

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INTERIM APPLICATION NO. 668 OF 2025

IN

SUIT NO. 13 OF 2025

Shri Hari Ashram

Applicant
.. (Org. Plaintiff)

In The Matter Between

Shri Hari Ashram

.. Plaintiff

Versus

Vijay Jayantilal Patel & Anr.

Respondents
.. (Org. Defendants)

.....

- Mr. Karl Tamboly a/w Mr. Gaurav Srivastav, Mr. Aaman Keharia, Mr. Adil Parsuram Puria, Ms. Monorama Mohanty & Mr. Hitanshu Jain i/by S.K. Srivastav & Co., Advocates for Applicant / Org. Plaintiff
- Mr. Rohaan Cama a/w Mr. Piyush Shah, Mr. Nagendra Dubey, Mr. Dishang Shah, Mr. Yash Oza & Mr. Ankit Shah i/by Lexi Conveniens, Advocates for Defendant No. 1

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 03, 2026

P. C.:

1. Heard Mr. Tamboly, learned Advocate for Applicant (Org. Plaintiff) and Mr. Cama, learned Advocate for Defendant No. 1.

2. For the sake of reference and convenience, Applicant is referred to as "***Plaintiff***" and Respondents are referred as "***Defendants***".
Suit is filed by Plaintiff Trust for declaration, possession, damages and injunction on the basis of a Deed of Assignment dated 30.07.2012.
Interim Application is filed for appointment of Court Receiver and

damages in the interregnum. Interim Application is decided by this order.

3. Following facts are relevant for adjudicating the present *lis:-*

3.1. Applicant - Plaintiff is a Charitable Trust registered under the Public Charitable Trust Act, 1950 and based in Vadodara, Gujarat. Plaintiff holds and maintains several properties across India including temples, multipurpose halls, bhojnalayas, etc.

3.2. Defendant Nos. 1 and 2 are sons of late Mr. Jayantilal Mohanlal Patel. According to Plaintiff, in 2012 Plaintiff Trust was desirous of acquiring properties in Mumbai for the purposes and objects of the Trust. According to Plaintiff, in February 2012, Mr. Jayantilal Mohanlal Patel (hereinafter referred as "**Jayantilal**") - father of Defendant Nos. 1 and 2 and his cousin brother Dr. Peter @ Shantilal Bhailal Patel (hereinafter referred as "**Dr. Peter**") represented to Plaintiff that Jaihind Co-operative Housing Society Ltd (hereinafter referred as "**Society**") situated in JVPD Scheme, Juhu, Vile Parle is owner of Plot No.6 admeasuring 669.80 sq.mtrs., bearing Survey No. 580 which is part of land bearing Survey No.70 in JVPD Scheme, Juhu, Mumbai Suburban District (the said Plot). Jayantilal and Dr. Peter represented that they were entitled to the said plot and building

standing thereon called "Usha Villa" in equal share of 50% by operation of law under the last Will and Testament of one Mr. Bhailal Chhotalal Patel (hereinafter referred as "**Bhailal**") who was the original member of the Society and holder of five shares of Rs.100 each bearing Nos.76 to 80 comprised in Share Certificate No. 16 issued by Society in respect of Plot No. 6. According to Plaintiff, Dr. Peter and Jayantilal, *inter se*, agreed that said Jayantilal was entitled to ground floor, 1st floor, garage and storage on the ground floor and Dr. Peter was entitled to 2nd and 3rd floor of the building known as Usha Villa standing thereon.

3.3. According to Plaintiff, it agreed to acquire from Dr. Peter his undivided 50% share in the said building 'Usha Villa' and undivided share in the said Plot together with joint ownership of five shares of Plot No. 6 with the consent of Jayantilal. Deed of Assignment dated 30.07.2012 was executed by Dr. Peter as Assignor and Sadhu Purushottamacharandasji and Vithalbhai Somabhai Patel being Trustees of Plaintiff – Trust as Assignee and Jayantilal as confirming party, thereby assigning unto the Plaintiff, Dr. Peter's 50% undivided share, right, title and interest in the leasehold Plot No.6 and the 2nd floor admeasuring 161.54 sq. mtrs. and 3rd floor admeasuring 92.84 sq. mtrs. in the building known as Usha Villa for the remainder of the lease period to Plaintiff for consideration of Rs. Five Crore. The

Deed of Assignment was registered with the Sub-Registrar of Assurances at Andheri, Mumbai on 30.07.2012. According to Plaintiff, it was put in vacant and peaceful possession of the 2nd and 3rd floor and in joint possession of the said plot along with Jayantilal who was holder and occupant of ground and 1st floor. Consideration of Rs. 5 Crore was paid to the Assignor Dr. Peter by cheque dated 05.06.2012.

3.4. According to Plaintiff, whenever the religious head of the Yogi Divine Society of the Swaminarayan Sampradaya Swami Shri. Hariprasaddasji visited Mumbai, he used to reside in the suit premises i.e. 2nd and 3rd floor along with his fellow trustees, representatives and servants of the Trust. According to Plaintiff, the 2nd and 3rd floor i.e. suit premises became the abode of the religious head known as "Anirdesh" amongst the followers and devotees of the Plaintiff Trust worldwide. According to Plaintiff, there were several similarly situated places of abode all over the world where religious head of the Trust resided intermittently during his visits along with his followers and devotees for Trust related programs / works.

