

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

**NOTICE OF MOTION NO.408 OF 2016
IN
SUIT NO.917 OF 1981**

Mr.Maneesh Bawa son of late Shri Randhir)
S.Bhalla and Ors.)....Applicants/Plaintiffs

V/s.

Shree Bhavani Co-op.HSG Society Ltd.)....Defendant

Mr.Dipen Merchant, senior Advocate a/w Mr.Chirag Shah and
Ms.Leena Mirasee i/by Shah & Sanghavi for plaintiffs/applicants.

Mr.O.S.Kutty a/w Mr.Sandesh Deshpande i/by S.Deshpande and
P.S.Pillai for defendant.

**CORAM : K.R.SHRIRAM,J
DATE : 7.8.2017**

P.C.:-

1 This Notice of Motion is taken out by plaintiffs praying for the court to exercise its inherent powers of section 151 of the Code of Civil Procedure 1908 and to permit the plaintiffs to lead oral evidence pertaining to six documents annexed to the Notice of Motion.

It should be noted that the entire evidence in the suit has been recorded and closed and the matter is ripe for arguments. According to plaintiffs these documents became available after the evidence was closed and these documents certainly go to the root of the matter to show that the plaintiffs were the owners of the suit property.

2 Mr.Merchant for plaintiffs/applicants submitted that these documents and the evidence connected there with will certainly assist the court to effectively adjudicating the matter.

3 Mr.Kutty appearing for defendant stated that pursuant to the order dated 22.7.2012 read with order dated 24.8.2012 the plaintiffs were permitted to use DILR survey so that the documents can be taken on record for the convenience of the Court. Mr.Kutty also pointed out that in paragraph-2 of the order it is expressly stated “that plaintiff cannot use DILR survey as evidence in support of his case”. Mr.Kutty submitted that plaintiffs have carried out this order in appeal but later chose to withdraw the appeal. Mr.Kutty has no objection regarding 1st two documents because they are orders of the court.

So far as documents 3, 4, 5 & 6 are concerned, Mr.Kutty states plaintiffs should not be permitted to re-open the evidence but since DILR survey has been done pursuant to liberty granted by the court, the court may while adjudicating the matter consider these documents but not to reopen the evidence.

In view of the statement made by Mr.Kutty, counsel for plaintiffs states that defendants' statement that these documents can be considered by the court while adjudicating the suit is enough and plaintiffs will not want to lead any further evidence in the matter.

Statement accepted.

Notice of Motion accordingly stands disposed.

4 Plaintiffs are permitted to place the documents mentioned in the schedule to the Notice of Motion with an index and properly paginated and copy thereof to be served on the other side.

(K.R.SHRIRAM,J)