

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

**COMMERCIAL CHAMBER SUMMONS NO. 9 OF 2016
AND
COMMERCIAL CHAMBER SUMMONS NO. 13 OF 2017
IN
COMMERCIAL SUIT NO. 27 OF 2016**

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Prothonotary's orders	Court's or Judge's orders
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Mr. Vishal Kanade I/by. Mohan B. Jadhav for Plaintiff.

Mr. Roshan D'Souza a/w Ms. Priyanka Sheth I/by. J. Nishar & Co. for Defendant No.1.

Mr. P. D. Dalvi I/by. A. A. Kocharekar for Defendant No.2.

CORAM : K. K. TATED, J.

DATE : NOVEMBER 29, 2017

P.C.:

1. Heard learned Counsel for parties.
2. Chamber Summons No. 9 of 2016 is preferred by the Defendant No.1 for revocation of leave under Clause XII of the Letters Patent granted by this Court on 27th June, 2016. For the same relief, Defendant No.2 had preferred the Chamber Summons No. 13 of 2017. As the issue involved in both the Chamber Summons is same, both the Chamber Summons are disposed of by the common order.

3. Both the Counsel for Defendants submits that in the present proceedings Plaintiff had filed Commercial Suit No. 27 of 2016 for specific performance of Memorandum of Understanding dated 29th September, 2011 and writing dated 28th April, 2014 and for possession of the property situated at village Neral, Taluka Karjat, District Raigad being Survey No. 97 area 1 H-00R-0P. Prayers in the plaint are as under :

“(a) That the Hon'ble Court may be pleased to direct the Defendant No.1 to specifically perform the contract by executing registered Sale Deed in Plaintiffs favour in respect of suit property mentioned at Exhibit A to plaint in view of MOU dated 29.9.11 and subsequent writing dt. 28.4.14 executed by Defendant No.1 in Plaintiffs favour, and also direct the Defendant to handover possession of suit property mentioned at Exh.A to the Plaint, to Plaintiff, failing which the officer of this Hon'ble Court may be directed to execute registered Sale Deed in Plaintiffs favour in respect of suit property mentioned at Exh.A to the Plaint;

(b) That the Hon'ble Court may be pleased to declare that the Plaintiff is owner in respect of suit property mentioned at Exhibit A to Plaint;

(c) That the Hon'ble Court may be pleased to declare that the registered agreement dt. 24.2.2012 executed between the Defendant No.1 and 2 in

respect of suit property stands cancelled null and void and same is not binding upon the Plaintiff;

(d) That the Defendant No.1 and 2 be permanently restrained by an order of injunction from selling, transferring and/or creating any third party right in respect of suit property mentioned at Exhibit A to plaint;

(e) In alternate of prayer (a) to (d) of the plaint, that the Hon'ble Court may be direct the Defendant No.1 to pay to Plaintiff sum of Rs. 11,10,00,000/- (Rupees Eleven Crores Ten Lakhs only) (i.e. actual amount paid by Plaintiff to Defendant No.1 Rs. 2,10,00,000/- and damage caused to the Plaintiff of Rs. 9,00,00,000/-] and pass decree for the said sum of Rs. 11,10,00,000/- (Rupees Eleven Crores Ten Lakhs only);

(f) Pending the hearing and final disposal of the suit, Defendant No. 1 and 2 be temporarily restrained by order of injunction restraining them from selling, transferring and/or creating any third party right in respect of suit property mentioned at Exhibit A to plaint;

(g) Pending the hearing and final disposal of the suit that the Hon'ble Court may be pleased to appoint court Receiver High Court, Bombay as Receiver in respect of suit property mentioned at Exhibit A to plaint;

(h) For interim and ad-interim relief in terms of

prayer clause (a) to (f);

(i) For costs of this suit;

(j) For other and further reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstance of this case.”

