

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

**NOTICE OF MOTION NO.1170 OF 2013
IN
SUIT NO.335 OF 2013**

Khimji Ramji Shah ...Applicant/Plaintiff
V/S.
Newton Finstock Pvt. Ltd. And Ors. ... Defendants

Mr. R.A. Thorat, Senior Advocate a/w. Ms. Sonal Rajput I/b. Mr. Anilkumar Patil for Applicant / Plaintiff.
Mr. Chetan B. Raithatha for Defendant Nos.3 to 9.

CORAM : B. P. COLABAWALLA, J.
DATED : 09th AUGUST, 2019.

P.C.

1. This Notice of Motion has been filed by the Plaintiff *inter alia* seeking an injunction restraining Defendant No.1 from selling, transferring and/or creating any encumbrance, charge in respect of the suit properties which is land bearing Survey No.139/A, Hissa No.37, CTS No.1987, admeasuring 877 Sq. yards equivalent to 733.3 Sq. mtrs. situated at Vile Parle (E), Mumbai - 400 057 along with structures standing thereon. It is the case of the Plaintiff that he is in possession of the suit property and hence an injunction is also sought against

Defendant No.1 from disturbing and/or obstructing the peaceful and exclusive possession of the Plaintiff in respect of the suit property.

2. The present suit has been filed for a declaration that the Deed of Conveyance dated 31.01.2008, and by which Defendant No.1 purchased the suit property from Defendant Nos.2 to 9 be declared as illegal and not binding on the Plaintiff. The reason for seeking such a declaration is that according to the Plaintiff, in 1974, the original owners of the suit property sold the same to Defendant No.2 and his wife Maggie Francis Rodrigues. Thereafter, by a Deed of Conveyance dated 26.07.1985, the suit property was sold by Defendant No.2 and Defendant Nos.3 to 9 (all being heirs by the said Maggie) to Narandas Makwana and Kewal Makwana. This conveyance was lodged for registration with the Registering Authority on 26.07.1985 itself, but was only registered on 06.03.2013.

3. Pending registration of the aforesaid conveyance dated 26.07.1985, the said Makwana sold the suit property to the Plaintiff by an Agreement for Sale dated 19.08.1987. It is the case of the Plaintiff that the entire consideration for the

sale of the suit property was paid by the Plaintiff to the said Makwana's in the year 1987 itself. In fact, clause (1) of this Agreement for Sale itself records that the said Makwana's have received the consideration in its entirety. I must mention that this agreement dated 19.08.1987 was not registered but a Deed of Confirmation was executed and which was registered on 05.05.2010. It is the case of the Plaintiff that in the interregnum and despite Defendant Nos. 2 to 9 having no transferable interest in the suit property, entered into a registered deed of conveyance dated 31.01.2008 under which the suit property was purportedly sold by Defendant Nos.2 to 9 to Defendant No.1. It is in these circumstances, that the said conveyance is challenged in the suit.

4. Despite service, none have appeared on behalf of Defendant No.1. Defendant No.1 has not filed any Affidavit-in-reply to the above Notice of Motion. Prima facie, I find that Defendant Nos.2 to 9 transferred the suit property in favour of the Makwana's as far back as on 26.07.1985. This being the position, atleast prima facie, I am in agreement with the learned Counsel appearing on behalf of the Plaintiff that

Defendant Nos.2 to 9, not having any transferable interest in the suit property, could not have entered into any deed of conveyance in favour of Defendant No.1. As mentioned earlier, Defendant No.1 has not appeared before this Court and has chosen not to contest the present Notice of Motion.

5. As far as Defendant Nos.2 to 9 are concerned, the learned advocate appearing on behalf of the aforesaid Defendants has stated before me that since no reliefs in the Notice of Motion are claimed against Defendant Nos.2 to 9, they are submitting to the orders of this court.

6. In view of the forgoing discussion and looking at the totality of the facts and circumstances of the case, I find that a case for interim relief is made out. In these circumstances, the Notice of Motion is allowed in terms of prayer Clauses (a) and (b) which read thus:

“a. Pending hearing and final disposal of abovesaid suit, by an order of injunction of this Hon'ble Court, the Defendant No.1, its agents, servants or any person claiming through it, be restrained from selling, transferring, and / or creating any encumbrance, charge in respect of the said Suit Property viz. Land bearing Survey No.139/A, Hissa No.37, CTS No.1987, admeasuring 877 Sq. yards equivalent to 733.3 Sq. mtrs. Situated at Vile Parle (E), Mumbai – 400 057

which is a N.A. Plot along with the structure standing thereon.

- b. *Pending hearing and final disposal of abovesaid suit, by an order of injunction of this Hon'ble Court the Defendant No.1, its agents, servants or any person claiming through it, be restrained from disturbing and / or obstructing the peaceful exclusive possession of the Plaintiff in respect of the suit property Viz. land bearing Survey No.139/A, Hissa No.37, CTS No.1987, admeasuring 877 Sq. yards equivalent to 733.3 Sq. mtrs. Situated at Vile Parle (E), Mumbai – 400 057 which is a N.A. Plot along with the structure standing thereon.”*

7. The Notice of Motion is accordingly disposed of. No order as to costs.

(B. P. COLABAWALLA, J.)