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

CHAMBER SUMMONS NO. 846 OF 2013
IN
SUIT NO. 535 OF 2013

Souvenier Developers (I) Pvt.Ltd. ...Applicant/Intervener

In the matter between

M/s.Simar Pride Ventures & Ors. …Plaintiffs
vs.
Birla Cotsyn (India) Pvt.Ltd. & Ors. ...Defendants

Mr.Sachin Punde for Applicant/Intervener.
Dr.Birendra Saraf with Mr.Simil Purohit, Manoj Agre I/b. G.B. Kedia for Plaintiffs.
Ms.Krishma Shah I/b. Subir Kumar for Defendant No.1.
Mr.Rohaan Cama with Nishit Dhruva and Prakash Shinde and Ambreen Saheed I/b. MDP & Partners for Defendant Nos.2,7,8, 9 to 11.

CORAM : S.C. GUPTE, J.

23 JUNE 2017

P.C. :

Heard learned Counsel for the parties.

2 This chamber summons is taken out by a third party applicant for impleadment to the suit. The suit is between the Plaintiffs, who are agreement purchasers, and Defendant No.1, who is owner of the suit property.

3 It is the case of the Plaintiffs that by an agreement for sale dated 2 April 2012 entered into by and between Defendant No.1 (therein referred to as the “vendor”) and the Plaintiffs (therein referred to as the

"purchasers"), Defendant No.1 agreed to sell the suit property described in the schedule annexed as Exhibit-A to the plaint to the Plaintiffs at or for a consideration of Rs.7 crores and on terms and conditions mentioned therein. It is the Plaintiffs' case that they have paid full consideration under this agreement and have been put in possession of the suit property. The conveyance of the suit property has, however, been withheld on account of want of NOC from Defendant Nos.2 to 12, who hold a security in respect of the suit property.

4 The chamber summons is on the footing that Defendant No.1 has entered into an agreement for sale in favour of the Applicant. This agreement is entered into on 14 May 2012, that is to say, after the suit agreement for sale between the Plaintiffs and Defendant No.1. It is the case of the Applicant that it is entitled to specific performance of this agreement with Defendant No.1. It is submitted that the Applicant has paid a substantial part of the consideration towards this agreement. It is submitted that the Applicant has filed a suit seeking specific performance before the court of Civil Judge, Senior Division, Dhule and has even obtained interim orders in this behalf. On these facts, the Applicant seeks impleadment to the present suit. The Applicant as an agreement purchaser claiming a separate agreement under one of the parties to the suit, is neither a necessary nor a proper party to the present suit. As held by the Supreme Court in the case of **Bharat Karsondas Thakkar vs. Kiran Construction Company**[1], the Applicant is a stranger to the agreement for sale, which is sought to be enforced in the present suit. The Applicant, as such third party, does not come within the ambit of Section 19 of the Specific Relief Act. The Applicant cannot be said to be holding any subsequent title within the meaning of that section. The scope of a suit for specific performance could not be enlarged in

1 **(2008) 13 SCC 658**

this manner. Addition of the Applicant as defendant in the present suit would clearly embarrass the trial of the suit. Anyway, any decree that may be passed in the present suit between the Plaintiffs and Defendant No.1 herein can never bind the Applicant, who has his own remedy, which it even appears to have availed of. Even if there is any declaration or decree granted in the present suit, it is always open to the Applicant to contend in his suit that such consent decree is not binding on him. He may even seek a declaration that such decree is null and void and liable to be quashed.

5 Learned Counsel for the Applicant relies on a judgment of this court in the case of **Nitin Gandhi vs. Dinyar Pheroz Dubash[2].** Relying on this judgment, it is submitted that in a suit for specific performance, whenever a subsequent purchaser is sought to be impleaded, the true test to be applied is, whether the purchaser claims a title under the vendor of the Plaintiff or whether he claims a title independent of or adverse to the title of such vendor. It is submitted that the impleadment is permissible where the party, who is proposed to be joined, claims through the same vendor and under a subsequent agreement. It may be noted that in this particular case, the subsequent purchaser, who was sought to be impleaded, was a purchaser through a deed of assignment under which the original Defendants had transferred their undivided rights in the property in favour of the subsequent purchaser. The agreement for sale of immovable property does not create any interest in the property. In the present case, though the Applicant claims through the Defendant, he does not claim as a person having interest in the property. Therefore, merely as a person, who claims to have a right of specific performance in respect of his agreement with the Defendant, the Applicant cannot be termed either as a necessary or a proper party within the meaning of the law laid down in the case of **Nitin Gandhi**

2 **2015(2) Mh.L.J. 850**

(supra).

6 In the premises, there is no warrant for joinder of the Applicant as a party Defendant to the present suit. The chamber summons is, accordingly, dismissed. No order as to costs.

(S.C. Gupte, J.)