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

INTERIM APPLICATION NO. 1705 OF 2025
IN
SUIT NO. 102 OF 2024

Lila Harshad Maniar & Anr. .. Applicants

Versus

Bhardwaj Harshad Maniar .. Defendant

Adv. Amod Eklaspur a/w Adv. Ayaz Bilawala, Adv. Dhanashree Gaikaiwari & Adv. Yogesh A. Gaikwad i/b Bilawala and Co. for the Applicants.

Adv**. Rajiv Narula a/w Adv. Tarang Jatiani i/b Jhangiani, Narula and Associates** for the Defendant /Respondent.

CORAM: FIRDOSH P. POONIWALLA, J.
RESERVED ON : NOVEMBER 4, 2025
PRONOUNCED ON : JUNE 9, 2026

Judgement :

1. The present Suit is filed to principally seek relief in terms of a declaration that each of the Plaintiffs are entitled to a 1/3rd share in the estate of the deceased Mr. Harshad M. Maniar, who passed away on 1st July, 2010, and for the administration of the said estate by and under the directions of this Court.

2. The present Interim Application seeks the following reliefs:

"a. this Hon'ble Court be pleased to order and direct the Defendant to disclose on oath and furnish the following information: -

i. all the movable, immovable and intangible properties possessed and owned by the Deceased as on 1st July, 2010;

ii. all title documents of the immovable properties enumerated in paragraphs Nos. 9(a) to 9(c) hereinabove and any further assets disclosed by the Defendant;
iii Status of the properties forming the estate of the 2011 to Deceased from Financial Year 2010 Financial Year 2023-2024 [including particulars such as the name of the person's having possession of the immovable assets and capacity thereof, income derived therefrom if any] as enumerated in paragraphs Nos. 9(a) to 9 (c) hereinabove and the said further assets disclosed by the Defendant;

iv. Account statements for all Bank Accounts standing in the name of the Deceased as of July 1, 2010;

V. Financial records of M/s. Maniar Plastic Industries including but not limited to Bank Statements, Profit & Loss Accounts, Balance Sheets, Income Tax Return forms, etc., from Financial Year 2010 - 2011 to Financial Year 2023-2024;

vi. all agreements / arrangements entered into by the Defendant or any person claiming through him in respect of immovable properties forming part of the estate of the Deceased;

b. this Hon'ble Court be pleased to order and direct the Defendant to deposit in this Hon'ble Court the documents pertaining to the estate of the Deceased and financial records thereof;

c. this Hon'ble Court be pleased to appoint the Commissioner for Taking Accounts, High Court, Bombay or any other fit and proper person to take accounts of all the movable, immovable and intangible properties of the Deceased including the properties enumerated at paragraphs Nos. 9(a) to 9(c) hereinabove, for the purpose of conducting such enquiry as he may deem fit;

d. this Hon'ble Court be pleased to restrain the Defendant from selling, alienating, transferring, disposing of, parting with *possession and/or creating any third-party interests in the immovable properties more particularly described in paragraph 9(a) to 9 (c) above or any part thereof [in the nature of Mortgage, Lease, Sub-Lease, Leave & License or otherwise] forming a part of the estate of the Deceased;*

e. this Hon'ble Court be pleased to appoint Court Receiver, High Court, Bombay or any other fit person with all powers under Order XI Rule 1 of the Code of Civil Procedure, 1908, in respect of the immovable properties and more particularly described in paragraph 9(a) to 9(c) or any part thereof with all powers under Order XI of the Civil Procedure Code, 1908, with specific direction to the Court Receiver to take physical possession of the aforesaid immovable properties;

f. Costs;

g. Any for such further and other orders that are just and necessary in the facts of the present case."

Facts

The case of the Plaintiffs is as follows:

3. On 11th May 1967, the deceased and Plaintiff No. 1 got married in Rajkot, Gujarat, in accordance with Hindu customs and traditions. Out of the said wedlock, the Defendant was born on 30th September, 1968, and Plaintiff No. 2 was born on 7th November 1974.

4. During his life time, the deceased, together with his wife and children, resided in Flat No-31 on 6th floor, 43, Aryan Mahal, C-Road, Marine Drive, Mumbai -400020 (hereinafter referred to as "the said Flat"). The said Flat was owned by the mother of the deceased i.e. Mrs. Rukshamaniben Maniar.

5. On 11th February 2007, Plaintiff No 2 got married and moved overseas with her husband in May 2007.

6. From 2004 onwards, the relations of the Defendant with the members of the Maniar Family, i.e. Rukshamaniben Maniar, the deceased and the Plaintiffs were strained on account of the Defendant's illicit relationship with a married woman, namely Anjali Ravi Jagttiani.

