

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

**CHAMBER SUMMONS NO.320 OF 2013
IN
LEAVE PETITION NO.805 OF 2011
IN
SUIT NO.2695 OF 2011**

Bhavanaben D.Patel, through Constituted)
Attorney Manish Pravin Patel)....Applicant

IN THE MATTER BETWEEN :

Husseinbhai Saheb Husamuddin & Ors.)....Plaintiffs

V/s.

Bhavanaben D.Patel, through Constituted)
Attorney Manish Pravin Patel)....Defendant

WITH

**NOTICE OF MOTION NO.3290 OF 2011
NOTICE OF MOTION NO.593 OF 2013**

Mr.Chetan Kapadia a/w Mr.Deepak Shukla i/by Vinod Mistry & Co.
for plaintiffs and for applicants in Notice of Motion 3290/2011 and
Notice of Motion 593/2013.

Mr.Saurabh S.Oka for defendant and for applicant in Chamber
Summons No.320 of 2013..

**CORAM : K.R.SHRIRAM,J
DATE : 7.9.2017**

P.C.:-

CHAMBER SUMMONS NO.320 OF 2013

1 Plaintiffs have filed this suit for specific performance of a
Memorandum of Understanding dated 30.10.2006 (MOU). As per
the MOU, defendant had agreed to sell to plaintiffs a property

admeasuring 7,140 sq. yards equivalent to 5969.90 sq. meters situated within Thane Municipal Corporation bearing Survey no.32, Hissa no.1 as described in Exh.B to the plaint. Defendant, as per the MOU had to perform certain obligations which defendant did not perform. Plaintiffs therefore, filed the present suit and the reliefs sought are : (a) declaration that MOU is valid, subsisting and binding and (b) for an order and decree against defendant to specifically perform the MOU and to do all things necessary to effectively perform the same, including inter alia, to execute the requisite conveyance in respect of the suit property in favour of plaintiffs.

2 Before the plaint was lodged, plaintiffs filed a petition for leave under clause-XII of the Letters Patent. This court was pleased to grant leave on 19.10.2011.

3 Paragraph-23 of the plaint reads as under :-

"The Plaintiffs submit that the said MOU was executed in Mumbai, the Parties reside in Mumbai and the said MOU is to be performed in Mumbai. Monies being part consideration under the MOU have been paid and received and accepted in Mumbai. The cheques have been encashed by the Defendant in Mumbai. The suit property however is situate in Thane outside the limits of this Hon'ble Court. As such, with leave under Clause XII of the Letters Patent, it is respectfully submitted that this Hon'ble Court will have jurisdiction to entertain and try this Suit."

4 The present Chamber summons is taken out on behalf of defendant to revoke/recall the order granting leave and the plaint to

be returned to the plaintiffs to be filed in the court of appropriate jurisdiction.

5 Clause-XII of the Letters Patent reads as under :-

“Original jurisdiction as to suits- And we do further ordain that the said High Court of Judicature at Bombay, in the exercise of its ordinary original civil jurisdiction, shall be empowered to receive, by, 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 Bombay, or the Bombay City Civil Court.”

6 Clause-XII can be conveniently divided into two parts.

The first part relates to suits relating to land or immovable property and the 2nd part relates to all other cases, i.e., suits other than suits for land or immovable property. In all cases, i.e., in respect of the suit not relating to land or immovable property, the High Court will have jurisdiction to entertain the suit if (a) cause of action has wholly arisen within the local limits of Ordinary Original Jurisdiction ; (b) if prior leave of the court has been obtained and cause of action arisen in part within the local limits of the Ordinary Original Jurisdiction of the High Court or (c) if prior leave is obtained and the defendant at the time of the commencement of the suit 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 shall not have jurisdiction to entertain the suit even if the leave of the Court is obtained under clause-XII unless the property is situated within the limits of its original jurisdiction.

7 So far as a suit which falls under 1st part of clause-XII, i.e., suit 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 the jurisdiction of the High Court. This is the view that has been expressed by the Apex court in the case of ¹**Adeon Electronics Pvt. Ltd. Vs. Daulat & Anr.** Paragraph-9 of the said judgment reads as under :-

“Thus it is clear that under Cl.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) allother 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 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.”

8 The Supreme Court then considered what is the meaning of the expression suit for land appearing in clause-XII of the Letters Patent and held in paragraph-15 as under :-

1 AIR 2001 Supreme Court 3712

“From the above discussion it follows that a “suit for land” is a suit in which the relief claimed relates to title to or delivery of possession of land or immovable property. Whether a suit as a “suit for land” or not has to be determined on the averments in the plaint with reference to the reliefs claimed therein ; where the relief relates to adjudication of title to land or immovable property or delivery of possession of the land or immovable property, it will be a “suit for land.” We are in respectful agreement with the view expressed by Mahajan, J in M/s.Moolji Jaitha's case”.

9 Therefore, a suit for specific performance of the contract in which relief of delivery of possession is not claimed or relief claimed does not relate to title, cannot be treated as suit for land. At the same time, in a suit for specific performance for contract of sale in which delivery of possession is claimed or in which title for the property is the subject matter of the suit, is a suit for land and excluded from the original jurisdiction of the High Court.

10 Therefore, let us consider (a) whether the present suit is for specific performance of contract of sale and (b) if it is so, whether the suit is for delivery of possession. Admittedly, it is not a suit in which title of the property is a subject matter. Plaintiffs do admit that title of the property is with the defendant but plaintiffs are seeking specific performance of the MOU.