3.5. In the aftermath of COVID-19 pandemic, the religious head of the Trust while staying in the suit premises passed away on 26.07.2021. Due to this the suit premises were kept locked and unused by Plaintiff – Trust thereafter. According to Plaintiff Trust, in November 2021 taking advantage of the COVID-19 pandemic situation

and lockdown, Defendants i.e. sons of Jayantilal illegally took over possession of the suit premises and put their own lock on the gate leading to the suit premises and illegally and unlawfully dispossessed the Plaintiff Trust claiming to be owners of the suit premises by putting up a legal notice. Representatives of Plaintiff Trust were denied entry into the suit premises. Plaintiff Trust addressed letter to the Society for issuance of duplicate share certificate on 30.06.2023 and issued public notice in respect thereof. Society responded to the public notice stating that as per Society record, Plot No. 6 stood in the name of their member and Plaintiff Trust was not registered as member as per record of the Society. Defendant No. 1 thereafter through his Advocate asserted that Plot No. 6 was standing in the name of Jayantilal Mohanlal Pate as member of the Society and only he was entitled to the said plot and the building 'Usha Villa' standing thereon and after his demise Defendants were owners of the suit premises. According to Plaintiff Trust, after the death of the spiritual head of Plaintiff Trust many descendants and followers of the religious head by illegal and unlawful means attempted to take possession of the assets and properties of the Trust in a similar fashion. Hence Plaintiff Trust filed present Suit seeking declaration, possession , injunctive reliefs and damages alongwith interim compensation @ Rs. 10,00,000/- per month. In the interim Plaintiff - Trust prayed for

appointment of Court Receiver for the suit premises and a direction to put Plaintiff in possession as agent of the Court Receiver and restrain Defendants from disturbing possession of Plaintiff in the suit premises.

4. Mr. Tamboly, learned Advocate for Plaintiff would submit that Defendants have forcibly and unlawfully occupied the suit premises when they were kept locked by Plaintiff during the COVID-19 pandemic period pursuant to the demise of their father Jayantilal who was the confirming party to the Deed of Assignment dated 30.07.2012. He would submit that by virtue of the Deed of Assignment Dr. Peter assigned his right, title and interest in his 50% share of the entire property namely Plot No.6 and building named 'Usha Villa' standing thereon to the Plaintiff. He would submit that the said act of transfer / assignment was confirmed by Jayantilal which is now resiled by the Defendants who are his sons after his demise on 22.03.2022. He would submit that Dr. Peter's 50% share namely 2nd and 3rd floor was assigned to Plaintiff Trust for the remainder period of the lease which was a perpetual lease for 999 years beginning from 14.03.1962 onwards. He would submit that taking advantage of the demise of the religious head and Jayantilal, the Defendants have illegally trespassed onto the suit premises which was otherwise assigned and transferred to Plaintiff Trust. He would submit that therefore until the Suit proceedings are decided, on the basis of the

Deed of Assignment dated 30.07.2012, Court Receiver be appointed forthwith and Plaintiff – Trust be put back in possession of the suit premises until the Suit is determined. He would submit that Plaintiff Trust has made out a *prima facie* case on the basis of Deed of Assignment dated 30.07.2012 and the consideration paid to Dr. Peter, that irreparable loss will be caused to the Plaintiff – Trust if injunction is denied and balance of convenience lies in favour of Plaintiff Trust since conduct of Defendants who are sons of Jayantilal is *prima facie* contumacious, illegal and contrary to law. Hence he would submit that interim reliefs prayed for in the Interim Application be allowed.

5. *PER CONTRA* Mr. Cama, learned Advocate for Defendants would submit that Suit filed by Plaintiffs suffers from gross delay and laches since Plaintiff Trust did not take any steps under the purported Deed of Assignment dated 30.07.2012 to fructify its substantive right title and entitlement in the suit premises as member of the Co-operative Housing Society. He would submit that Plaintiff has in fact laid completely silent and taken no steps whatsoever to assert its alleged right. His submission is that the Deed of Assignment itself was *ab initio* void and incapable of being executed or even fructified as it was in violation of the terms and conditions of the original lease Agreement of the year 1962 and the Suit premises was incapable of sub-division under the extant bye-laws of the Society. He would submit

that the police complaint by Plaintiff on 19.06.2023 was limited to the grievance of purported loss of original share certificate and it did not refer to any act of dispossession of Defendants. He would submit that admittedly Plaintiff – Trust is not a member of the Society and therefore is disentitled to any interim relief.

