

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION No.1286 of 2014

IN

SUIT No.134 of 2014

M/s Atul Builders & Associates ..Applicant.

In the matter between :-

M/s Atul Builders & Associates ..Plaintiff.

Vs

Satyawan Ramchandra Patil & Ors ..Defendants.

Mr. Makrand Raut I/by Deepali Mainkar for the Plaintiff.

Mr. S.A. Abhayankar for Defendant No. 5 to 7, 8 (a) to 8 (c).

CORAM : B. P. COLABAWALLA, J.

DATED :- 28th February, 2019.

P.C. :

1. When this motion was originally filed, it was seeking a prayer for appointing a Court Receiver in relation to the suit property bearing Survey No. 76, Hissa No.11, admeasuring 18 Gunthas, equivalent to 2,178 square yards at village Eksar, Taluka Borivali, Mumbai as well as for an injunction restraining defendant Nos. 1 to 8 from disposing of and/or creating any third party rights or parting with possession in relation thereto. It appears that defendant No.4 passed away as far back as on 31st October, 1998

and defendant No.8 passed away on 1st September, 2004, I fail to understand how the suit could have been filed against dead persons, which was filed in 2014. Be that as it may, the notice of motion is restricted seeking an injunction only against defendant Nos. 5 to 7 and who, according to the plaintiff, are the only heirs and legal representatives of defendant No.4 as well as defendant No.8 (a) to 8 (c).

2. The suit has been filed for specific performance of an agreement for sale dated 4th April, 1988 allegedly executed between the plaintiff and defendant Nos. 1 to 3 as well as an agreement for sale of the same date allegedly executed between the plaintiff and defendant Nos.4 to 8. A direction is also sought that defendant Nos. 1 to 8 to execute a conveyance with regard to the suit property and accept the balance consideration as contemplated under the aforesaid two agreements.

3. On going through the plaint, I find that no prima facie case has been made out for any interim reliefs. In Paragraph 20 of the plaint, it is stated that the plaintiff's partner, on 26th December, 2007 signed the duly adjudicated and stamped

conveyance not on behalf of the plaintiff but also on behalf of Mr. Ramchandra Patil (in his capacity as the power of attorney holder) and defendant Nos. 1 to 8 (in his capacity as the power of attorney holder). I am surprised to see that a conveyance though according to the plaintiff is executed in his favour, he seeks specific performance of the two agreements and for direction against defendant Nos. 1 to 8 to execute a conveyance in regard to the suit property. Furthermore, considering that defendant No.4 had expired on 31st October, 1998 and defendant No.8 had expired on 1st September, 2004, how a conveyance could have been executed by the partner of the plaintiff on behalf of defendant No. 4 and 8 on the basis of a power of attorney is beyond my comprehension. Once the person is dead, the power of attorney, unless coupled with consideration, comes to an end. It appears prima facie that the plaintiff has not approached to this Court with clean hands. There is therefore no case made out for any interim reliefs.

4. In the aforesaid circumstances, the notice of motion is dismissed. No order as to costs.

(B.P. COLABAWALLA, J.)