

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****CHAMBER SUMMONS NO. 1074 OF 2014****IN****SUIT NO. 2012 OF 2009****ALONG WITH****NOTICE OF MOTION NO. 2910 OF 2009****AND****NOTICE OF MOTION NO. 1345 OF 2014**

Shri Ram Nagar Trust No.1 & Anr.

...Plaintiffs / Applicants

vs.

Mehtab Liaq Sheikh & Ors.

...Defendants

Mr.P.K. Dhakephalkar, Senior Advocate with Mr.Shyam Kapadia i/b. Crawford Bayley & Co. for Plaintiffs.

Mr.G.S. Godbole, Senior Advocate with Mr.Vishal Kanade & Ms.Gargi Bhagwat i/b. Divekar Bhagwat & Co. for Defendant No.1.

CORAM : S.C. GUPTE, J.**7 DECEMBER 2015****P.C. :**

This chamber summons seeks to amend the plaint in terms of the schedule annexed to the chamber summons. Originally, the suit was filed in respect of a piece or parcel of land admeasuring 1125 sq.mtrs. forming part of CTS No.190A/1 (part), Village Majas, Taluka Andheri. It was the Plaintiffs' case that this property was owned by the Plaintiffs and that Defendant No.1 had sought to illegally encroach upon the same.

2 In pursuance of an order passed by this Court, by consent of parties, on 2 March 2009, a joint survey of the encroached property was ordered to be conducted by the District Superintendent of Land Records. That survey was conducted and a report dated 6 April 2009 was presented to the Court. The report revealed that there was overlapping of the properties respectively claimed

by the parties only to the extent of 321 sq.mtrs of CTS No.190A/1. The report also found that there was overlapping to the extent of two portions of land of 254.9 sq.mtrs. and 589.9 sq.mtrs. forming part of different pieces or parcels of land, which according to the Plaintiffs, are also owned by the Plaintiffs. As a result of this realisation, the Plaintiffs seek to amend the plaint so as to include these two other portions of occupied land within the ambit of the suit.

3 The question purely pertains to the identity of the suit property, which the Plaintiffs claim to have been encroached upon by Defendant No.1. The Plaintiffs, after the survey report is made available, now want to clarify that Defendant No.1 also has illegally and unlawfully occupied two other portions of the property of the Plaintiffs (though forming part of other pieces or parcels of land). The amendment sought, accordingly, seeks to clarify the exact location or identity of the suit property. These amendments are necessary for determination of the real issue in controversy between the parties.

4 The objection of Defendant No.1 that the property did not originally form part of the suit property, has no merit. The suit was in respect of the Plaintiffs' land, which was purportedly encroached upon by Defendant No.1. After a survey report was prepared of the encroached land in pursuance of an order passed by this Court, by consent of parties, the Plaintiffs have realised that apart from the overlapping portion of 321 sq.mtrs. forming part of CTS 190A/1, there are two other portions of land, admeasuring in the aggregate of 844.8 sq.mtrs, which are in occupation of Defendant No.1, making up for the total area of the Plaintiffs' property said to be in unauthorised occupation of Defendant No.1 and for which the present suit is filed.

5 The chamber summons is, accordingly, made absolute in terms of prayer clauses (a) and (b). The amendment to be carried out within a period of two weeks from today. The amended copy of the plaint to be served on the Advocates' of Defendant No.1.

6 It is clarified that the merits of the controversy, namely, whether or

not Defendant No.1 has actually encroached upon the two additional pieces or parcels of land mentioned above, are not considered by this Court whilst passing this order. It is also clarified that the question as to whether the ad-interim order passed by this Court in Notice of Motion No.2910 of 2009 applies to the two additional pieces or parcels of land included within the suit property in terms of the present order as well as the question of the alleged ownership of the Plaintiffs of these additional pieces or parcels of land, is not concluded in any way by this order and rights and contentions of the parties in that behalf are kept open. The Plaintiffs are permitted to amend the schedule of the chamber summons in terms of the schedule annexed to the additional affidavit dated 22 September 2014.

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The motions to stand over to 15 December 2015.

(S.C. Gupte, J.)