

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 828 OF 2016
IN
SUIT NO. 1257 OF 2007
AND
CHAMBER SUMMONS NO. 829 OF 2016

Gul Rupchand Kripalani	...Applicant
<i>In the matter between</i>	
Girish Nautamlal Jani	...Plaintiff
<i>Versus</i>	
Rusi Furdoon Seervai & Ors	...Defendants

Ms Neeta Jain, i/b SJ Khera, for the Applicant in both CHS.
Mr Anuj Narula, i/b CB Raithatha, for the Plaintiff.
Mr Cyrus Ardeshir, with Dipanwita Ghosh, i/b Akhila Kaushik, for
Defendant No. 1.
Ms Kainaz Irani, i/b Dhuru & Co., for Defendants Nos. 4 & 5.

CORAM: G.S. PATEL, J
DATED: 10th January 2018

PC:-

CHAMBER SUMMONS NO. 828 OF 2016

1. The applicant in this Chamber Summons, represented by Ms Jain, seeks impleadment in this suit for specific performance of an

agreement of sale dated 31st January 1992 read with certain other documents. The agreement contemplated, the plaintiff says, the sale and delivery of possession of an immovable property — a bungalow — previously known as Meherabad Mansion and now known as Juhu Sagar in Juhu, Mumbai.

2. At the very beginning, Mr Ardeshir for the 1st Defendant seeks time, saying that the 1st Defendant is very ill and has been hospitalized. I do not propose to pass any order adverse to the 1st Defendant in that view of the matter.

3. The applicant, one Gul Rupchand Kripalani, claims to be a lessee of a part of this bungalow. Ms Jain states that the agreement in question, and of which specific performance is sought against the 1st Defendant, mentions the applicant, Kripalani, as a lessee of a portion of the property. Since possession has been sought in the plaint, it is her submission that any decree of specific performance that involves delivery of possession directly affects Kripalani, and this makes him both a necessary and a proper party. A decree directing possession against the 1st Defendant could not be executed against Kripalani since the Plaintiff has foreknowledge and notice of Kripalani's possession of a part of the property, and the manner in which he claims to be in possession.

4. I should have thought that this is a Chamber Summons that would readily have been accepted without contest. Mr Narula for the Plaintiff says, however, that he has instructions to oppose the the impleadment application and to say that Kripalani as proposed

defendant No. 6 is neither a necessary nor a proper party. I have pointed out that it is entirely possible that without Kripalani joined an effective decree may not be possible, and, even if fashioned, might yet yield further problems in execution or enforcement. Mr Narula submits that this is inconsequential.

5. So be it.

6. The plaintiff is *dominus litus*. The plaintiff must take the consequence of joining, or more importantly, *not* joining a party to his suit. It only remains to be noted if at any stage hereafter there is a question of the plaintiffs' rights or contentions as against the applicant, Kripalani, it is the plaintiff who must bear the consequences of not having joined him, and of having opposed the application by Kripalani to be joined as defendant No. 6 to this suit. If that renders either a decree impossible of either being passed or being executed, it is the plaintiff who will bear responsibility. No application by the plaintiff to implead Gul Rupchand Kripalani will, therefore, be entertained hereafter.

7. The Chamber Summons is disposed of in these terms. There will be no order as to costs.

8. All affidavits to be filed in the Registry.

9. At this stage, to my quite considerable dismay, Mr Narula makes an application for a decree on admission against the 1st Defendant, Mr Ardeshir's client. I had made it clear at the start that

I would not, in view of Mr Ardeshir's suitably worded request, pass any order adverse to the 1st Defendant. I should have thought that was enough, and sufficiently clear and understood by all. I do not for one minute believe that donning a lawyer's robes (or a judge's, for that matter) warrants such a wholesale abandonment of all humanity, compassion and empathy. Since Mr Narula insists, for the second time: so be it. It may not be necessary to demand a formal application for a judgment on admission, and I accept that such an application may be made even orally. However, in the peculiar facts and circumstances of this case, and since I believe Mr Ardeshir will face significant difficulty in obtaining the necessary instructions to respond to any oral application for a judgment on admission, I will now insist, as I believe I am in my discretion entitled to do, that any such application (for a decree on admission) must be made by the Plaintiff in a formal application, one that will then have to be duly served and to which the 1st Defendant will have the opportunity to respond in writing.

Chamber Summons No. 829 of 2016:

10. This is a Chamber Summons by Gul Rupchand Kripalani for inspection. In view of the order passed today in Chamber Summons No. 828 of 2016, this Chamber Summons will not survive. The Chamber Summons is disposed of as infructuous. No costs.

(G. S. PATEL, J)