4. The learned Counsel for Defendants submit that bare reading of the plaint shows that Plaintiff is seeking possession of the land which is situated beyond the territorial jurisdiction of this Court. Both the Counsel for Defendants further submits that even as per prayer clause (b) Plaintiff is seeking declaration that Plaintiff is the owner of the suit property. They further submit that by prayer clause (c), Plaintiff is seeking declaration that registered agreement dated 24th February, 2012 executed between the Defendant Nos. 1 and 2 in respect of the suit property to stand cancel and same is null and void and not binding upon the Plaintiff. Both the Counsel for Defendants submits that by registered agreement dated 24th February, 2012 Defendant No.1 sold the suit property to Defendant No.2 and handed over the vacant and peaceful possession to the Defendant No.2. The said agreement was executed at Neral, Taluka Karjat, District Raigad. Not only that, the same was registered at Karjat itself. In support of this contention, he relies on Exhibit 'H' of the Plaint on Page 47.

5. Both the Counsel for Defendants submit that as per Clause XII of the Letters Patent this Court have no objection to entertain the suit in respect of the land. Clause XII of the Letters Patent read thus :

“ Clause 12 – Original Jurisdiction as to suits –
And We do further ordain that the said High Court of Judicature at Fort William in Bengal [Madras] [Bombay], in the exercise of its ordinary original civil jurisdiction, shall be empowered to receive, try and determine suits of every description if, in the case of suits for land or other immovable property, such land or property shall be situated or in all other cases if the cause of action shall have arisen, either wholly, or, in case the leave of the Court shall have been first obtained, in part, within the local limits of the ordinary original jurisdiction of the said High Court, or if the defendant at the time of the commencement of the suit shall dwell or carry on business, or personally work for gain, within such limits; except that the said High Court shall not have such original jurisdiction in cases falling within the jurisdiction of the Small Cause Court at [Madras], [Bombay], Calcutta, in which the debt or damage or value of the property sued for, does not exceed one hundred rupees.”

6. Both the Counsel for Defendants submit that in the present proceedings Plaintiff is

seeking specific performance of the MOU, cancellation of registered agreement dated 24th February, 2012 which was registered in the registry which is beyond the jurisdiction of this Court and also claiming possession of the suit property. Therefore, this Court has no jurisdiction in view of Clause XII of the Letters Patent.

7. In support of this contention, Counsel for Defendants relies on the judgment of Apex Court in the matter of ***Adcon Electronics Pvt. Ltd. V/s Daulat & Anr., reported in 2001(4) ALL MR 479.*** Both the Counsel submits that in this authority Apex Court held that if the suit is filed with leave under Clause XII of the Letters Patent in respect of the land which is situated beyond the territorial jurisdiction of the High Court of Bombay, then also the suit is not maintainable and leave is required to be recalled. They relies on para nos. 9, 12, 13 and 17 of this authority which read thus :

“9. Thus, it is clear that under Clause 12 of the Letters Patent, the High Court in exercise of its ordinary original jurisdiction will have power to receive, try and determine : (1) suits for land or other immovable property if such property is situated within the local limits of original jurisdiction of the High Court; or (2) all other cases (a) if the cause of action has arisen wholly within the local limits of the ordinary original jurisdiction of the High Court; (b)

if prior leave of the Court has been obtained and the cause of action has arisen in part within the local limits of the ordinary original jurisdiction of the High Court; or (c) if the defendant dwells or carries on business or personally works for gain within such limits.”

“12. In **His Highness Shrimant Maharaj Yashvantrav Holkar of Indore v. Dada Bhai Cursetji Ashburner, 1890 (14) ILR Bom. 353** a Division Bench of the Bombay High Court held that a suit for specific performance would not fall within the meaning of that expression. There the suit was filed for specific performance of an agreement to mortgage certain immovable property. The agreement was made in Bombay between the parties on January, 1883. The Divisional Court held, “it had jurisdiction” and granted decree. On appeal a Division Bench referred to an earlier judgment of that Court in **Yeakoba Balset Kasar v. Rambhaji (1872) (9 Bom HC Rep 13)** which laid down that suit for land was a suit which asked for delivery of land to the plaintiff. The High Court also referred to the view of the Calcutta High Court in the **Delhi and London Bank v. Wordie (1875-1876) ILR I Cal.249 at p. 263** construing that expression to mean “substantially for land” that is for the purpose of acquiring title to, or control over, land”. It also noticed the view of a learned single Judge of the

