

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO. 323 OF 2017
IN
NOTICE OF MOTION NO.2341 OF 2010**

Ajitprasad Mathuraprasad & Anr

..Appellants

Vs.

Niranjan J. Shah & Ors

..Respondents

**Mr. O. M. Kulkarni a/w Mr. Chinmaya Acharya for the Appellants
Mr. K. G. Mhatre a/w Mr. Mikhail Behl i/b Mhatre & Associates for the
Respondent Nos.2 and 3**

**CORAM :R. M. SAVANT, &
SARANG V KOTWAL, JJ
DATE : 22nd NOVEMBER, 2017**

P.C.

1 The above Appeal takes exception to the order dated 7-7-2016 passed by a Learned Single Judge of this Court K. R. Shriram J. by which order the above Notice of Motion No.2341 of 2010 came to be dismissed. The dismissal is on the ground that the Suit is of the year 2010 and the above Notice of Motion has been registered on 27-8-2010, however has not been moved for ad-interim relief since then. The Learned Single Judge was therefore of the view that there are no change in circumstances from the date when the Notice of Motion was filed till the Notice of Motion was moved for ad-interim relief and accordingly dismissed the Notice of Motion.

2 The Learned Counsel appearing for the Appellants would submit

that the Learned Single Judge ought not to have dismissed the above Notice of Motion on the said ground without considering the said Notice of Motion on merits. Though we endorse the view expressed by the Learned Single Judge, on the basis that the Notice of Motion being not moved for ad-interim reliefs since its filing and therefore there was no change in circumstances so as entitle the Plaintiff to any ad-interim reliefs, we endeavoured to find out whether there is any merit in the claim for interim reliefs.

3 The bone of contention in the Suit is the suit flat in respect of which the Plaintiff lay a claim on the basis of the agreement dated 7-8-2007 executed in favour of the Plaintiff No.1 by a Power of Attorney of the Plaintiff No.2 one Salim Shaikh. In so far as the Defendant Nos.2 and 3 are concerned they lay a claim to the suit flat on the basis of a registered agreement which is dated 11-7-2002 executed by the Plaintiff No.2-Linda Tapp, in favour of the Defendant Nos.2 and 3. The said agreement is therefore prior in point of time. It is pointed out to us by the Learned Counsel appearing for the Defendant Nos.2 and 3 that the Advocates who initially filed the instant Suit were the Advocates who had been engaged by the Defendant Nos.2 and 3 to carry out title search and based on the title search the said Advocates had submitted a report that the Defendant No.1 was vested with the right to dispose of the flat in question. The said Advocates as indicated above have now filed the Suit for the Plaintiffs after vouchsafing for the disposable capacity of the Defendant

No.1. It is also required to be noted that the Defendant Nos.2 and 3 are in possession of the flat in question as on date. In so far as the allegations of the Plaintiffs on the basis which they question the document of the Defendant Nos.2 and 3 the said aspect would undoubtedly be gone into at the trial. Hence for the aforestated reasons also the order passed by the Learned Single Judge dismissing the Notice of Motion can be sustained. In our view therefore, no interference is called for with the impugned order, the Appeal is accordingly dismissed.

[SARANG V KOTWAL, J]

[R.M.SAVANT, J]