

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

**NOTICE OF MOTION NO.4126 OF 2009
IN
SUIT NO.3105 OF 2009**

Kishan G. Hirani And Others	...	Applicants/Plaintiffs
Versus		
Neeraj Constructions And Others	...	Defendants

**WITH
NOTICE OF MOTION NO.259 OF 2010
IN
SUIT NO.196 OF 2010**

Mr. Anil Kishan Hirani And Another	...	Applicants/Plaintiffs
Versus		
Neeraj Constructions And Others	...	Defendants

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Mr. Abhishek Pungliya for the Applicants in Notice of Motion No.4126 of 2009 and the Plaintiffs in Suit No.3105 of 2009.

Mr. Rajesh S. Datar for the Respondents/Defendant Nos.4 And 5 in Notice of Motion No.4126 of 2009 and Suit No.3105 of 2009.

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CORAM : S.C.GUPTE, J.

DATE : 11 JULY 2017

P.C. :

• Heard learned Counsel for the parties.

2 Notice of Motion No.4126 of 2009 is taken out in a specific

performance suit filed by the Plaintiffs against Defendant Nos.1 to 3, who are their vendors. The suit property consists of a flat, bearing No.101 in Kakad Enclave, Plot No.739/B, Bandra (West), Mumbai. It is the case of the Plaintiffs that by an agreement between the parties, this flat was agreed to be sold by Defendant Nos.1 to 3, who are the developers of the property, to the Plaintiffs. It is submitted that this agreement is reflected in a writing executed on 23 August 2007, and which is annexed as Exhibit 'A' to the plaint. It is the case of the Plaintiffs that a sum of Rs.1 crore out of total consideration Rs.1.30 crores has been duly paid by the Plaintiffs to Defendant Nos.1 to 3 towards this agreement. The Plaintiffs, in the premises, pray for specific performance of the suit agreement. Subsequent to the filing of the suit, the Plaintiffs claim to have learnt of third party rights created by Defendant Nos.1 to 3 in the suit property in favour of Defendant Nos.4 and 5. The suit has been accordingly amended on 8 September 2016, by impleading Defendant Nos.4 and 5 as party defendants to the suit and praying for suitable orders against them.

3 Defendant Nos.1 to 3 are not before the Court to show cause to the Plaintiffs' Notice of Motion. Learned Counsel for Defendant Nos.4 and 5 claims that his clients are *bona fide* purchasers for value without notice in respect of the suit property and their rights ought not to be prejudiced. If one has regard to the records of the case, particularly, the agreement executed between Defendant Nos.1 to 3 on one hand and Defendant Nos.4 and 5 on the other, it is apparent that Defendant Nos.4 and 5 had notice of a title certificate issued by Vinod J. Gandhi & Co., Solicitors of the developers. The agreement annexes a copy of the title certificate. The title certificate, in turn, shows that out of twelve flats in the building

constructed by Defendant Nos.1 to 3, eleven flats had already been sold to various third parties. The title certificate also refers to a suit filed by one Rita Anne Shah And Others, claiming to be beneficiaries under a private trust known as “Laxmichand Baghji Family Trust”, to which suit Defendant No.1 (the developer) was also a party. Affidavits were filed in this suit by Defendant Nos.1 to 3. These affidavits clearly set out particulars of the third parties with whom agreements were entered into by Defendant Nos.1 to 3 for sale of flats. The affidavits disclose the present Plaintiffs as a party to whom Flat No.101, i.e. the suit flat, was sold by Defendant Nos.1 to 3. The consideration paid by the Plaintiffs towards this agreement for sale is also duly reflected in the affidavits. In the premises, it is not open to Defendant Nos.4 and 5, at least at this *prima facie* stage, to contend that they were indeed purchasers for value without notice of the Plaintiffs' agreement and that injunctive relief ought to be denied to the Plaintiffs on that basis.

4 Learned Counsel for Defendant Nos.4 and 5 submits that though Defendant Nos.1 to 3 had entered into an agreement with the Plaintiffs, that agreement has since been terminated and a suitable communication to the effect that the suit flat was un-encumbered, was addressed by Defendant Nos.1 to 3 to their financiers. Be that as it may, it is a matter of fact that one of the two affidavits referred to in the title certificate was in fact filed after the purported termination of the agreement between Defendant Nos.1 to 3 on the one hand and the Plaintiffs on the other. This affidavit reiterates that the suit flat was sold to the Plaintiffs and does not refer to any termination of agreement as between the parties.

5 In the premises, the Plaintiffs have clearly made out a *prima facie* case, which needs to go to trial. The Plaintiffs have *prima facie* shown that Defendant Nos.4 and 5 cannot be termed as *bona fide* purchasers for value without notice of the Plaintiffs' agreement for sale. In the premises, the suit flat, viz. Flat No.101, will have to be protected, pending the hearing and final disposal of the suit.

6 Accordingly, the Notice of Motion is allowed in terms of prayer clause -(A)(i).

7 Costs to be costs in the cause.

(S.C. GUPTE, J.)