

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

**SUIT NO. 2335 OF 2012**

Darryl D'Monte & Ors. .. Plaintiffs  
Vs.  
Saint Peters Church & Ors. .. Defendants

Mr.Vishal Kanade a/w. Ms.Mallika Taly i/b S. Mahomedbhai for plaintiffs.  
Mr.Denzil D'Mello for defendant nos.1 and 2.  
Mr.Zal Andhyarujina i/b M.P. Havnur for defendant no.3.  
Mr.Cyrus Ardeshir i/b Ms.Swapnila Rane from Kachhawa for defendant no.7

**CORAM : K.R.SHRIRAM, J.  
DATED : 18<sup>TH</sup> DECEMBER, 2014**

**P.C.**

1 At the outset, the counsel for the plaintiffs states that when Exhibit P-1 was filed, photocopies of all the documents were filed. Subsequently, the plaintiffs have been able to obtain certified copies of some of the documents. However, the contents of the affidavit has still not been corrected to reflect that certified copies are being filed.

2 The plaintiffs' first witness Darryl D'Monte, (PW-1), who is also plaintiff no.1 herein is present in Court and is administered oath. On oath, PW-1 confirms having sworn the affidavit dated 26<sup>th</sup> June 2014 in lieu of examination in chief and also identifies his signature. The counsel for defendant no.3 and defendant no.7 state that paragraphs 21 to 23 of the

affidavit should be excluded because what is mentioned in those paragraphs, do not find a mention in the plaint. The counsels submit that to lead evidence, the party should lay a foundation in the plaint. The counsel for defendant nos.1 and 2 states that in paragraph 26 of the affidavit, it is stated that the witness came to know about the decree being passed by the City Civil Court, Bombay on 22<sup>nd</sup> May 2012 or thereabout whereas in paragraph 30 of the plaint what is stated that the plaintiff came to know of the alleged fraud only some time in the month of August 2012.

3 Dealing with these objections in the reverse order, as regards the objection raised by counsel for defendant nos.1 and 2, in my view, it is something for the parties to cross examine the witness and therefore, this objection is overruled.

4 As regards the objections raised by counsels for defendant nos.3 and defendant no.7, in paragraph 30 of the plaint, the plaintiffs have stated that they have acquired knowledge of the alleged fraud sometime late in the month of August 2012. The plaintiffs have averred therefore, the suit is within limitation. As regards, paragraphs 21, 22 and 23 of the affidavit, in my view, it is only an explanation as to how the plaintiffs came to know about the alleged fraud sometime in the month of August 2012. Therefore

the objection is overruled. The entire affidavit is taken on record and marked as **Exh.P-1**.

5 Along with Exh.P-1, the plaintiffs have also filed a compilation of 26 documents. The documents from serial nos.15 to 26 are separately filed as additional compilation of documents. The serial numbers given below relate to the index filed along with the compilation of documents :

- 1 : **Exh.P-2**
- 2 : **Exh.P-3**
- 3 : **Exh.P-4**
- 4 : **Exh.P-5**
- 5 to 14 : **Exh.P-6 to Exh.P-15**, respectively.
- 15 to 26 : **Exh.P-16 to Exh.P-27**, respectively.

6 Mr.Mikhail Behl, an Advocate practicing in this Court is appointed as Commissioner to record evidence in the matter. The fees, administrative expenses of the Commissioner, venue expenses, if any, to be shared equally between the parties, i.e., the plaintiffs to pay 50% and the contesting defendants to pay remaining 50% and the same will be costs in the suit.

7 Stand over to 2<sup>nd</sup> March 2014 for directions.  
Liberty to apply.

**(K.R. SHRIRAM, J.)**