

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

**NOTICE OF MOTION NO.401 OF 2016
IN
SUIT NO.800 OF 2014**

M/s. Hakimji Lookmanji and Ors. ...Applicants

In the matter between

M/s. Hakimji Lookmanji and Ors. ...Plaintiffs

Versus

Seth Morarji Mulji Charitable Trust
and Ors. ...Respondents

.....

Mr. Chirag Balsara with Ms Eram Quraishi i/b. M/s. Kartikeya and Associates for the Plaintiffs/Applicants.

Mr. Akshay Petkar with Mr. Atman Mehta i/b. M/s. Harish Mehta and Co. for the Defendant Nos.1 to 5.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 30th APRIL, 2019.

P.C.:-

The Plaintiffs have taken out this notice of motion seeking to restrain the Defendants through themselves or through their servants, officers, office-holders and /or agents and/or Power of Attorney holder/s from entering upon the suit property and/or in any manner physically disturbing the Plaintiffs' possession in respect of the suit property and /or creating third party rights in respect of the suit

property and /or negotiating with third parties/outside for alienating the suit property and /or unlawfully/forcefully inducing any third party till disposal of the suit.

2. Heard Mr. Chirag Balsara, the learned counsel for the Applicants/Plaintiffs and Mr. Akshay Petkar, the learned counsel for the Defendant Nos.1 to 5. Perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The dispute is in respect of a plot of land admeasuring 129.6 sq. mts. bearing C.S. No. 3195 of Bhuleshwar Division situated at Cawasji Patel Tank Road (or Duncan Road Street). Said plot shall be hereinafter referred to as the 'suit property'.

4. It is not in dispute that the Defendant No.1 is the owner of the suit property and that the Plaintiffs is the lessee of the suit property. By Memorandum of Understanding dated 30/4/2008 the Defendant No.1 through its Trustees agreed to sell the suit property to the Plaintiffs for total consideration of Rs.29,00,000/-. The Plaintiffs had paid to the Defendants Rs.5,00,000/- at the time of execution of the said MoU. The sale of the suit property was subject to obtaining

permission/sanction from the Charity Commissioner. The sale transaction was to be completed within a period of thirty working days from the date of obtaining permission/sanction. It is not in dispute that in the application No.J-4-79-2009 the Charity Commissioner by an order dated 24/7/2009 accorded sanction to the Defendant No.1-Trust to sell revisionary rights in respect of the suit property. The sale transaction was to be completed within a period of three months from the date of the order. The sale transaction could not be effected within the stipulated time. The Defendant therefore filed an application before the Charity Commissioner for extension of time. By order dated 25/7/2011 the Charity Commissioner extended the time for further period of three months from the date of the said order. The records further reveal that on 1/8/2011 the Defendant No.1 and the Plaintiffs entered into a supplementary MoU. At the time of execution of supplementary agreement the Plaintiffs made further payment of Rs.20,00,000/- to the Defendant No.1 and the balance amount of Rs.4,00,000/- was to be paid at the time of execution of conveyance.

5. The records prima facie reveal that the Plaintiffs had lodged the draft conveyance with the office of the Superintendent of Stamps for adjudication on stamp duty. The Superintendent of Stamp

Duty declared the market rate to be 3.5 crores and adjudicated the stamp duty payable on conveyance as Rs.17,65,000/-. Said order was challenged in an appeal. The Appellate Authority by its order dated 25/4/2013 accepted the market value of revisionary rights as being 29,00,000/- and directed the Plaintiffs to pay sum of Rs.1,45,000/- as stamp duty. Accordingly, The Plaintiffs have paid the stamp duty on 9/5/2013. The records thus prima facie indicate that the Plaintiffs have performed their part of the contract and fulfilled their obligations under the agreement, despite which the Defendants have failed to execute the conveyance.

6. The Defendants have claimed that they have already terminated the lease as well as MoU and hence they are not liable to execute the deed of conveyance. It is pertinent to note that the Defendants have executed the supplementary MoU and received part sale consideration of Rs.20,00,000/- subsequent to the termination notice dated 20/7/1993. The other termination notice dated 17/4/2013 was addressed to the Advocate M/s. Mandviwala and Co. There is nothing on record to prima facie suggest that M/s. Mandviwala and Co. was representing the Plaintiffs or that the Plaintiffs had authorised them to accept the notice and act on their

behalf. Thus, prima facie there is no termination of the agreement. The Plaintiffs have paid the agreed sale consideration of Rs.25,00,000/- and are ready and willing to pay the balance amount of Rs.4,00,000/- at the time of execution of the conveyance. The Plaintiffs have already performed their part under the agreement which is still subsisting. Under the circumstances the Plaintiffs have made out a prima facie case and their rights are required to be protected till final adjudication of the Suit.

7. Hence, pending the final hearing and disposal of the Suit, the Defendants, their servants, agents, officers, etc. are hereby restrained from creating third party rights in respect of the suit property and or disturbing possession of the Plaintiffs in respect of the suit property otherwise than in due process of law.

8. The notice of motion is disposed of in above terms.

(SMT. ANUJA PRABHUDESSAI, J.)