

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**CHAMBER SUMMONS NO. 437 OF 2015**  
**IN**  
**SUIT NO. 1426 OF 1996**

Smt. Sakubai w/o Shankar Ghatyal & Ors                      ...Plaintiffs  
**Versus**  
The National & Grindlays Bank Ltd & Ors                      ...Defendants

Mr. Vinod Pandey, a/w Mr. Paresh More, i/b S. Pandey, for  
the Plaintiffs.

Ms. Dhanashree Gaikawai, i/b Bilawala & Co., for  
Defendant No.1.

Mr. Bhupendra Singh, for Defendants Nos. 2, 2(a) to 2(f) & 5  
to 5(f).

Mr. H.B. Takke, AGP for Defendants Nos. 3 & 4.

**CORAM:** K.K. TATED, J

**DATED:** 6th September 2017

**PC:-**

1. Heard learned Counsel for the parties. Advocate Mr. Singh for Defendants Nos. 2, 2(a) to 2(f) & 5 to 5(f) filed their reply dated 5th September, 2017. Same is taken on record.

2. This Chamber Summons is preferred by the Plaintiffs for carrying out amendment in plaint in view of subsequent developments.

3. In the present proceedings initially Defendant No.1 National and Grindlays Bank Ltd. filed Suit No.54 of 1967 before this Court with following prayers:

(a) That this Hon'ble Court be pleased to declare :

(i) that the purported Consent Decree dated 15th January, 1970 – Ex.'K' hereto passed in High Court Suit No.54 of 1967 was and is null and void and the same is not binding on the Plaintiffs or any person claiming through or under him;

(ii) that the said decree is null and void; and not enforceable against the Plaintiffs;

(iii) that the Plaintiffs is the owner of and is entitled to the possession, use and enjoyment – to the exclusion of the Defendant, of the said properties described in Ex. 'A' hereto and that the Defendant have not right, title, interest or claim of any nature whatsoever so as to interfere or obstruct the possession, use and enjoyment of the said property and each and every part thereof by the Plaintiffs.

(b) That this Hon'ble Court be pleased to order and decree that the said Consent Decree dated 15th January, 1970 – Ex. 'K' hereto, be cancelled and all steps taken pursuant

thereto by any of the Defendants or anybody claiming through by or under them or acting at their instance are null and void and the Defendants be ordered the restoration of status quo ante in respect of the Plaintiff's right, title and interest in the properties described in Ex. 'A' hereto;

- (c) that by a permanent order and injunction of this Hon'ble Court, the Defendants by themselves, their servants, agents, officers and subordinates be restrained from in any manner interfering with, obstructing or preventing or intermeddling with the Plaintiff's exclusive possession, use, enjoyment, development and constructing and exploitation of the properties described in Ex. 'A' hereto and/or claiming any right, title or interest therein in any manner whatsoever;
- (d) that by a mandatory order and direction of this Hon'ble Court, Defendants Nos.3 and 4 be ordered and directed to forthwith restore the structures on properties described in Ex. 'A' hereto to status quo ante before their demolition and/or affecting construction then standing thereon; or
- (e) In the alternative to the prayer (d) above, the Plaintiff be allowed to restore the status quo

ante of the said properties as they existed prior to wrongful action of Defendants Nos.3 and 4 subject to the Plaintiff's right to recover from Defendants Nos.3 and 4 the costs, charges and expenses and that may be incurred by him for such restoration of status quo as also the compensation in respect thereof;

- (f) that by an order and decree of this Hon'ble Court, Defendants Nos.1 and 2 be ordered and decreed to pay to this Plaintiffs a sum of Rs.50 lakhs as an by way of damages for wrongful actions and also to pay to the Plaintiff all the income and profits derived by them from and out of the said properties and interest on all the aforesaid amounts of 21% per annum from the date of institution of suit till payment or realisation;
- (g) that pending the hearing and final disposal of the suit, the Defendants by themselves, their servants and agents be restrained by an order and injunction of this Hon'ble Court from in any manner entering upon or remaining on the properties described in Ex. 'A' hereto or any part thereof and they be also restrained from in anyway disturbing the possession, use and enjoyment as also development,

exploitation and/or construction on the said properties or any part thereof by the Plaintiff or any persons claiming through or under him;