7. In 2007, the Defendant introduced Anjali to his family . Due to Anjali's marital dispute with her husband Ravi (who was a friend of the Defendant), the Defendant requested Rukshamaniben to allow Anjali to reside in the said Flat with the Maniar family for around six months. The Defendant's request was acceded to, and Anjali was allowed to live in the said Flat without having to pay any rent or license fees.

8. Thereafter, Anjali and the Defendant began acting in an inappropriate manner, which disrupted the environment of the said Flat and tormented the members of the Maniar family. This included consumption of non-vegetarian food and alcohol in a traditional vegetarian household, not maintaining neatness or basic levels of hygiene and verbal abuse and threats during confrontation. It is the case of the Plaintiffs that Anjali also assaulted and slapped Plaintiff No.1 once in 2008, after she asked Anjali to rack washed clothing for drying.

9. On November 19, 2008, Rukshamaniben issued a Notice through her Advocate calling upon Anjali and the Defendant to vacate the said Flat.

10. On 28th January, 2009, Rukshamaniben passed away. Following the passing away of Rukshamaniben, the said Flat was transferred to the name of the deceased. Even thereafter, the harassment by Anjali and the Defendant continued.

11. In September 2009, the deceased instituted L.E. Suit No. 196 of 2009 against Anjali and the Defendant in the Small Causes Court, Mumbai, seeking their eviction from the said Flat. Anjali and the Defendant entered their appearance in the said Suit and opted to defend the Suit. The pleadings in the said Suit were completed and issues came to be framed. The deceased also filed his Affidavit of Evidence on 5th April, 2010.

12. On 1st July, 2010, the deceased, Mr. Harshad Maniar, passed away. It is the case of the Plaintiffs that, in September, 2010, Plaintiff No.1 was threatened with bodily harm and was driven out of the said Flat. As a result of the same, Plaintiff No.1 moved to Nigeria and started residing with Plaintiff No.2.

13. Plaintiff Nos. 1 and 2 were not brought on record in the L.E. Suit. Thus, Anjali and the Defendant moved an application for abatement of the Suit. It is the case of the Plaintiffs that the said application was not served on the Plaintiffs.

14. On 27th January, 2011, the Application for abatement was allowed and L.E. Suit No. 196 of 2009 stood abated.

15. In July, 2011, Plaintiff No.1 returned to India and has been residing at Plaintiff No's. 2 Flat in Manpada, Thane ever since.

16. In December 2016, Plaintiff No.2 moved to India along with her infant son, owing to a matrimonial discord with her husband.

17. In April 2023, Plaintiff No.1, in a telephonic conversation with the Defendant, indicated her desire to visit the said Flat.

18. It is the case of the Plaintiffs that the Defendant concocted a false story alleging that the Plaintiffs had threatened to take forceful possession of the said Flat on 19th April, 2023. Thus, by his Advocates' letter dated 5th May, 2023, the Defendant sought to assert his and Anjali's absolute claim over the said Flat by adverse possession based on his exclusive, uninterrupted, open, hostile and settled possession over the said Flat for more than 12 years since the abatement of the L.E. Suit No. 196 of 2009 and his acquisition of tenancy rights over the tenanted premises (on account of him being the only heir of the deceased in possession of the said tenanted premises). The Defendant also proposed a without prejudice dialogue to explore a figure of monetary compensation payable to the Plaintiffs.

19. By their Advocates' letter dated 12th May, 2023, the Plaintiffs replied to the Defendant's Advocates' letter and denied the Defendant's allegations and

assertions. The Plaintiffs further declared their entitlement over the said Flat to the extend of 1/3rd share each, and rights over assets of M/s. Maniar Plastic Industries and the tenanted premises. The Plaintiffs also accepted the without prejudice offer of the Defendant and agreed to initiate a dialogue.

20. By the Defendant's Advocates letter dated 18th May 2003, a schedule of the proposed meeting was agreed upon on 7th June, 2023. The parties conferred. However, no amicable solution could be arrived at.

21. In December 2023, the Plaintiffs learnt that the Defendant had inducted a sub-tenant in the tenanted office premises at Bhoiwada, Bhuleshwar and that the tenanted factory premises in Chembur were also sub-let to one Kamal TVS Service Centre. The Plaintiffs further learned that the Defendant had previously sublet office premises to a third party, and the landlord of the office premises had filed an eviction Suit in the Small Causes Court, which is still ongoing.

22. The Plaintiffs addressed a letter dated 20th December, 2023 to the landlords of the tenanted office premises at Bhoiwada, Bhuleshwar, seeking details and documents.

23. The Plaintiffs addressed a letter dated 29th January, 2024 to the alleged sub-tenant ('Dazzle') seeking disclosure of the rent / license fees paid, and the agreement so executed, if any. Plaintiffs also addressed letters to the landlord of the tenanted premises at Chembur, seeking details and documents, and the

alleged sub-tenant Kamal TVS Service Centre seeking disclosure of the rent / license fees paid and the agreement so executed, if any. However, the Plaintiffs did not receive any response either from the landlord or the alleged sub-tenants.

