

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 3 OF 2010**

Mumtaz Daughter of Riyazuddin & wife of
Suleman Khan & Anr ...Plaintiffs
Versus
Jamaluddin Riyazuddin Sheikh & Ors ...Defendants

Mr Omar Khaiyam Shaikh, *with Chetan G Mendadkar, for the*
Plaintiffs.
Ms Aparna Devkar, *i`/b M/s. MP Vashi & Associates, for Defendants*
Nos. 1 to 5.

CORAM: G.S. PATEL, J
DATED: 5th June 2018

PC:-

1. Heard.
2. Plaintiff No. 2 has filed an Affidavit in lieu of examination-in-chief and an Affidavit of Documents with a compilation, and a separate compilation of original documents. I am marking the documents on the basis of the separate compilation. There are 42 documents to be considered.
3. The following documents are fully admitted by the Defendants, i.e., 1, 11, 35 and 37. The remaining documents that are

marked as indicated below are received in evidence subject to proof of correctness of contents.

4. The documents at Sr. Nos. 1 to 19 will have to be taken in as exhibits. I will note that some of these documents such as the ones at Sr. Nos. 6, 8 and 12 are allowed in evidence because they are more than 30 years old and are originals. The documents at Sr. Nos. 15 to 19 are also required to be allowed in evidence. The document at Sr. No. 20 is the original pass-book that stands in the name of the husband of Plaintiff No. 2 (wrongly mentioned as Respondent No. 1 in the compilation). The document at Sr. No. 22 is also allowed in evidence, and all these documents are, therefore, marked in evidence as **Exhibit “P1” to “P21” respectively**.

5. The document at Sr. No. 23 is a rough sketch plan and is marked “X1” for identification.

6. The documents at Sr. Nos. 24 to 33 are also required to be allowed in evidence. The documents at Sr. Nos. 24 to 33 are marked in evidence as **Exhibits “P22” to “P31” respectively**.

7. The document at Sr. No. 34 is most contentious. This is a Deed of Family Arrangement. Ms Deokar for the Defendants says that the family arrangement is dated 19th May 2001. The document produced is of 9th May 2001. Otherwise, the two documents is identical except for the date. The dispute as to the date is noted and all contentions in that behalf are kept open. Subject to this, the document is marked in evidence as **Exhibit “P32”**.

8. The documents at Sr. Nos. 35 and 37 are admitted by the Defendants. These, along with the documents at Sr Nos 36 and 38 are marked in evidence as **Exhibits “P33” to “P36” respectively.**

9. The documents at Sr. Nos. 39 to 42 have been introduced to show that the Defendants are allegedly mismanaging some properties. Subject to all contentions on relevance been kept open I will mark those documents in evidence as **Exhibits “P37” to “P40” respectively.**

10. Other than the documents specifically admitted by the Defendants as noted above, the other documents marked in evidence are subject to proof of contents.

11. A few directions are necessary to safeguard the original documents that are in the compilation.

- (a) First, Mr SS Agate will ensure that the originals are properly scanned following the index and exhibit markings indicated.
- (b) Soft copies of the scanned file will be given to the Advocates for both sides on pen drives to be furnished by them.
- (c) A scanned copy will also be retained on file by the Registry and Mr Agate will take directions from Mr Bobade, Deputy Registrar, IT as to how to preserve the original scanned file.

- (d) The original documents are to be returned to the Advocates for the Plaintiffs upon these being substituted with authenticated copies.
- (e) The Plaintiff agrees and undertakes to preserve the original until the final disposal of the Suit and to keep these available at every day of trial unless otherwise directed.

12. By consent, Ms Priyanka Kothari is appointed as a Commissioner and is requested to record the cross-examination of the Defendant's first witness.

- (a) The Commissioner is at liberty to exercise discretion under Order XVIII Rule 4(4) of the Code of Civil Procedure, 1908, to note the demeanour of the witnesses where necessary.
- (b) All cross-examination shall be conducted strictly in question and answer form.
- (c) The Commissioner will also be at liberty to direct that the whole or any part of the cross-examination should be video recorded for later reference of the court. Should that be done, the original audio visual recording will be submitted along with the Commissioner's Report to the Registry.
- (d) Liberty to the parties as also to the Commissioner to apply in case of difficulty.
- (e) All re-examination will be conducted only in court.

- (f) Costs of the commission shall be borne equally by the parties.
- (g) The Commissioner is not to permit any applications for adjournment on dates previously fixed, except where absolutely unavoidable. Counsel's inconvenience or unavailability does not constitute such unavoidability.

13. List the matter on 28th August 2018 for a status report including as to progress before the Commissioner.

(G. S. PATEL, J)