

JSN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1312 OF 2016
IN
SUIT NO. 546 OF 2016

Jayashree alias Jaibai H. Bhandari ... Plaintiff
Versus
S.J. Enterprises ... Defendant

Mrs. Indrayani M. Koparkar, *for the Applicant/ Plaintiff.*
Mr. Vishal Kanade, *with Mr. A.R. Shaikh i/b ASD Associates for the*
Defendant.

CORAM: G.S. PATEL, J
DATED: 9th January 2017

PC:-

1. Heard.
2. The Plaintiff seeks a declaration that she is one of the 62 owners of the Suit property admeasuring about 1147.40 sq. mtrs. in TPS III, Borivali (West). Prayer (a) of the Suit impeaches a sale agreement dated 30th December 2009, another sale agreement 30th October 2010 and a conveyance deed dated 16th March 2013. The interim relief sought is to stay all construction on the Suit property. Even according to the Plaintiff, this construction has proceeded

considerably and this is evident from documents annexed to the Plaintiff and to the Notice of Motion.

3. Mr. Kanade for the Defendants points out from a compilation which is tendered and taken on record that a several third party rights have already been created and all these persons will be affected by any such order of stay.

4. Ms. Koparakar for the Applicants states that her client's rights have been defeated by the Defendants acting on a false Power of Attorney and by keeping her in dark. The Plaintiff being an uneducated person could not move the Court earlier. Even assuming that this is so, the fact is that on 8th November 2013, the Plaintiff was sufficiently aware of her rights because her Advocate sent notice a notice to the authorities asserting her claims in respect of the property. In this letter the Plaintiff mentioned that she was aware of the signboard put up by the 1st Defendant. Further allegations of forgery and fabrication of documents were also made in that very letter. There was a detailed reply by the 1st Defendant's Advocate on 21st January 2014. The Plaintiff did not move Court then. Construction proceeded, and it proceeded to a great extent with no action by the Plaintiff. It was not till as late as March 2016, a good two years or more after her notice, that the Plaintiff finally filed this suit. By this time, of course, third party rights had been created and had been crystallised.

5. In fairness, Ms. Koparkar does not suggest that her client has the means to be able to offer security to these various third parties

or to 1st Defendant should her claim ultimately fail. This is always a factor to be taken in to consideration while assessing the balance of convenience and question of irreparable prejudice. But to even get to that stage, one must first arrive at a conclusion that a sufficiently strong *prima facie* case has been made out for the grant of such relief. As I have noted the prayer is much too widely worded. Nothing in the Plaint or the Notice of Motion lends itself to the acceptance of such a prayer. I find it difficult to conclude at this stage that there is any sort of *prima facie* case made out for interim reliefs.

6. The Notice of Motion is dismissed with no order as to costs.

(G. S. PATEL, J.)