- (h) that pending the hearing and final disposal of the suit, by a mandatory order and direction of this Hon'ble Court, Defendants Nos.3 and 4 be ordered and directed to restore status quo ante with regard to the structures which existed prior to the said wrongful act of demolition by Defendants Nos.3 and 4; or in the alternative, the Plaintiffs be allowed to restore the said status quo ante initially at his costs, subject to recovery of costs, charges and expenses that may be incurred or spent by him for the said purpose;
- (i) for ad-interim reliefs in terms of prayers (g) and (h) above;
- (j) that the Defendants be ordered to pay the Plaintiff's costs including costs under Order XXA of the Code of Civil Procedure, 1908.
- (k) Such further orders be passed, directions be given and inquiries be made as this Hon'ble Court may deem fit in the nature and circumstances of the case."

4. In that suit this Court passed consent decree dated

13th April, 1967 sealed on 15th January, 1970. Thereafter the Plaintiff filed the present Suit on 16th April, 1986 for setting aside the consent decree dated 15th January, 1970 (passed on 13th April, 1967). As per consent decree defendant in that Suit Manglya Ladkya undertaken to hand over possession of land bearing Survey No.234(Part), 228 Hissa No.1 (Part), 239 (Part) and 225 (Part) to the Plaintiff. The National and Grindlays Bank Ltd.

5. In the present Suit on the basis of pleadings of both parties this Court framed issues on 9th January 2015 which are as under:

- “(1) Whether the plaintiffs were in possession, use and occupation of the suit property ?
- (2) Whether the plaintiffs handed over any portion of the suit property to defendant Nos.3 and 4 ?
- (3) Whether the suit property is a forest land ?
- (4) Whether the Consent Decree dated 15th January, 1970 is null and void and not binding on the plaintiffs ?
- (5) Whether the demolition of the suit structures pending the suit was legal and property ?
- (6) Whether defendant Nos.3 and 4 were liable to restore the structures of the plaintiffs on the suit properties ?

(7) What relief, if any, are the plaintiffs entitled to ?”

6. Thereafter this Court by order dated 30th January, 2015 framed further three issues which are as under:

“(8) Whether the suit is maintainable in view of the bar created by Order 23 Rule 3A of the CPC ?

(9) Whether the suit is bad for non-joinder of necessary parties ?

(10) Whether the suit is barred by the law of limitation ?”

This Court by order dated 30th January, 2015 held that these three issues to be tried as preliminary issues. Liberty granted by this Court to file Affidavit of evidence and documents if any. Pursuant to the said liberty, the Plaintiffs filed their Affidavit of evidence dated 18th March, 2015.

7. Plaintiffs preferred the present Chamber Summons on 23rd January, 2015 for carrying out amendment in plaint.

8. The learned Counsel Mr. Pandey appearing on behalf of the Plaintiffs submits that in view of subsequent development it is necessary and in the interest of justice, the Plaintiffs may be allowed to carry out amendment in the plaint. He submits that though the suit land was earlier shown as forest land, on their investigation and after taking out certain documents from the Revenue Department they

learnt that the suit land is already deleted from forest land. He further submits that they also collected several other documents to show that the Plaintiffs acquired title by adverse possession of the suit land. He further submits that all these facts are required to be placed on record in the interest of justice. Hence they preferred present Chamber Summons.

9. The learned Counsel for the Plaintiffs submits that they already made averments in the plaint about adverse possession of suit land. In support of this contention the learned Counsel for the Plaintiffs relied on portion of paragraph 14 of the plaint which read thus:

“The Plaintiff says and submits that if that be so, and it should be treated so in respectful submission of the Plaintiff, then and in that view of the matter, the Plaintiff says and submits that in any view of the matter with regard to the said two plots bearing Survey No.239 part admeasuring 13 gunthas and 4 annas and 3 acres and 16 gunthas and 12 annas, as also the property bearing Survey No.225 Part, the Plaintiff has become owner by adverse possession. The Plaintiff says and submits that in respect of the rest of the said properties bearing Survey No.234 (C.T.S. No.33) and Survey No.228 – Hissa No.1 (C.T.S.