*Calcutta High Court in **Sreenath Roy v. Cally Doss Ghose (1880) (5) ILR Cal 82** holding that the Court had no jurisdiction to make a decree in a suit for specific performance. The Division Bench of the Bombay High Court held that the suit was within the jurisdiction whether regarded as a suit for specific performance or to enforce equitable mortgage by deposit of title deeds as a Court of equity in England could entertain it.”*

*“13. In **M/s. Moolji Jaitha and Co. v. Khandesh Spinning and Weaving Mills Co. Ltd., AIR 1950 FC 83**, there is divergence of opinion among the learned Judges of five Judge Bench of the Federal Court in regard to the import of the expression “suit for land” chief Justice Kania opined. “Taking the suit as a whole, one has to consider whether it is for the purpose of obtaining a direction for possession or a decision on title to land, or the object of the suit is something different but involves the consideration of the question of title to land indirectly.” Justice Fazl Ali observed, “If I had really felt that I was called upon to decide it, I would have agreed with the line of cases in which it has been held that broadly speaking, the expression “suit for land” covers the following three classes of suits : (1) suits for the determination of title to land; (2) suits for possession of land; and (3) other suits in which the reliefs claimed, if granted, would directly affect*

title to or possession of land.” Justice Patanjali Sastri took the view. “The words in question, besides obviously covering claims for recovery of possession or control of land, are apt to connote also suit which primarily and substantially seek an adjudication upon title to immovable property or a determination of any right or interest therein.” Justice Mahajan observed, “If an attempt is made to find a comprehensive definition of the phrase, it will eventually be discovered that it has created further complications. I, therefore, content myself by saying that where the nature of the suit is such that in substance it involves a controversy about land or immovable property and the Court is called upon to decide conflicting claims to such property and a decree or order is prayed for which will bring about a change in the title to it, that suit can be said to be in respect of land or immovable property; but where incidentally in a suit, the main purpose of which or the primary object of which is quite different, some relief has to be given about land, the title to it not being in dispute in the real sense of the term, then such a suit cannot fall within the four corners of this expression.” He added, “In my opinion, if the suit is for specific performance and a decree for possession of the land sold is claimed, such a suit would certainly be a “suit for land, “but if the suit simpliciter for specific performance i.e., for the

enforcement of the contract of sale and for execution of a conveyance, in that event there can be no good ground for holding that such a suit is a suit for determination of title to land or that the decree in it would operate on the land. "In that view he expressed his agreement with the decision of the Full Bench of the Madras High Court in Velliappa Chettiar v. Govinda Doss, AIR 1929 Mad 721 FB. Justice Mukherjee perceived. "It seems to me fairly clear that the expression "suit for land" occurring in Cl. 12 Letters Patent, means a suit which is instituted with the object of establishing claims regarding title to the property or possession of it. Whether or not possession is claimed, if title to any immovable property is to be directly affected by the result of the decision, the suit would be a suit for land."

"17. It may be seen that sub-section (1) is an enabling provision. A plaintiff in a suit of specific performance may ask for further reliefs mentioned in clauses (a) and (b) thereof. Clause (a) contains reliefs of possession and partition and separate possession of the property, in addition to specific performance. The mandate of sub-section (2) of Section 22 is that no relief under clauses (a) and (b) of sub-section (1) shall be granted by the Court unless it has been specifically claimed. Thus it follows that no Court can grant the relief of possession of

land or other immovable property, subject-matter of the agreement for sale in regard to which specific performance is claimed, unless the possession of the immovable property is specifically prayed for.”

