

This Order is modified/corrected by Speaking to Minutes Order dated 27/10/2014

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NMS No.1771_2014

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

NOTICE OF MOTION NO.1771 OF 2014
IN
SUIT (L.) NO.732 OF 2014

Mehboob Jafar Shaikh & Anr. ... Plaintiffs
Vs.
Jolly Brothers Pvt. Ltd. & Ors. ... Defendants

Mr. Pradeep Sancheti, Sr. Adv., a/w. Dr. Birendra Saraf, Adv., a/w.
Mr. Ameya Gokhale, Adv. i/b. Yogesh Adhia, Adv. for plaintiffs.
S.U. Kamdar, Adv. a/w. Mr. Jariwala, Adv. a/w. Ms. Jyoti Ghag, Adv.
i/b. Thakore Jariwala, for Defendant No.1.
Mr. Sharan Jagtiyani, Adv. a/w. Siddhesh Bhole, Adv. a/w. Shakeeb
Shaikh, Adv., a/w. Mitali Harish, Adv., i/b. Siddhesh Bhole for
intervener.

CORAM : MRS. ROSHAN DALVI, J.
DATE : 15th September, 2014.

P.C. :

1. The suit property was initially owned by the Dhumatkar family who has executed a lease in favour of defendant No.1. Defendant No.5 executed a development agreement in favour of defendant No.2 on 10th February, 2005. Defendant No.2 seeks to develop the suit property. He has obtained necessary permissions. The original building has been demolished. The tenants in the building have been vacated. The construction would begin or has already begun. Defendant No.2 has also sued the plaintiffs predecessor-in-title for specific performance and in the alternative for partition. The plaintiffs' predecessor-in-title had a 1/6th share. The partition would be of 5/6th share of the property. The plaintiffs' predecessor-in-title has assigned his 1/6th share to the plaintiff under



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a Deed of Assignment dated 2nd December, 2009.

2. There has been some disputes between plaintiffs and his predecessor-in-title. The plaintiffs predecessor-in-title has claimed to be joined as a proper and necessary party to the suit which application has been allowed today by this Court. He has shown an MOU executed between the parties, the purport of which shall have to be considered in the suit.

3. Defendant No.2 claiming rights of development through defendant No.1 whose right is challenged by the plaintiffs' predecessor-in-title claims to continue to construct without any order of injunction in that behalf. However, counsel on behalf of defendant No.2 stated that he would construct under the lease executed in favour of defendant no.1 but would not transfer the 1/6th share claimed by the plaintiff and or by plaintiffs' predecessor-in-title who would be joined as defendant No.2 in the suit, pending the Notice of Motion.

4. The rights claimed by each of the parties would be decided in the Notice of Motion and later in the suit. Pending that the construction / development may be allowed to continue subject to protection of 1/6th share claimed by the plaintiff or by plaintiffs' predecessor-in-title. Hence the following order :

1. Defendant No.2 shall be entitled to develop the suit property and put up construction utilising entire FSI of the suit property.
2. However defendant no.2 shall not sell, alienate, encumber or

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create any third party rights in such construction to the extent of 1/6th share of such construction pending the Notice of Motion.

3. Notice of Motion is made returnable and adjourned to 10th November, 2014.

(ROSHAN DALVI, J.)

ASR