5.1. On the issue of merits of the transaction of Assignment, he would submit that the purported Deed of Assignment dated 30.07.2012 is itself *ab initio void* for want of permission and consent from the Society in as much as it is impermissible for a member of the Society to sub-divided and transfer and alienate part of the property to a third party in the manner which has been done in the present case or for that matter split the 5 shares into two parts. He would submit that the share certificate issued by Society dated 06.05.2006 does not confirm or entitle Dr. Peter to assign his 50% shareholding in the property to the Plaintiff Trust. He would draw my attention to clause 2(12) of the lease deed dated 10.09.1962 by which the said Plot No. 6 was leased to the predecessor-in-title of the parties namely one Bhailal Patel through whom the Plaintiff Trust and Defendants are claiming entitlement. He would submit that the said clause categorically bars members from transferring of the demised plot and the structure (Usha Villa) standing thereon at any time during the tenure of the lease without written consent of the Society for that purpose having

been previously obtained by the member. He would submit that in the present case, admittedly there is no the written consent of the Society obtained by Dr. Peter or Jayantilal before executing the Deed of Assignment in 2012. He would submit that under clause 12(2), it is impermissible for the lessee to assign its rights or part of its rights in the said plot and the structure standing thereon without written consent of the Society and thus, Dr. Peter was not legally permitted to assign his rights in respect of 50% of the land and property to the Plaintiff Trust.

5.2. He would submit that the Deed of Assignment relied upon by the Plaintiff executed with Dr. Peter and confirmed by Jayantilal admittedly does not bear the consent of the Society. He would submit that even otherwise the Deed of Assignment is contrary to the bye-laws of the Society as it *prima facie* violates bye-laws 19 and 20 as no right would be accrued to the transferee without the Consent of the Society or sanction of the General Body of the Society. He would submit that in such a case where transfer takes place without the consent of the Society, it confers no right on the purported assignee i.e. Plaintiff Trust in the present case. In support of this proposition, he seeks to refer and rely upon the decisions in the case of ***Zoroastrian CHS Ltd & Anr. v. District Registrar CHS & Ors.***¹ and ***Ghanshyam***

1 2005(5) SCC 632

Malhotra & Ors. v. Vithalnagar CHS Ltd.² to contend that it is well settled position that if an agreement is *ab initio void*, then the same need not even be set aside or cancelled in that case. He would submit that no title whatsoever could be passed to the Plaintiff on the basis of the purported Deed of Assignment dated 30.07.2012 as it is *prima facie ab initio void* and therefore Plaintiff Trust derives no right, title and interest in the Suit premises at all.

5.3. He would submit that Plaintiff's claim is through 50% shareholding of Dr. Peter as per the Deed of Assignment but name of Dr. Peter is not certified on the Memorandum of Transfer of the share certificate, copy of which is appended at page Nos. 56 and 57 of the suit plaint. He would submit that insofar as Dr. Peter is concerned, he was a citizen of UK. He would submit that he was not an Indian citizen either by birth and residence and therefore pursuant to the demise of his predecessor-in-title – Bhailal C. Patel, under his Will he could never have held property in India without the permission of Reserve Bank of India. He would submit that Reserve Bank of India under the provisions of FEMA had issued a Master Circular on 02.07.2012 contemplating conditions for persons of non-Indian origin i.e. resident outside India and foreign nationals permitted to inherit property from a person who was resident in India. He would submit

2 2023 SCC Online Bom 2408

that thus holding of any property by Dr. Peter in India was barred under the provisions of Section 31 of FERA which was in application at the then time. He would vehemently submit that any transaction done in breach of Section 31 of FERA without seeking permission of the Reserve Bank of India would be void as is the present case and thus the aforesaid reasons put a significant question mark on the validity and legality of the Deed of Assignment dated 30.07.2012. He would submit that Dr. Peter had no right to inherit the Suit property and if he had no right to inherit the property, then no right accrued to him to transfer the same to the Plaintiff Trust under the purported Deed of Assignment. He would submit that Plaintiff is entitled to return of their monies paid by them to Dr. Peter and not to assert rights in respect of the suit premises in the present facts and situation. On the issue of return of monies, he would submit that the entire amount received from the Plaintiff – Trust under the Deed of Assignment has been returned back to the Plaintiff by Defendants' father Jayantilal between 2012 and 2017.

5.4. On the aspect of possession, he would vehemently contend that case of Plaintiff that they were put in possession of the 2nd and 3rd floor of the building 'Usha Villa' is completely false. He would submit that it is Plaintiff's case in the affidavit in rejoinder that Plaintiff had put faith in Defendant Nos. 1 and 2 to maintain the suit

premises on behalf of Plaintiff since Plaintiff had its base in Gujarat which itself is a clear admission that Plaintiff was never in possession of the suit premises. According to him Defendant Nos. 1 and 2 were in possession of the suit premises and were taking care of the suit premises and therefore case of dispossession of Plaintiff is not proved. He would submit that Defendants have been making payment of all statutory and other payments in respect of the entire property including Plaintiff's alleged share all through out from 2007 onwards. He seeks to refer to and rely upon the electricity bills (appended at page Nos. 272 to 396 of Defendant No. 1's reply), water bills (appended at page Nos. 397 to 406) and PR tax / Municipal Tax (appended at page Nos. 407 to 441) in support of the above submission. He would submit that that pursuant to the Deed of Assignment Plaintiff has never demanded possession of the suit premises, neither Plaintiff has applied to the Society under its bye-laws to recognize itself as member of the Society.

