

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

**CHAMBER SUMMONS NO.475 OF 2017
WITH
NOTICE OF MOTION NO.569 OF 2017
WITH
NOTICE OF MOTION NO.637 OF 2017
IN
SUIT NO.203 OF 2017**

Pushpraj Singh S/o. Maharaja Martand SinghPlaintiff

Vs.

Chandrashekhar Champalal Hingarh and Anr.Defendants

Mr. Amey Patil I/b. Vivek Kantawala and Company for plaintiff/applicant in CHS/475/2017 and NMS/569/2017.

Mr. Harsh Behany I/b. Maniar Srivastava Associates for defendant no.1 and for applicant in NMS/637/2017.

Mr. Sujeet G. Kurup for defendant no.2.

CORAM : K.R.SHRIRAM, J.

DATE : 26th NOVEMBER 2018

P.C.:

CHAMBER SUMMONS NO.475 OF 2017

1 The counsel appearing for defendants have no objection to the reliefs sought in the chamber summons.

2 Chamber summons is allowed and accordingly disposed in terms of prayer clause – (a) except paragraph 6 of Schedule - I which is bracketed in red ink.

3 Amendment to the plaint to be carried out and copy of the amended plaint to be served on or before 10th December 2018.

4 Written statement to be filed and copy served by 22nd December 2018. If no written statement is filed, the suit will stand decreed without further reference to this Court.

NOTICE OF MOTION NO.637 OF 2017

1 Mr. Behany, counsel for applicant seeks leave to withdraw the notice of motion.

2 Notice of motion dismissed as withdrawn.

NOTICE OF MOTION NO.569 OF 2017

1 The suit filed is basically to challenge the rights created in favour of defendant no.1 and defendant no.2 of certain properties (the suit properties). Plaintiff is the owner of the suit properties. It is plaintiff's case that purportedly rights have been created in favour of defendant no.1 and defendant no.2 based on two documents, which are Power of Attorney's which could not have been created. Plaintiff apprehends that if the ad-interim order granted on 23rd March 2017 is not confirmed as order in the notice of motion, grave prejudice and injustice will be caused to plaintiff because by the time the suit is disposed, defendants may create further third party rights. Defendants have filed affidavits in reply opposing the notice of motion. The counsel for defendants state that the order passed on 23rd March 2017 was an ex-parte order. This order, though it was ex-parte,

has been extended on atleast four times when defendants had also appeared before the Court.

2 I have, however, heard the counsel and also considered the plaint, affidavit in support and the replies filed by defendants. In my view, the balance of convenience is in favour of plaintiff in as much as if any further rights are created by defendants, it would only made things worse and if ultimately plaintiff succeeds, the decree may be rendered infructuous. At the same time, no prejudice will be caused to defendants since according to defendants they are in possession of the suit properties though plaintiff claims to be in possession.

3 In the circumstances, keeping open the rights and contentions of the parties to be raised at the time of hearing of the suit, the order dated 23rd March 2017 is confirmed as order in the notice of motion and notice of motion accordingly stands disposed.

SUIT NO.203 OF 2017

1 Pleadings in the suit are completed. Therefore, the following further directions are passed :

(a) parties to file their respective affidavit of documents and serve a copy thereof upon the other side on or before 5th January 2019, failing which parties will not be permitted to rely on any document, copy whereof is not annexed to the plaint and/or written statement or mentioned in the list of documents annexed to the plaint

and/or written statement.;

(b) inspection to be given and statement of admission and denial with reasons for denial to be exchanged by 12th January 2019. If the statement of admission and denial is not given, parties shall be deemed to have admitted the existence of all the documents of the other side. If inspection is not given, such party will not be permitted to rely on any document.

2 Suit be listed for issues on 16th January 2019 on which date parties shall come with agreed draft issues and a separate list of issues on which they are unable to agree.

(K.R. SHRIRAM, J.)