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

**NOTICE OF MOTION NO. 173 OF 2014
IN
SUIT NO. 2678 OF 2010**

Ranjitsingh Linga & Ors. ...Applicant/Orig.Defdt.No.1

In the matter between:

Parwan Construction Pvt. Ltd. ...Plaintiff
Vs.

Ranjitsingh Linga & Ors. ...Defendants

Mr. Vivek Walvalkar a/w. Mr. Sameer R. Bhalekar
with Ms. Vidita S. Bhalekar, Advocates for the Plaintiff
Mr. S.S. Joshi, Advocate for Defendant Nos. 1 & 2
Mr. Neel Pungliya i/b. M/s. Yogesh Adhia, Advocate
for Defendant No.3.

**CORAM : MRS. ROSHAN DALVI, J.
DATED : 20TH MARCH, 2015**

P.C. :

1. Defendant Nos. 1 and 2 have taken out this notice of motion for rejection of the plaint on the ground of want of cause of action to file the suit.
2. One Muktaben Sanghavi was the owner of the suit property. The suit property consists of two sheds. She was in occupation of Shed II. She had tenanted shed I to 13 tenants including defendant Nos. 1 and 2. She entered into an

agreement with one Jayshree Sanghavi, defendant No.3, for sale of the reversionary rights on 14th July, 1987. The said Jayshree Sanghavi entered into an agreement with defendant Nos. 1 and 2 on 31st August, 1992. Defendant Nos. 1 and 2 claim through defendant No.3 and ultimately the initial owner, Muktaben.

3. Muktaben Sanghavi conveyed the suit property to one Mehta and Kanakiya on 2nd January 1997. Mehta and Kanakiya conveyed the suit property to the plaintiff on 31st October, 2002. The plaintiff claims through Mehta and Kanakiya to the plaintiff's ultimate predecessor-in-title, the initial owner Muktaben Sanghavi.
4. Since defendant Nos. 1 and 2 were the initial tenants the plaintiff claims certain breaches of the agreement of the tenancy by defendant Nos. 1 and 2. These are specially with regard to certain unauthorised construction put up by defendant Nos. 1 and 2 in parts of the suit property along with other tenants who are sued separately. The plaintiff would claim that the FSI of the suit plot of land was adversely affected because of the breach of the conditions of the tenancy by defendant Nos. 1 and 2 who sought to register a co-operative society consequent upon the agreement for sale of the reversionary rights by Muktaben Sanghavi to defendant No.3 who later sold the property to defendant Nos. 1 and 2

amongst other tenants.

5. Consequently the breach committed by defendant Nos. 1 and 2 by putting up unauthorised construction is the cause of action in the suit.
6. Similarly the application for registration of the co-operative society is another cause of action.
7. It is contended on behalf of the defendant Nos. 1 and 2 that the plaintiff has accepted the defendant Nos. 1 and 2 as owners which is reflected in the plaintiff's letter dated 14th September, 2009 addressed to the Deputy Registrar, Co-operative Societies. Indeed that letter states that the 13 tenants have converted the tenancy into ownership of the respective tenements in favour of themselves affecting the rights of further right of development by utilising balance FSI by their initial landlady one Muktaben. It is also stated in the said letter that the 13 tenants are only entitled for the area mentioned in their respective agreements. It is argued on behalf of defendant Nos. 1 and 2 that this tantamounts to admission of ownership of defendant Nos. 1 and 2 to the extent of the area occupied by them in shed-I. Defendant Nos. 1 and 2 argue that because their ownership rights is accepted, the breach of the condition of tenancy would not avail the plaintiff and consequently the breach of the

condition of tenancy would not be the cause of action against them as owner.

8. What the Court is required to see is whether there is any cause of action to sue. That has to be independently seen by the Court upon the reading of the plaint. The plaintiff's case on the cause of action may or may not succeed. It may not succeed upon any admission of the ownership of defendant Nos. 1 and 2. However the plaintiff cannot be non-suited before the trial if there is some cause of action to sue.
9. The suit is, therefore, not bad for want of any cause of action.
10. Consequently the plaint cannot be rejected under Order 7 Rule 11(a) of the CPC as being bad for want of any cause of action. Hence this notice of motion is dismissed.

(ROSHAN DALVI, J.)