

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 491 OF 2017
IN
SUIT NO. 779 OF 2011**

Hazal Louis Gonsalves & Ors ...Plaintiffs
Versus
Municipal Commissioner of Greater Mumbai & ...Defendants
Ors

Mr JG Damani, *for the Plaintiff.*
Ms GR Shastri, *AGP for Defendants Nos. 4 to 8.*
Ms Sonal, *i/b Kavita A Shah, for Defendant No. 9/Applicant.*

CORAM: G.S. PATEL, J
DATED: 14th August 2018

PC:-

1. This is a Chamber Summons by Defendant No. 9. The application is to frame additional issues to supplement those already framed on 11th April 2017. There are 15 additional issues listed in the Chamber Summons.

2. Ms Sonal for Defendant No. 9 / the Applicant submits that only issues Nos. 1 to 5 and the first portion of issue No. 9 need be considered. She does not press the rest.

3. Having seen the issues framed on 11th April 2017 and the Chamber Summons, I am satisfied that issues Nos. 1 to 5 in the Schedule to this Chamber Summons and the first portion of issue No. 9 up to the words “dated 30th April 1993” require to be cast as issues.

4. So that there is no confusion, these will be listed as additional issues. For clarity, all issues, i.e. those as originally framed on 11th April 2017 and as added today are appended to this order.

5. No issue is required to be deleted/recast as stated in Annexure-II to this Chamber Summons.

6. Defendant No. 9 is considerably delayed in complying with previous orders. Ms Sonal accepts that there was a delay and says that this was partly due to oversight and partly because of a large volume of documentation of over several thousand pages.

7. On payment to the Plaintiff of costs quantified at Rs. 50,000/- and which Ms Sonal has instructions to agree that Defendant No. 9 will pay on or before 23rd August 2018, time to file the Affidavit of Evidence and compilation of documents is extended till 27th August 2018.

8. The Chamber Summons is disposed of in these terms. No costs.

(G. S. PATEL, J)

ISSUES FRAMED ON 11TH APRIL 2017

SUIT NO. 779 OF 2011

1. Whether the Plaintiffs prove that they are entitled to partition of suit land had have share therein?
2. Whether the Plaintiffs prove that their predecessor late Louis Avlin Gonsalves had never sold, conveyed or transferred his portion of land to defendant No. 9, Elite Enterprises?
3. Whether the Plaintiffs prove that the agreement dated 30th April 1993 and the confirmation deed dated 20th March 1995 are manipulated, bogus and illegal and hence no title could be transferred to any one including defendant No. 9?
4. Whether the Plaintiffs prove that the defendant, Ashok Gosalia could not have signed both for the plaintiffs' predecessor as vendor and himself as vendee/purchaser on the confirmation deed?
5. Whether the Plaintiffs prove that the Defendant No. 8 had not properly registered the confirmation deed dated 20th march 1995?
6. Whether the Defendant Nos. 4 yo 7 prove that the suit plot has been subdivided?
7. If answer to issue No. 6 is in the negative, the how was the permission given by defendant nos. 4 to 8 for converting plot into NA and construction on land bearing CTS no. 349 of village Malvani?
8. Whether the Plaintiffs prove that defendant nos. 1 to 3 have sanctioned the plan without verifying consent of original owner or whether

the power of attorney is valid or not?

9. If answer to issue no. 8 is in the affirmative, whether the structure in the suit plot should be pulled down?
10. Whether the plaintiffs prove that they are entitled to 1/10th of the undivided shares in the suit property?
11. Whether the plaintiffs prove that the suit property be divided by metes and bounds and plaintiffs are put into vacant possession of their shares in the suit property?
12. What decree? What order?

ADDITIONAL ISSUES FRAMED ON 14TH AUGUST 2018

SUIT NO. 779 OF 2011

1. Whether the suit filed by the Plaintiffs is bad-in-law and liable to be dismissed for want of statutory Notice under Section 80 of the Code of Civil Procedure as contended by Defendants No. 9 in paragraph No. 5 of the written statement and paragraph 1 of the additional written statement and as contended by defendant Nos. 4 to 8 in their written statement?
2. Whether the Suit is liable to be dismissed for want of statutory Notice under Section 527 of the BMC Act upon Defendant Nos. 1 to 3?
3. Whether the suit filed by the Plaintiffs is barred by law of limitation under Section 527 of the MCGM Act and is liable to be dismissed?
4. Whether the Suit filed by the Plaintiffs particularly prayers (c) and (f) are barred by Section 149 of the Maharashtra Regional Town Planning Act?
5. Whether the suit filed by the Plaintiffs is barred by Bombay Revenue Jurisdiction Act 1879 as contended by Defendant Nos. 4 to 7 and Defendant No. 9?
6. Whether the Defendant No. 9 prove that they paid to Louis Alvin Gonsalves, the father of the Plaintiffs the full consideration amount under the Agreement dated 30th April 1993?

(G. S. PATEL, J.)