

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 109 OF 2015
IN
TESTAMENTARY SUIT NO. 15 OF 1996
IN
TESTAMENTARY PETITION NO. 265 OF 1994**

Mr.David Francis Vincent D'souza .. Applicant/Org. Deft.No.3

In the matter between :

Mrs.Sushila Helen A. D'Souza & Ors. .. Plaintiffs

Vs.

Mrs. Anastasia Bomfilia D'souza & Ors. .. Defendants

Mr.Jariwala a/w. Mr.Ganesh Ambekar i/b Thakore Jariwala & Associates for plaintiffs.

Mr.Jose George for defendant no.1.

Ms.Rohini S. Pandit for defendant no.3.

**CORAM : K.R.SHRIRAM, J.
DATE : 6TH JANUARY, 2017**

P.C.

1 This notice of motion is taken out by Mr.David Francis Vincent D'souza-original defendant no.3 to grant permanent injunction restraining the plaintiffs, their Power of Attorney, servants, agents, workers etc. from entering into any Agreement for Sale of Plot No.239, TPS-III, Bandra West, Mumbai-400 050.

2 Ms. Pandit for the applicant states that this application has become necessary because of an Agreement, dated 27th September 2014 that

allegedly had been entered into between the plaintiffs and one Mahimna V. Deshpande, copy whereof is annexed to this notice of motion. In the affidavit in reply filed by the plaintiffs, it is categorically mentioned that the plaintiffs have not signed any such agreement and the document is a forged, fabricated and got up document.

3 In view of the statement made by the plaintiffs, the question of creating any third party rights based on this agreement does not arise. Therefore, an apprehension expressed by defendant no.3 is not founded.

4 The notice of motion accordingly disposed.

5 Shri George, appearing for defendant no.1 states that he has been instructed not to appear in the matter and defendant no.1 will be instructing another Advocate.

6 The counsels state that evidence in the suit is complete and the matter is ripe for arguments. The suit be listed for arguments on 16th February 2017. The Commissioner to file report with copy to the parties on or before 27th January 2017.

(K.R. SHRIRAM, J.)