

Santosh

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

**INTERIM APPLICATION NO. 668 OF 2022
IN
SUIT NO. 295 OF 2012**

SANTOSH
SUBHASH
KULKARNI

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SANTOSH SUBHASH
KULKARNI
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Kaizer Taher Mithaiwala

...Applicant

In the matter between

Kaizer Taher Mithaiwala

...Plaintiff

Versus

Shamima Taher Mithaiwala & ors.

...Defendants

Mr. Govind Pawar, for the Plaintiff.

Ms. Poonam Madhwani, for Defendant No.1.

Mr. Prem Gidwani, a/w Gauri Deshpande, for Defendant
Nos.2, 3 and 5.

CORAM: N. J. JAMADAR, J.

DATED : 9th FEBRUARY, 2023

PC:-

1. This interim application is taken out seeking appointment of a Court Receiver.

2. The learned Counsel for the defendants point out that the prayer for appointment of Court Receiver was also made in Notice of Motion No.367 of 2014. The said Notice of Motion came to be disposed of by an order dated 8th May, 2014, granting prayer in terms of prayer Clause (c), only.

3. Paragraph 5 of the said order reads as under:

“5. However, I am of the prima facie view that defendant nos. 1 to 3 who knew that the plaintiff also was entitled to certain share in the suit property could not have executed such deed of conveyance in favour of defendant no.6 without taking consent and/or joining the plaintiff as party to the deed of conveyance. Defendant nos. 1 to 3 have purchased three flats which are described in prayer (c) of the Notice of Motion. In my view prima facie case is made out for grant of injunction against defendant nos. 1 to 3 in respect of said flats. Notice of Motion is accordingly made absolute in terms of prayer (c). No order as to costs.”

4. From the perusal of the said order, it becomes evident that the Court noted that the plaintiff sought appointment of Court Receiver in respect of the properties described in prayer Clause (a) of the plaint and also sought injunction against defendant No.6 in respect of the properties described in Exhibit-B and C of the plaint. After ascribing reasons, the Court was persuaded to grant relief in terms of prayer Clause (c), only.

5. The learned Counsel for the plaintiff urged that since the Court has not specifically rejected the prayer for appointment of Court Receiver, the plaintiff is within his rights in again seeking the said prayer. It is trite that if the Court does not grant a particular prayer and disposes of the application, it implies that the prayer stands rejected. It is also well settled that an order operates as *res judicata* at different stages of the same

proceeding. Hence, no case is made out to entertain the application for appointment of Court Receiver.

6. Application stands rejected.

[N. J. JAMADAR, J.]