

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**NOTICE OF MOTION NO. 2819 OF 2011**  
**IN**  
**SUIT NO. 1992 OF 2011**

Bhagwandas Gupta & Ors ...Plaintiffs  
*Versus*  
Ramadhar S Dwivedi & Ors ...Defendants

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**Ms Poonam Gupta**, *i/b Ajay Law Associates, for the Plaintiffs.*  
**Dr B Saraf**, *with Rohan Sawant, i/b IC Legal, for Defendants Nos.*  
*26B to 26E.*  
**An Advocate**, *for Defendant No. 54.*  
**Mr Abhishek Patil**, *i/b AA Singh, for Defendants Nos. 55(a), 55(b),*  
*55(c) and 56.*

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**CORAM: G.S. PATEL, J**  
**DATED: 11th December 2018**

**PC:-**

1. Quite apart from the observations made more than six years ago on 17th January 2012 by SJ Vazifdar J, as he then was, declining ad-interim reliefs, the observations more recently of SC Gupte J on 21st July 2017 in a Chamber Summons are also relevant. SJ Vazifdar J noted that there was an unexplained delay of 15 years and declined ad-interim reliefs. Since that order, nearly seven years have passed and still there is no explanation.

2. On 21st July 2017, SC Gupte J summarized the suit thus:

“3. The suit is for a money claim towards monies paid by the Plaintiffs to Defendant No. 1, who at the relevant time acted as the Plaintiffs’ Advocate for purchase of the property. It is the grievance of the Plaintiffs that instead of purchasing the property in the name of the Plaintiffs, Defendant No. 1 purchased the property in the name of himself and his family members and friends, who are arraigned as Defendants in the present suit along with him. The documents subsequently discovered by the Plaintiffs show that Defendant No. 1 in fact acted as Advocate of the Plaintiffs and monies were paid from the Plaintiffs’ account. Based on these documents, further averments are sought to be made in the plaint.”

3. These observations are relevant for the purpose of interim relief because what is sought in the Notice of Motion is an injunction from creating third-party rights in respect of the properties at Exhibit A1 to A7 to the Plaint. These are properties that the Plaintiffs say were to be acquired for them, and the proposed or supposed acquisition of which he allegedly funded. Dr Saraf for some of the Defendants points out that the alleged funding, even on the Plaintiffs’ own showing, was apparently “to overcome laws”, with all that this necessarily implies. I will not hold an awkward phrasing against the Plaintiffs, but the fact is that the suit is essentially for recovery of money and this does not readily translate into an actionable cause against immovable property without significantly more than the Plaintiffs are able to demonstrate. The allegations in the Plaint even after amendment are based on a series of what I can only call assumptions and

conjectures. In fact, the averments made in paragraph 10 at page 220, seem to indicate that there was a promise of repayment.

4. In the prayers in the suit, without an adequate supporting pleading, a relief sought is first for recovery of money and then for a declaration that some lands are charged with the repayment. On this basis, I do not think it is possible to grant the Plaintiffs the kind of interim relief sought, of appointment of a Court Receiver or an injunction against alienation. The best that can be done today is to list the matter at an early date for framing issues, the suit having been filed in 2011.

5. Defendants Nos. 54 and 55 have passed away. The Plaintiffs have already filed a Chamber Summons to bring on record the heirs and legal representatives of Defendant No. 55. The heirs of Defendant No. 54 will be communicated by the Advocates for Defendant No. 54 to the Advocates for the Plaintiffs on or before 21st December 2018.

6. The Advocates for Defendants Nos. 1 to 7 and other Defendants will inform the Advocates for the Plaintiffs of the names of other Defendants, if any, who have also passed away and the names of their heirs and legal representatives on or before 21st December 2018.

7. The necessary amendments are allowed dispensing with the formality of a Chamber Summons and the heirs will be impleaded without need of re-verification on or before 11th January 2019.

8. The newly added Defendants will be served on or before 1st February 2019. All Written Statements by the present Defendants who have not yet filed Written Statements shall file and serve their Written Statements no later than 8th February 2019.
9. For the present, and subject to all just exceptions, list the suit for framing issues on 13th February 2019.
10. The Notice of Motion is disposed of in these terms. There will be no order as to costs.

**(G. S. PATEL, J)**