24. In these facts and circumstances, the Plaintiffs filed the present Suit.

25. In the present Suit, by an Order dated 27th February, 2024 passed by this Court, the Defendant was directed to file a disclosure affidavit within two weeks from the date of the Order in terms of prayer clauses (a)(i)(ii) and (iii). By the said Order, this Court also pointed a Mediator to mediate in respect of the disputes between the parties. Subsequently, the said Mediation failed.

26. Pursuant to the said Order dated 27th February, 2024, the Defendant filed an Affidavit of disclosure dated 11th March, 2024. The Plaintiffs filed an Affidavit-in-Reply dated 8th April, 2024 to the said disclosure Affidavit. Further, the Defendant filed an Affidavit-in-Reply dated 12th April, 2024 to the present Interim Application and the Plaintiffs filed an Affidavit-in-Rejoinder dated 10th June, 2024 thereto.

27. Further, by an Order dated 18th July 2024, this Court rejected Interim Application No. 16701 of 2024 filed by the Defendant under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as "**the CPC**"). The Plaintiff filed an Appeal against the said Order dated 18th July, 2024. After the said Appeal was argued for some time and the

Division Bench of this Court (of which I was one of the members) was not inclined to entertain the Appeal, the learned Advocate appearing on behalf of the Appellant sought leave to withdraw the Appeal. Accordingly, by an Order dated 21st March, 2025, the said Appeal was dismissed as withdrawn.

SUBMISSIONS OF THE PARTIES.

28. Mr. Amod Eklaspur, the learned counsel appearing on behalf of the Plaintiffs, first drew my attention to the prayers in the Plaint and in the present Interim Application.

29. Further, Mr. Eklaspur referred to the Order dated 27th February, 2024 passed by this Court directing disclosure by the Defendant. He submitted that, pursuant thereto, disclosures were made by the Defendant by his Affidavit of disclosure dated 11th March 2024. Mr. Eklaspur referred to paragraph 10 (e) of the said Affidavit of disclosure and submitted that, although in the said paragraph, the Defendant had referred to an Amenities Agreement dated 11th January, 2022 entered into between the Defendant and M/s Kamal Auto, the Defendant had suppressed the lease given to M/s Kamal Auto in respect of the said premises.

30. Further, Mr. Eklaspur referred to paragraph 9 (f) of the said Affidavit of Disclosure which stated that the landlord had filed an eviction Suit in the Small Causes Court against the Defendant in respect of the office premises at

Bhuleshwar and submitted that this showed that, due to his wrong doing, the Defendant had endangered the estate by inviting an eviction Suit.

31. Further, in the context of the said Affidavit of Disclosure, Mr. Eklaspur submitted that there was misrepresentation by the Defendant's wife as she wrongly claimed rights in the tenanted premises at Bhuleshwar. Further, he submitted that the Defendant jeopardised the estate by inviting an eviction Suit in respect of the office premises at Bhuleshwar. Further, Mr. Eklaspur submitted that the Defendant had made a selective disclosure. By way of illustration, he submitted that Defendant had disclosed the Amenities Agreement in respect of the factory premises at Chembur, but had not disclosed the lease agreement.

32. Further, in respect of the said Flat at Marine Drive, Mumbai, Mr. Eklaspur submitted that the same was being wasted as no one was residing there. In this context, he submitted that Plaintiff lived in Dehradun. Mr. Eklaspur drew my attention to page 130 of the Plaint which shows the Facebook Profile of the Defendant, and which states that he resides in Dehradun. Further, Mr. Eklaspur submitted that Affidavit-in-Reply to Interim Application No. 1660 of 2025 had been affirmed by the Defendant at Dehradun. Mr. Eklaspur submitted that these facts showed that the Defendant resided at Dehradun and the said Flat, though empty, was not monetized. Mr. Eklaspur submitted that, pending the hearing and final

disposal of the Suit, the said Flat should not be kept vacant and should be monetized by this Court by passing appropriate orders.

33. Further, Mr. Eklaspur submitted that the factory premises at Chembur were given on rent by the Defendant and the Defendant was pocketing the rent and not sharing the rent with the Plaintiffs.

34. Further, in respect of the partnership of Maniar Plastic Industries, where the Defendant and the deceased were 50:50 partners, Mr. Eklaspur submitted that the said partnership stood dissolved on the death of the deceased. Despite the same, without settling accounts, the Defendant continued carrying on business.

35. Mr. Eklaspur submitted that, in these circumstances, this Court ought to grant the reliefs sought in the Interim Application, including the reliefs for injunction, Court Receiver and Commissioner for taking accounts.

36. In support of his submissions Mr. Eklaspur relied upon a Judgement of the Madras High Court in ***T. Krishnaswamy Chetty Vs. C. Thangavelu Chetty & Ors. 1954 SCC Online Madras 374***.