No.51) admittedly, the said property even as of date are standing in the 7/12 Extract in the name of the Plaintiff. Nowhere in the Revenue Records either the name of the Forest Department/State Government or any of the Defendants Nos.1 and 2 appears. The Plaintiff says and submits that with regard to all the said properties, admittedly taken into consideration, the averments made by Defendants No.1 and 2 themselves, the Plaintiff was and is continuing to be in possession thereof. None of the Defendants have any right of any justification in any way interfering with or obstructing the exclusive possession, use and enjoyment of the said property by the Plaintiff of which, in respectful submission of the Plaintiff, he was and is the owner based on his title and in any event based on title by prescription i.e. by adverse possession. The Plaintiff submits that he alone is entitled to exclusive possession, use and enjoyment of the said properties and none of the Defendants have any right to prevent or obstruct or interfere with the use or enjoyment of the said property by the Plaintiff.”

On the basis of these submissions the learned Counsel for the Plaintiff submits that this Hon’ble Court be pleased to

allow the present Chamber Summons. He submits that if Chamber Summons is not allowed, irreparable loss will cause to the Plaintiffs.

**10.** On the other hand, the learned Counsel appearing on behalf of the Defendants vehemently opposed the present Chamber Summons.

**11.** The learned Counsel Mr. Singh appearing on behalf of Defendant Nos.2, 2(a) to 2(f) and 5 to 5(f) submits that in view of the additional issues framed by this Court on 30th January, 2015, present Chamber Summons is not maintainable. He submits that the preliminary issue is about the maintainability of suit as it is filed by the Plaintiff. He further submits that in the present proceeding trial has already began. He submits that the issues were framed by this Court on 9th January, 2015 and 30th January, 2015. Thereafter the Plaintiffs filed their Affidavit in lieu of evidence dated 18th March, 2015. He submits that in view of this subsequent development Chamber Summons for amendment of plaint is not maintainable.

**12.** The learned Counsel for the Defendant Nos.2, 2(a) to 2(f) and 5 to 5(f) submits that by way of this Chamber Summons Applicants/Plaintiffs is seeking to place on record the additional evidence subsequent to the consent decree dated 15th January, 1970 in Suit No.54 of 1967. He submits that the main prayer of the Plaintiffs in the present suit is to set aside the consent decree dated 15th January,

1970. Therefore there is no question on the part of the Applicants/Plaintiffs to place on record and to rely on subsequent documents or facts. On this ground also the Chamber Summons preferred by the Plaintiffs is required to be dismissed with costs.

**13.** I heard both sides at length. Bare reading of the plaint filed by the Plaintiffs shows that the main prayer in the present suit is to set aside the consent decree dated 15th January, 1970 (13th April, 1967) in Suit No.54 of 1967. Even the pleadings in the plaint is only for setting aside the consent decree and claiming ownership on the basis of adverse possession. It is to be noted that issues are required to be decided on the basis of facts as stated by the Plaintiffs in the plaint. By way of amendment, Plaintiffs are seeking to place on record the subsequent evidence and documents which is not permissible. In any way, in the present proceedings issues are already framed by this Court on 9th January, 2015 and additional issues on 30th January, 2015. By order dated 30th January, 2015 this Court framed preliminary issues including “whether the suit as it is filed by the Plaintiffs is maintainable.” Apart from that the Plaintiffs already filed Affidavit of evidence dated 18th March, 2015.

**14.** Considering all these facts I do not find any reason to entertain the present Chamber Summons as it is filed by the Plaintiffs.

15. Hence the Chamber Summons stands rejected with no order as to costs.

**[K. K. TATED, J.]**