

Ashwini

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 424 OF 2019
IN
SUIT NO. 636 OF 2018**

Himayat Ali Mirza	... Applicant
<i>In the matter between</i>	
Prince Shahmath Ali Khan	...Plaintiff
<i>Versus</i>	
Nawab Mir Barkat Ali Khan & Ors	...Defendant

Ms Madhavi Ayyappan, i/b Talekar and Associates, for the Plaintiff.
Mr Mutahhar Khan, i/b Rajesh Gupta, for the Applicant.
Ms Apurva Thipsay, i/b Khan Shaba Parveen, for Defendant No. 3.

CORAM: G.S. PATEL, J
DATED: 17th March 2021

PC:-

1. This is a partition Suit relating to some properties of the royal family of the Nizam of Hyderabad and Berar. The Plaintiff claimed a 24% share in the properties. He is the brother of Defendant No. 3, who was said to have a 12% share. Defendants Nos. 1 and 2 are supposed to have a 20% share each, while Defendants Nos. 4 and 5 are supposed to have a 12% share each.

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2. It seems that by an oral gift or *hiba*, the Plaintiff gifted his 24% share to his sister Fatima. This was recorded in an deed of acknowledgment of past oral gift of property rights executed on 19th October 2019. A copy is at 'Exhibit A' to the Interim Application.

3. Defendant No. 3, represented by Ms Thipsay, thus acquire a 36% interest in the properties. In turn, she made an oral gift or *hiba* of her entire share in favour of son Himayat, the present Applicant. She acknowledged this by another deed also dated 19th October 2019. A copy is at 'Exhibit B'.

4. Now the document at 'Exhibit A' as between the Plaintiff and Defendant No. 3 has the photograph and the signature of the Plaintiff. It matches the signature on the plaint. The document is attested before a Notary. I have no reason to disbelieve this.

5. The application is first for the substitution of the Applicant Himayat as the Plaintiff, the deletion of the original Plaintiff and the deletion of Defendant No. 3. Defendant No. 3 does not of course dispute or oppose the application. As to the original Plaintiff, I refuse to permit the matter to be delayed because the Advocate now appearing says she has limited instructions. The reason is that there is an Affidavit of Reply dated 29th November 2019 filed by the Plaintiff himself in which he accepts the correctness of the assertions made in the Interim Application. In paragraph 3 he says that he is amenable to the reliefs being granted, and specifically says that he consents to an order on this Interim Application. In paragraphs 5 to 8 he sets out his own narrative about these oral gifts.

In paragraph 9 he accepts that the Applicant has a 36% undivided share in the properties. In paragraph 11 he says specifically that he has no objection to the Applicant being impleaded as the Plaintiff in the Suit in his place. This is a properly sworn Affidavit that is part of the Court records.

6. Accordingly, the Interim Application is made absolute in terms of prayer clauses (a) and (b).

7. Amendments are to be carried out in Court without need of re-verification.

8. The Interim Application is disposed of accordingly.

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

(G. S. PATEL, J)