

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
INTERIM APPLICATION NO.1949 OF 2023
IN
SUIT NO.56 OF 2001
IN
PETITION NO.689 OF 2001

Christopher Neil Fernandez through Constituted
Attorney Holder Lisa Gomes ... Applicant
Vs.
Phyllis Fernandes and others ... Respondents / Defendants

Mr. Anthony Paul Fernandez @
Anthony Paul Fernandez @ A. P. Fernandez
@ Anthony P. Fernandez @ Tony Fernandez ... Deceased

Mr. Sean Wassoodew a/w. Mr. Rupesh Mandhare and Ms. Ashna Shah for
Applicant / Plaintiff.
Mr. B. G. Saraf for Respondent No.3 / Defendant No.3.

CORAM : MANISH PITALE, J.
DATE : FEBRUARY 26, 2024

P.C. :

. On 20.02.2024, this Court had passed the following order:-

“ Heard learned counsel for the parties.

2. By this application, the applicant (original petitioner) is seeking appointment of Court Receiver for a flat which forms part of the estate of the deceased. It is the case of the applicant that the defendant No.3 (respondent No.3 in this application), has never resided in the said flat and there are affidavits and reports of the Commissioner to show that the husband of the said defendant was residing alone in the said flat till the time of his death. Even after his death, according to the applicant, the said defendant has been residing at a different place and yet the prayer in the present application, is being opposed.

3. It is submitted that if this Court grants the prayer, it would be only for benefit of the estate of the deceased.
4. The learned counsel appearing for defendant No.3 seeks short adjournment to take appropriate instructions in the matter.
5. List the application for further consideration on 26th February, 2024 (High on Board).”

2. Today when the application is called out for hearing, the learned counsel appearing for defendant No.3, on instructions, submits that even if this Court is inclined to appoint Court Receiver on the said flat, reasonable time of two weeks may be granted to the defendant No.3 to remove her articles from the said flat.

3. This Court has considered the material on record. Without going into the allegations made by the applicant and defendant No.3 against each other, this Court, having perused the material on record, is of the opinion that it would be only in the interest of the estate of the deceased that the Court Receiver takes possession of the flat and gives it out on leave and licence. The proceeds earned through the said exercise would only inure to the benefit of the estate. The material placed on record does indicate that as on today, the defendant No.3 is not in actual physical possession of the subject flat and that she is residing elsewhere.

4. In view of the above, the application is allowed in terms of prayer clause (a), which reads as follows:-

“(a) That pending the hearing of the aforementioned Suit, this Hon’ble Court be pleased to appoint a Court Receiver under Order XL Rule 1 of the Code of Civil Procedure, 1908 for the Flat No. 101, Cozydell CHS, St Andrew’s Road, Bandra, Mumbai 050 with all powers under O XL R 1 CPC including the power to take forcible possession with the help of police and for this purpose; be pleased to direct the Bandra West Police Station, Hill Road, Mumbai 400050 to provide all assistance and depute police officers to accompany the officer to take and keep possession of the Flat No. 101, Cozydell CHS, St Andrew’s Road, Bandra, Mumbai 400050;”

5. The defendant No.3 is permitted to take out her articles from the subject flat within two weeks from today. The Court Receiver shall take possession of the flat and take further steps for giving out the said flat on leave and licence. The Court Receiver shall take necessary steps in the matter expeditiously.

6. The application stands disposed of.

(MANISH PITALE, J.)

Minal Parab