

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

SUIT NO.2335 OF 2012

Darryl D'Monte and Ors. ... Plaintiffs
versus
Saint Peter's Church and Ors. ... Defendants

**WITH
NOTICE OF MOTION NO.2250 OF 2012**

Mr. Vishal Kanade with Ms. Mallika Taly, Ms. Suchitra Sridhar i/by M/s. S. Mohamedbhai and Co., for Plaintiffs.

Mr. D'Manto i/by Mr. P.M.Havnur, for Defendant No.3.

Ms. Swapnila Rane i/by Ms. Vanita Kakkar, for Defendant No.7.

CORAM: S.J. KATHAWALLA, J.

**DATE: 9th NOVEMBER, 2016
(In chambers)**

P.C.:

1. The learned Advocate for Defendant No.7 has tendered Affidavit in lieu of Examination-in-Chief of Mr. Mahendra P. Rawal, Director of Defendant No.7 along with the Compilation of Documents relied upon by Defendant No.7. The same is taken on record.

2. Perused the Affidavit in lieu of Examination in Chief of Mr. Norman Joseph D'Monte - Defendant No.3. Defendant No.3 has relied on two documents. The first document is a letter dated 10-09-2015 addressed by Smt. S.P.Patange, Registrar, City Civil Court, Mumbai, to the Defendant No.3. No explanation is given in the Affidavit of Evidence as to why the Original is not produced before this Court.

In view thereof, the said document is marked Y-1 for identification. The Second document relied upon by Defendant No.3 is a photograph which according to Defendant No.3 is handed over to him by Vinky Developers - Defendant No.4. There is no evidence on record to show as to who has taken the said photograph and when. In view thereof, the same is marked Y-2 for identification.

3. A copy of the Index of the Compilation of Documents relied upon by Defendant No.7 is taken on record and marked 'Y'.

4. The documents at Serial No.1 is marked Y-3 for identification.

5. The documents at Serial Nos.2 and 3 are the photocopies of the public notices purportedly issued in the newspapers 'Mumbai Samachar (Gujarati) and 'Daily' (English) dated 31-10-1988 and 01-09-1988. From the photocopies, it does not appear that the same have been published in the newspapers as alleged. The same are therefore, marked Y-4 and Y-5 respectively for identification.

6. The documents at Serial No.4 is marked Exhibit D-1.

7. The existence of the document at Serial No.5 is not denied. The same is marked Exhibit D-2. However, the contention qua the contents of the same and the circumstances in which it was found/received by the Plaintiff is kept open.

8. The documents at Serial Nos.6 and 7 have already been marked as Exhibit P-15 collectively. Therefore, the same are not required to be marked.

9. The other Defendants have not filed their Affidavits of Evidence or

documents despite opportunities being given to them. In view thereof, the Court shall now proceed on the basis that they are not interested in filing Affidavits of Evidence and/or relying on any documents. Infact, the learned Advocate for Defendant Nos.1 and 2 was present before this Court on 7th November, 2016, but has thereafter, failed to remain present on 8th November, 2016 and 9th November, 2016 i.e. today. In view thereof, the learned Commissioner shall record cross-examination of Defendant Nos.3 and 7 and submit his Report to this Court on 30th November, 2016. Stand over to 30th November, 2016.

(S.J.KATHAWALLA, J.)