

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

Amk

SUIT NO. 716 OF 2008

Fatehali Hassanali Karim & Ors. .. Plaintiffs

Vs.

Gulamhussein A. Karim & Ors. .. Defendants

Mr. U. J. Makhija with Mr. Rizvi i/b Thakore Jariwala & Associates for the Plaintiffs.

Mr. M. R. Irani for Defendant Nos. 1 to 4.

Mr. Akshay Patil with Faisal Sayeed i/b M. K. Ambalal & Co. for Defendant Nos.5 to 7.

CORAM : MRS. ROSHAN DALVI, J.  
Date : 3<sup>rd</sup> February, 2011.

P.C.

1. Admissibility of the documents of the parties is considered as follows :

1. By consent, Deed of Conveyance is marked **Exhibit A**.
2. By consent, the Will of Currimbhai Ismail dated 29.09.1951 is marked **Exhibit B**.
3. By consent, the Deed of Gift dated 06.10.1960 is marked **Exhibit C**.
4. By consent, copy of Will of Hassanali Karim dated 22.07.1963 is marked **Exhibit D**.
5. By consent, copy of Will of Manbai Hassanali Karim dated 23.06.1973 is marked **Exhibit E** for the sake of convenience. It shall have to be proved by the Plaintiffs.
6. The Will of Malekbai Abdulaziz Karim dated 19.01.1987 is marked **Exhibit F** for the sake of convenience. It shall have to be proved by the

Plaintiffs, if required.

7. The Will of Malek bai Abdulaziz Karim dated 25.11.1994 is marked Exhibit G for the sake of convenience. It shall have to be proved by the Plaintiffs.
  8. The extracts of property register card are marked **Exhibit H** collectively subject to production of certified copy thereof.
  9. By consent, Copy letters of Firdosh & Co. dated 23.08.2005, 29.08.2005, 25.09.2005 and 08.11.2005 are marked **Exhibit J** collectively subject to proof of the truth of the contents of those documents.
  10. Evidence in Para 9 of the affidavit of examination-in-chief of Plaintiff No.1 shows the production of the photo copy of a Deed of Partnership dated 27<sup>th</sup> May, 1982 by secondary evidence. The original Deed of Partnership is stated to be with Defendant Nos.5 & 6. Defendant Nos.5 & 6 refute that statement. Defendant Nos.5 & 6 have not produced the original document. The Plaintiffs have produced the photo copy. The Plaintiffs' witness has identified the signature of deceased Malek bai, deceased Badruddin and Defendant No.1 on the photo copy. Photo copy of the Partnership Deed dated 27<sup>th</sup> may, 1982 is marked **Exhibit K** upon the secondary evidence led by the Plaintiffs.
  11. Letter dated 29.11.1994 of Firdosh & Co., Advocates is marked X for identification.
2. Admissibility of the documents of Defendant No. 1 to 4 are considered as follows:

1. The Will of Abdul Aziz Karim dated 29.03.1966 is marked **Exhibit 1** for the sake of convenience. It shall have to be proved by Defendant Nos.1 to 4.
2. The Will of Malek bai Abdulaziz Karim dated 25.10.1967 is marked **Exhibit 2** for the sake of convenience. It shall have to be proved by Defendant Nos.1 to 4.
3. Another Will of Malek bai Abdulaziz Karim dated 01.01.2000 is marked **Exhibit 3** for the sake of convenience. It shall have to be proved by Defendant Nos.1 to 4.
4. Notice of payment of land revenue dated 01.03.2005 is, by consent, marked **Exhibit 4**.
5. Receipt for payment of Municipal taxes dated 17.06.2009 is, by consent, marked **Exhibit 5**.
6. Another receipt for payment of Municipal taxes dated 24.11.2009 is, by consent, marked **Exhibit 6**.
7. Repair bills are marked **Y** collectively for identification.

3. By consent, Mr. Pankaj Sawant is appointed Commissioner to record the evidence of the witnesses in this Suit. The evidence shall be led by Defendant No.1 first since he is required to prove the latest Will dated 01.01.2000. Parties shall appear before the Commissioner initially on 10<sup>th</sup> February, 2011 at 5 p.m. and thereafter as fixed by the Commissioner. The 3 groups of the parties shall pay the fees of the Commissioner in 3 equal parts. The Commissioner shall record the evidence preferably day to day.

4. After the evidence of Defendant No.1 is

complete, Defendant No.1 shall be entitled to lead the evidence of further witnesses to prove the Wills produced by them for which the affidavit of examination-in-chief shall be filed directly before the Commissioner since no further documents are produced and no admissibility is required to be considered by the Court.

5. After the evidence on behalf of Defendant Nos.1 to 4 is complete, the cross-examination of Plaintiff No.1 shall be recorded. After that cross-examination is complete, the Plaintiff shall be entitled to lead the evidence of any further witnesses as required to prove the Wills propounded by the Plaintiffs. The affidavit of examination-in-chief of such further witnesses shall also be filed directly before the Commissioner since further admissibility of documents is not required.

6. After the entire evidence of Plaintiff is complete, the other group of Defendants and Plaintiffs shall be entitled to lead their evidence, if any, as required. They shall file their affidavit of examination-in-chief directly before the Commissioner. If they rely upon any further documents, the admissibility of the documents shall be considered by the Court. In that case, parties shall have to place the Suit on board for considering the admissibility of such documents. If that group of parties do not require to rely upon any further documents, the parties shall place the Suit on board after the entire evidence is recorded.

( ROSHAN DALVI, J.)