8. Both the Counsel for Defendants further relies on the judgment of this Court in the matter of ***D. G. Kotak & Anr. V/s Rajeshkumar @ Rajas R. Doshi & Ors. Reported in 2012 (4) ALL MR 711.*** Both the Counsel submits that in this authority our High Court has held that suit for specific performance of contract for sale of land in which possession of property situated outside the original jurisdiction of High Court is claimed, then such suit itself is not maintainable, even by taking leave under Clause XII of the Letters Patent. He relies on para nos. 5 and 7 which read thus :

“5. Clause XII of the Letters Patent can be conveniently divided into two parts The first part relates to the suits relating to land or immovable property and the second part relates to all other cases i.e. suits other than the suits for land and other immovable properties. In all other cases i.e. in respect of any suit not relating to land or immovable property the High Court will have jurisdiction to entertain the suit if (a) the cause of action has wholly arisen within the local limits of its ordinary original jurisdiction or (b) if prior leave of the court has been obtained and cause of action has arisen in

part within the local limits of the ordinary original jurisdiction of the High Court or (c) if prior leave of the court is obtained and the defendant dwells or carries on business or personally works for gain within such limits. In respect of suits for land or other immovable property, the High Court of Bombay would not have jurisdiction to entertain a suit even if the leave of the court has been obtained under Clause XII unless the property is situate within the limits of its original jurisdiction. So far as the suits which fall under the first part of Clause XII viz. Suits for land or other immovable property, there is no question of obtaining a leave of the court if the land or immovable property falls outside original jurisdiction of the High Court.”

“7. In my view, a suit for specific performance of a contract of sale of an immovable property in which possession of the property is claimed in pursuance of the contract for sale or as a consequence of the sale deed to be executed in performance of an agreement of sale, is a suit for land. Such a suit would be covered by the first part of Clause XII of Letters Patent. Being so, the High Court of Bombay would not have jurisdiction to entertain and try the suit if the immovable property is situated outside the limits of its original jurisdiction. Leave to institute such as a suit in the High Court cannot be granted. Grant of such leave

would be a nullity because the court itself does not have a power to grant leave in respect of a suit for land or immovable property.”

9. On the basis of these submissions and the authorities of the Apex Court as well as our High Court, both the Counsel for Defendants submit that leave granted by this Court under Clause XII of the Letters Patent in favour of Plaintiff by order dated 27th June, 2016 in Leave Petition No. 165 of 2016 may be revoked. Both the Counsel submits that if the present Chamber Summons are not allowed, irreparable loss will be caused to them.

10. On the other hand, learned Counsel Mr. Kanade appearing on behalf of Plaintiff vehemently opposed both the Chamber Summons. He submits that they have already preferred Notice of Motion (L) No. 21 of 2017 for carrying out amendment in prayer clause (a) and also for deletion of para 27 of the plaint. He submits that prayer clause (a) and also para 27 of the Plaint reads as under :

“(a) That the Hon'ble Court may be pleased to direct the Defendant No.1 to specifically perform the contract by executing registered Sale Deed in Plaintiff's favour in respect of suit property mentioned at Exhibit A to plaint in view of MOU dated 29.9.11 and subsequent writing dt. 28.4.14

executed by Defendant No.1 in Plaintiff's favour, and also direct the Defendant to handover possession of suit property mentioned at Exh. A to the Plaintiff, failing which the officer of this Hon'ble Court may be directed to execute registered Sale Deed in Plaintiff's favour in respect of suit property mentioned at Exh. A to the Plaintiff."

"27. The Plaintiff states and submits that in the aforesaid facts and circumstances the Plaintiff came before this Hon'ble Court seeking the relief against the Defendant No.1 and 2 that the Hon'ble Court may be pleased to direct the Defendant No.1 to specifically perform the contract by executing registered Agreement/Sale Deed in plaintiff's favour in respect of suit property as mentioned at Ex.A hereto, as per MOU dated 29.9.2011 and subsequent writing dated 28.4.2014, failing which the officer of this Hon'ble Court may be pleased to direct to execute registered sale deed in Plaintiffs favour in respect of suit property mentioned at Ex.A hereto and also direct the Defendant No.1 to hand over the possession of suit property mentioned at Ex.A hereto and declare that the Plaintiff is the owner of the suit property. And also declare that the Registered Agreement dated 24.2.2012 executed between Defendant No.1 and Defendant No.2 is stands cancelled null and void, and same are not binding upon the Plaintiff. In alternate the Defendant No.1

