

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION NO. 794 OF 2021
IN
SUIT NO. 71 OF 2021**

Sitaram Ganpat Nerurkar

...Applicants/
Plaintiff

Versus

Nandini Nandakumar Nerurkar & ors.

...Defendants

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KULKARNI

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Mr. M. Vashi, Senior Advocate, a/w Mr. Aniket Nerurkar, for
the Applicant.

Mr. Sachindra Shetye, a/w Ms. Mohina Thakur & Ms. Sarika
Shetye, for the Defendants.

CORAM: N. J. JAMADAR, J.

DATED : 3rd JANUARY, 2022

PC:-

1. The learned Counsel for the defendants has tendered an additional affidavit-in-reply on behalf of the defendant.
2. The additional affidavit-in-reply is taken on record.
3. This application is preferred by the applicant seeking appointment of a Court Receiver in respect of Flat No.201, Shamik Niramaya Co-operative Housing Society Limited, Plot Nos.328, 329, Nandapatkar Road, Vile Parle (East), Mumbai ("Flat No.201") and for an injunction restraining the defendants or any person through the defendants from alienating,

encumbering and parting with the possession of the said suit flat.

4. Evidently, the estate left by the deceased consists of two flats i.e. Flat No.8, A-14, Jawahar Society, Govind Nagar, Sodawala Lane, Borivali (West), Mumbai ("Flat No.8") and Flat No.201, in respect of which the interim orders are sought. Indisputably, the plaintiff is in possession of Flat No.8. There is now not much controversy over the fact that the defendants have let out Flat No.201 and, as affirmed in paragraph 12 of the affidavit-in-reply filed on behalf of the defendants, defendant no.1 is receiving a sum of Rs.55,000/- per month towards the licence fee thereof. The defendants have, however, made an endeavour to account for the expenses required to be defrayed in connection with the said flat.

5. In the aforesaid backdrop, Mr. Vashi, the learned Senior Counsel for the plaintiff, would urge that as the property in possession of the plaintiff is of lesser value and above-numbered Flat No.201, being of higher area and value, fetches substantial return and defendant no.1 is earning profits out of the said flat, it is necessary to appoint Court Receiver in respect of the said flat.

6. Mr. Shetye, the learned Counsel for the defendants, in contrast, submitted that the defendants do not intend to alienate or further encumber Flat No.201. Therefore, an order in terms of prayer clause (b) may be passed.

7. Evidently, the plaintiff and defendants are in possession of one flat, each. However, the plaintiff's claim rests on the premise that the property in possession of the defendants is of higher value and has greater earning potential. This concern on behalf of the plaintiff can be taken care of by passing an order in terms of prayer clause (b) with a further direction that the defendants, especially defendant no.1 shall maintain accounts of the receipts from Flat No.201, so that the equities can be worked out in the event of a decree for partition.

8. Hence, the following order.

: O r d e r :

(i) There shall be interim order in terms of prayer clause (b), which reads as under:

“(b) That pending the hearing and final disposal of the suit, the defendants or any person through the defendants be restrained by an order and injunction of this Hon’ble Court from alienating, encumbering and parting with the possession of the suit flat i.e. flat no.201, Shamik Niramaya Co-operative Housing Society Ltd., Plot No.328, 329, Nandapatkar Road, Vile Parle (East), Mumbai – 400 057.”

- (ii) The defendants, particularly defendant no.1 shall maintain the account of the receipts in respect of Flat No.201, so that the equities can be worked out in the event a decree for partition is passed.
- (iii) By way of abundant caution and to rule of possibility of prejudice, the plaintiff as well as the defendants are restrained from alienating, transferring or otherwise creating any third party interest in the suit flats i.e. Flat No.8, A-14, Jawahar Society, Govind Nagar, Sodawala Lane, Borivali (West), Mumbai and Flat No.201, Shamik Niramaya Co-operative Housing Society Limited, Plot Nos.328, 329, Nandapatkar Road, Vile Parle (East), Mumbai, during the pendency of the suit.

The application stands disposed of.

[N. J. JAMADAR, J.]