

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

NOTICE OF MOTION NO.525 OF 2019

IN

SUIT NO.1040 OF 2018

John Joseph Gomes & Ors.)...Plaintiffs/Applicants

V/s.

M/s.K.M.Enterprises)....Defendants

Mr.Clive D'souza for plaintiffs/applicants.

Mr.Deepak Shukla I/by Vinod Mistry and Co. for defendants

CORAM : K.R.SHRIRAM,J

DATE : 11.3.2019

P.C.:-

1. Mr.Shukla for defendants states that he has no intention to create any 3rd party rights with regards to the 650 sq. ft. flat which is the subject matter of the suit. Mr.Shukla states that if the Court grants ad-interim prayer i.e., direct defendant to hand over possession, suit will get decreed at the ad-interim stage itself. Mr.Shukla states that there is another suit filed by one Marc Gomes who claims to be legal heir of Peter Joseph Gomes and who also has filed Suit No.174 of 2015. One of the relief in that suit is to declare conveyance dated

7.11.2007, copy whereof is at Exh.D to this court, be cancelled to the extent that part consideration thereunder given to plaintiff nos.2 & 3 by defendant is void. Mr.Shukla states that plaintiff has not disclosed in the plaint about the pendency of this suit though plaintiffs are parties to the said suit No.471 of 2015.

2. Mr.D'souza for the applicants states he will take instructions as to whether this plaint requires to be amended. Mr.Shukla states that he is filing an affidavit of Arif Malkani affirmed on 9.3.2019 in which in paragraph-16 defendant has stated that defendant has no intention of selling, disposing or creating any 3rd party rights as per the deed of conveyance dated 7.11.2007 and in view of the pendency of the other suit, ready and willing to deposit the keys of the said flat upon receiving Occupation Certification, with the Prothonotary & Senior Master, High Court, Bombay. The statement in the affidavit is accepted as an undertaking to this Court.

3. Notice of Motion accordingly stands disposed.

(K.R.SHRIRAM,J)