5.5. He would submit that Plaintiff has suppressed the lease deed dated 10.09.1962, the contents of which clearly disentitle predecessor of Plaintiff from dealing with or transferring their rights to any third party without the written consent of the Society. He would submit that Society is a proper and necessary party in the present Suit

proceeding but it has not been impleaded and thus the Suit is bad in law for non-joinder of proper and necessary party.

5.6. He would submit that Plaintiff has stated in the Suit Plaintiff that Defendant Nos. 1 and 2 obstructed entry of the Plaintiff on 21.04.2022 but at that time Defendant No. 2 was in the United States of America during the period 06.03.2022 to 16.10.2022. Further Defendant No. 1 who is a principal and teacher in a School in Surat, Gujarat was admittedly in Gujarat and has marked his presence in the muster roll of the School through the month of April which can be seen from the copy of muster roll appended at page No. 450 of the reply. He would submit that since it is Plaintiff's own case in the plaint that Defendant Nos. 1 and 2 were taking care of the suit premises and were in possession thereof, there is no question of Plaintiff's dispossession and requiring the Plaintiff to be put back in possession through the Court Receiver. He would submit that Plaintiff Trust has alternate residential premises at Kandivali (E) in Ashok Nagar where the present religious head of Plaintiff Trust has been visiting and residing during his visits to Mumbai which has been suppressed by Plaintiff from this Court. That apart he would submit that putting the Plaintiff in possession of the suit premises would amount to grant of final relief at the interim stage. He would submit that there are no

extraordinary circumstances pleaded which prejudice the rights of Plaintiff for grant of interim relief in its favour.

5.7. He would submit that Court Receiver cannot be appointed unless there is a clear case of danger or waste of the suit premises which is not the present case as Defendant Nos. 1 and 2 are in possession of the same and are taking due care of the same. Most importantly he would submit that as per Deed of Assignment, the amount stated therein was Rs. 3.97 crores since Rs. 1.03 crore was retained back to pay tax on behalf of Dr. Peter as recorded in the purported Deed of Assignment itself and father of Defendants - Jayantilal has repaid back the entire amount of Rs. 3.97 crores back to the Plaintiff in its entirety. He would submit that the said amount was paid back by Jayantilal to Plaintiff – Trust in the guise of donations as Jayantilal would otherwise not be able to justify repayment of such large sums of money to the Plaintiff. He would submit that there was no question of repurchasing the property which is wrongly contended by the Plaintiff. He would submit that in such circumstances, the Deed of Assignment was obtained and given a complete go-bye by the parties and it is in any event *ab initio void* and cannot be challenged. He has strongly relied on the entire re-payment having been made by Defendants' father to the Plaintiff details of which are appended at page No. 58 of the reply. He would submit that

payments have been made immediately after it was realized since the purported Deed of Assignment dated 30.07.2012 could not be given effect to as it was impermissible in law.

5.8. He would submit that reliefs prayed for by Plaintiff are on the premise that Plaintiff is entitled to 50% share in the suit premises and therefore Plaintiff has sought relief of possession and injunctive reliefs. He would submit that in the aforesaid factual circumstances Deed of Assignment did not confirm any right, title and interest unto the Plaintiff and therefore it was incumbent upon the Plaintiff to seek declaratory relief on the basis of the purported Deed of Assignment rather than assume entitlement to 50% of the holding in the entire property and seek possession and injunctive reliefs.

5.9. In view of the above, he would submit that Interim Application be dismissed.

6. I have heard both the learned Advocates at the bar and with their able assistance perused the record of the case. Submissions made by the learned Advocates have received due consideration of the Court.

7. Case of Plaintiff seeking declaration relief, possession, damages and injunctive relief is principally and primarily based upon the Deed of Assignment dated 30.07.2012. It is Plaintiff's case that

pursuant to execution and registration of the same, Plaintiff was put in physical possession of the suit premises. The suit premises in the present case are the 2nd and 3rd floor of the building known as 'Usha Villa' standing on Plot No.6 of JVPD Scheme. The said plot said scheme belong to Jaihind Co-operative Housing Society Limited.

8. Record shows that Dr. Peter alias Shanitlal Patel and Jayantilal Mohanlal Patel, both were devotees of the Yogi Divine Society Swaminarayan Sampradaya Swami Shri. Hariprasaddasji would to visit Mumbai very often for discourses and other trust related work. Since the head of the Plaintiff used to reside in 'Usha Villa'. Plaintiff – Trust, Dr. Peter and Jayantilal decided to execute and enter into the Deed of Assignment dated 30.07.2012. However, it is seen that admittedly the original parent Deed of Assignment / Lease whereby the perpetual lease was granted to the original Bhailal Peter has a specific covenant whereby if any further assignment was to be granted, then the written permission of the Jaihind Co-operative Housing Society was a *sine qua non* and was required to be obtained by the Assignor. In the present case, admittedly the written consent of the Society was not obtained and Deed of Assignment was sans this written permission.

