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

**CHAMBER SUMMONS NO. 627 OF 2014
IN
SUIT NO. 817 OF 2004**

Harish Sinh M. Vagela

...Applicant/Plaintiff

In the matter between:

Mrs. Sayed Unnisa Begum & Ors.

...Plaintiffs

Vs.

Jameel Ahmed Hussain & Ors.

...Defendants

Mr. Rahul R. Singh for the Plaintiffs

Mr. Jitendra Vasudev Dave for the Applicant in CHS. No.627/2014

Mr. Navin Parekh i/b. Hetal Patel for the Defendant Nos. 1 to 4 & 6

CORAM : MRS. ROSHAN DALVI, J.

DATED : 13TH AUGUST, 2015

ORDER:

1. The applicant is proposed to be plaintiff No.7 under Order 1 Rule 1 and Order 1 Rule 10 of the CPC. The applicant claims as the present owner of the suit property. The applicant claims legal entry in the suit property and seeks to prosecute the suit against the defendants. The applicant's right as the owner must be shown from documentary evidence. Each of such documents is for a property worth more than Rs.100/-. Hence the documents must be registered to be relied upon by the applicant. The applicant has relied upon articles of agreement dated 16th June, 2004, the sale deed dated 6th

March, 2006, another agreement of sale dated 29th April, 2011, yet another agreement dated 26th May, 2010, the irrevocable power of attorney dated 2nd April, 2010 and an affidavit-cum-declaration dated 2nd April 2010. None of these documents except the power of attorney is registered. All of these documents, including the power of attorney are on insufficiently stamped papers. These are copies executed before the Notary and on which a mere stamp of the Chief Judicial Magistrate without any date is put. Under none of the such documents the applicant can acquire ownership.

2. The applicant, therefore, cannot claim as an owner. On this seminal ground the applicant cannot be joined as a party plaintiff to be entitled to prosecute the suit.
3. Besides this, the applicant has not paid any Court fees to be a party plaintiff.
4. Counsel on behalf of the applicant drew the Court's attention to number of judgments under Order 1 Rule 10 of the CPC specially for considering the impleadment of a person as a party to the suit. The parameters of such application are essentially set out in the judgment in the case of **Vidur Impex & Traders Pvt. Ltd. & Ors. Vs. Tosh Apartments Pvt. Ltd. & Ors. With Bhagwati Developers Pvt. Ltd. Vs. Tosh Apartments Pvt. Ltd. & Ors. AIR 2012 S.C. 2925**, which are

followed in the case of **Gotan Lime Stone Khanij Udyog Pvt. Ltd. Vs. The State of Rajasthan & Ors.** in SB Civil Writ Petition No. 9669 of 2014 dated 28th January, 2015, High Court of Rajasthan at Jodhpur. The right which the party claims which is to be considered is mentioned in the case of **Basant Kumar Soni Vs. Mukund Das Soni & Ors.** AIR 2011(NOC) 103(A.P) and the claim of a owner or a party in possession is shown in the case of **Amar Nath Shroff Vs. Smt. Savitri Singh & Ors.** 2012(1) CCC 631 (All).

5. Counsel on behalf of the applicant argued that the dispute between the parties cannot be considered by the Court at the stage of considering whether or not such party must be made a party to the suit. Indeed that is correct. However without considering the dispute raised by any other party, the entitlement in law of a party claiming to be the owner must be seen at the inception itself. Registration of the documents of sale / purchase is the fundamental requirement, the absence of which would disentitle that party to claim the relief even if there is no dispute raised by the other party. That aspect must be considered by the Court.
6. Counsel on behalf of the applicant specifically relied upon the case of **Lt. Col. Atul Mani Chopta Vs. Lt. Col. Manu Bhalla & Ors.** 2014(3) CCC 199 (Del.) to show the Court that even the effect of non-registration of the

documents cannot be considered at such stage and would be determined in the trial. That was the case of seeking possession and damages. The reliance upon the document of title would be only for a collateral purpose. Hence in such a case even the non-registration need not be seen. When however the applicant claims as an owner he would require to produce the document of title to show his basic claim of ownership which is the main purpose of prosecuting a civil action; it would not be a collateral purpose. Such a document must, therefore, be registered and it is the bounden duty of the Court to see whether it is registered and not accept the case at the inception itself, if it is not registered. In view of this the other judgments (See in the cases of (1) **Uma Gupta Vs. Mahesh Kumar Prahladka** 2004 Law Suit (Cal) 564, (2) **Jayeshkumar Chhakaddas Shah Vs. Gordhanji S/o. Mafaji Motiji Thakor & Ors.** 2009(2) G.L.H.420, (3) **Molly Ajithkumar Vs. Vimala Sasidharan & Anr.** AIR 2012 KERALA 87, (4) **Gurmukh Singh & Ors. Vs. Janmeja Singh & Ors.** 2012(1) CCC 554 (P&H), (5) **Shri Pratap Singh Vs. Mr. Rahul Gupta & Ors.** Delhi High Court, Judgment dated 5th February, 2013, (6) **Baluram Vs. P. Chellathangam & Ors.** 2014STPL(Web)829 SC (SC)(DB) and **Anil C. Gandhi, Sole Proprietor of M/s. Ashapura Developers & Ors. Vs. Manoharlal Kishorilal Gupta HUF & Ors.** In Chamber Summons (L). No. 228 of 2014 in Suit No.3463 of 1987 by Justice S.J. Kathawalla dated 31st October, 2014) relied

upon by the applicant need not be considered.

7. The case of the applicant of purchase of the property cannot be seen. Hence the applicant cannot be impleaded as a party to the suit, whether as the plaintiff or even as the defendant.
8. The chamber summons is wholly misconceived and is accordingly dismissed.

(ROSHAN DALVI, J.)