

SHEPHALI

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 354 OF 2012
IN
SUIT NO. 3106 OF 1984**

Deo Deveshwar CHS Ltd	...Plaintiffs
<i>Versus</i>	
Durgabai Narayan Deo & Ors	...Defendants

Ms Saloni Ghule, i/b Markand Gandhi & Co, for the Applicant.

**CORAM: G.S. PATEL, J
DATED: 20th February 2017**

PC:-

1. The Suit was originally filed for specific performance of the agreement dated 14th November 1970 and a further agreement dated 22nd January 1980, Exhibit "B" and Exhibit "D" respectively to the plaint. On 6th September 1985, Consent Terms were filed and a consent decree taken before SC Pratap J. The decree was actually drawn up. It seems that at some point thereafter the papers in this matter went missing. When the Plaintiffs attempted to execute the decree, necessarily involving applications for changes and mutations in land records, the Plaintiffs found that there was an error in the description of the suit property in the schedule or exhibit annexed to the plaint. When the Plaintiff sought to have the plaint amended and

the drawn up decree amended in consequence, they were confronted with the situation of the papers being missing.

2. In the meantime, to make the necessary amendments (and which also involved the deletion of the name of Defendant No. 1(a) from the title), the Plaintiffs filed Chamber Summons No. 903 of 2003. SC Dharmadhikari J disposed of this Chamber Summons on 21st June 2004 noting in paragraph 2 that the application filed was within the ambit of Section 152 of the Code of Civil Procedure 1908. He allowed the Chamber Summons.

3. It seems that since then the Plaintiffs have been unable to implement that order and carry out the amendments that SC Dharmadhikari J permitted simply because the file was only partly reconstructed on the basis of the papers the Plaintiffs held, but which themselves were not complete.

4. The prayer before me today is now for leave to reconstruct the papers and proceedings; to delete the names of Defendant Nos. 1(a) and 1(c) to 1(e); to bring the heirs and legal representatives of Defendants Nos. 2 to 4 and 7 to 9 on record; to extend the time for compliance with Dharmadhikari J's order; and for issuance of a fresh or duplicate decree dated 6th September 1985 in terms of the original decree.

5. The Chamber Summons has been served. There is no reply. There is a delay of seven years and 88 days in implementing SC Dharmadhikari J's order and a delay of nine years and 111 days in

filing this Chamber Summons. But I will have to condone all this delay for the simple reason that much, if not all, of it is attributable to lapses and errors in the management of Court records. Justice and equity also demand this. I note with a great deal of consternation that this Chamber Summons itself has been dormant on the docket of this Court since it was filed almost six years ago on 18th January 2011.

6. I will make the Chamber Summons absolute in terms of prayer clauses (a) to (f).

7. The Registry will act on an authenticated copy of this order and order in the following sequence:

- (a) The record will be reconstructed on the basis of the papers available with the Plaintiff and such papers as are with the Registry.
- (b) It will first issue a certified copy of the order dated 21st June 2004 passed by SC Dharmadhikari J;
- (c) The amendments will be carried out by the Plaintiff without need of reverification on or before 17th March 2017;
- (d) There is no question of service thereafter. Any of the existing Defendants are at liberty to apply for and

obtain an ordinary or certified copy of the amended
plaint thereafter.

- (e) The Registry will then issue a fresh decree or duplicate decree in terms of the Consent Terms dated 6th September 1985 but incorporating the present amendment as to the description of the property;
- (f) On the action of the Plaintiff they will be at liberty to submit the original drawn up decree that is with them for amendment in terms of this order and upon such application being made, the Registry will issue a duplicate or corrected decree incorporating these changes.

- 8. All concerned to act on an authenticated copy of this order.
- 9. The Chamber Summons is disposed of in these terms with no order as to costs.
- 10. I must compliment Ms Ghule for the applicant for the compact precision and accuracy with which she presented her case. It is indeed a privilege, and an increasingly rare one these days, to see such thorough and meticulous preparation.

(G. S. PATEL, J.)