9. That apart, it is seen that the holders of Plot No.6 who were Members of the Society did not transfer the entire right, title and

interest by way of assignment to Plaintiff. They had agreed to transfer only 2nd and 3rd floor of the building 'Usha Villa'. Whether transfer of part premises held in the Co-operative Housing Society can be allowed to be transferred is a question to be answered? At the threshold, there is no answer to this question because it is seen that the Member of the Society held 5 shares in respect of its right and entitlement in Plot No.6 which comprised of land and building 'Usha Villa'. Thus on this count, there is no agreement between parties with respect to subdivision up of the shares which can be found in the Deed of Assignment.

10. In that view of the matter, Plaintiff has assumed that it has become the owner of the suit premises and has prayed for possessory reliefs and injunctive reliefs. *Prima facie* since title of Plaintiff is not fructified fully, I am not inclined to accept the case of Plaintiff either at the interim stage.

11. Plaintiff has filed the present Suit proceedings without impleading the Society as proper and necessary party. Impleadment of the Society who is the owner of the subject plot whereon 'Usha Villa' building is standing and the suit premises comprises of 2nd and 3rd floor in the said Usha Villa building, the Suit is *prima facie* bad for non-joinder of parties also. Written consent of the Society as required by the parent lease Agreement has not been obtained by the Assignee

or even the Assignor before execution of the same which is a condition precedent in the present case.

12. Apart from this factual aspects which are *prima facie* seen from the record of the case, the issue of payment which has been raised by both the sides is also a disputed question of fact. According to Plaintiff, an amount of Rs.5 crores was paid, but the same stands *prima facie* refuted since an amount of Rs.1.03 crores was held back for the purpose of paying tax as stated in the Deed of Assignment itself.

13. Be that as it may, Defendants have *prima facie* accepted the fact the amount of Rs.3.97 crores was no doubt received from the Plaintiff by Dr. Peter, but it is case of Defendants and argued vehemently by Mr. Cama that immediately after the said payment was received, father of Defendants namely Jayantilal started repaying back the said payment in its entirety to the Plaintiff. Appended at page No.58 of the Affidavit-in-Reply is the list of payments made intermittently by Jayantilal after execution of the said Deed of Assignment to Plaintiff – Trust.

14. The dichotomy which has been pointed out by Mr. Tamboly, learned Advocate for Plaintiff is that these payments cannot be considered as repayment at all. According to Plaintiff, since

Jayantilal was a devotee of the spiritual head of Plaintiff – Trust, these payments were infact donations given by Jayantilal to the Trust over a period of 7 years. Once such disputed questions of facts are asserted and denied by either side, then it become a case for trial.

15. No *prima facie* opinion can be expressed by the Court merely on the basis of such cross and rival averments made by the parties. In so far as the Defendants are concerned, they have placed on record details of payment relating to repayment of Rs.5.66 crores made by Jayantilal according to them to Plaintiff. The reason mentioned by them as to why these payments were made intermittently and in the manner and fashion paid for is that the entire amount of Rs.3.97 crores received by the Assignor (Dr. Peter) and the confirming party could not be paid back due to income tax reasons. Therefore it is *prima facie* seen that such disputed questions of facts can only be resolved on evidence.

16. In so far as the issue of trespass and physically taking over of the subject property is concerned, the case of Plaintiff does not inspire any confidence. It is seen that Plaintiff has not taken any steps whatsoever neither Plaintiff has approached the Society from the year 2012 to assert its right of it being in possession of the suit premises and for seeking membership. If Defendants have forcibly taken over the suit premises, it was incumbent upon the Plaintiff to have

approached the Law Enforcement Agencies in the first instance to show their *bonafides*. This has not been done rather complaint is filed with the Police Authorities by Plaintiff claiming a missing certificate namely Share Certificate of the subject premises. That complaint as filed by Plaintiff is not adequate enough to inspire confidence of the Court to believe the case of Plaintiff *prima facie*.

17. It is seen that Plaintiff claims ownership in respect of the plot and structure standing thereon and asserts 50% undivided right in the same by virtue of the Deed of Assignment dated 30.07.2012. It is Plaintiff's case that other portion of the building namely ground floor, first floor, garage and storage on the ground floor remained in possession of Jayantilal the other co-owner and Defendants who are his sons took over physical possession of the Plaintiff's suit premises.

18. That apart, Defendants have raised questions with respect to Dr. Peter's entitlement to execute the Deed of Assignment being a German national and not an Indian citizen and therefore questioned the very foundation of the Deed of Assignment as being violative of the FERA provisions and requirement of the permission from RBI as per Master Circular dated 02.07.2012. According to Defendants, Dr. Peter namely Shantilal Patel was born in Germany and lived in UK and was a UK residence and never an Indian citizen either by birth or by residence and therefore upon the death of the original lessee Bhailal

Patel in the year 1983, he could not have held property in India without the permission from the RBI. Once the title of the suit premises is itself in question, then the case of Plaintiff cannot be believed *prima facie*. This case of the Defendants is also unbelievable atleast *prima facie* on the basis of documents produced by Defendants on record.

