

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

**NOTICE OF MOTION NO.270 OF 2014
IN
SUIT NO.170 OF 2014**

Bhim Laxman Kapoor and Ors.Applicants/Plaintiffs

Vs.

Anil Navrataram KapoorDefendant

Mr. J.M. D'silva for applicant/plaintiff.

Mr. Vaibhav M. Parashurami i/b. Mr. Vikrant V. Parashurami for defendant no.8.

CORAM : K.R.SHRIRAM, J.

DATE : 12th JUNE, 2017

PC.:

1 This notice of motion is taken out to restrain defendant from disposing of or alienating or encumbering or dealing with or parting with possession of the suit property and pending the hearing and final disposal of the suit to restrain revenue authorities from carrying out changes in revenue records and/or rights in respect of the suit instrument being conveyance dated 21st January, 2010 and conveyance dated 28th March, 2013.

2 According to plaintiffs, they were entitled to share in the suit property and defendant nos.6 and 7, behind their back, disposed of the suit property to defendant no.8. Mr. D'silva, counsel for plaintiffs states that defendant nos.6 and 7 have now filed an affidavit saying that they erroneously conveyed the property to defendant no.8.

3 Plaintiffs are seeking to impugn two Conveyances one dated 21st January, 2010 and the other dated 28th March, 2013. The plaint was lodged on 28th October, 2013 and the notice of motion was also lodged on 29th October, 2013. Plaintiffs did not make any application for ad-interim relief or for any urgent orders against defendant. Mr. D'silva states that plaintiffs have lodged the writ of summons to be served upon defendant and since nobody entered appearance or filed written statement within the returnable date given in the writ of summons, court directed the matter to be listed as undefended suit and directed plaintiffs to file affidavit of evidence. At that stage, defendant no.8 filed its written statement. The written statement was directed to be taken on record in August, 2016. Mr. D'silva states that on 10th August, 2016 also he pressed for ad-interim reliefs but the court adjourned the matter for defendant no.8 to file their reply. Paragraph 4 of the order dated 10th August, 2016 reads as under :

“4. Place the suit for framing of issues and notice of motion no.270 of 2014 for hearing and final disposal on 31st August, 2016”.

Thereafter the matter never got listed. It has got listed today. In October, 2013 plaintiffs did not consider it necessary to move for ad-interim reliefs. What they are seeking also is for cancellation of the Conveyances of 2010 and 2013. No fresh affidavit is also filed as to why the order, which was not found necessary to be prayed for in October, 2013, should be passed today.

4 In the circumstances, notice of motion dismissed.

5 Suit be listed for issues on 11th July, 2017 on which date parties to come with agreed draft issues and a separate list of issues on which they are unable to agree.

(K.R. SHRIRAM, J.)