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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1102 OF 2014

IN

SUIT NO.1885 OF 2009

Floyd Alfred D'Mello & Anr. ...Applicants

IN THE MATTER BETWEEN

Kashiram Ambre & 13 Others ...Plaintiffs

vs

Reatox Guru Developers Pvt. Ltd. & Anr. ...Defendants.

And

Floyd Alfred D'mello & Anr. ...Respondents

WITH

CHAMBER SUMMONS NO.1103 OF 2014

IN

SUIT NO.1885 OF 2009

Prem Amirchand Devidayal ...Applicant

IN THE MATTER BETWEEN

Kashiram Ambre & 13 Others ...Plaintiffs

vs

Reatox Guru Developers Pvt. Ltd. & Anr. ...Defendants.

And

Prem Amirchand Devidayal ...Respondent

.....

Mr. Vivek Dube, i/b. A.K. Upadhyay, for the Applicant.

Mr. R.D. Mishra, for the Plaintiff.

Ms. Radhika Samant, i/b. Pradeep Havnur, for Defendant No.1.

Ms. Pratibha C. Redkar, h/f. Ms. Madhuri Gaikwad, for Defendant No.2.

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CORAM : S.C. GUPTE, J.

DATED : NOVEMBER, 17, 2015

P.C. :

. This Chamber Summons, which is filed by third party Applicants, seeks impleadment to the suit. The application is on the footing that the Applicants are joint owners of the suit property along with Defendant No.2. The Plaintiffs have filed the present suit claiming to be owners and occupants of structures on the suit property. Defendant No.1 is a builder and developer who claims to have purchased the suit property from Defendant No.2, alleged to be the sole owner thereof.

2. The Plaintiffs' case in the plaint is that one Alfred Julius D'mello, who was the father of Defendant No.2, was the owner of the suit property. Some time in 1979, the deceased Alfred, under an agreement for sale, allowed some individuals to develop the suit property. These developers developed the suit property and constructed structures thereon and allowed the Plaintiffs to occupy the same. The Plaintiffs claims to have become owners of the respective premises and the land thereunder. It is the Plaintiffs' case that the occupiers of the premises formed a society - Sai Nagar Cooperative Housing Society, in whose name municipal taxes and assessment records in respect of the suit property are issued. It is the Plaintiffs' case that Defendant No.1, who claims to be a developer of the suit property and who claims to have a conveyance of the suit property from Defendant No.2, has no right to the property. The Plaintiffs pray for a declaration that the deed of conveyance purportedly executed between Defendant Nos. 1 and 2 in respect of the suit property is illegal, null and void. The Plaintiffs also pray for cancellation of the deed and a permanent injunction against Defendant No.1 from dispossessing the Plaintiffs or

alienating or encumbering the suit property. The present Chamber Summons is on the footing that Defendant No.2 is only a part owner in respect of the suit property and that the suit property is owned by the Applicants jointly with Defendant No.2. The Applicants seek a joinder on that basis.

3. As held by the Supreme Court in the case of **Bharat Karsondas Thakkar vs. M/s. Kiran Construction Co.**¹, a third party claimant, who claims adversely to the defendant, has no locus to be impleaded to a suit between the plaintiff and the defendant, even if that suit be a suit in respect of the property in which the third party Applicant claims a right. There is no merit in the Chamber Summons. The Chamber Summons is dismissed. No order as to costs.

4. The other Chamber Summons, namely, Chamber Summons No.1103 of 2014, is filed by a third party Applicant, who claims to be a lessee in respect of the part of the suit property. It is the case of the Applicant that the predecessors-in-title of Defendant No.2 created this lease in favour of the Applicant's mother and, upon her death, the Applicant is entitled to the lease. Again here, the Applicant claims adversely to the Defendants. For the same reasons as are stated in the order on Chamber Summons No.1102 of 2014, there is no merit in this Chamber Summons. The Chamber Summons is, accordingly, dismissed. There shall be no order as to costs.

(S.C. GUPTE, J.)

¹ Appeal (Civil) 2573/18 dtd. 9 April 2008