37. On the other hand, Mr. Rajiv Narula, the learned counsel appearing on behalf of the Defendant, opposed the granting of any reliefs in the present Interim Application.

38. Mr. Narula submitted that it was the case of Plaintiff No.1 that she was driven out of the said Flat in September 2010. The present Suit has been filed

only in February, 2024 and, therefore, there is gross delay in approaching this Court.

39. As far as the said Flat at Marine Drive is concerned, Mr. Narula submitted that the Defendant stayed both in Mumbai and in Dehradun and therefore he resided in the said Flat whenever he stayed in Mumbai. Mr. Narula submitted that, therefore, it is wrong to suggest that the said Flat was lying vacant and ought to be monetized. Mr. Narula submitted that the Defendant was and has been in possession of the said Flat.

40. Mr. Narula further submitted that the Plaintiffs cannot ask for accounts at the interim stage.

41. Further, Narula also submitted that no case has been made out by the Plaintiffs for appointment of a Court Receiver as the Plaintiffs have not been able to show any wastage of the assets of the deceased.

42. As far as the partnership of Maniar Plastic Industries was concerned, Mr. Narula submitted that the same stood dissolved in July, 2010, when the deceased passed away. Mr. Narula submitted that a suit for accounts and share of profits had to be filed within three years of the date of dissolution. However, the Plaintiffs have filed the present Suit 14 years after the date of dissolution and therefore the Suit is clearly time barred, in so far as it seeks accounts in respect of the partnership firm of Maniar Plastic Industries.

43. As far as the office premises at Bhuleshwar and factory premises at Chembur are concerned, Mr. Narula submitted that, after the passing away of the deceased, the Defendant, who was carrying on business with the deceased in the said tenanted premises, became a tenant of the said premises, and, therefore, the Plaintiffs have no right in the said premises. Mr. Narula submitted that the tenancy would be covered by the Maharashtra Rent Control Act, 1999 and only the Small Causes Court at Mumbai would have jurisdiction in respect of the same. In support of his submission, Mr. Narula relied upon a Judgement of this Court in ***Urmi Deepak Kadia Vs. State of Maharashtra (Writ Petition No. 1853 of 2014).***

44. Further, Mr. Narula submitted that the Defendant had started a new partnership business in the Bhuleshwar office and referred to the Deed of Partnership of October, 2017, at page 113 in the Affidavit-in-Reply to the Interim Application. Mr. Narula submitted that the Plaintiffs cannot ask for a share in the said Bhuleshwar office after a period of 14 years.

45. Further, Mr. Narula referred to the Amenities Agreement entered into by the Defendant with M/s. Kamal Auto at page 124 in the Affidavit-in-Reply. Mr. Narula submitted that there was no suppression in respect of the said Amenities Agreement or in respect of the said factory premises at Chembur.

46. In support of his submissions, Mr. Narula relied upon the judgement of the Hon'ble Supreme Court in ***Hitesh Bhuralal Jain Vs. Rajpal Amarnath Yadav SLP (Diary No. 51132 of 2023)***.

47. Mr. Narula submitted that, for all the aforesaid reasons, the Plaintiffs were not entitled to any of the reliefs sought by them in the Interim Application. Mr. Narula, however, made a statement that, in respect of the said Flat at Marine Drive, the Defendant would not create any third party rights.

48. In rejoinder, Mr. Eklaspur referred to the Order dated 18th July, 2014 passed by this Court in Interim Application No. 16701 of 2024 filed by the Defendant under the provisions of Order VII Rule 11 of the CPC. Mr. Eklaspur drew my attention in particular to paragraphs 22 to 26 of the said Order and submitted that, by the said Order, this Court had *prima facie* rejected the argument of limitation raised by the Defendant, and, therefore, it was not open for the Defendant to raise that argument again. Further, Mr. Eklaspur submitted that the Appeal against that Order had been withdrawn as recorded in the Order dated 21st March, 2025 passed by a Division Bench of this Court.

49. In support of his submissions, that a Receiver should be appointed, Mr. Eklaspur relied upon a Judgement of the Andra Pradesh High Court in

Chelikam Rajamma Vs. Padileti Venkataswami Reddy & Ors. 1993 (1) APLJ page 230 (High Court) (HC).

50. Mr. Eklaspur also submitted that there was no embargo against appointing a Commissioner during the pendency of the Suit by virtue of the provisions of Section 75 of the CPC read with Order XXVI Rule 11.

ANALYSIS AND FINDINGS

51. The mediation between the parties, as directed by the said Order dated 27th February, 2024 of this Court, has failed.

52. As far as the relief of disclosure sought in this Interim Application is concerned, the same was allowed by an Order dated 27th February, 2024 passed by this Court and, in fact, thereafter, the Defendant has filed an Affidavit of Disclosure dated 11th March, 2024.