11 In the MOU vendor is the defendant and purchaser is the plaintiff.

Clause-(vi) of the recitals reads as under :-

“(vi) The Vendor has agreed to clear the title in respect of the said property and incorporate her name in the Records of Right i.e., 7/12 Extract, Village Form No.6 and the Property Card as well as the Municipal Record, and subject thereto the Purchaser herein have agreed to purchase the said property (more particularly described in the Schedule) on the following terms and conditions appearing hereinafter.”

Paragraph -2 of the Memorandum of Understanding reads as under :-

“The Vendor has agreed to sell or cause to be sold to the Purchasers the said property which is more particularly described in the Schedule hereunder written on “as is where is basis”..... Survey by the Competent Authority to the extent of the same the Purchaser is liable to pay the consideration amount @ Rs.2121/- per sq. yards.”

Paragraph-3 of the Memorandum of Understanding reads as under :-

“..... The Vendor herein agreed that the Vendor shall obtain the necessary NOC as well as Deed of Cancellation of the Parties executed the said Development Agreement dated 02.12.1999. The Vendor will also produced the 7/12 Extract, Village Extract Form VI, Property register card and all document title in her name including the necessary NOC from the Competent authority under Urban Land Ceiling Act, 1976 on or before the completion of the transaction.”

Paragraphs-4(a), 8, 8(a) (b), (e) and (f) and clause-9 read as under :-

“4(a) Title of the said property of the Vendor is clear, marketable and free from all encumbrances and the Vendor undertakes to produce the Title Certificate from her Solicitor/Advocate ;

8. The purchasers have agreed to pay sum of Rs.7,00,000/- (Rupees Seven Lakhs only) at the time of execution of this M.O.U to the Vendor as earnest money and the Vendor hereby agree to comply the following :

(a) Title to the property in favour of the Vendor at the entire satisfaction of the purchasers and/or their Advocate.....

(b) To appoint the Surveyor for the joint survey of the property with the representative of the purchasers to ascertain the net area available to the purchasers after deducting all the encroachments lawful as well as unlawful.....

(c).....

(d).....

(e) The vendor hereby further agreed and declare that pending the final conveyance in favour of the purchasers, the vendor shall not discuss and/or negotiate with any person or persons in respect of the said property or part thereof.....

(f) The purchasers hereby agree that after the conveyance is made in favour of the purchasers

Clause-9- The Vendor has agreed to execute a Deed of Conveyance of the said property in favour of the Purchasers or their nominees and assigns immediately after clearing the title of the said property and joint measurement within 90 days or as mutually agreed."

12 Therefore, from the averments in the plaint and the MOU it is very clear that it is only an agreement to enter into a conveyance. The suit filed by plaintiffs is only to enforce a personal obligation of the defendant to fulfill the obligations under the MOU.

13 Counsel for defendant relied upon a judgment of the single Judge of this Court in ²***D.G.Kotak & Anr. Vs. Rajeshkumar*** to submit that in a case of present nature, the Court would conclude that suit is for possession of land and therefore, revoke the leave granted under clause-XII.

14 In my view, the judgment of the learned single Judge in

² 2012 (Supp.) Bom.C.R.509

D.G.Kotak (supra) will not be applicable to the facts of the present case because plaintiffs have not sought specific prayer seeking relief of possession. Even title to the suit property is not subject matter of the suit.

15 Mr.Kapadia appearing for plaintiffs relied upon ³**P.M.A. Velliappa Chettiar & Anr. Vs. Saha Govinda Dass.** The said judgment of the full bench squarely applies to the facts and circumstances of the present case. There also subject matter was a suit for specific performance of the contract, whereby defendants had agreed to convey to plaintiffs for a consideration, their right title and interest in a property which was situated outside the jurisdiction of Madras High Court. The full bench came to a conclusion that though the land may be described in the conveyance, it is not going to be touched even in the execution of the decree as in the case of a decree for sale on a mortgage, nor does any issue of title to the land arise in such a suit and those were strong considerations for holding that a suit for specific performance is not a suit for land. In this case also the title to the land is not an issue. Even if a decree is granted, it would be only a decree against defendant to enter into a deed of conveyance whereby plaintiffs can be put in possession.

16 In the circumstances, I cannot, on the facts and
3 1928 ILR Vol-III Madras- 809

circumstances of the case, come to a conclusion that the suit filed is for possession of land. Therefore, I cannot agree to grant the relief as sought.

Chamber summons dismissed.

17 Mr.Oka for defendants states that written statement is filed.

18 Suit be listed for issues on 10.10.2017 at 3.00 P.M. at which time parties will come with agreed draft issues and a separate list of issues on which they are unable to agree.

In the meanwhile, parties shall file their respective affidavit of documents, complete discovery and inspection and also exchange statement of admission and denial with reasons for denial.

NOTICE OF MOTION NO.3290 OF 2011

1 Mr.Kapadia states that the order of injunction granted on 18.11.2011 read with Order dated 9.1.2012 be confirmed as order in the Notice of Motion and Notice of Motion be disposed.

Mr.Oka for defendant has no objection. Therefore, the order dated 18.11.2011 read with order dated 9.1.2012 is continued as order in the Notice of Motion. Notice of Motion stands disposed accordingly.

NOTICE OF MOTION NO.593 OF 2013

1 Mr.Kapadia states that court appointed commissioner has given a report on 10.4.2013. Mr.Kapadia states that there is nothing to show that defendant had done anything to alter the status of the property or breached orders of this Court. Mr.Kapadia states that report may be taken on record and Notice of Motion be disposed with liberty to move the court if situation arises.

2 Commissioner's report is taken on record. Notice of Motion disposed with liberty as sought for.

(K.R.SHRIRAM,J)