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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 91 OF 2020
IN
SUIT NO. 139 OF 2020**

Jaya Premanand Sawant & Ors ...Plaintiffs
Versus
Ashwin Ankush Sawant & Ors ...Defendants

Mr Pramod Bhosle, *with Karan Gajra, i/b Sharad Bhosle, for the Plaintiffs.*
Mr Mahesh Tiwari, *for Defendant No. 15.*

CORAM: G.S. PATEL, J
DATED: 1st April 2021

PC:-

1. Heard. Mr Ashwin Sawant, Defendant No. 1 is present online. He states that he wishes to change his Advocate and has obtained a no-objection certificate from his previous Advocate. He is at liberty to do so before the next hearing. The matter will not be adjourned again on that basis.

2. The array of parties needs some explanation. Plaintiff No. 1, Jaya, is the wife of Plaintiff No. 2, Premanand. Premanand and

Sunil, Plaintiff No. 3, are brothers. Sunil has special needs and is being looked after by Premanand and Jaya.

3. Premanand and Sunil are two of the four sons of one Ankush Sawant and his wife Pushpalata, both of whom died in 1990. Ankush and Pushpalata had four sons: Anand, Ramesh, Premanand and Sunil. Anand and Ramesh died in 1990. Anand was married to Jaya (Plaintiff No. 1). After Anand died, she married her brother-in-law, Premanand. Anand had two sons Ashwin (the 1st Defendant) and Chetan (the 4th Plaintiff). I am told that both Ashwin and Chetan have been brought up as Premanand's son and in fact have taken Premanand's name as their father's name.

4. Be that as it may, the present dispute is inter alia in relation to a residential flat of 550 sq ft at 7/Sapphire, Jaishankar CHS Ltd., Chheda Nagar, Chembur, Mumbai 400 089. This stood in the name of Ankush (Premanand's and Sunil's father; Ashwin's and Chetan's paternal grandfather). On Ankush's demise, the flat would have devolved on intestacy in share per stirpes, i.e., on Anand's branch (Ashwin and Chetan), Premanand and Sunil. Ramesh himself having passed away without lineal descendants, his share would have gone to his three brothers.

5. The Suit is for partition. There is already an order dated 5th August 2019 granting an ad-interim relief in terms of prayer clause (a). This has continued for this period of time. It is now confirmed as an order on this Notice of Motion.

6. The other relief sought in the Notice of Motion is for appointment of the Court Receiver and for a direction that Ashwin and his wife, Jyoti be directed not to enter the Sapphire flat and be restrained from creating 'any nuisance in that flat'. The Affidavit in Support in paragraph 4 only speaks in generalities of a nuisance and of Jyoti allegedly threatening the Plaintiffs. There are complaints made to the police by the Plaintiffs.

7. I do not think that an order in terms of prayer clause (c) for a restraint against Ashwin and Jyoti is at all possible. Demonstrably, they have a share, right, title and interest in the flat. In the partition Suit, those shares have to be determined and then the partition will follow the usual course for this and other properties.

8. But this is not to be construed as a license to Ashwin and Jyoti to harass, intimidate or threaten the Plaintiffs and especially Premanand, Jaya and Sunil. If Ashwin has been brought up as Premanand and Jaya's son, he is bound to treat them with the necessary dignity and respect that they deserve.

9. I am not assessing the rival merits on either side but I cannot say that I am at all impressed by the averments that Ashwin has chosen to make in paragraph 9(f) of his Affidavit in Reply at page 125 against Premanand. There is a certain restraint that is demanded in matters like this. I expect both sides to conduct themselves in a civil manner. They may minimize contact with each other and reduce it to the bare minimum.

10. There is, at this stage, given the injunction, no warrant for the appointment of a Receiver.

11. I do, however, make it clear that repeated issues of harassment or allegations may invite a stronger order at an appropriate stage.

12. The Notice of Motion is disposed of with these observations with liberty to the Plaintiffs to apply should the need arise. No order as to costs.

13. List the Suit for directions and for considering a preliminary decree declaring the shares of the parties on 28th April 2021.

14. All concerned will act on production of an ordinary copy of this order.

(G. S. PATEL, J)