53. I will now consider as to whether the Plaintiffs are entitled to any interim reliefs in respect of the assets of the deceased.

54. As far as the said Flat at Marine Drive is concerned, by an Order dated 18th July, 2024, this Court has already held that the Suit in respect thereof is prima facie not barred by the law of limitation. Paragraphs 24, 25 and 26 of the said Order are relevant and are set out here under :

> *"24. It would be contextually relevant to note that the stated case of the defendant in the notice dated 5th May. 2023 was perfection of title by prescription on the basis of hostile possession for 12 years from the abatement of the suit instituted by the deceased, in the year 2010. Evidently, the said suit was on the premise that the*

> *defendant was a gratuitous licensee. Suffice to note a claim for adverse possession by a person, who is stated to be a licensee is tenuous.Therefore, the question as to whether the suit is barred by law of limitation, being essentially a mixed question of fact and law, it would be rather hazardous, at this stage, to accede to the submission on behalf of the defendant that the instant suit is barred by law of limitation.*
>
> *25. The reliance placed by Mr. Eklaspur on the decision of the Supreme Court in the case of* ***Govindammal*** *(supra) appears to be well founded. In the said case, it was enunciated that in order to oust by way of adverse possession, one has to lead definite evidence to show that to the hostile interest of the party that a person is holding possession and how that can be proved will depend on facts of each case. In the facts of the said case, it was further observed that, it was the widow, who has been thrown out and she has been moving from pillar to post. The relief cannot be denied to her just because she sent notice claiming partition of the properties and she did not file any suit thereafter and the stepsons were holding the properties adversely and hostile to her knowledge.*
>
> *26. There is another significant factor, which renders the claim for rejection of the plaint untenable. Plaintiff No.2, being a Class-I heir of the deceased, is entitled to claim a share in the properties left behind by the deceased in her own right. Even if the averments in the plaint are read in the manner desired by the defendant, the claim of plaintiff No.2 cannot be said to be barred by law of limitation, by any stretch of imagination."*

55. Therefore, *prima facie* this Court has come to the conclusion that the Suit, in respect of the said Flat, is not barred by the law of limitation. In these circumstances, the Defendant cannot be allowed to raise the plea of limitation in respect of the said Flat at this stage.

56. Further, as far as the said Flat is concerned, both the Plaintiffs have a 1/3 share each in the same. It is the case of the Plaintiffs that the Defendant stays at Dehradun and therefore the said Flat is unoccupied and can be monetized. The Plaintiffs have referred to the Facebook Profile of the Defendant which shows that he resides at Dehradun. The Plaintiffs have also pointed out that the Affidavit in Reply to Interim Application No. 1660 of 2025 has been affirmed at Dehradun. On the other hand, it is the case of the Defendant that he resides both at the said Flat in Mumbai and at Dehradun. Whether the said Flat is unoccupied or not will have to be decided at the trial of the Suit. The fact of the matter is that the Defendant is in possession of the said Flat. Further, in the Interim Application no prayer has been sought for monetization of the said Flat. Even otherwise, since the Defendant claims that he resides in the said Flat, the same cannot be monetised either by giving it on lease or on leave and license. However, since, the Defendant is in possession of the said Flat, and the Plaintiffs also have rights in respect of the said Flat, an injunction will have to be granted against the Defendant restraining him from creating third party rights etc. in respect of the said Flat pending the final hearing and disposal of the present Suit. This would be necessary to protect the estate of the deceased till the final hearing and disposal of the present Suit.

57. As far as the appointment of a Court Receiver is concerned, the Plaintiffs have relied upon two Judgements in respect of their submission that a Court Receiver should be appointed. Paragraph 17 of the Judgement in ***T. Krishnaswamy Chetty (supra)*** is relevant in this regard and is set out hereunder :

> *"17. The five principles which can be described as the 'panch sadachar' of our Courts exercising equity jurisdiction in appointing receivers are as follows:*
> *(1) The appointment of a receiver pending a suit is a matter resting in the discretion of the Court. The discretion is not arbitrary or absolute: it is a sound and judicial discretion, taking into account all the circumstances of the case, exercised for the purpose of permitting the ends of justice, and protecting the rights of all parties interested in the controversy and the subject-matter and based upon the fact that there is no other adequate remedy or means of accomplishing the desired objects of the judicial proceeding: — 'Mathusri v. Mathusri,' 19 Mad 120 (PC) (Z5); — 'Sivagnanathammal v. Arunachallam Pillai', 21 Mad LJ 821 (Z6); — 'Habibullah v. Abtiakallah', AIR 1918 Cal 882 (Z7); — 'Tirath Singh v. Shromani Gurudvvara Prabandhak Committee', AIR 1931 Lah 688 (Z8); — 'Ghanasham v. Moraba', 18 Bom 474 (Z9); — 'Jagat Tarini Dasi v. Nabagopal Chaki', 34 Cal 305 (Z10); — 'Sivaji Raja Sahib v. Aiswariyanandaji', AIR 1915 Mad 926 (Z11); — 'Prasanno Moyi Devi v. Beni Madhab Rai', 5 All 556 (Z12); — 'Sidheswari Dabi v. Abhayeswari Dabi', 15 Cal 818 (Z13); — 'Shromani Gurudwara Prabandhak Committee, Amritsar v. Dharam Das', AIR 1925 Lah 349 (Z14); — 'Bhupendra Nath v. Manohar Mukerjee', AIR 1924 Cal 456 (Z15).*
> *(2) The Court should not appoint a receiver except upon proof by the plaintiff that prima facie; he has*

