to 6 relies on delays in filing of affidavits in this behalf by Defendant No.1 and want of disclosure of accounts after the last affidavit was filed on 27 April 2017. It appears that as a result, the Plaintiff has filed a contempt petition, being Contempt Petition No.31 of 2011, which petition is pending hearing and final disposal before this Court. The Plaintiff also took out another notice of motion, being Notice of Motion No.930 of 2014, seeking inter alia appointment of Court Receiver and temporary injunction against Defendant Nos. 1 and 2 from creating third party rights in relation to the estate of the deceased. Though ad-interim relief was not granted on this notice of motion, the matter was directed to be dealt with later with liberty to Defendant No.1 to file a reply.

4. In the backdrop of these facts, the present notice of motion has been filed by Defendant Nos. 3 to 6 praying for appointment of Court Receiver in respect of the suit property and also claiming a temporary injunction against Defendant Nos. 1 and 2 preventing creation of third party rights and praying for disclosure. The Plaintiff supports the application. By an ad-interim order passed on 30 April 2019, Defendant Nos. 1 and 2 were directed to make disclosures as per the order of 21 September 2010 on or before 7 June 2019 and maintain status-quo in respect of the property as per

prayer clause (f) of the notice of motion during the pendency of the motion. Both Defendants claim to have made disclosures in pursuance of this order, though whether such disclosures were in accordance with the order of 21 September 2010 is a matter of dispute between the parties. It is, however, not contested that the Defendants have since maintained status-quo in respect of the property, which forms the subject matter of the present suit, in accordance with the ad-interim order dated 30 April 2019.

5. At the hearing of the present notice of motion, learned Counsel for Defendant No.1 has mainly contended that the property dealt with by his client does not form part of the estate of the deceased. It is submitted that this property belongs to a partnership firm, in which Defendant No.1 and his father, the deceased Vasantkumar, were partners and that, after the death of late Vasantkumar, Defendant No.1 has become a sole proprietor in respect of the business of the firm, having the requisite authority to deal with the property of the firm. It is submitted that the property referred to in the injunction order passed by this Court on 21 September 2010 is said to be the estate of the deceased “as disclosed hereinabove”, that is to say, ‘as mentioned in paras 18 and 19 of the written statement of Defendant No.1’ and not what was described in the plaint. In answer, learned Counsel for Defendant Nos. 3 to 6, relying on the order of this Court dated 21 September 2010, submits that the order does cover the property dealt with by Defendant No.1; the order refers to the suit property described in Exhibit “C” to the plaint. Secondly, it is submitted that, in any event, as propounder of the last will and testament of the deceased, it is impermissible for Defendant No.1 herein to raise such a plea. As far as Defendant No.2 is concerned, the chief allegation against her appears to be that whilst being in possession of three flats and a garage, forming part of the estate of the

deceased, she has been taking shifting stands in relation to the nature of her occupation. The allegations of Defendant Nos. 3 and 6 as well as the Plaintiff against her are contested by her Counsel.

6. On these facts, what the Court has to consider in the present notice of motion is, whether and to what extent should protective orders in respect of the property of the deceased, which forms subject matter of the suit, which is described in the schedule annexed as Exhibit "C" to the plaint, be passed. In the very first place, it is important to note that the entire estate of deceased Jyoti and Vasantrao forms the subject matter of the present suit. This estate mainly consists of two buildings, both named as "Aashirwad", at Wadala and Dadar in Mumbai. The interim order passed by this Court in Notice of Motion No.3726 of 2009 clearly covers the entire estate of the deceased, including these two properties at Wadala and Dadar. The order makes it clear that the Court was of the view that there was a prima facie case for preservation of the subject matter of this litigation. This subject matter obviously referred to the entire estate of the deceased, which was described in Exhibit "C" to the plaint. Pending hearing and final disposal of the suit, all parties to the suit were directed to maintain status-quo in respect of this property, making it clear that no transfer or alienation, including transfer of tenancy, was permissible. Besides this interim injunction, Defendant Nos. 1 and 2 were to render accounts in respect of their management of the estate. Leaving aside the dispute as to whether their disclosure or rendering of accounts was properly made as required by this Court in its order of 21 September 2010 by the Defendants or not, it is not in dispute that Defendant No.1 has dealt with two flats, being Flat Nos. 203 of the 2nd Floor at Aashirwad building at Wadala and Flat No.103 on the 1st floor of the same building. So also, Defendant No.1 has created licences in respect of Flat No.2 on the ground floor of the building at

