

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 477 OF 2013
IN
SUIT NO. 2659 OF 2010

M/s. Asha Developers

.. Applicant

IN THE MATTER BETWEEN:

M/S. Jupiter Construction

.. Plaintiffs

Vs.

Ramanugrah @ Nanku Jangbahadur
Mishra and Anr

.. Defendants

...

Mr. S. K. Chaurasia for Applicant in CHS 477/2013

Mr. D. S. Sakhalkar i/b. M/s R. B. Singh and Associates

Adv. For Plaintiffs.

Shri Rupesh R. Lanjekar i/b. Mr. Ashish J. Dubey for Defendants.

CORAM : A. K. MENON, J.

DATE : AUGUST 07, 2015.

P.C.:

The present chamber summons is taken on by the applicant M/s Asha Developers, claiming to be the owners of the suit property having acquired the same from M/s Mishra Brothers-defendant no. 2. The aforesaid document is dated 5th February 2013, and the same is registered in the office of Joint Sub Registrar Borivali (9) under No. BRL-9-784-2013. The present applicant claims to be entitled to the suit property by virtue of the said registered conveyance.

According to the applicant after the suit was filed in 2010, the plaintiff moved a notice of motion on 3 April 2013, and he came to learn about the pendency of suit only on or about 11th June 2014. He has thereafter taken out the chamber summons on or about 1st July 2013. The defendant no. 1 has filed an affidavit in reply containing general denials. However in paragraph No. 11 of the said affidavit the deponent deals with denial of the contents of paragraph 3(j) of the affidavit in support. While the deponent denies that Mishra Brothers – defendant no. 2, executed a deed of conveyance and/or irrevocable Power of Attorney in favour of the applicants, it goes to state that such conveyance has been challenged by one of the partners. As stated in paragraph 3 as of the affidavit in support there can be no serious dispute as to the existence of the conveyance or the fact that the document has been registered. Since the contents of the extract of the Index II register annexed in the affidavit in support has not been challenged by the plaintiff. The applicant's contentions relate the very same property forming subject matter of the Index II chart. There is no dispute as to the description of the property either. It is not the plaintiff's case that the property forming subject matter of

the conveyance which is said to be registered as evidence by the Index II, extract is different from the property in respect of which the suit has been filed.

Accordingly, I am of the view that the applicants have made out the case of being a necessary and proper party to the suit. In the chamber summons, Defendant no. 2 has not filed any affidavit in reply, however since the plaintiff is domins litus and has been heard, it is not necessary to hear the defendant no. 2 at this stage. I therefore pass the following order

- (i) The chamber summons is made absolute in terms of prayer clause (a) and (b). Amendment the plaint and proceedings to be carried out within a period of two weeks from today.
- (ii) Newly added applicant/defendant shall file his affidavit in reply to the notice of motion and written statement within a period of three weeks from today.
- (iii) Advance copy of the reply be served on defendant no. 2, and rejoinder, if any be filed within a period of one week thereafter S. O. to 4th September 2015.

(A. K. MENON, J.)