very excellent chance of succeeding in the suit. — 'Dhumi v. Nawab Sajjad Ali Khan', AIR 1923 Lah 623 (Z16); — 'Firm of Raghubir Singh Jaswant v. Narinjan Singh', AIR 1923 Lah 48 (Z17); — 'Siaram Das v. Mohabir Das', 27 Cal 279 (Z18); — 'Muhammad Kasim v. Nagaraja Moopanar', AIR 1928 Mad 813 (Z19); — 'Banwarilal Chowdhury v. Motilal', AIR 1922 Pat 493 (Z20).

(3) Not only must the plaintiff show a case of adverse and conflicting claims to property, but, he must show some emergency or danger or loss demanding immediate action and of his own right he must be reasonably clear and free from doubt. The element of danger is an important consideration. A Court will not act on possible danger only; the danger must be great and imminent demanding immediate relief. It has been truly said that a Court will never appoint a receiver merely on the ground that it will do no harm. — 'Manghanmal Tarachand v. Mikanbai', AIR 1933 Sind 231 (Z21); — 'Bidurramji v. Keshoramji', AIR 1939 Oudh 61 (Z22); — 'Sheoambar Ban v. Mohan Ban', AIR 1941 Oudh 328 (Z23).

(4) An order appointing a receiver will not be made where it has the effect of depriving a defendant of a 'de facto' possession since that might cause irreparable wrong. If the dispute is as to title only, the Court very reluctantly disturbs possession by receiver, but if the property is exposed to danger and loss and the person in possession has obtained it through fraud or force the Court will interpose by receiver for the security of the property. It would be different where the property is shown to be 'in medio', that is to say, in the enjoyment of no one, as the Court can hardly do wrong in taking possession: it will then be the common interest of all the parties that the Court should prevent a scramble as no one seems to be in actual lawful enjoyment of the property and no harm can be done to anyone by taking it and preserving it for the benefit of the legitimate who may prove successful. Therefore, even if there is no allegation of waste and

> *mismanagement the fact that the property is more or less 'in medio' is sufficient to vest a Court with jurisdiction to appoint a receiver. — 'Nilambar Das v. Mabal Behari', AIR 1927 Pat 220 (Z24); — 'Alkama Bibi v. Syed Istak Hussain', AIR 1925 Cal 970 (Z25); — 'Mathuria Debya v. Shibdayal Singh', 14 Cal WN 252 (Z26); — 'Bhubaneswar Prasad v. Rajeshwar Prasad', AIR 1948 Pat 195 (Z27). Otherwise a receiver should not be appointed in supersession of a bona fide possessor of property in controversy and bona fides have to be presumed until the contrary is established or can be indubitably inferred.*
> *(5) The Court, on the application of a receiver, looks to the conduct of the party who makes the application and will usually refuse to interfere unless his conduct has been free from blame. He must come to Court with clean hands and should not have disentitled himself to the equitable relief by laches, delay, acquiescence etc."*

58. Further, paragraph 11 of the Judgement in ***Chelikam Rajamma (supra)*** is relevant and reads as under :

> *"11.From an analysis of Order 40, Rule 1 of the Code of Civil Procedure in the Light of the case law in relation to partition suits, the following propositions may be deduced:*
>
> *1) The appointment of receiver cannot be resorted to lightly without considering the entire facts and circumstances.*
>
> *2) The party seeking the appointment of receiver must make out a case that he or she was not only kept out of possession of the properties unauthorisedly, but the party in possession is indulging in acts of waste leading to the inference of incompetence.*
>
> *3) If, prima facie, the plaintiff has excellent chance of succeeding in the suit, there being no denial with, regard to his of her share in the plaint schedule properties, the conduct of the opposite party in keeping the plaintiff out of possession will be a relevant consideration for directing the opposite party to deposit a sum of*

> *money approximately representing the value of the yield pertaining to the share of the plaintiff pending disposal of the suit. Even in such circumstances, a receiver should not be appointed to oust the possession of the opposite party from the joint family properties. The protection of the properties and safeguarding of the rights of the parties shall be the twin objectives impelling the appointment of receiver."*

