



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 2157 OF 1999

NALIN DULABHJEE KALA.....PLAINTIFF

VERSUS

SURYKANT PRABHUDAS BHIMJI AND SIX OTHERS.....DEFENDANT

JUDGMENT

The two Plaintiffs pray for the following Orders namely:

1. Defendants be granted leave to defend by filing letters of administration of the late Prabhudas Bhimji the deceased $\frac{1}{4}$ partner of L.R. 209/3543 within one month and ten days from date of issue of summons by registered post.
2. Plaintiffs be granted leave to sell suit property at the Best valued price in the Local Market, either by public auction or private treaty.
3. The Deputy Registrar or any officer of the court be authorized to execute the transfer for or on behalf of deceased defendant Prabhudas Bhimji $\frac{1}{4}$ registered owner and his one fourth of the sale proceeds be deposited in Financial Institution as directed by this court.
4. costs of this suit to be paid from the estate of late Mr. Prabhudas Bhimji

The suit property L.R No. 209/3543 known as Vijay Mansion is registered in the names of Nalin dulabhjee Kala (first plaintiff) Shantaben Amritlal; and Prabhudas Bhimji as tenants in common in the following shares:

Nalin Dulabhjee Kala 37 $\frac{1}{2}$ %

Shantaben Amritlala 37 $\frac{1}{2}$ %

Prabhudas Bhimji – 25%

It measures 0.035HA or 0.08645 acres.

It is a leasehold property for a term of 99 years from 1/5/90 to 1/5/2049. There is a four storey – commercial building on the plot. I have called for three valuations. Mr. C.P. Robbertson – Dunn – T.d. has valued it at shs 5.1 million M/S Bel Air Properties have valued it at shs 5.5. million while M/S Attic Property Consultants have valued it at shs 5.2 million. Plaintiffs intend to sell the property because:

- (i) The $\frac{1}{4}$ share of deceased Prabhudas Bhimji cannot be separated

(ii) Beneficiaries of share of Prabhudas Bhimji have not come forward to claim their share.

(iii) Being one consolidated structure

(iv) The $\frac{3}{4}$ of share cannot be conveniently disposed off or divided

The first plaintiff lives in South Africa He has given a Power of Attorney to Mr. Manilal Premchand Chandaria (2nd plaintiff. The latter, (PW1), testified that he in contact with first plaintiff and that they have discussed the matter and agreed that the building be sold.

The second plaintiff is also the Administrator of the estate of Shantaben Amratlal, who died on 9.2.89, by virtue of a Grant given on 27.3.91 in High Court Succession Cause No. 1220/90 (Ex 1). Prabhudas Bhimji died on 21.8.89. The certificate of death is annexed Ex 2). The defendants are sons of deceased Prabhudas Bhimji. They are resident in Lishon Portugal. Plaintiffs applied for leave to serve Notice of summons outside Kenya and for an order to serve summons and plaint by registered post. The application was granted by Mbogholi J on 1.3.99. Plaintiffs thereafter applied for orders, inter alia, that date for formal

proof be set down as defendants have failed to appear. On 2.7.2000, Aluoch J was satisfied that defendants have been served but have failed to appear. Aluoch J ordered that suit do proceed to formal proof. Mr. Hilji Shah (PW2), a director of Juhudi Investments and the Managing Agents of the suit property testified that his company has collected rents for the suit property for over 15 years and that after maintenance and outgoings he has been paying the rental income proportionately to the three Co-owners. He testified that he has been retaining the share of rental income belonging to the estate of the late Prabhudas Bhimji and investing it in a bank deposit account. According to him, he has written to the beneficiaries several letters but they have not responded. He states that he is ready to release the money held on account of the estate to the Public Trustee.

The 1st plaintiff want to sell his share of the property. The second plaintiff as administrator of the estate of Shantaben Amratlal also wants to sell the share belonging to the estate of Shantaben Amratlal. The beneficiaries of the estate of Rubhudas Bhimji has not laid claim to their rightful share and have not claimed their rightful share of the rental income for many years. I am satisfied that the building being one consolidated structure is not divisible. In the circumstances of the case I am satisfied that the suit property should be sold.

The suit property has been valued at between 5.1 million and shs 5.5.million. The suit property is located at the City Centre. The unexpired term of the lease is more than 45 years. In my view, the suit property has been grossly under valued. To protect the estate of Prabhudas Bhimji, I shall fix a reserve price of shs 10 million.

The share of Prabhudras Bhimji is trust property. I have read sections 17 and 19 of the Public Trustee Act together with s. 45(b)(ii) S. 51, S52 and S. 56 of the Trustee Act. The court has power to appoint the Public Trustee as the trustee of the Estate of Prabhudas Bhimji and vest the share of the suit land belonging to beneficiaries of the estate of Prabhudas Bhimji in the Public Trustee. The court has also power to order the sale of such share. The Public Trustee and not the Registrar of the High court is the one competent to handle the administration of the estate of Prabhudas Bhinji.

For the foregoing reasons I allow the plaintiffs suit to the extent that and I order that:

1. I appoint the Public Trustee as the trustee of $\frac{1}{4}$ share of L.R 290/3543 Nairobi known as VIJAY MANSION belonging to estate of Prabhudas Bhimji.
2. A vesting order do issue vesting the said $\frac{1}{4}$ share of L.R 209/3545 in the Public Trustee
3. The suit property L.R No. 209/3543 to be sold by Public tender advertised in the Daily Nation subject to a reserve price of shs 10 million

4. The defendants $\frac{1}{4}$ share of the proceeds of sale and the defendants $\frac{1}{4}$ share of the rental income held by Mr. Hirji Shah – Director of Juhudi Investments to be paid to the Public Trustee.

5. Upon receipt of the said $\frac{1}{4}$ share proceeds of sale and the accumulated rental income the Public Trustee is authorized to execute the transfer for and on behalf of deceased co-owner Prabhudas Bhimji

6. The Public Trustee to deal with the said proceeds of sale and the rental income in the manner authorized by the Public Trustee Act.

7. The Public Trustee is authorized to recover his expenses from the said proceeds of sale and rental income

8. The costs of the suit to be paid proportionately by the three co-proprietors of the suit property

E. M. Githinji

Judge

28.2.2002

Mr. Paskal Sheth present

Order: Copy of Judgment and decree to be served on the Public Trustee by the Deputy Registrar of this court

E. M. Githinji

Judge