

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

**NOTICE OF MOTION NO.1585 OF 2009
IN
SUIT NO.2891 OF 2007**

Kanayalal K.Kasat & Ors.Plaintiffs

V/s.

Hemlata M.Thakur & Ors.Defendants

Mr.D.A.Barot for plaintiffs.

Mr.Sachin S.Punde for the defendant no.1A/applicant.

Mr.Ameya Tamhane i/by Seema Sarnaik for defendant no.3.

**CORAM : K.R.SHRIRAM,J
DATE : 27.10.2016**

P.C.:-

1 This Notice of Motion is taken out by the defendant no.1A the legal heirs of the original defendant no.1 for rejection of the plaint under Order 7 Rule 11(a) of the Code of Civil Procedure i.e., non disclosure of cause of action.

2 I have considered the plaint. In paragraph-27 of the plaint the plaintiffs have disclosed the cause of action. The suit is for specific performance of the development agreement dated 25.2.1985. By an agreement/deed of declaration dated 20.12.1997 defendant nos.1 & 2 are required to execute deed of assignment or deed of conveyance/assignment in respect of the lease hold rights of the suit property. Instead defendant no.1 has transferred and

conveyed the entire property, which transfer has been challenged by the plaintiffs. Defendant no.2 sought to develop the suit property.

3 In paragraph-27 of the plaint, the plaintiffs have submitted that the deed of conveyance/assignment dated 22.8.2002 and agreement for sale dated 11.6.2002 are illegal and unlawful documents and ought to be cancelled and set aside. The plaintiffs have also submitted that defendant no.1 had no right to sell, convey the suit property and defendant no.3 had no right to purchase the said property and the leasehold rights. Moreover, when the Notice of Motion No.4322 of 2008 was taken out by the plaintiffs, original defendant no.1 had opposed the Notice of Motion and filed affidavit in reply and had not taken this ground also. By an order dated 11.11.2008, this Court, while disposing of the Notice of Motion No.4322 of 2007, had directed defendant no.1 not to act upon the deed of conveyance and assignment and also not to create any 3rd party rights in respect of the suit property. This order was carried in appeal by defendant no.3 and the appeal came to be dismissed. Defendant no.1 had not challenged the order dated 11.11.2008, which has attained finality.

4 In the circumstances, the Notice of Motion requires to be disallowed. Notice of Motion dismissed.

5 The counsel for the plaintiffs and the defendants state that the pleadings in the Suit and in the Counter claim are completed. Suit be listed for issues on 19.12.2016. In the meanwhile, parties to file their respective affidavit of documents, complete discovery and inspection and also exchange statement of admission and denial with reasons for denial.

6 On the next date parties to come up with agreed draft of the issues and a separate draft on which they do not agree.

7 The counsel for the plaintiffs to the counter claim states that the written statement and the counter claim, he has been informed by his clerk, are missing from the record & proceedings. Registry to verify the same.

(K.R.SHRIRAM,J)