be directed to pay total sum of Rs. 11,10,00,000/- (Rupees Eleven Crores Ten Lakhs only) (i.e. pay sum of Rs. 2,10,00,000/- towards the actual amount paid by Plaintiff and damages Rs. 9,00,00,000/-). The Plaintiff is also seeking the relief that the Defendant No. 1 and 2 be permanently restrained by an order of injunction from selling, transferring and/or creating any third party right in respect of suit property mentioned at Exhibit 'A' to Plaintiff. The Plaintiff is also seeking relief of temporary injunction during the pending of the suit, pending the hearing and final disposal of the suit that the Hon'ble Court may be pleased to appoint court receiver High Court, Bombay as Receiver in respect of suit property mentioned at Exhibit 'A' to plaintiff."

11. The learned Counsel for Plaintiff submits that if the Notice of Motion is allowed, then this Court has jurisdiction to entertain and try the present suit on the basis of leave granted by this Court under Clause XII of the Letters Patent. Hence, there is no substance in the present Chamber Summons and the same to be dismissed with costs.

12. I have heard both the sides at length.

13. It is to be noted that in the present proceedings, Plaintiff has filed the suit for specific performance of MOU and writing dated 28th April, 2014 in respect of the property which is situated at

Neral, Taluka Karjat, District Raigad with a prayer for possession.

14. Bare reading of the Clause XII of the Letters Patent shows that if the suit is for possession of the land, then the suit is not maintainable in this Court in respect of the land which is situated beyond the territorial jurisdiction of this Court. The Apex Court in the matter of *Adcon Electronics Pvt. Ltd.*, and our High Court in the matter of *D. G. Kotak & Anr.* laid down the same principle. Apart from that, prayer clause (c) of the plaint is for declaration that the registered agreement dated 24th February, 2012 executed between the Defendant Nos.1 and 2 in respect of the suit property be cancelled. The agreement dated 24th February, 2012 is in respect of the suit property which is situated beyond the territorial jurisdiction of this Court at village Nerul, Taluka Karjat, District Raigad. Apart from that, the said agreement was duly registered at Karjat itself. On this ground also this Court has no jurisdiction to entertain the suit as it is filed by the Plaintiff.

15. Considering these facts and authorities of Apex Court as well as our High Court, I am of the opinion that Defendants have made out the case for allowing their Chamber Summons.

16. In view of allowing both these Chamber Summons, there is no question of

considering the Notice of Motion (L) No. 21 of 2017 which is for carrying out amendment of the Plaintiff.

17. At this stage, learned Counsel Mr. Kanade appearing on behalf of Plaintiff submits that in the present proceedings this Court had granted ad interim relief on 29th August, 2016 in Commercial Notice of Motion No. 15 of 2016 in terms of prayer clause (c) for restraining defendant no.1 from creating any third party rights in respect of the suit property. He submits that said order is continued for last more than one year. Hence, in the interest of justice, same to be continued for four weeks.

18. Considering all these facts, following order is passed.

ORDER

(A) Leave granted by this Court on 27th June, 2016 under Clause XII of the Letters Patent in Petition No. 165 of 2016 is revoked.

(B) Registry is directed to return the plaint to the plaintiff for filing the same in the Court of Civil Judge, Senior Division, Panvel, District Raigad immediately on complying the procedure for the same.

(C) Plaintiff can lodge the plaint before the Civil Judge, Senior Division, Panvel, District Raigad on or before 12th January, 2018.

(D) Ad-interim relief granted by this Court on 29th August, 2016 in Commercial Notice of Motion No. 15 of 2016 to continue till then.

(E) Ad-interim relief granted by this Court on 29th August, 2016 to continue till 13th January, 2018 only.

(F) If plaint is lodged before the Civil Judge, Senior Division, Panvel, District Raigad and if any application is made for interim or ad-interim relief by the Plaintiff, trial court is at liberty to decide the same on its own merits, without influencing the order passed by this Court.

(G) Plaintiff to give 72 hours clear notice with all pleading to the Defendants if he moves for ad-interim relief before trial court.

(H) Both the Chamber Summons stands disposed of accordingly.

(I) No order as to costs.

(K.K.TATED, J.)