

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

**CHAMBER SUMMONS NO. 881 OF 2014
IN
SUIT NO. 396 OF 2006**

M/s. Apex Constructions

.. Applicant

In the matter between :

Adarsh Water Parks and Resorts Pvt. Ltd.

.. Plaintiff

Vs.

Abdul Rashid Abdul Rehman Yusuf & Anr.

.. Defendants

Mr.Abhishek Bhadang i/b Nikhil A. Ranadive for applicant in
CHS/881/2014.

Mr.Chetan R. Shah i/b Rakesh Agarwal for plaintiff.

Mr.Girish Godbole a/w. Mr.Chirag Shah i/b J.J. Shah for defendant no.2.

CORAM : K.R.SHRIRAM, J.

DATE : 21ST/22ND JUNE, 2017

P.C.

1 This chamber summons is taken out by the applicant to be impleaded as party defendant to the suit. Before we proceed further, it should not noted, as submitted by the plaintiff, that defendant no.1 had died in June 2012 and his name is required to be struck off. Since he was only an executor of a Will, question of bringing on record legal heir of defendant no.1 does not arise. Defendant no.2 is a co-executor.

2 It is the case of the applicant that defendant no.1 executed an Agreement for Development dated 21st March 2004 in favour of the applicant appointing the applicant as Developer of the suit land with marketable title free from any encumbrances. At that time, one M/s. Ray Constructions who was a tenant in the suit land surrendered its tenancy. It is stated that M/s.Ray Constructions also signed the Development Agreement as confirming party. The said Agreement, according to the applicant, is duly stamped and registered. It is also stated that on 21st March 2004, defendant no.1 executed an irrevocable power of attorney in favour of the nominee of the applicant authorizing him to do and carry out acts, deeds and matters in respect of the suit land. It is stated that the Power of attorney is also registered.

3 The applicant is also relying on consent terms filed in RAD Suit No.216 of 2001 to emphasize its rights. The main document, on which the applicant is replying, is on a Deed of Conveyance executed on 25th April 2012 but registered on 26th June 2012 conveying the land in favour of applicant. A copy of the registration document of the Conveyance Deed is annexed at Exh.'D' to the affidavit in support. If one sees this document, the same has been signed for registration on 26th June 2012 by the Constituted Attorney of defendant no.1. But defendant No.1 expired on 4th June 2012.

Therefore, this document has been registered after the death of defendant No.1 by relying on a Power of Attorney which came to an end after the death of defendant no.1. The fact that, defendant no.1 had died has not even been disclosed while registering the said document and the applicant had relied on a non-existent document to get the Conveyance registered. In view of this conduct, such an applicant should be shown the door. Moreover, there was an order of status-quo passed by this Court on 2nd March 2006. Therefore, the document, viz., Conveyance Deed itself is illegal.

4 The Supreme Court in case of ***Ramesh Chandra Pattnaik Vs. Pushpendra Kumari & Ors.***¹, has held that a subsequent purchaser of immovable property is not at all a necessary party for determining the question in a suit for specific performance.

5 In view of the above facts, presence of the applicant is not required for effective adjudication of the dispute between the plaintiff and the defendants. The applicant is neither a necessary nor a proper party to the suit.

1 (2008) 10 SCC 708

6 The chamber summons filed by the applicant is, therefore, dismissed with costs in the sum of Rs.50,000/-. This amount to be paid as Rs.25,000/- to the plaintiff and Rs.25,000/- to the defendants.

(K.R. SHRIRAM, J.)