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

**CHAMBER SUMMONS NO. 73 OF 2015
IN
SUIT NO. 273 OF 2014**

Dinesh P. Rathod & Anr.

...Applicant/Orig.Pltfss

Vs.

Kirti Murji Shah

...Defendant

Mr. G.D. Utangale, Mr. Akhil Kupade

i/b. Utangale & Co., for the Plaintiffs

Mr. Jeetendra Ranawat i/b. Mr. Dharmesh Jain for the Defendant

CORAM : MRS. ROSHAN DALVI, J.

DATED : 18TH JUNE, 2015

P.C. :

1. The 5 plaintiffs in the suit have purchased flat Nos. 201, 202, 203, 204 and 302 in the proposed building to be constructed by the defendant on the suit plot of land. The suit plot of land is shown to be survey No.143, CTS No.219 at Dattapada Road, Borivali (East), Mumbai – 400 066 known as Hansa Complex as averred in para 4 of the plaint.
2. The plaintiffs have averred that the defendant had completed the construction of A and B wings in Hansa Complex and he proposed to commence C-wing in Hansa Complex. That would be on CTS No.219.

3. The plaintiffs have sued for declaration that they are the owners of the 5 flats of which the agreements are marked Exhibits-A1 to A5 which are valid and subsisting.
4. The defendant undertook not to create any third party rights in respect of the aforesaid flats. This undertaking came to be accepted in the order dated 9th April, 2014. These flats were, therefore, to be in C-wing of Hansa Complex.
5. The plaintiffs have later found out and now relied upon a deed of conveyance dated 15th October, 2013 in which the defendant has agreed to sell plot No.219 where C-wing was to be constructed to the respondent. The deed of conveyance of the defendant as the vendor in favour of the respondent as the purchaser is in respect of the survey No.143 CTS No.219 which is the suit property.
6. Clause 1 of the conveyance shows that the defendant as the vendor has sought to convey survey No.143 CTS No.219 admeasuring 2276 sq. yds of land known as Hansa complex consisting of A & B excluding the rights of erstwhile occupiers in A & B wings of Hansa complex. What is conveyed under the said clause is right to use the balance plot. That is plot bearing CTS No.219. Hence on 15th October, 2013 the defendant had already conveyed the land

on which the defendant was to construct C-wing on Hansa Complex and for which he had sold the aforesaid 5 flats to the 5 plaintiffs in the suit.

7. In fact this would constitute a fraud upon the plaintiffs in as much as the defendant later agreed in 2011 to sell 5 flats to the plaintiffs on that part of the land.
8. In fact this would also constitute a fraud upon the Court because for the land sold by the defendant to the respondent under the conveyance dated 15th October, 2013 the defendant gave the undertaking to the Court in respect of the 5 flats to be constructed on that plot of land on 9th April, 2014.
9. The defendant could never have constructed flats on the plot of land sold to the respondent. The plot of land sold to the respondent was the balance of the land of Hansa Complex aside from A & B wings. That would have C-wing. The plaintiffs' agreements are for C-wing. The respondent would be the owner of the C-wing. The plaintiffs have, therefore, sought to bring the respondent on record as the necessary party. The respondent is indeed a necessary party because the reliefs that the plaintiffs would claim in the suit would be for the premises to be constructed on the balance plot bearing CTS No.219 sold to the respondent.

10. In fact the defendant has sought to defend this chamber summons whereas the respondent has not even appeared in Court or filed any reply to the chamber summons despite the service of summons on defendant at its address at Walkeshwar since 19th December, 2014.
11. Consequently the chamber summons is granted in terms pf prayer (a).
12. The plaintiffs shall amend the plaint to add the respondent as a party defendant and carry out the necessary amendments in that behalf within 2 weeks from today.
13. The ad-interim order passed on 10th April, 2015 shall continue for 8 weeks.
14. Chamber Summons is disposed off accordingly.

(ROSHAN DALVI, J.)