

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****SUIT NO. 1879 OF 2008**

Beam Developers Pvt.Ltd.

...Plaintiffs

VS.

Furuk Jusuph Motiwala & Ors.

....Defendants

Ms.Dipti Panda with Neha Thakkar i/b. Narayanan & Narayanan for Plaintiffs.
Ms.Neha Bhatt i/b. Bilawala & Co. for Defendant No.5.

CORAM : S.C. GUPTE, J.**5 FEBRUARY 2016****P.C. :**

This suit, which has come up for passing of an ex parte decree, is for cancellation of a deed of confirmation dated 13 May 2005 allegedly executed in favour of Defendant Nos.1 and 2.

2 The Plaintiffs are owners of the suit property, which consists of land bearing Plot No.B-9, CTS No.609 of Village Oshiwara, forming part of original survey No.41 of Village Oshiwara, admeasuring 3122.5 sq.mtrs. or thereabouts, and situate at New-Link Road, Andheri (West), Mumbai –400 053. The suit property is described in a schedule annexed to the plaint. The suit property was originally owned by Defendant No.4. Defendant No.5 is claimed to have acquired the suit property through a decree passed by this court. The Plaintiffs have traced their title to the suit property in paragraph 3 of the plaint. From the narration in the plaint and documents placed on record by the Plaintiffs, it appears that by a conveyance executed by Defendant No.5 on 17 August 2007, the suit property came to be vested in the plaintiffs. The conveyance is registered. The Plaintiffs' grievance in the suit is that upon search taken by the Plaintiffs at the Sub-Registrar of Assurances at Mumbai and Bandra, an entry was found in respect of an alleged deed of confirmation dated 13 May 2005 in favour of Defendant Nos.1 and 2. On obtaining a copy of the alleged deed of

confirmation from the office of the Sub-Registrar, the Plaintiffs learnt that this deed of confirmation was in respect of an alleged conveyance dated 18 May 1967 purportedly executed by Defendant No.4 by transferring and conveying the suit property along with other lands in favour of Defendant Nos.1 and 2. The conveyance was apparently executed on a stamp paper of Rs.3 and was not registered. The conveyance appears to have been executed on behalf of Defendant No.4 by one N.B. Jeejeebhoy, who is said to be a Constituted Attorney of Defendant No.4. It is the case of the Plaintiffs that the deed of confirmation dated 13 May 2005 and the purported conveyance by 18 May 1967 are fabricated documents, which do not create any right, title or interest in Defendant No.2 in respect of the suit property. The Plaintiffs have, accordingly, prayed for a declaration that the said deed of confirmation and conveyance are forged and fabricated and are consequently illegal and void and do not create any right, title or interest in either of Defendant Nos.1 and 2 in respect of the suit property. The Plaintiffs have prayed for delivery of the original deed of confirmation dated 13 May 2005 for cancellation and an order of the court annulling and cancelling the said document.

3 The suit has been duly served on Defendant Nos.1 and 2, who are the main contesting Defendants in the present suit. Despite such service, the Defendants have not filed any written statement. In its written statement, Defendant No.4 has accepted the Plaintiffs' case that the documents of deed of confirmation of 13 May 2005 and the conveyance of 13 May 1967 along with the alleged deed of confirmation of 20 March 1970 are all forged and fabricated documents. It is submitted by the Defendant No.4 that none of the documents is signed by Defendant No.4 and that Defendant Nos.1 and 2 in collusion with Defendant No.3 are using forged documents to set up bogus claims to the suit property. Defendant No.5, who has not filed any written statement but is present through counsel before the court, also supports the Plaintiffs' case.

4 The Plaintiffs have filed a compilation of original documents, which *inter alia* evidence the title of the Plaintiffs to the suit land. An affidavit of Dinesh Moolchandani, Director of the Plaintiffs, dated 7 January 2016 is tendered by

learned Counsel for the Plaintiffs in lieu of examination in chief. Dinesh Moolchandani (PW1) has deposed to the execution of various documents and acquisition of title by the Plaintiffs in respect of the suit property. The documents tendered by the Plaintiffs, namely, serial nos.1 to 19 of their compilation of documents, are admitted in evidence, marked as Exhibit P-1 to P-19 respectively.

5 PW1 has also deposed to the fabrication of documents by Defendant Nos.1 and 2. No issues have been joined by Defendant Nos.1 and 2 to the case of fabrication urged by the Plaintiffs. No contrary evidence is on record.

6 Based on the documents tendered by the Plaintiffs and the affidavit of evidence of PW1, the Plaintiffs have made out a case for an ex parte decree. Defendant Nos.1 and 2 claim title in respect of the suit property through Defendant No.4, who denies execution of any documents as alleged by Defendant Nos.1 and 2. The Plaintiffs' documents and the evidence have gone unchallenged.

7 In the premises, there will be a decree in terms of prayer clauses (a), (b), (d) and (e). Since there is no evidence in respect of damages claimed in prayer clause (f), the prayer for damages is rejected. The Plaintiffs shall be entitled to costs of the suit, to be taxed by the Taxing Master.

8 On the request of learned Counsel for the Plaintiffs, all documents evidencing the Plaintiffs' title, which are admitted in evidence and marked, shall be allowed to be substituted by the office against filing of certified true copies of the documents by the Plaintiffs' Advocate. The true copies shall be marked and maintained in the records of the court.

9 Refund of court fees in accordance with the applicable rules.

10 Drawing up of the decree is expedited.

(S.C. Gupte, J.)