

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

**CHAMBER SUMMONS NO.171 OF 2016
IN
SUIT NO.211 OF 2013**

1. Mr.Rashkendera Sharma)
2. Mrs.Babita Rashkender Sharma)....Applicants

IN THE MATTER BETWEEN :

Soumitra Kumar Dutt & Dipanwita DuttPlaintiffs

V/s.

Daljitsingh Z.Naib & Ors.Defendants

And

Paradise Co-operative Society Ltd.Prop.defendant

WITH

NOTICE OF MOTION NO.530/2013

NOTICE OF MOTION NO.1423/2016

Mr.Sharan Jagtiani a/w Mr.Madhav Kanoria i/by Khaitan & Co. for plaintiffs.

Mr.Shalabh K.Krishnana for defendant nos.1 & 2.

Ms.Pinaz Contractor for defendant nos.3 & 4 and for applicants in chamber summons.

Mr.Karuvelil Mathai John for respondent in chamber summons.

CORAM : K.R.SHRIRAM,J

DATE : 20.12.2016

P.C.:-

1 This chamber summons is taken out by defendant nos.3 & 4 to add respondent as party defendant to the suit.

2 The suit is filed for specific performance of a

Memorandum of Understanding dated 5.12.2011 entered into between the plaintiffs and the defendant nos.1 & 2. It is the case of the plaintiffs that after the Memorandum of Understanding was entered into between the plaintiffs and defendant nos.1 & 2, the defendant nos.1 & 2 have sold the suit flat to defendant nos.3 & 4 in breach of the Memorandum of Understanding. It is the case of the defendant nos.3 & 4 that they were not aware of the said Memorandum of Understanding and in any case their agreement was registered. We are not going into the merits of the case but question is whether the respondent is a proper and necessary party to the suit for effectively disposing of the suit.

3 The plaintiffs strongly opposes the chamber summons, so also the respondent. According to the plaintiffs and the respondent, the respondent is not a proper and necessary party to dispose of the suit. The counsel for the respondent states that the plaintiff at the relevant time was the Chairman of the society and now he is not even in the managing committee. The counsel for the applicants submits that the respondent is not co-operating with the applicants and therefore, the respondent should be added as defendant to the suit.

4 In my view that cannot be a basis for adding a party to the

suit as a defendant. Order 1 Rule 10(2) of the Code of Civil Procedure 1908, reads as under :-

“Court may strike out or add parties- *The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.”*

5 The dispute between the plaintiffs and the defendants is for specific performance of the Memorandum of Understanding entered into between the plaintiffs and defendant nos.1 & 2. The respondent has nothing to do with that dispute. Just because defendant no.3 and defendant no.4 feel that the respondent is not co-operating can't make the respondent a proper and necessary party. In my view, the respondent is not a proper and necessary party to effectually and completely adjudicate upon and settle all questions involved in the suit. Therefore, chamber summons is dismissed.

6 The plaintiffs have filed additional affidavit in support of the Notice of Motion No.530 of 2013 and should defendant nos.3 & 4 wish to file a response to the same, registry to accept the same. The counsel for defendant nos.1 & 2 states that they have not been served copy of the additional affidavit. Mr.Jagtiani for plaintiffs states

that the copy will be served during the course of today. Should defendant nos.1 & 2 wish to file response to the same, the same to be filed and copy served within two weeks.

Both the Notices of Motion be listed for hearing on 2.2.2017.

(K.R.SHRIRAM,J)