Wadala and also another flat, being Flat No.502 on the 5th floor of that building. The last of these transactions appears to have been executed on 12 February 2018. And this despite there being a clear and categorical injunction order passed by this Court. In fact, Defendant No.1 appears to have moved an application for speaking to the minutes of the order of 21 September 2010 on the selfsame basis as contended by learned Counsel for Defendant No.1 in the present notice of motion, namely, that the properties included in the suit did not form part of the estate of the deceased; that the estate of the deceased referred to in the order as “disclosed hereinabove” was what was mentioned in paragraphs 18 and 19 of the written statement filed by Defendant No.1. By an order dated 19 October 2010, passed on that application, the learned Single Judge, who passed the injunction order of 21 September 2010, refused to issue any clarification, observing inter alia that there was no ambiguity or clerical error in the order of 21 September 2010 calling for speaking to the minutes. In other words, the very argument of Defendant No.1, whilst opposing the present notice of motion, was advanced before the learned Single Judge, who passed the order of 21 September 2010, and repelled by him.

7. Even on merits, if, for the sake of arguments, one were to accept the case of Defendant No.1 that the properties dealt with by him were partnership properties, there is not even a statable case that after the death of his partner, the late Vasantkumar, he became a sole proprietor of the business of the firm. The Plaintiff and Defendant Nos. 2 to 6, as legal heirs of the deceased partner, are entitled to the property administered after dissolution of the firm and stake their claim to the surplus. They thus have an interest over the property of the firm. Defendant No.1 cannot unilaterally deal with the property.

8. Though some of these transactions were carried out in 2013, there is adequate explanation for claiming the present reliefs in 2019 by way of the present notice of motion. In the first place, the Plaintiff's notice of motion, Notice of Motion No.930 of 2014, for similar reliefs was filed in close proximity with the transactions, and though there was no ad-interim order passed on that motion, the motion itself was to be heard finally after allowing Defendant No.1 to file his affidavit-in-reply. During the pendency of that motion, the present notice of motion has been taken out by Defendant Nos. 3 to 6, who are, like the Plaintiff, entitled to administration and partition of the estate.

9. Considering that contrary to the injunction order of 21 September 2010, Defendant No.1 has not only entered into licence agreements with third parties in respect of parts of the suit property, one of them being as late as in February 2018, but even transferred two flats forming part of the estate (as claimed by the Plaintiff) to third parties by effecting agreements for sale and parting with their possession, a Court Receiver in respect of the suit property deserves to be appointed.

10. So far as Defendant No.2 is concerned, merely because she has taken contradictory stands in respect of the estate of the deceased in her possession, it cannot be said that her actions complained of in the present notice of motion call for appointment of Court Receiver. Considering, however, that this Court proposes to order appointment of a receiver in respect of the estate of the deceased, which forms the subject matter of the present suit, which is otherwise under the control of Defendant No.1, receiver may well be appointed in respect of the property in possession and occupation of Defendant No.2, though she may be permitted to use and

occupy the same without payment of royalty or security.

11. The notice of motion is, accordingly, made absolute in terms of the following order:

- (i) Court Receiver, High Court, Bombay is appointed as receiver of the suit property, described in Exhibit "C" to the plaint, including the two buildings, being buildings known as "Aashirwad" at Wadala and Dadar in Mumbai;
- (ii) The Court Receiver shall not disturb physical possession of any of the parties found to be in possession of any part of the suit property;
- (iii) The Court Receiver shall recover licence fees or compensation payable from third party licensees in respect of any portion/s of the suit property licensed to such third parties with effect from the date of his appointment;
- (iv) Defendant No.1 shall render accounts in respect of the estate of the deceased dealt with by him by filing an affidavit within four weeks from today, setting out therein the total amount of sale proceeds received by him towards the sale of the two flats referred to above, namely, Flat Nos. 102 and 203 in Aashirwad building, Wadala, as also licence fees/compensation recovered by him from third parties from other flats forming part of the suit property;
- (v) Defendant Nos. 1 and 2 shall be entitled to use and occupy such of the flats or parts of the property as are in their respective possession

and occupation without payment of royalty or security;

- (vi) Defendant No.2 shall be free to carry on her own business in those parts of the suit property which are in her possession and occupation;
- (vii) As and when the existing licences of flats licensed under agreements of licence entered into by Defendant No.1 with third parties expire, possession of the flats shall be made over to the Court Receiver, who shall then give on licence these flats to third parties after calling for offers and receive licence fees/compensaiton in respect of such flats.

12. Learned Counsel for Defendant No.1 prays for stay of this order for a limited period. The application is rejected.

(S.C. GUPTE, J.)