

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
CHAMBER SUMMONS NO.103 OF 2017
IN
MISCELLANEOUS PETITION NO.42 OF 2014
IN
TESTAMENTARY PETITION NO.1115 OF 2010

Amit Vasant Kenia and others	...	Applicants
In the matter Between		
Arunkumar J. Patel and others	...	Petitioners
Vs.		
Dinesh Kumar Ramji	...	Respondent

Mr. Karl Tamboly a/w. Mr. Thomas James i/b. Auris Legal for Applicants.
Mr. Chetan Kapadia a/w. Ms Deepa Poluja and Mr. Srividya Venkat for
Petitioners in TP No.1115 of 2010 and for Respondent in MPT No.42 of 2014.
Mr. Navin R. Tiwari for Petitioner in MPT No.42 of 2014.

CORAM : R. G. KETKAR, J.
DATE : AUGUST 18, 2017

P.C. :

Heard Mr. Tamboly, learned Counsel for the applicants,
Mr. Kapadia, learned Counsel for petitioners in TP No.1115 of 2010 and
Mr. Tiwari, learned Counsel for petitioner in MPT No.42 of 2014 at
length.

2. By this Chamber Summons, applicants have prayed for directing
the petitioners to implead applicants as party respondents in
Miscellaneous Petition No.42 of 2014.

3. Mr. Tamboly submits that at present, he is not pressing prayer
clause (b) of the Chamber Summons.

4. In support of this Chamber Summons, Mr. Tamboly has invited
my attention to the Schedule of properties at exhibit-H, pages 72 to 77.

He submitted that by Deed of Conveyance dated 28.03.2012 read with Deed of Rectification dated 27.04.2013, applicants have purchased area admeasuring 609.03 sq.mtrs., bearing formerly survey No.221, plot No.8 and now non agricultural survey No.243/3 and CTS Nos.354/22 to 354/40 of the Revenue Village, Kurla Part 4, Taluka Kurla and District Mumbai Suburban. He submitted that by Deed of Assignment of Lease dated 28.03.2012 read along with Deed of Rectification dated 27.08.2013, leasehold rights are assigned in favour of the applicants in respect of the area admeasuring 1763.16 sq.mtrs. bearing formerly Survey No.221, Plot No.8 and now non-agricultural Survey No.282 Hissa No.1 (part) and CTS No.354, 354/1 to 21 and 354/41 to 50 of the Revenue Village Kurla Part 4, Taluka Kurla and District Mumbai Suburban. By Deed of Assignment of Lease dated 28.03.2012, leasehold rights are assigned in favour of the applicants in respect of East side near the lavatory about 45 feet, on the West side about 28 feet, on the South side about 131'9 and on the North side about 114'9 and bearing formerly Survey No.221 and Municipal No.153A but now non-agricultural Survey No.248, among other properties.

5. On the other hand, Mr. Tiwari strenuously contended that the documents relied by the applicants are forged documents and no right is created in favour of the applicants. He has invited my attention to the letter dated 19.06.2012 addressed by applicant No.1 to Advocate J. S. Raymond on behalf of Jagdish Prasad Ramji (petitioner in Miscellaneous Petition No.42 of 2014) and in particular paragraph 2 thereof. In paragraph 2, applicant No.1 contended that he is not concerned with any *inter se* disputes between Jagdish Prasad Ramji and his brother Dinesh Kumar Ramji. He submitted that interim order was passed in Miscellaneous Petition No.42 of 2014 in the year 2014 and the applicants did not move this Court. He submitted that while considering

the Miscellaneous Petition No.42 of 2014, prayer clause (b) cannot be considered by this Court.

6. Mr. Kapadia submitted that after order dated 02.05.2011 passed in Testamentary Petition No.1115 of 2010, interest is created in favour of the applicants as there was no impediment. He submitted that petitioner in Miscellaneous Petition No.42 of 2014 had filed consent affidavit in Testamentary Petition No.1115 of 2010.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Prima facie, the applicants have claimed interest on the basis of the registered instruments, referred hereinabove. In view thereof, prayer clause (a) of Chamber Summons is required to be granted. As far as prayer clause (b) is concerned, the same will be considered at the time of hearing of Miscellaneous Petition No.42 of 2014. Chamber Summons is made absolute in terms of prayer clause (a) with no order as to costs.

8. List the Miscellaneous Petition No.42 of 2014 on 24.08.2017.

(R. G. KETKAR, J.)

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