

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

CHAMBER SUMMONS NO. 458 OF 2016

IN

SUIT NO. 30 OF 2014

Kapil Group

...Applicants/Intervenors

In the matter between

Jatish Chandulal Mehta

...Plaintiff

vs.

Parshwanath Jain Vidyalaya & Ors.

...Defendants

WITH

CHAMBER SUMMONS NO. 658 OF 2017

IN

SUIT NO. 30 OF 2014

Techno Grihanirman LLP

...Third Party Applicants

In the matter between

Jatish Chandulal Mehta

...Plaintiff

vs.

Parshwanath Jain Vidyalaya & Ors.

...Defendants

WITH

NOTICE OF MOTION NO. 308 OF 2014

IN

SUIT NO. 30 OF 2014

Jatish Chandulal Mehta

...Plaintiff/Applicant

vs.

Parshwanath Jain Vidyalaya & Ors.

...Defendants

Mr.Chirag Mody with Viral Shukla, Priti Patel, Rohira Shaikh with Darshan Ashar I/b. Shukla & Associates for Plaintiff.

Mr.Kamlesh Tiwari for Applicant in CHS 458/2016.

Mr.U.J. Makhija with Samit Shukla I/b. DSK Legal for Applicant in CHS 658/2017.

Mr.Gautam Ankhad I/b. Ashok Purohit & Co. for Defendant Nos.1 to 38 and 40 to 49.

Mr.G.S. Godbole with Sandeep Parekh and Meena Shah I/b. Pandya & Co. for Defendant Nos.39, 50 to 53.

Mr.Sukanta Karmakar, AGP for Defendant Nos.54 to 56. for Defendant.

CORAM : S.C. GUPTE, J.

DATE : 9 OCTOBER 2018

P.C. :

Heard learned Counsel for the parties.

2 These two chamber summonses are, respectively, taken out by two third parties, who claim to have interest in the subject matter of the suit. The subject matter of the present suit is a beneficiary's action jointly against trustees of a public charitable trust and a purchaser of the property of the trust.

3 It is the case of the Plaintiff beneficiary that that the trust property is being disposed of by the Defendant trustees so as to cause loss and prejudice to the trust and is an act in breach of trust. The matter has some forensic background. The purported development agreement between Defendant trustees (Defendant Nos.2 to 49) and the Defendant purchaser (Defendant No.50) has been a subject matter of challenge by the present Plaintiff before the Devsathan Department, Rajasthan. (The first Defendant trust is registered under the provisions of Rajasthan Public Trusts Act and is subject to the jurisdiction of that office. Defendant Nos.2 to 49 are

claimed to be its trustees. There is some controversy between the parties as to whether Defendant No.39 is a trustee.) It appears that offers have been made by the present third party Applicants before the Devasthan authorities, Rajasthan for purchasing the suit property. It is the case of both third party Applicants that their offers have been substantially higher and deserve acceptance. Whilst the merits of their offers and the corresponding demerits of the Defendants' transaction may be the subject matter of proceedings before the Devasthan authorities in Rajasthan, the third party Applicants, as prospective purchasers of the suit property, have no interest in the subject matter of the present suit. Even as beneficiaries, assuming that they qualify as such, they are neither necessary nor proper parties to the present suit. The suit can be adjudicated without the presence of either of the third party Applicants. So also, for effective adjudication of the suit the presence of neither is necessary. In the premises, the applications for joinder have no merits.

4 Both chamber summonses are, accordingly, dismissed. No order as to costs.

5 The notice of motion to come up for hearing on 30 October 2018. Office to take on record the responses of Defendant No.39 and 50 to 53 to the additional affidavit filed by the Plaintiff in the notice of motion .

6 Learned Counsel for the Plaintiff states that in case his client settles the present suit or proposes to withdraw it, he shall cause a prior notice to be given to the third party Applicants herein. The statement is accepted.

7 All contentions of the parties, including the third party Applicants herein, on merits are kept open.

(S.C. GUPTE, J.)