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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1730 OF 2007

IN

SUIT NO.1317 OF 2007

Siddhgiri Premises Co-operative Society
Limited And Anr.

...Plaintiffs

VS

Lilavati Gokuldas Morjaria And Anr.

...Defendants.

....

Mr. Rajiv Narula, a/w. Mr. Bhupesh Dhumatkar, i/b. M/s. Jhangiani, Narula
& Associates, for the Plaintiffs.

Mr. Atul Damle, Senior Advocate, i/b. Ashish J. Dubey, for Defendant No.2.

Mr. Butuk Morjaria, C.A. of Defendant No.1 present in person.

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CORAM : S.C. GUPTE, J.

DATED : JANUARY 30, 2015

P.C. :

. This Notice of Motion is taken out by the Plaintiffs in a suit for declaration and permanent injunction. It is the case of the Plaintiffs that by a development agreement and power of attorney, both dated 13 August 1998 as well as a supplementary agreement dated 19 November 1999 and an irrevocable power of attorney as well as a lease deed, both dated 16 December 1999, Defendant No.1, who is the owner of the suit property, entrusted the development of the suit property to the Plaintiffs. It is the case of the Plaintiffs that in pursuance of these agreements, the Plaintiffs were put in possession of the suit property and permitted to develop the same. It is submitted by the Plaintiffs that the plan for development of the suit property submitted by the Plaintiffs was sanctioned by the Municipal

Corporation and some construction was carried out by the Plaintiffs in the suit property. It is submitted that, subsequently, by a letter dated 11 September 2006, Defendant No.1 purported to terminate the development agreement as well as the lease executed in favour of the Plaintiffs. On this basis, a restraint order is sought in the suit against Defendant No.1 restraining her from entering into any development agreement in respect of the suit property with any third party. A permanent restraint is also sought in respect of any obstruction to, or interference with, the development of the suit property by the Plaintiffs. During the pendency of the present suit, it appears that Defendant No.1 proceeded to execute a conveyance in respect of the suit property in favour of Defendant No.2 by a deed dated 27 September 2007. Defendant No.2 claims to be in possession of the suit property by virtue of this conveyance. By an amendment, Defendant No.2 has been impleaded as a party Defendant to the present suit. There is a separate suit pending between Defendant Nos. 1 and 2 herein in respect of the conveyance of 27 September 2007. It is claimed by Defendant No.1 in that suit (where she is the Plaintiff) that the execution of the conveyance is invalid and inoperative. It is claimed by Defendant No.1 in that suit that her consent to the conveyance is vitiated due to a misrepresentation and fraud on the part of Defendant No.2. A cancellation of the deed of conveyance is claimed in that suit. Under an ad-interim order passed in that suit, Defendant No.2 is restrained from acting upon the impugned conveyance dated 27 September 2007 so as to jeopardise the right, title and interest of Defendant No.1 in respect of the suit property.

2. It appears from the pleadings of the parties and documents produced therewith that though there is some construction carried out by the Plaintiffs herein in the suit property, the suit property continues to be

occupied by the tenants of Defendant No.1. There are rival claims to this property on the part of both the Plaintiffs as well as Defendant No.2. On the other hand, both these claims are contested by the Plaintiffs. In the circumstances, it will be in the interest of justice to restrain the Defendants from creating third party rights in respect of the suit property described as Flat No. B in the plaint annexed as **Exhibit 'C'** to the plaint. No further relief can be considered for the present, in the facts of the case.

3. Accordingly, pending the hearing of the suit, there will be an injunction restraining the Defendants from transferring, alienating or creating any third party rights in respect of the suit property being Plot '**B**' described in **Exhibit 'C'** to the plaint. The Notice of Motion is disposed of accordingly.

(S.C. GUPTE, J.)