

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

**APPEAL NO. 453 OF 2016
IN
NOTICE OF MOTION NO. 728 OF 2012
IN
SUIT NO. 167 OF 2010
WITH
NOTICE OF MOTION (L) No. 2027 of 2016**

Zubedabai Saifuddin Suratwala and ors. .. Appellants
V/s.

Mohammedali M. Sali and ors. .. Respondents.

Mr. V.Y. Sanglikar i/b K.N. Kandekar for the Appellants.

**CORAM: DR. MANJULA CHELLUR, C.J. &
M.S.SONAK, J.**

DATE : 15 DECEMBER 2016.

P.C.

1] Heard learned counsel for the appellants.

2] The appellants were the plaintiffs before learned Single Judge and defendant Nos.1 and 2 are none other than brothers of the appellants. Defendant No.7 is admittedly the developer of the suit property. All the plaintiffs and the defendants except the builder are legal representatives of one Karimbhai (deceased). By virtue of a Will dated 20th February 1980, the plaintiffs and their brothers became entitled to the property. According to the plaintiffs, the suit property was not the subject-matter of the Will. Apparently, another Suit No. 3072 of 1995 is pending, wherein they have sought for partition and separate possession of their respective shares. So far as the present case is concerned, learned Single Judge declined to grant temporary

injunction. In the above circumstances, the Joint Venture Agreement was registered. The plaintiffs and others executed the alleged Joint Venture Agreement dated 20th August 2009 in favour of defendant No.7. The partition suit is pending from 1995 and in 2010, the present suit was filed seeking the following prayers, which read thus:

- “(a) that it be ordered and declared that the deed of confirmation and the deed of conveyance dated 20.8.2009 in favour of the defendant No.1 or any other documents by way of joint development agreement or otherwise executed by the defendant No.1 in favour of any person or persons or the company be declared null and void, invalid bad in law and the same be struck down as illegal, void, invalid and not binding upon the plaintiffs;*
- (b) that the plaintiffs shall have the possession of the suit property as shown in Exh.A bearing survey No. 191, Hissa No. 9/1 and 9/2, CTS No. 372 (part) and 372, 9 to 30 situate at Bazarwad, Kurla (West), Mumbai-400 070;*
- (c) that pending the hearing and final disposal of the suit, the defendant Nos.1 and 2 or any one claiming through them be restrained by an order and injunction of this Honourable Court from developing and or putting up any construction or from encumbering or dealing with in any manner the said property as shown in Exh. A bearing survey No. 191, Hissa No. 9/1 and 9/2 CTS No. 372 (part) and 372, 9 to 30 situate at Bazarwad, Kurla (West), Mumbai-400 070;*
- (d) ad-interim relief in terms of prayer (c) above;*
- (e) that the cost of this suit be provided for;*
- (f) for such other and further relief as this Honourable Court may deem fit and proper under the circumstances;”*

3] If the suit for partition was pending, wherein the alleged Will in favour of the respondent-brothers was under challenge, we fail to understand, from 1995 onwards till the building was completed and various tenants of the suit property were suitably accommodated, what the plaintiffs were doing. Similarly, various agreements for sale have been entered into between defendant No.7 and various third parties. We can take judicial notice that the building of this nature cannot come

up overnight. The same must have been demolished and put up, to the knowledge of the plaintiffs. Why they were waiting till completion of the building without questioning the same ?

4] According to the respondents-defendants certain amounts were paid to the plaintiffs under the Joint Venture Agreements, which is denied by the plaintiffs and the very prayer in the present suit is to declare so-called or alleged deed of conveyance dated 20th August 2009 as bad in law, since it is null and void. Ultimately, if the appellants/plaintiffs were to establish that they are entitled for the property in question either in the partition suit or if they are able to establish the documents of 20th August 2009 as null and void, they are at liberty to have the fruits of the suit property. Since the entire transaction of the sale agreement is during the pendency of the present suit and also the partition suit, these documents if convey any right, title or interest in the property to the third parties, those transactions would be *pendent lite*. In the light of such situation, we are of the opinion that no prejudice whatsoever is caused to the plaintiffs/appellants. Accordingly, the appeal is disposed of. All contentions are kept open.

5] In view of the disposal of the main appeal, notice of motion does not survive and the same is disposed of accordingly.

(CHIEF JUSTICE)

(M.S.SONAK, J.)