19. Right of the Plaintiff emanates from the Deed of Assignment dated 30.07.2012. The challenge to the right of Plaintiff thereto in respect of suit premises is argued vehemently by the Defendants. Their respective submissions have been noted by the Court. However when the Deed of Assignment and documents submitted alongwith the Suit plaint are *prima facie* seen by the Court they bear out a completely different picture. It is unfortunate that none of the Advocates appearing at the bar either for the Plaintiff or Defendants have pointed out the said position emanating from the documents to me. For deciding interim relief all that the Court will have to be convinced with is *prima facie* case placed before the Court. Both the parties have argued on the basis of factual submissions and law as noted above without drawing the Court's attention to the *prima facie* case emanating from the documents which are appended to the Suit plaint determining rights of both sides.

20. Description of the Suit property is 50% undivided share, right, title and interest in the leasehold Plot No.6 admeasuring 669.80 sq. meters bearing City Survey No.580 and situated, lying and being at Juhu Vile Parle Development Scheme in the registration District and Sub-District of Mumbai City and Mumbai Suburban together with joint ownership of the fully paid-up shares of Rs.100/- bearing Nos.76 to 80 (both inclusive) of the Jaihind Co-operative Housing Society Limited and ownership of second floor admeasuring 161.54 sq.meters and third floor admeasuring 92.84 sq.meters of the building known as 'Usha Villa'.

21. Whether what is stated in the description of the suit property enures to the right of the Plaintiff or the Defendants or for that matter the Assignor or the Assignee will have to be seen from the documentary evidence placed before the Court. As stated above, primary document is the Deed of Assignment dated 30.07.2012. This document is executed by Dr. Peter @ Shantilal Bhailal Patel as Assignor for transferring his 50% share which is the suit property to the Plaintiff. This Deed of Assignment is also signed by Jayantilal Mohanlal Patel as 'confirming party'. It is registered before the Sub-Registrar of Assurance on 30.07.2012. What is stated in the Deed of Assignment is crucial to determine how the rights have accrued to the respective parties.

22. Jaihind Cooperative Housing Society Limited is the owner of Plot No.6 in Juhu Vile Parle Development Scheme. By Indenture of Lease dated 10.09.1962 duly registered before Sub-Registrar of Assurances, the Society leased and demised three plot of lands belonging to the said Society to Lalbhai Purshottamdas Shah as lessee for a term of 999 years with effect from 14.03.1962 for the annual rent of Re.1/- and on terms and conditions contained therein. One out of the 3 plots is Plot No.6. One of the significant term and condition contained in the lease was that if the lessee desires to transfer by way of assignment the balance period of the remainder of the lease to any third party then prior written consent of the Society would be a condition precedent for the same.

23. Thereafter by Indenture of Assignment dated 10.09.1969 duly registered with the Sub-Registrar of Assurances, the said lessees Lalbhai Purshottamdas Shah and others as Assignors assigned Plot No.6 to Bhailal Chhotalal Patel as Assignee with the Society being a confirming party thereto. The unexpired term of the original Indenture Leased dated 10.09.1962 was assigned for consideration and on the terms and conditions contained therein.

24. Thus Bhailal Chhotalal Patel became shareholder of five shares of Rs.100/- each bearing Nos.76 to 80 (both inclusive) during his lifetime and until his demise. The said Bhailal Chhotalal Patel

constructed a building known as 'Usha Villa' comprising of ground plus three storey on the said plot No.6. The said Bhailal Chhotalal Patel expired on 27.12.1983 leaving behind his last Will and Testament dated 21.06.1982. According to Defendants and as stated in the Deed of Assignment Dr. Peter alias Shantilal Bhailal Patel became entitled to said plot No.6 and said building 'Usha Villa' in equal shares under the last Will and Testament of the deceased Bhailal Chhotalal Patel.

25. The aforesaid dates are significant because what is appended by the parties to the said Deed of Assignment bears a different picture altogether. The parties have appended Memorandum of Transfer which is effected by the Society on the backside of the share certificate at page No.56 which *prima facie* shows that on 07.08.1969 under registered Folio No.77 duly authenticated by the Secretary of Society name of Bhailal Chhotalal Patel was incorporated as transferee in the Society record.

26. Thereafter it is seen that on 16.01.1985, name of Shri. Jayantilal Mohanlal Patel was entered into as transferee against Folio No.28 duly authenticated by the Secretary of the Society. On the same Memorandum of Transfer, it is next seen that on 06.05.2006, name of Dr. Peter alias Shantilal Bhailal Patel is added / entered into Memorandum of Transfers / Share Certificate as transferee but there is no authentication of the such transfer under the registered Folio of the

Society, the Clerk's initials are not there as stated therein (it is a clear blank) and most importantly the same is not authenticated by the signature and stamp of the Society and Secretary which once again is a clear blank.

