

sg

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.728 OF 2012

IN

SUIT NO.167 OF 2010

Zubedabai S. Suratwala And 2 Ors. ...Plaintiffs

vs

Mohammedali M. Sali And 6 Ors. ...Defendants

.....

Mr. K.N. Kandekar, for the Plaintiffs.

Mr. Chirag Mody, a/w. Mr. Jayesh Mestry, i/b. RMG Law Associates, for Defendant Nos. 1 and 2.

....

CORAM : S.C. GUPTE, J.

DATED : DECEMBER, 14, 2015

P.C. :

. This Notice of Motion is taken out by the Plaintiffs for temporary injunction restraining Defendant Nos. 1, 2 and 7 from developing the suit property or creating any third party rights therein. The facts of the case may briefly be stated as follows :-

2. The suit property, which consists of land and buildings at Survey No.191, Hissa No.9/1 and 9/2, CTS No.372 (part) and 372/9 to 30 situated at Bazarwad, Kurla (West), Mumbai – 400 070, was originally owned by one Karimbhai Daruwala. Plaintiffs claim to be the daughters and heirs and legal representatives of Karimbhai (since deceased). The deceased has left a will dated 20 February 1980. It is, however, the Plaintiffs' case that the suit property is not bequeathed by the deceased Karimbhai by that will. It is submitted that the Plaintiffs have a share in the

suit property by way of intestate succession. The other sharers of the suit property are brothers of the Plaintiffs, one Kutubuddin and one Jainuddin, who are the other legal heirs of the deceased Karimbhai. By an agreement dated 18 November 1985, the Plaintiffs along with Kutubuddin and Jainuddin executed an agreement for sale in favour of Defendant No. 1 carrying on business in the name and style as Mayco Construction Company (Defendant No.2) for sale of the suit property at or for a consideration of Rs.30 lacs. There was also a power of attorney and indemnity bond executed by the Plaintiffs in favour of Defendant Nos. 1 and 2 for completion of the sale. It is the case of the Plaintiffs that, apart from the initial deposit of Rs.5000/- at the date of this agreement, no amounts have been paid by the Defendants to the Plaintiffs. The Plaintiffs, therefore, claim to have terminated the agreement for sale and the power of attorney by their notice dated 19 July 2001. Before termination of the agreement for sale and power of attorney, the Plaintiffs also appear to have instituted a partition suit before this Court *inter alia* claiming partition of the suit property. In a Notice of Motion taken out in that suit (Suit No.3072 of 1995), a Court Receiver came to be appointed. By a subsequent order passed by the Appeal Court, Defendant No.1 herein was permitted to deposit a sum of Rs.10 lacs within a period of 12 weeks and the Court Receiver was ordered to be discharged upon such deposit. Defendant No.1 was, in the meantime, permitted to make applications to various authorities for the purpose of development of the suit property. It appears that Defendant No.1 did not deposit this amount of Rs.10 lacs within the stipulated period, but took out a Notice of Motion for extension of time to make such deposit. By an order dated 13 July 2001, Defendant No.1 was permitted to deposit a cheque of Rs.10 lacs tendered in the Court with the Prothonotary and Senior Master, together with a further amount of Rs.2

lacs within six weeks. It is an admitted position that Defendant No.1 did deposit the cheque of Rs.10 lacs and also the further amount of Rs. 2 lacs with the Prothonotary & Senior Master. The Defendant has, thereafter, proceeded to develop the suit property and create third party rights in favour of various parties, as pointed out hereinbelow. It is the Plaintiffs' case in the Notice of Motion that though this Court permitted Defendant No.1 to deposit Rs. 10 lacs with the Prothonotary, it did not extend the time originally granted to Defendant No.1 to deposit the said amount and that as a result, the Court Receiver continues till date as Receiver of the suit property.

3. It may be seen from the record that the Plaintiffs herein had taken out a Notice of Motion in the earlier suit, namely, Suit No.3072 of 1995 (NMS 818/2001), for directions to the Court Receiver to take physical possession of the suit property. This Court, by its order dated 20 November 2002, noted that that Notice of Motion had become infructuous in view of the deposit made by Defendant No.1 as per the orders of this Court. The Notice of Motion was, therefore, dismissed as infructuous. It is, therefore, clear that this Court clearly treated the Receiver as discharged in accordance with the order passed by the appeal Court upon the admitted deposit of the amounts of Rs. 10 lacs and Rs. 2 lacs by Defendant No.1 herein. Besides, it is pertinent to note that pursuant to the agreement executed by the Plaintiffs and others in favour of Defendant No.1, Defendant Nos. 1 and 2 had executed a joint venture agreement dated 20 August 2009 with Defendant No.7. The joint venture agreement is registered. In pursuance of that agreement, Defendant Nos. 1 and 2 have put Defendant No.7 in joint possession of the suit property. Defendant Nos. 1 and 2, along with Defendant No.7, have carried out the work of

development and have virtually completed the construction of the building in the suit property. Learned Counsel for the Defendants produces photographs to show the status of completion of the building. Not only has the building been completed but various tenants of the suit property have been suitably accommodated and several agreements for sale have been entered into by Defendant No.7 with various third parties. These agreements date from 29 February 2012 to 28 August 2014. All these agreements have been registered and flats have been sold in the new building constructed on the suit property to the third party purchasers.

4. In the premises, it is not possible to grant the temporary injunction sought by the Plaintiffs restraining Defendant Nos. 1, 2 and 7 from developing the suit property or creating any third party rights.

5. The motion is, in the premises, dismissed. There shall be no order as to costs.

(S.C. GUPTE, J.)