

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

**NOTICE OF MOTION NO.1961 OF 2017
IN
SUIT NO.624 OF 2016**

Bharatbhai Lalchandbhai Shah	... Applicant/ Defendant No.15
In the matter between:	
Dhirubhai @ Dhirajlal H. Desai and ors.	... Plaintiffs
Vs.	
Lataben Abuwalla and ors.	... Defendants

Mr.Snehal Shah with Mr.Ieshan Sinha and Ms. Varada
Balachandran i/by M/s Wadia Ghandy & Co. for the Plaintiffs.
Mr.Charul Abuwala i/by M/s Dave & Co. for Defendant No.1.
Mr.Karan Thorat i/by Mr. V.V.Thorat for Defendant No. 13.
Mr. Rajiv Narula with Ms. Shwetaa H. Doshie i/by M/s Jhangiani
Narula & Associates for Applicant/Original Defendant No.15.

**CORAM : S.C. GUPTE, J.
DATE : 17 JANUARY 2018.**

P.C. :

. This notice of motion is taken out by Defendant No.15, who is subsequently joined as a party Defendant to the present suit. The Plaintiffs claim to be executors of the last will and testament of the deceased-Dr.Saurabh Desai. The Plaintiffs' case is that the property, namely, plot No.333 at village Palsana, District Surat belongs to the deceased. The Plaintiffs accordingly apply for

interim relief in the form of a temporary injunction restraining the Defendants from creating third party rights or developing this property.

2. When the ad-interim application was made before the court and the first ad-interim injunction was secured, this property had stood transferred and was owned by Defendant No.15. (On that day, Defendant No. 15 was not a party to the suit. He came to be added as a party on his application after the ad-interim order was secured by the Plaintiff.) The person said to be intermeddling with the property at the date of the ad-interim application was Defendant No.13. It is the grievance of Defendant No.13 that on the date this ad-interim application was moved, though the Defendant was shown as duly served, there was in fact no service of the notice of motion and the plaint and proceedings on Defendant No.13. There is a registered document as between the original owners of plot No.333, whose names appear as owners in the revenue record in respect of the property, and Defendant No.13 executed on 2 January 2014, by which the owners (heirs of one Vasumati Desai) transferred plot No. 333 to Defendant No.

13. By a registered sale deed dated 11 January 2016, this plot was transferred by Defendant No. 13 to Defendant No. 15. There is nothing to indicate that the deceased-Dr.Saurabh Desai had title to this plot. Merely because the property is included in the will of the deceased-Dr.Saurabh Desai, it cannot be said to belong to him. There is no independent material placed on record as yet by the Plaintiffs in support of their case that the property belonged to the deceased. On the other hand, there is adequate prima facie material placed before the court by Defendant Nos.13 and 15 that Defendant No.13 acquired title to this plot before the death of the deceased from the original owners disclosed in the revenue record, namely, the heirs and legal representative of one Vasumati Desai, and this plot has been subsequently transferred by Defendant No. 13 in favour of Defendant No. 15. Defendant No.15 is in the process of developing this plot. The Plaintiffs, after obtaining ad-interim orders in respect of this plot, without service of any notice on Defendant No. 15, who is the registered owner of this plot, not only proceeded to issue notice to the Revenue Department, but also to the Electricity Board, and sought and procured disconnection of electricity. The development project of Defendant

No. 15 has come to a halt as a result.

3. In these facts, the ad-interim injunction order passed on 11 July 2016, and continued from time to time, will have to be vacated in respect of plot No. 333. It is ordered accordingly. The notice of motion is, accordingly, made absolute in terms of prayer clause (a).

4. It is clarified that this order shall not come in the way of the Plaintiffs' application to amend their plaint so as to challenge the transaction between Defendant Nos.13 and 15 in respect of plot No.333. As and when such application is filed, the same shall be considered on its own merits. All contentions and rights of the parties in that behalf are kept open.

(S.C.GUPTE J.)