27. *Prima facie*, it is seen that on 06.05.2006 name of Dr. Peter entered into as transferee on the Memorandum of Transfer is not duly authenticated by the Society. When this Memorandum of Transfer is juxtaposed with the recitals in the Deed of Assignment at page No.41 of the suit plaint, the same are completely incongruous. The fact that Dr. Peter alias Shantilal Bhailal Patel and Shri Jayantilal Mohanlal Patel (confirming party) were entitled to equal shares as stated in the Deed of Assignment is *prima facie* proved false on the face of record by merely looking at the Memorandum of Transfer.

28. It is seen that Jayantilal Mohanlal Patel expired on 22.03.2022. Thereafter it is Defendants' case that in the record of Society name of Dr. Peter alias Shantilal Bhailal Patel does not appear and the name of the Member which appears is that of Jayantilal Mohanlal Patel, their father. Such case of Defendants' is *prima facie* belied by or rather destroyed by the Memorandum of Transfer which has been appended to registered Deed of Assignment by the parties themselves.

29. The dishonesty of Defendants is also *prima facie* evident from the material which they themselves have placed on record. In the compilation of documents Will of Bhailal Chhotalal Patel owner of Plot No.6 and 'Usha Villa' has been appended at Exhibit-D, page No.131. It is seen that in the said Will in paragraph No.5 he has bequeathed and devised the said immovable property namely Plot No.6 and Usha Villa to the beneficiaries more particularly described in Schedule – A thereunder as 'Scheduled Beneficiaries'. He has instructed his Executors and Trustees (one of them been Jayantilal Mohanlal Patel) to divide amongst and pay to the Scheduled Beneficiaries or to the exclusion of any one or more of them and in such proportions as they deem fit.

30. In Schedule – A appended to the Will, list of Scheduled Beneficiaries are (i) Dr. Peter alias Shantilal Patel (son of Bhailal C. Patel), his wife and their issues, (ii) Dr. Mrs. L. K. alias Nalini HinzPeter alias Patel (daughter of Bhailal C. Patel), her husband and their issues and (iii) Jayantilal Mohanlal Patel (nephew of Bhailal C. Patel), his wife and their issues. From the above, it is *prima facie* seen that in so far as the Scheduled Beneficiaries and namely daughter – Nalini is concerned, she is completely excluded from the present set of transaction (Assignment). Her name does not even find mention in the Deed of Assignment wherein it is stated that as per the last Will

and Testament dated 21.06.1982, the Assignor and confirming party namely Dr. Peter and Jayantilal Mohanlal Patel have become entitled to the said plot and the said building 'Usha Villa' in equal shares. Thus there is a clear dichotomy with respect to what is stated in the Will of Bhailal Chhotalal Patel and the recital made on page No.41 in the Assignment Deed. Thus it is *prima facie* clear that Defendants who are sons of Jayantilal Mohanlal Patel have not approached the Court with clean hands on the face of record.

31. Defendant Nos.1 and 2 cannot take a different and contrary stand which was adopted by their own father Jayantilal Mohanlal Patel who was a confirming party to the Deed of Assignment. Though it is pleaded by the Defendants and also argued across the bar vehemently that Dr. Peter alias Shantilal Bhailal Patel was a citizen of United Kingdom and was not an Indian citizen by birth and residence and therefore pursuant to the demise of predecessor-in-title Bhailal Chhotalal Patel under his Will could never have inherited any property in India contrary to Reserve Bank of India's Master Circular, Foreign Exchange Regulation Act and Foreign Exchange Management Act, 1999 Regulations, however once again the documents which are appended to the suit plaint do not support such submissions at all.

32. It is seen that Dr. Peter alias Shantilal Bhailal Patel was issued a PAN Card by the Government of India, copy of which is appended at page No.73. It is seen that Dr. Peter alias Shantilal Bhailal Patel was also issued a driving license as far back as in the year 1996 which is appended at page No.75 of the Suit Plaint. The documentary evidence *prima facie* shows that he has been a resident of “Usha Villa” in the Suit premises as per his residential address.

33. In that view of the matter, case of Defendants *prima facie* cannot be believed. The question that now arises is why such a circuitous transaction was entered into by the parties. Though it is clear that permission of the Co-operative Housing Society was never taken as it does not find mention nor place in the Deed of Assignment. By virtue of the Deed of Assignment what is effected by the parties is subdivision of property belonging to the Society. Society is governed by the provisions of the Maharashtra Cooperative Societies Act, Rules framed thereunder and bye-laws of the Society which are all placed on record.

34. Be that as it may, in any event if any Assignment was required to be contemplated by the parties, written consent of the Society was *sine qua non* which was required to be procured from the Society concerned. Thus it is seen that both Plaintiff and Defendants have entered into Deed of Assignment by flouting the terms and

conditions which govern substantive rights of the parties at the threshold itself. Such rights of the parties would fructify eventually for transfer of the subject property and would be ultimately decided only at trial.

