

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 714 OF 2017
IN
SUIT NO. 1821 OF 2004**

Abhishiek Mahesh Trivedi	...Applicant
<i>In the matter between</i>	
Bakul Maganlal Vyas & Ors	...Plaintiffs
<i>Versus</i>	
Babubhai (alias Harsukhlal) G Trivedi & Ors	...Defendants

**WITH
NTOICE OF MOTION NO. 1951 OF 2017**

Mahesh Govindji Trivedi	...Applicant
<i>In the matter between</i>	
Bakul Maganlal Vyas & Ors	...Plaintiffs
<i>Versus</i>	
Babubhai (alias Harsukhlal) G Trivedi & Ors	...Defendants

Mr Hasmit Trivedi, *a/w Mr S Chavan, i/b LJ Law for the Plaintiff
and Respondents in CHS & NMS, respectively.*
Mr VR Dhond, *Senior Advocate, i/be Reena Salunkhe, for the
Applicant in CHS & NMS and for the third party.*

CORAM: G.S. PATEL, J
DATED: 17th January 2018

PC:-

1. By a separate order made yesterday, I allowed the deletion of some parties to the Suit. The appropriate and corresponding changes will need to be done in Chamber Summons. This amendment is to be done within two weeks without need of reverification.

2. The present Chamber Summons is filed by one Abhishiek Mahesh Trivedi. He is not a party to the Suit. He is the son of the 3rd Defendant, Mahesh Govindji Trivedi.

3. The Suit is for specific performance of an agreement under which the Plaintiffs alleged they purchase the reversionary interest of *inter alia* Mahesh Trivedi in a property situate at CTS Nos. 851, 851/1 to 851/36 at 237, Dadabhai Road, Vile Parle, Mumbai. The 3rd Defendant, Mahesh says that he is of advanced years and in indifferent health. He opposes the Suit and desires that should he passed away before the Suit is decided, his son Abhishiek should carry on his defence. The Plaintiffs are admittedly the lessees of the original owners. They have created various sub-leases in the property and are recovering lease rent. The question in the Suit therefore is whether the Plaintiffs are entitled to a decree in the agreement for purchase of the reversionary interest.

4. On 5th May 2009, a learned Single Judge of this Court (DK Deshmukh J) granted an injunction saying that pending the Suit the Defendant would not transfer, alienate or create any third party rights in the Suit property without leave of the Court. It appears that under some belief, quite incorrect as it happens, the 3rd Defendant

executed a Gift Deed in favour of his son Abhishiek. A copy of the Gift Deed is at page 103 of the Chamber Summons. It is dated 30th May 2017 and it is registered.

5. Mr Dhond's submission on behalf of the Applicant is that the interim order be varied to the limited extend of permitting the Gift Deed so that the Applicant can carry on the litigation after his father.

6. I do not believe this is an appropriate process or procedure. That Gift Deed is entirely irregular and could not have been executed in the face of an injunction of the kind noted above. In my view, it is more appropriate that the property be brought *in custodia legis*. The Receiver should be appointed of the property in question but with the direction to only take symbolic or formal possession and not to dispossess the Plaintiffs or any other occupants. There will be no question of the execution of any agency agreement either. This is only to ensure that the property in question is not further encumbered.

7. The other order that is required is to direct the 3rd Defendant to take the necessary steps to have the Gift Deed of 30th May 2017 cancelled. Since it has been registered, the necessary applications will have to be made to the Sub-Registrar of Assurances. The 3rd Defendant will do so within three weeks from today.

8. All authorities will act on production of an authenticated copy of this order.

9. It is clarified that all rights of the Plaintiffs against their sub-lessees remain unaffected by this order.
10. The Chamber Summons and the Notice of Motion both are disposed of in these terms. There will be no order as to costs.
11. The Suit is expedited.
12. List the Suit for framing issues on 31st January 2018.

(G. S. PATEL, J)