

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

Amk

SUIT NO. 1450 OF 1999

Mahendrakumar C. Sanghvi & Ors. .. Plaintiffs

Vs.

The Heera Panna Co-op. Hsg. Soc. Ltd. & Ors. .. Defendants

Ms. Dipti Panda a/w. Mr. Dhawal Mohan i/b Thakore Jariwala & Associates
for the Plaintiffs.

Mr. S. T. Manek i/b S. T. Manek & Co. for Defendant No.3.

Mr. A. K. Chauhan i/b Ranjit & Co. for Defendant Nos.1 & 2.

CORAM : **MRS. ROSHAN DALVI, J.**

DATE : **9th FEBRUARY, 2015.**

P.C.

1. The affidavit of evidence of the plaintiffs is tendered. It is accepted on record under the provisions of Order 18 Rule 4 of the CPC. The compilation of original documents along with the list of documents is also tendered. It is taken on record. The admissibility of the documents of the plaintiffs is considered as follows:

(a) The plaintiffs have sought to rely upon a copy of the agreement dated 21.06.1973. The said agreement is shown to be of that date upon the date being struck off from the earlier date which was 12.07.1973. The typewritten copy relied upon by the plaintiffs shows only the ultimate date. However the agreement shows the date 12.07.1973 corrected to read 21.06.1973. The admissibility of that document has to be considered.

Defendant Nos.1 & 2 have craved leave to refer the agreement dated 12.07.1973 in para 12 of their written statement. The construction of the agreement would have to be seen. Consequently a copy of the agreement dated 12.07.1973 which was corrected to 21.06.1973 is the document which has to be considered upon the defence of defendant Nos.1 & 2. Hence a copy of the agreement dated 12.07.1973 (corrected to read 21.06.1973) is marked **Exhibit A**.

(b) The plaintiffs rely upon a specimen copy of a printed agreement of flat purchase in para 9 of the plaint. Defendant Nos.1 & 2 have dealt with para 9 of the plaint in para 13 of their written statement. The averment relating to the specimen agreement similarly entered into with flat purchasers is not denied. Consequently defendant Nos.1 & 2 have admitted that document. Hence a copy of the printed agreement of flat purchase is marked **Exhibit B**.

(c) The plaintiffs have produced by way of illustration a photocopy of an agreement of flat purchase/agreement of sale entered into by and between the developer/promoter of the plaintiffs' society with one of the first flat purchasers by identifying the signatures of both the parties executing the document having known them in the ordinary course of business in which the deponent had seen and received similar agreement and correspondence bearing those signatures. The original document is stated to be misplaced. Hence the plaintiffs have led secondary evidence of the fact of loss and the mechanical process by which the photocopy was taken out prepared by the deponent at the time of the filing of the suit. Upon the evidence of the plaintiffs in para 5 of the affidavit of evidence, the photocopy of the agreement dated 24.11.1973 is marked **Exhibit C**.

(d) The plaintiffs have deposed about a got up letter of defendant No.3 dated 27.08.1973 in collusion with defendant No.1 in para 11 of the plaint. Defendant Nos.1 & 2 have dealt with para 11 of the plaint in para 15 of their written statement. Defendant Nos.1 & 2 have not referred to or stated or disputed or denied the execution of the letter by defendant No.3. Defendant No. 3 has answered para 11 of the plaint in para 5(b) and para 10 of the written statement. Defendant No.3 has stated that the letter dated 27.08.1973 was signed though the signature was obtained by defendant No.1 from defendant No.3. Consequently the execution of the letter dated 21.08.1973 by defendant No.3 and sent to defendant No.1 has not been denied. How and in which circumstances the letter was got signed by defendant No.1 from

defendant No.3 shall have to be seen in the cross-examination of the parties. Consequently upon the statement of the plaintiffs in paras 6 & 7 of the affidavit of evidence the copy letter dated 27.08.1973 of defendant No.1 (which is not stated about at all in the written statement) and confirmed by defendant No.3 (who has admittedly putting signature upon the say of defendant No.1) is marked **Exhibit D**.

(e) The sketch map of the hoardings site is admitted by all the parties and accordingly, by consent, marked **Exhibit E**.

(f) The office copy of the letter dated 31.01.2015 which is a notice to produce given by the parties is admittedly received by all the parties and accordingly, by consent, marked **Exhibit F**.

2. Mr. Makarand Bakore is appointed Court Commissioner to record the cross-examination of the parties. The parties shall appear before the Court Commissioner initially on 18.02.2015 at 5 p.m. and thereafter as directed by the Court Commissioner. The parties shall pay the fees of the Commissioner and the cost of the commission in three equal sets for the plaintiffs, for defendant Nos.1 & 2 and for defendant No.3 who are the only contesting defendants.

3. After the cross-examination of the plaintiffs' witness is completed, the plaintiffs shall be entitled to examine any other witness, if required. The affidavit of evidence of such witness shall be filed, by consent, before the Court Commissioner directly. That witness shall be cross-examined before the Court Commissioner directly. Within two weeks after the plaintiffs' evidence is closed, defendant Nos.1 & 2 shall file their affidavit of evidence, if any, along with their documents, if any. The parties shall then place the suit on board for considering the admissibility of the documents of defendant Nos.1 & 2.

(ROSHAN DALVI J.)