35. Hence the aforesaid actions of both parties which are noted by the Court do not inspire confidence of the Court at all in so far as Plaintiff is concerned or for that matter the Defendants are concerned. It is Defendants' case that their father Jayantilal Mohanlal Patel has repaid the entire amount to the Plaintiff in the form of donations in order to save himself from the wrath of the Income Tax Act. What is *prima facie* seen from the details of payments made by Jayantilal Mohanlal Patel made to Plaintiff – Trust is that amounts have been paid by Jayantilal Mohanlal Patel to Plaintiff – Trust by 10 cheque payments between 12.08.2012 upto 03.03.2017 over a period of five years totalling to Rs.5,66,11,000/-, details of which are appended to the reply filed by Defendants. According to Defendants, these cheques were paid in *lieu* of the amount received from the Plaintiff under the Deed of Assignment. However, if the Deed of Assignment is seen, the entire amount (Rs. 3.97 crores) was paid by one singular cheque as admitted therein to Dr. Peter alias Shantilal Bhailal Patel whereas according to Defendants, their father Jayantilal

Mohanlal Patel has returned the amounts under the Deed of Assignment.

36. The nexus and circuitous transactions between Dr. Peter alias Shantilal Bhailal Patel receiving the amount under the Deed of Assignment and Jayantilal Mohanlal Patel repaying the same is *prima facie* not established at all on the face of record. Parties will therefore have to prove their case at trial. According to Plaintiff – Trust, the amounts which were paid by Jayantilal Mohanlal Patel were donations to the Trust. Whether Plaintiff is correct or whether the Defendants' case needs to be accepted can only be proved at Trial.

37. *Prima facie*, it is seen that Deed of Assignment was executed by parties and there are gaping loopholes which remain unexplained in so far substantive right of Plaintiff thereto are concerned. Merely because the Defendants' claim that they have been paying the utility bills, electricity bills, water tax and property tax will not entitle them to claim entitlement to the said premises unless the suit is tried on evidence.

38. The aforesaid position *prima facie*, requires several issues to be proved on evidence by both sides. From the Will of Bhailal Chhotalal Patel it is *prima facie*, seen that Dr. Peter alias Shantilal

Bhailal Patel was his son and Jayantilal Mohanlal Patel was his nephew.

39. In my opinion, both the parties before me have failed to prove their respective case at the threshold on the basis of available documents so as to consider their submission in the interim.

40. In view of the aforesaid dichotomy which is *prima facie* emanating from the record of the case, Court Receiver stands appointed on the suit premises namely the 2nd and 3rd floor of the building called as 'Usha Villa' forthwith. It is seen that both Defendants who are sons of Jayantilal Mohanlal Patel have placed a banner on the entrance to the suit premises titled "Legal Notice" which reads that 'same is owned and is in possession and custody of Defendants after the demise of their father Jayant Mohanlal Patel and general public are cautioned and desisted from disturbing the said possession in any manner whatsoever'. The said legal notice which is pasted thereon states that it is by order of the owners. However, in the aforesaid facts and circumstances, I am of the opinion that the said legal notice which has been appended on the suit premises, copy of which is placed at Exhibit-D, page No.85 of the suit plaint is immediately required to be removed.

41. Court Receiver is directed to remove the same forthwith and if so required take police assistance. Defendants are directed to hand over the possession of the suit premises namely the 2nd and the 3rd floors of the 'Usha Villa' building to the Court Receiver on the basis of server copy of this order. If the Defendants or their representatives do not hand over possession of the suit premises to the Court Receiver, the Court Receiver is directed by this Court to break-open the lock on the Suit premises and take charge of the suit premises and seal the same forthwith and thereafter make appropriate report to the Court for seeking further orders.

42. The case of Defendants in the legal notice dated 05.07.2023 appended at Exhibit-J, page No.91 that from the year 2006 Mr. Jayantilal Mohanlal Patel was the owner of Usha Villa and was in adverse possession of the 2nd and 3rd floor is once again *prima facie* contrary to the contents of the Deed of Assignment as also to the Memorandum of Transfer of the share certificate in respect of the said premises.

43. However case of Defendant No.1 namely Vijay Jayantilal Patel claiming to be the owner of the suit premises from 22.03.2022 merely on the basis that he has been paying electricity and water bills and property taxes cannot be accepted at the threshold at all in the aforesaid facts and circumstances of the case.

44. In view of the aforesaid observations and findings which *prima facie* emanate from the record of the case the Interim Application seeking interim reliefs stands disposed with the aforesaid directions to the Court Receiver. The Court Receiver will take custody and possession of the said premises and after complying with this order make an appropriate Report to the Court for dealing with the suit premises strictly in accordance with law.

45. After the premises are taken over by Court Receiver both parties shall be entitled to bid for being appointed as Agent of the Court Receiver if Report is made for dealing with preservation, protection and augmentation of the suit premises in the interregnum until disposal of the Suit.

46. Interim Application is disposed in the above terms.

[MILIND N. JADHAV, J.]

47. After this order is pronounced, learned Advocate for Defendant No.1 has persuaded the Court to stay the effect of this order in order to test its validity and legality in the superior Court. However in view of the strong facts which are stated qua the conduct of Defendants in the present case, I am not inclined to accede to the request made by learned Advocate for Defendant No.1. Hence, the request made for stay of this order stands declined.

[MILIND N. JADHAV, J.]