

Ashwini

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 1644 OF 2019
IN
SUIT NO. 154 OF 2020**

Jagdish Gangadhar Mirji & Anr ...Plaintiffs
Versus
Vijay Gangadhar Mirji ...Defendant

Mr Bhavik Manek, *with Ashok Paranjpe & Vishal J, i/b MDP & Partners, for the Plaintiffs.*
Ms Shakuntala Joshi, *with Nikita Pawar & Jalpa Pithadia, i/b SI Joshi & Co, for the Defendant.*

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

PC:-

1. No ad-interim reliefs.
2. The Interim Application has been moved for ad-interim with very short notice.
3. There is absolutely no urgency. Even on the Plaintiffs' own showing, the Defendant is at the very least the owner of an undivided 1/3rd share, right, title and interest in flat No. 13, Modern Flats, 128, Nathlal Parekh Marg, Colaba, Mumbai 400 005. The Plaintiffs also admit that the Defendant has been in exclusive use

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and occupation of this flat for a very long time. Indeed, in the praecipe, the Plaintiffs have stated that the Defendant has been using the flat 'gratuitously' at least in respect of the Plaintiffs' claimed 2/3rd share therein. That this would make the Defendant a gratuitous licensee of the Plaintiffs in respect of their 2/3rd share. The jurisdictional question that this raises is left open for the present.

4. The learned Advocate for the Plaintiffs incorrectly states that the Interim Application has been filed seeking a preliminary decree. It is not. There is no such prayer in the Interim Application and in any case there could not be. The prayers are as follows: to appoint a Commissioner or an Architect, and then for a *final* decree acknowledging the Plaintiff alleged 66.66% ownership in a flat. This is supposed to be an order made pending the hearing and final disposal of the Suit as an interlocutory order. It is inconceivable that there could be any such interlocutory decree.

5. Then there is an alternative prayer to sell the flat and divide the sale proceeds. Next is a prayer to appoint the Court Receiver and take forcible possession of the property. Finally there is prayer clause (d) for an injunction against the Defendant from dealing with the flat. In that regard, i.e. about the disposal of the flat by the Defendant, a statement was made by his previous Advocate before Menon J on 18th December 2019. This was continued by Ms Joshi for the Defendant on 16th December 2020. There has been absolutely no change of circumstances thereafter. Nothing warrants the moving of this Interim Application for such reliefs at this stage. In fact, the Plaintiffs accept that both are living elsewhere and do not

have need of this flat for their own use. The Defendant, on the other hand, has no other residence.

6. There is no prima facie case made out the Plaintiffs. The balance of convenience is with the Defendant rather than the Plaintiffs. No prejudice could conceivably be cause to the Plaintiffs if the status quo as on the date of the institution of the suit continues. After all, what is being sought are mandatory interlocutory orders, and the law in that regard is abundantly clear: see: *Dorab Cawasji Warden v Coomi Sorab Warden*.¹

7. Therefore, while accepting Ms Joshi's statement that her previous statement will continue, the other reliefs are refused.

8. The Interim Application is dismissed.

9. Liberty to both sides to file an appropriate application, if there is change of circumstances so warrant.

10. Ms Joshi states that the written statement has already been filed. Accordingly, as a concession to the Plaintiffs and at their request, I will take up the matter immediately for framing issues.

11. List the matter for framing issues on 25th March 2021.

1 (1990) 2 SCC 117.

12. 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)