

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO.2951 OF 2022
IN
SUIT NO.3005 OF 2008**

Mahendra Giradharlal Mehta and Ors. ... Plaintiffs
versus
Atul Builders and Estate Ltd. And Ors. ... Defendants

**WITH
SUIT NO.773 OF 2007**

Asmabegum Co-op. Hsg. Soc. Ltd. ... Plaintiff
versus
M/s. Atul Builders and Ors. ... Defendants

**WITH
SUIT NO.2941 OF 2005**

Ursula S. Pereira and Anr. ... Plaintiffs
versus
Tina Allean Gonsalves ... Defendants

**WITH
CHAMBER SUMMONS NO.1134 OF 2017
WITH
INTERIM APPLICATION NO.3089 OF 2002
IN
SUIT NO.3006 OF 2008**

Mr. Shiraz Rustomjee, Sr. Advocate with Mr. Shanay Shah, Ms. Anusha Guthi, Ms. Tvishi Pant i/by Keystone Partners for Applicants/Plaintiffs in IA 2951 of 2002.
Mr. Piyush Raheja with Mr. Ruben Vakil, Mr. Ankur Kalal, Mr. Neer Karia, Mr. Dhiraj Bhandari i/by Markand Ghandy and Co., for Defendant No.1.
Mr. Kiran Mohite for Defendant Nos.2(a) and (b).
Ms. Gauri Mestha i/by L.J.Law for Defendant No.7.
Mr. E.B.Sivakumar, 1st Asstt. To Court Receiver.

CORAM : N.J.JAMADAR, J.

DATE : 19 JANUARY 2023

P.C.

1. Heard the learned Counsel for the parties.
2. The learned Senior Advocate appearing for the Applicants/Plaintiffs informs the Court that in a meeting held by the Court Receiver on 26 December 2022, the Court Receiver has requested the Plaintiffs to have suit property measured and demarcated before taking physical possession of the suit property described in Exhibit C to the Application.
3. By an order dated 15 December 2022, this Court had inter alia directed as under :

“13. There is not much controversy over the fact that ICICI Bank, who was in the occupation of the suit property, has since vacated the same. The situation which thus obtains is that the suit property is allegedly being put to use by a number of persons for diverse purposes. There is, thus, an eminent danger of the suit property being encroached upon and myriad claims being set up by a number of persons.

14. In the circumstances, since this Court has already appointed the Court Receiver and directed the Court Receiver to take the symbolic possession, it would be expedient in the interest of justice to now direct the Court Receiver to take physical possession of the suit property.

15. Hence, by way of ad-interim relief, the Court Receiver is directed to take physical possession of the suit properties described in Exhibit C to the application with all powers under Order 40 Rule 1 of the Code of Civil Procedure, 1908.

16. The Court Receiver shall be at liberty to seek the assistance of jurisdictional police in case there is resistance in obtaining possession of the suit property.

17. After the Court Receiver obtains the physical possession of the suit property, a report be filed seeking further directions of the Court.”

4. The learned Senior Advocate for the Plaintiffs submits that apart from the area over which there are encroachments there is a large parcel of area of which the Court Receiver can take possession.

5. It would be appropriate if the Court Receiver takes possession of the suit property and files a report indicating the situation at site and seek further directions which may be deemed appropriate.

6. Let the Court Receiver comply with the directions contained in the aforesaid order within a period of two weeks and submit report to the Court.

(N.J.JAMADAR, J.)