

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION (LODGING) NO. 30710 OF 2021
WITH
INTERIM APPLICATION NO. 3890 OF 2022
IN
SUIT NO. 2666 OF 1992**

Vimaldev Hirjibhai Thakkar & ors. ... Applicants/Plaintiffs
vs.
Dr. Chandrashekhar Hirjibhai Thakkar & ors. ... Respondents/Defendants

Mr. M. P. Vashi, Senior Advocate, i/b. Sujit S. Nikam for applicants/plaintiffs.

Mr. Anoshak Daver a/w. Mr. Nakul Jain, Mr. Harsh L. Behany and Ms. Saloni Manjrekar, i/b. HN Legal for respondent/defendant Nos.2 and 3.

CORAM : MANISH PITALE, J.

DATE : 25th AUGUST, 2023

P.C. :

Interim Application (Lodging) No. 30710 of 2021:

. Heard learned counsel for the parties. By this application, the applicants/original plaintiffs pray for discharging the Receiver and modifying order dated 10.11.1993 passed by this Court to the extent that the Court Receiver may be continued in respect of three buildings only i.e. Chandra Villa, Dusyant Villa and Bharti Villa.

2. A perusal of the order dated 10.11.1993 shows that Receiver was appointed with the consent of all the parties and the Receiver was to manage the properties in question.

3. The application proceeds on the basis that insofar as building No.3 is concerned i.e. Vimal Villa, the defendants have admitted in their written statements that the said building belongs to the applicants.
4. This Court has perused the written statements and it is found that there is no such specific admission on the part of the defendants of which, the applicants can take advantage. The basic premise on which, the present application is filed, is therefore found to be flawed and hence, the application is found to be meritless.
5. Even otherwise, it is brought to the notice of this Court that in an earlier application bearing Interim Application No.1687 of 2020, filed by the applicants, discharge of the Receiver was sought in respect of all the four buildings. The said application was simply dismissed as withdrawn, without any liberty, sought on behalf of the applicants.
6. In the present application, in paragraph No.13, it is stated that applicant No.1 pointed out a mistake to his advocate in the earlier application and he was advised to withdraw the earlier application, to take out a fresh application in respect of discharge of the Court Receiver. The order dated 22.12.2021, dismissing the earlier application i.e. Interim Application No.1687 of 2020, shows that the interim application was dismissed as withdrawn and no liberty was reserved to the applicants. This is an additional reason for not entertaining the present application.
7. In view of the above, the present application is dismissed.

Interim Application (Lodging) No. 3890 of 2022:

8. By this application, the applicants are seeking an order, restraining defendant Nos.1 and 2 from dealing with or creating third party rights in respect of flat No.203 in Sangam building at Peddar Road, Mumbai and flat Nos.21 and 22 on 2nd floor of Sapphire building, Bandra, Mumbai, apart from praying for appointment of Court Receiver and ancillary reliefs.

9. Learned counsel for defendant No.2 submits that since the said defendant is resident of United Kingdom, the reply affidavit in the present application could not be filed, although a copy of the same was served on the applicants/plaintiffs. This Court has perused the original affidavit, while considering the application. The defendant No.2 is permitted to place the said affidavit on record within one week from today. Defendant No.1 has not filed any reply affidavit and today, there is no representation on behalf of said defendant.

10. The present application is based on certain statements and it is claimed that if the stand taken on behalf of defendant No.2 in the reply affidavit is to be appreciated in the correct perspective, it would become clear that consideration for flat Nos.21 and 22 of Sapphire building, Bandra, Mumbai, was actually paid by applicant No.1/plaintiff No.1 and that therefore, the prayers made in the present application are justified.

11. It is submitted that when the consideration for the aforesaid two flats as well as flat No.203 in Sangam building at Peddar Road, Mumbai, was paid by the plaintiff No.1, any further dealing of the said flats by defendant Nos.1 and 2 would be unfair and that therefore, the prayers made in the present

application ought to be granted.

12. This Court has perused the reply affidavit filed on behalf of defendant No.2 and the documents filed therewith. This Court finds that in the light of specific statements made in the plaint itself, where it is conceded that defendant Nos.1 and 2 purchased the said flats, the impression created by such pleadings is that the said flats would be outside the estate of the deceased. Hence, the prayers made in the present application cannot be granted. The manner in which the consideration flowed, with regard to flat Nos.21 and 22, has been explained with cogent material on behalf of defendant No.2. Even though it is contended on behalf of the applicants that the plaint was subsequently amended, the admissions made in respect of aforementioned two flats in the plaint, have not been specifically withdrawn and therefore, in face of such pleadings and facts placed on record in the reply affidavit filed on behalf of defendant No.2, this Court is convinced that no case is made out for appointment of Receiver or grant of orders, restraining defendant Nos.1 and 2 from dealing with or creating third party rights in respect of the aforementioned three flats.

13. The application is found to be without any merits and accordingly, it is dismissed.

(MANISH PITALE, J.)