

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

**NOTICE OF MOTION NO. 2237 OF 2015
IN
SUIT NO. 845 OF 2013**

M/s. JMC and Meghani Builders and ors.Applicants

In the matter between :-

M/s. JMC and Meghani Builders and ors.Plaintiffs

V/s.

Jamuna Darshan Co-op. HSG Soc. Ltd. and ors.Defendants

Mr. Ajay Panickar i/b. Ajay Law Associates for the plaintiffs.

Ms. Sukeshi Bhandari for defendant no.1.

Mr. Mrityunjay Barai for defendant nos.2, 2A.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED : 23rd APRIL, 2019.**

P.C.:

. At the outset, the learned counsel for the applicant / plaintiff seeks extension of time to carry out the amendment. Leave is granted. Amendment to be carried out forthwith.

2. By this Notice of Motion, the plaintiff has sought to transfer the S.C. Suit No.7546/1981 which is pending before City Civil Court, Bombay to this Court.

3. Heard Mr. Ajay Panickar, learned counsel for the plaintiffs, Ms. Sukeshi Bhandari, learned counsel for defendant no.1 and Mr.

Mrityunjay Barai, learned counsel for defendant nos.2, 2A. I have perused the records.

4. The records indicate that the plaintiffs herein had filed the Suit No.7546/1981 for specific performance of an Agreement for Sale dated 11/12/1973 and 01/06/1979. By Agreement for Sale dated 11/12/1973, the defendant nos.3, 4 and 5 had purportedly agreed to sell to the plaintiffs part or portion of the immovable property bearing Final Plot No.750 of Town Planning Scheme No.III admeasuring 1943.39 sq. meters. Further by Agreement of Sale dated 01/06/1979, the parties had agreed to sell an additional area of 2007.97 sq. meters from the adjoining plot. The plaintiff has filed the S.C. Suit No.7546/1981 alleging that the defendants had wrongfully and dishonestly avoided from executing the Deed of Sale.

5. In Suit No.845/2013 filed before this Court, the plaintiff seeks to restrain the defendants from obstructing him from constructing the additional building in Plot No.774 admeasuring 2066.66 sq. meters. The plaintiff has also sought recovery of possession in respect of two flats i.e. Flat No.301 and 302 each admeasuring 715 sq. meters in building at A-wing of the building known as Jamuna Darshan Co-

operative Housing Society Limited and further to restrain the defendants or any other person from creating third party rights in respect of the said two flats and has further claimed mesne profit and damages for the wrongful use and occupation of the said two flats.

6. A perusal of the plaint in both these suits clearly indicates that the subject matter of the suits is different. The cause of action is also different. Furthermore, the evidence in S.C. Suit No.7546/1981 which is pending before City Civil Court, Bombay has already commenced. Considering all these aspects, in my considered view, this is not a fit case to transfer the S.C. Suit No.7546/1981 to this Court. Notice of Motion is, therefore, dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)