

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

**SUIT NO.762 OF 2014
WITH
NOTICE OF MOTION NO.295 OF 2015**

Ravinder Kaur Harjeet Singh Chandhok and Ors. ... Plaintiffs
versus
Satwant Kaur Chandhok and Ors. ... Defendants

Mr. Sharan Jagtiani with Mr. V.B.Dhingreja, for Plaintiffs.
Mr. Suraj D.Wasukar i/by M/s. Ashok V.Jain, for Defendant Nos.1, 3 and 4.
Mr. Naushad Engineer with Mr. D.Shukla i/by M/s. Vinod Mistry and Co., for Defendant No.5.

CORAM: S.J. KATHAWALLA, J.

DATE: 31st AUGUST, 2015

PC.:

1. Heard the above Notice of Motion at some length. The learned Advocate for the Plaintiffs has *inter alia* submitted that Defendant Nos.1, 3 and 4 who have sold their 60% undivided share in the Suit property to Defendant No.5 have wrongly and illegally also conveyed flat No.4 and two garages (including Garage No.1 that the Plaintiffs claim is in their possession) to the Defendant No.5, which they are not entitled to do in law. The learned Advocate for Defendant No.5 has submitted that the cause of action on which the Suit is filed is that the Plaintiffs, who have a 20% undivided right in the Suit property, have a right of pre-emption, but were not given an opportunity

to purchase the shares of Defendant Nos.1, 3 and 4 in the Suit property before selling the same to Defendant No.5. The learned Advocate for the Plaintiffs refutes the submission advanced on behalf of Defendant No.5 and states that the averments in the Plaint shows that the Plaintiffs have also objected to certain portions of the undivided suit property being conveyed by Defendant Nos.1, 3 and 4 to Defendant No.5.

2. I have considered the above submissions. It appears that the Plaint lacks clarity qua the assertion of the Plaintiffs that along with the transfer of 60% undivided share of Defendant Nos.1, 3 and 4 in favour of Defendant No.5 along with the transfer of specific units of the undivided suit property like Flat No.4 and the two garages in favour of Defendant No.5 is wrong and illegal. Certain reliefs claimed by the Plaintiffs also militates against the above contention of the Plaintiffs. The Plaint, therefore, suffers from a formal defect. The Advocate for the Plaintiffs therefore seeks to withdraw the above Suit with liberty to file a fresh Suit as advised. The Suit as well as the Notice of Motion are accordingly disposed of as withdrawn with liberty as sought. Refund of Court Fees, if any, as per rules.

3. The learned Advocate for the Plaintiffs prays that the ad-interim order dated 14th March, 2014 directing parties to maintain status quo be continued for a period of four weeks from today. The learned Advocate for

Defendant No.5 has opposed the said request. Since the ad-interim order of status quo is in operation since 14th March 2014, the same is continued for a period of three weeks from today to enable the Plaintiffs to file a fresh Suit and apply for fresh ad-interim reliefs.

(S.J.KATHAWALLA, J.)

C E R T I F I C A T E

I certify that this Order uploaded is a true and correct copy of original signed Order.

Uploaded by : Swaroop S. Phadke, P.S.

Uploaded on : 3rd September, 2015.