

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

**NOTICE OF MOTION NO.3865 OF 2006
IN
SUIT NO.1144 OF 2000**

Union of India)....Plaintiff
V/s.
Suresh Jayantilal Thanawala & Ors.)....Applicants/Defendants

WITH

CHAMBER SUMMONS NO.1425 OF 2015
IN
SUIT NO.1144 OF 2000

Shri Anant Dinanath (Harischandra))
Mahulkar and Ors.)....Applicants

IN THE MATTER BETWEEN :

Union of India)....Plaintiff
V/s.
Suresh Jayantilal Thanawala & Ors.)....Defendants

Ms.Anamika Malhotra for plaintiff.
None for applicant in Notice of Motion 3865/2006.
Mr.Kubar Wagle I/by Purnanand and Co. for defendant nos.1 & 2.
Mr.Deepak Shukla a/w Ms.Swapna Samant I/by M/s.Vinod Mistry and
Co. for defendant nos.3, 9(a) to 9(l).
Mr.Milind More, AGP for defendant no.11.
Mr.Sandeep Patil for MCGM (defendant).
Ms.Nazia Shaikh for applicant in CHS 1425 of 2015.

**CORAM : K.R.SHRIRAM,J
DATE : 11.9.2018**

P.C.:-

1. None appearing for the applicants. Notice of Motion dismissed.

CHAMBER SUMMONS NO.1425 OF 2015

1. This chamber summons is taken out by the applicants to be added as a party defendants to the suit. The suit as filed by plaintiff is for a declaration that the plaintiff be declared as owners of the suit land mentioned in the plaint and defendant no.11 be directed to carry out appropriate amendments to the mutation entries. There is nothing stated in the affidavit in support as to how the applicants are proper and necessary party to the suit. The applicants' case is that applicants had filed a suit in City Civil Court, Bombay which came to be dismissed and there is a First Appeal pending. This cannot be the basis for adding any party to the suit.

2. Chamber summons therefore, dismissed.

SUIT NO.1144 OF 2000

1. The suit is of the year 2000 and still issues are yet to be framed.

2. By consent, the following issues are framed :-

ISSUES

1. Whether suit is barred by Limitation ?
2. Whether the Defendant Nos.3 and 9(a) to 9(j) prove that the Plaintiff has approached this Hon'ble Court with unclean hands and is guilty of suppression and making false statement on oath, therefore, the present suit is not maintainable ?
3. Whether Plaintiff proves that the Sale Deed dated 17.04.1973 executed by Defendant Nos. 1 and 2 in favour of Defendant No.3 is null, void and/or illegal ?
4. Whether the Plaintiff proves that they are entitled for injunction Order against Defendants not to deal with dispose of alienate, transfer and/ or part with possession of their right, title and interest in this suit property and/or part thereof?
5. Does Plaintiff proves that they are entitled for compensation of sum of Rs.34,00,000/- (Rupees Thirty Four Lakhs Only) being the amount of consideration received by Defendant nos.1 and 2 while creating third party rights in the suit property and/ or part thereof vide Sale Deed (1) dated 17.04.1983 in favour of Defendant No.3 and (2) dated 05.04.1994 in favour of Defendant Nos.3 to 7, 9 and 10?
6. Does Plaintiff proves that it is entitled for mesne profits against Defendant Nos. 3 to 7 and 9 to 10 for their unauthorized occupation of a portion of suit land @ 13,38,450/- (Rupees Thirteen Lacs Thirty Eight Thousand Four Hundred and Fifty Only) per month from 1994 till handing over quiet vacant, peaceful and unobstructed possession of the suit land and/or part thereof to the Plaintiff and also entitled for interest on the outstanding amount of mesne profit @ 18% p.a. from the date of filing this suit till payment and/or realization thereof?

7. Whether Plaintiff proves that they are entitled for an Order and direction against Defendant Nos.1 to 10 for disclosing the aggregate amount of mesne profit earned and derived by them from the use of suit land from 1994 onwards and decree to pay amounts to Plaintiff till handing over quiet, vacant, peaceful and unobstructed possession of the suit land to the Plaintiffs?

8. Whether the Defendant Nos.3 and 9(a) to (j) prove that Kabooliyatnama dated 29.03.1893 executed and/or allegedly signed by Mr. Naurojee Edulee Karbari is a fabricated and bogus document?

9. Whether the Plaintiff proves that they are entitled for a declaration that they are the owners of suit land ?

10. Whether Plaintiff proves that it is entitled to a modification of the mutation entries?

11. What decree ? what order ?

3. Parties to file their respective affidavit of documents, complete discovery and inspection and exchange statement of admission and denial with reasons for denial on or before 3.10.2018. On or before 19.10.2018 plaintiff shall also file list of witnesses, affidavit in lieu of examination in chief of its 1st witness together with compilation of documents and serve copy thereof upon all defendants.

4. Stand over to 25.10.2018 for marking of documents/recording of evidence at which time plaintiffs' 1st witness shall remain present in court. It is made clear that if witness does not

remain present, suit may get dismissed.

5. I find the plaint has too many amendments and even it is difficult to make out the amendments. Plaintiff is therefore, directed to file typed copy of the plaint with the amendments and in the appropriate colours and also serve colour photo copy on the defendants and this has to be done before the end of this month.

Jahagirdar
Kiran
Ganesh

Digitally
signed by
Jahagirdar
Kiran Ganesh
Date:
2018.09.14
15:50:19
+0530

(K.R.SHRIRAM,J)