59. In the Judgement in ***T. Krishnaswamy Chetty (supra),*** the Court has held that for appointment of a receiver the Plaintiff must not only show a case of adverse and conflicting claims of the property but he must also show some emergency or danger or loss demanding immediate action. The Court further held that the element of danger is an important consideration. The danger must be great and imminent demanding immediate relief. Further, the Court has held that an order appoint a Receiver will not be made when it has the effect of depriving the Defendant of de-facto possession. The Court held that a Receiver should not be appointed in supersession of a bonafide possessor of property. Further, the Court held that it would be different where the property is shown to be "in medio" i.e. to say, in the enjoyment of no one, as then the Court can hardly do wrong in taking possession as it would be in the common interest of the parties that the Court takes possession.

60. In the present case, admittedly, the Defendant is in possession of the property. Therefore, the property is not 'in medio" as held by the Court. Only contention of the Plaintiffs is that the Defendant is not occupying the property as he is residing in Dehradun. As stated herein above, the said issue

would be decided at the trial of the Suit. Further, the Plaintiffs have not shown that there is some emergency or loss demanding immediate action of appointment of a Receiver. It is not even the case of the Plaintiffs that the Defendant has sought to deal with the said Flat. In these circumstances, in my view, an injunction would be sufficient to protect the estate and the appointment of a Court Receiver is not necessary.

61. Further in the case of ***Chelikam Rajamma (supra),*** the Court held that the party seeking the appointment of a Receiver must make out a case that he or she was not only kept out of possession of the premises unauthorisedly but the party in possession is indulging in waste, leading to inference of incompetence. The Court further held that a Receiver should not be appointed to oust the possession of the opposite party from joint family properties. In my view, even on the basis of this decision, a Court Receiver is not required to be appointed. Even if it is assumed that the Plaintiffs have been kept out of the possession of the property, the Defendant is not indulging in any act of waste. In these circumstances, the appointment of a Court Receiver is not required and injunction against the Defendant would suffice.

62. In respect of the 50% share of the deceased in Maniar Plastic Industries, the Defendant has disclosed that, prior to 1973, M/s. Maniar Plastic Industries was a business in which his uncle Dhirendra Maganlal

Maniar was also a partner. However, vide Deed of Retirement dated 31st July, 1973, Dhirendra Maniar retired from M/s. Maniar Plastic Industries.

63. Thereafter, by an Indenture of Partnership dated 11th October, 1973 entered into between the Defendant's father, Harshad Maganlal Maniar, both the Defendant's grandfather and father became entitled to 50% share to M/s. Maniar Plastic Industries. Further, the Defendant has disclosed that after the death of his grandfather, by a Partnership Deed dated 26th August, 1987 entered into between the Defendant and his father, the Defendant became a partner in M/s. Maniar Plastic Industries holding 50% share while his father held the remaining 50% share.

64. It is the case of the Plaintiffs that, since, there were only two partners i.e. the Defendant and his father in the said partnership, after the death of the Defendant's father, the said partnership would stand dissolved. It is also the case of the Plaintiffs that they have a 1/3rd share each in the 50% share of the father in the said partnership and the Defendant has not given any accounts of the partnership firm to the Plaintiffs. It is further the case of the Plaintiffs that the Defendant is required to give accounts from 4th August, 1987 to 1st July, 2010.

65. However, a suit for accounts and share of the profits of a dissolved partnership must be filed within a period of three years from the date of dissolution of the partnership, as per article 5 of the Limitation Act, 1963.

Further, even if the suit is considered as a suit for administration of the estate of the deceased in respect of the 50% share of the deceased in the said partnership firm of M/s Maniar Plastic Industries, by virtue of Article 106 of the Limitation Act, 1963, the period of limitation is 12 years from when the legacy or share becomes payable or deliverable. However, the present Suit has been filed after about 14 years on 7th February 2024. Therefore, in these circumstances, *prima facie* this relief is barred by limitation. For these reasons, at the interim stage, no reliefs can be granted in favour of the Plaintiffs in respect of the partnership firm Maniar Plastic Industries.

66. As far as the tenancy rights in the office premises i.e. 63, 3rd Bhoiwada, Bhuleshwar, Mumbai 400023 are concerned, it is the case of the Plaintiffs that, on a perusal of the Deed of the Partnership dated 10th October 2017 executed between the Defendant, his wife Anajli Maniar, and one Bharat Veljibhai Manvar, it is evident that Defendant and Anjali have misrepresented to have sole and exclusive rights of the tenanted property at Bhuleshwar, despite being aware of the Plaintiffs' rights. Despite Anjali Maniar having no rights in the said tenancy rights, the said Partnership Deed records that Anjali has rights in the tenancy of Bhuleshwar office premises. The Defendant and Anjali are therefore guilty of misrepresentation . Further, it is the case of the Plaintiffs that, by executing the Deed of Partnership dated 10th October 2017, the Defendant has jeopardised the estate of the deceased

as the landlords, Rajesh R. Shah and Parag S. Shah, have filed a Suit for eviction, being RAE Suit no 256 of 2018, *interalia* on the ground of illegal subletting by the Defendant. The Plaintiffs have submitted that this subletting took place behind the back of the Plaintiffs and has caused damage to the estate of the deceased on account of the said suit for eviction filed by the landlords.

