

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

**NOTICE OF MOTION NO.211 OF 2010
IN
SUIT NO.188 OF 2010**

Kishore Mavji Shah & Ors.Applicants/Plaintiffs

V/s.

Rocky A. Joseph Rebello & Ors.Defendants

Mr. D.H. Mehta a/w. Ms. Rima Paradkar i/b. D.M. Legal Associates for the applicants/plaintiffs.

Mr. Ranjit Thorat, senior advocate a/w. Mr. Dharam Sharma & Ms. Uma Sharma i/b. Dharam & Co. for the defendant nos.1 to 3.

Mr. S.D. Mishra for the defendant no.7.

CORAM : K.R.SHRIRAM,J

DATE : 4th AUGUST, 2016

P.C.:-

1 In this notice of motion the plaintiffs are seeking to restrain defendant nos.1 to 5 and 7 in any manner dealing with, disposing of, transferring, alienating, encumbering, creating third party rights in respect of the suit property and for appointment of Court Receiver, etc. The notice of motion was taken out in January, 2010 and this court by an order dated 29th March, 2010 directed the notice of motion be removed from ad-interim relief column. In the order dated 20th December, 2014 it is noted that the ad-interim relief was not granted.

2 We are in August, 2016. There is nothing on record for the plaintiffs to show when ad-interim relief was not granted in March, 2010 and any final relief in the motion is required to be granted today. Moreover it is also stated in the plaint at paragraph 34 that the plaintiffs came across a public notice on 13th July, 1996 issued by some third party inviting claim in respect of the suit property and the plaintiffs objected to the same.

3 Similarly it is also stated in paragraph 35 of the plaint that on or about 5th February, 2000 the plaintiffs came across another public notice inviting objections in respect of the suit property and the plaintiffs claim to have objected. Though this happened in 1996 and 2000, the suit itself was lodged in 2010 and even ad-interim relief sought in the motion has been rejected. Mr. Thorat, senior counsel for the defendant nos.1 to 3 states that the agreement was terminated in 1998 itself which is disputed by Mr. Mehta, counsel for the plaintiffs.

4 All the defendants except defendant no.6, who supports the plaintiffs have filed their written statement. Therefore, the pleadings in the suit are completed. Since no ad-interim was also granted and the plaintiffs having filed the suit much after they read about third

party rights attempted to be created, I see no reason why any relief as sought in the notice of motion should be granted today.

5 The notice of motion is therefore, dismissed.

6 In the order of 20th December, 2014 the defendant no.7 has been directed to place on record alongwith affidavit the details of all the third parties to whom flats have been sold. Mr. Mishra, counsel for the defendant no.7 states that they have filed an affidavit but it does not contain the details of the third parties and the documents based on which they state rights have been created.

7 The defendant no.7 is given one last opportunity to file an affidavit within two weeks from today including details of the third parties to whom flats have been sold alongwith copies of the documents and serve the same upon the advocate for the plaintiffs.

 The defendant no.7 is also put to notice that if they do not file the affidavit as directed above within two weeks period granted, the defence of defendant no.7 will not be considered in the suit.

8 Withing three weeks from today parties to file their respective affidavit of documents and also give inspection of documents and within one weeks thereafter, parties to file and

exchange their statement of admission and denial with reasons for denial.

9 It is clarified that the issue of limitation is kept open. Since this is a suit filed in the year 2010, parties are put to notice that they have to strictly comply with the directions given above, failing which the parties will be put to terms.

10 The suit be listed for issues on 19th September, 2016.

(K.R.SHRIRAM,J)