

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (ST) NO. 2718 OF 2015

Roque Francis Rodrigues

Petitioner

Vs

1. Olvin A. Lobo and Anr.

.. Respondents

Ms. Geeta P. Sonawane i/b Denzil D'Mello, Advocate for Petitioner.
Mrs. A.S.Malwankar, Advocate for respondent no.1.
Ms Pallavi Thakur i/b U.H.Deshpande, Advocate for Respondents
no.2.

CORAM : R.G.KETKAR,J.

DATE : 15/07/2015

PC:

1. Heard Ms. Geeta Sonawane, learned counsel for the petitioner, Ms. A.S.Malwankar, learned counsel for respondent no.1 and Ms. Pallavi Thakur, learned counsel for respondent no.2 at length.

2. Rule. Learned counsel for the respective respondents waive service. At the request and by consent of the parties, Rule is made returnable forthwith and Petition is taken up finally.

3. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged the Judgment and order dated 10.11.2014 passed by the learned Judge, City Civil Court, Borivali Division, Dindoshi, Mumbai in Chamber Summons No. 451 of 2013 in L.C.Suit No.255 of 2009. By that order, the learned trial Judge dismissed the Chamber Summons taken out by the petitioner for substituting 'Hissa No.22' by 'Hissa No.11' in

relation to Survey No.140, Hissa No.22, CTS No.6517 admeasuring 178.2 sq.meters, situate at village Kolekalyan, Kalina, Santacruz (East), Mumbai, more particularly described in paragrpah 1 of the Plaint.

4. In support of this Petition, Ms Sonawane submitted that the plaintiff has instituted suit claiming ownership, qua Survey no.140, Hissa No.22, C.T.S.No.6516, admeasuring 129.5 sq.meters as also Survey No.140, Hissa No.22, C.T.S. No.6517 admeasuring 178.2 sq.meters. C.T.S. No.6517 corresponds to Survey No.140, Hissa No.11. However, instead of Hissa No.11, wrongly Hissa No.22 was mentioned in paragraph 1 of the Plaint. She submitted that at the time of hearing of this Chamber Summons, the plaintiff did not produce N.A. Order dated 30.9.1982 passed by Addl. Tahasildar (N.A.), Andheri wherein it is shown that Sruvey No.140, Hissa No.11 corresponds to C.T.S. no.6517. The plaintiff also did not produce Kami Jast Patrak which also records that Survey No.140, Hissa No.11 corresponds to C.T.S.No.6517 admeasuring 178.02 sq.meters. She submits that tomorrow is the next date of hearing before the trial Court and if liberty is given to the plaintiff to produce these documents, learned trial Judge may be directed to dispose of the Chamber Summons in a time bound manner. Ms Malvankar submitted that the plaintiff did not produce these documents before the trial Court and, therefore, it had no occasion to consider these

documents. She further submits that the trial Court has expedited hearing of the suit. As the plaintiff did not produce the documents referred herein above, in my opinion, liberty should be given to the plaintiff to substantiate his claim that C.T.S.No.6517, admeasuring 178.2 sq.meters corresponds survey no.140, Hissa No.11. Hence, the impugned order is set aside and the Chamber Summons is restored to the file of the trial Court. As the matter is due tomorrow, parties will appear before the trial Court and for that no notice is required to be issued.

5. The plaintiff will produce documents: (i) N.A. Order dated 30.9.1982 passed by Addl. Tahasildar (N.A.), Andheri and (ii) Kami Jast Patrak, in the trial Court tomorrow, viz. 16.7.2015. The learned trial Judge is requested to decide the Chamber Summons within two weeks from the date of appearance of the parties.

6. It is made clear that I have not examined merits of the Chamber summons. All contentions of the parties in that regard are expressly kept open. Rule is made absolute in the above terms with no order as to costs.

(R.G.KETKAR, J.)