67. It is the case of the Defendant that, at the time of the demise of his father, he was carrying on business along with his father in the said office premises situated at Bhuleshwar, and as such he became the tenant of the said premises under the provisions of Maharashtra Rent Control Act, 1999, and therefore the Plaintiffs have no right, title, interest or claim in respect of the said tenanted premises. In this context, the Defendant has submitted that it is a settled position of law, under Section 7(15) of the Maharashtra Rent Control Act 1999, that when the tenant dies, the tenancy rights go to the family member who was using the said premises for business ,trade or storage with the tenant at the time of his death.

68. In my view, the Small Causes Court having jurisdiction under the Maharashtra Rent Control Act, 1999 will ultimately have to decide whether the tenancy rights of the Bhuleshwar office exclusively belong to the Defendant or whether the Plaintiffs have any interest therein. However, it is my view, that, *prima facie,* by virtue of the provisions of Section 7(15) of the

Maharashtra Rent Control Act 1999, the Defendant has become the tenant of the Bhulweshwar office as he was using the said premises for business along with his father, when his father passed away. In this context, Section 7(15)(d) of the Maharashtra Rent Control Act, 1999, which is a part of the definition of a 'tenant', is relevant and is set out hereunder :

> *"7(15)(d) in relation to any premises, when the tenant dies, whether the death occurred before or after the commencement of this Act, any member of the tenant's family, who,*
>
> *(i) where they are let for residence, is residing, or*
>
> *(ii) where they are let for education, business, trade or storage, is using the premises for any such purpose,*
>
> *with the tenant at the time of his death, or, in the absence of such member, any heir of the deceased tenant, as may be decided, in the absence of agreement, by the court."*

69. For the aforesaid reasons, the question, of granting any other reliefs to the Plaintiffs, at this stage, in respect of the office premises at Bhuleshwar, does not arise. However, in my view, since it is still to be decided finally wether the Plaintiffs would have any share in the said tenancy rights, in order to protect the tenancy during the pendency of the suit, the Defendant will have to be restrained from transferring the tenancy of the Bhuleshwar office .

70. As far as the tenancy rights in respect of the factory located at Amar Estate Building, Sion Trombay Road, Chembur Mumbai 400071 are concerned, it is the case of the Plaintiffs that the Defendant's disclosure in respect thereof is false. It is the case of the Plaintiffs that the Amenities

Agreement cannot be executed in isolation but rather after execution of a lease/ rent agreement which would grant by a lease or sublease the right to occupy the demised premises, i.e. the tenanted factory premises at Chembur. Further, it is the case of the Plaintiffs that under the guise of the Amenities Agreement, the Defendant is monetising the said factory premises at Chembur and that further the Defendant must be ordered and directed to disclose the agreement under which M/s. Kamal Auto is in possession of the said factory premises at Chembur.

71. The Defendant's case in respect of the factory premises at Chembur is the same as his case in respect of the office premises at Bhuleshwar, i.e. on the death of his father, by virtue of the provisions of Section 7(15)(d) of the Maharashtra Rent Control Act, 1999, he has become the tenant of the said premises. As held by me hereinabove, *prima facie,* this submission of the Defendant seems to be correct. Therefore, there is no question of granting any other relief at this stage even in the respect of the factory premises of Chembur. However, for the reasons stated in respect of the office premises at Bhuleshwar, it is necessary to protect the tenancy of the factory premises at Chembur during the pendency of the Suit. In these circumstances, the Defendant will have to be restrained from transferring the tenancy of the factory premises at Chembur.

ORDER

72. In the light of the aforesaid discussion and for the aforesaid reasons, the following Order is passed :

a) that pending the hearing and final disposal of the Suit :

(i) the Defendant is restrained from selling, alienating, transferring, disposing of, parting with possession and/or creating any third party rights in respect of Flat No.31, 6th floor, Aryan Mahal, Marine Drive, Mumbai 400020 and garage No.2.

(ii) the Defendant is restrained from transferring the tenancy rights of the office premises at 63, 3rd Bhoiwada, Bhuleshwar, Mumbai 400023.

(iii) the Defendant is restrained from transferring the tenancy rights in respect of the factory at Amar Estate, Sion Trombay Road, Chembur, Mumbai 400071.

b) Interim Application is disposed of in the aforesaid terms.

c) In the facts and circumstances of the case, there will be no order as to costs.

[FIRDOSH P. POONIWALLA, J.]