

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER OF SUMMONS No. 169 of 2016.

IN

SUIT No.1380 of 2012.

M/s Singasane Engineering & Realty
Ventures Ltd.& Anr.

..Applicants.

In the matter between:-

Santosh Anant Pednekar

..Plaintiff.

Vs

Dhirajlal M. Mehta & Anr

..Defendants.

Mr. Nimish Lotlika I/by Kiran Jain & Co. for the Plaintiff in
S/390/2013.

Mr. Mayur Khandeparkar a/with Samir Suryawanshi a/with
Abhishek Deshmukh i/by Murlidhar B. Kale for the applicant
in CHS/169/2016 in S/1380/2012.

Mr. Jairam Chandrani a/with Mr. Ashish Gupta.

Mr. Pratik J. i/by Lexim Associates for Defendant No. 1 and 2.

CORAM : B. P. COLABAWALLA, J.

DATED :- 28th June, 2019.

P.C. :-

1. This Chamber Summons has been filed to add the
applicants as party defendant Nos. 3 and 4 in the above suit. The
amendment is sought on the ground that they are necessary and

proper parties because any adjudication done in the present suit would directly affect their rights in the suit property and in which they claim that they have an interest. It is the case of the applicants that with reference to the suit property, defendant Nos. 1 and 2 had executed a Development Agreement in favour of the applicants. The enforcement of this Development Agreement is the subject-matter of Suit No. 317 of 2015. In the present suit, the plaintiff seeks a declaration that he is the owner of the suit property. He too claims title from the father of defendant Nos. 1 and 2 on the basis of certain documents that they were executed in the years 1962, 1977 and 1978 respectively.

2. It is the specific case of Mr. Khandeparkar, the learned Counsel appearing on behalf of the applicants, that what was conveyed by defendant Nos. 1 and 2 in favour of the plaintiff was not the suit property but another property namely, Survey No. 24, Hissa No. 18, CTS No.82 admeasuring 798.9 square meters. However, in the present suit the plaintiff seeks a declaration of ownership in respect of the suit property which was given to the applicants by defendant Nos. 1 and 2 pursuant to the Development Agreement dated 6th September, 2006 and subsequent conveyance dated 11th

December, 2008. In these circumstances, Mr. Khandeparkar submitted that any decision given in this suit will certainly affect his legal rights and which forms the subject matter of Suit No.317 of 2015. He therefore submitted that the applicants are a necessary and proper party to the present proceedings. He, therefore, submitted that the applicants be added as party defendants to the suit and Chamber Summons be allowed accordingly.

3. On the other hand, Mr. Sasidharan, the learned Counsel appearing on behalf of the plaintiff, vehemently opposed this Chamber Summons. He submitted that the lis in the present suit is only qua the plaintiff and defendant Nos. 1 and 2 herein. The applicants are not proper parties to this suit. The plaintiff in a suit, being the dominus litis, can choose the person to whom he wants to join in the suit. If a necessary party is not joined, the suit may be dismissed. He submitted that the plaintiff cannot be forced to join any party as a defendant to his suit and especially with whom he has no lis.

4. In the alternative, Mr. Sasidharan submitted that in any event it was totally incorrect on the part of Mr. Khandeparkar to

contend that the applicants are a necessary or proper party to the present suit. He submitted that merely because the applicants claim some rights in the suit property and which admittedly are subsequent to the rights claimed by the plaintiff, the applicants cannot be presumed to be a necessary or proper party. In this regard, Mr. Sasidharan relied upon the following three decisions:-

- (i) Ramesh Hirachand Kundanmal vs. Municipal Corporation of Gr. Bombay and Ors (1992) 2 SCC 524
- (ii) Mumbai International Airport Private Limited (2010) 7 Supreme Court Cases 417
- (iii) Maooli Land Developers & Ors v. Kashibai Woman Patil & Ors 2015 (3) Bom.C.R. 466

Relying upon the aforesaid decisions, Mr. Sasidharan submitted that there is no merit in the Chamber Summons and same ought to be dismissed.

5. Mr. Jairam Chandrani, the learned Counsel appearing on behalf of defendant Nos. 1 and 2 supported the arguments canvassed by Mr. Sasidharan and also submitted that the applicants are neither a necessary party nor a proper party to the present suit

and hence their request to be joined as party defendants ought to be rejected by this Court.

6. I have heard the learned Counsel for the parties at length and perused the papers and proceedings in the Chamber Summons. It is the case of the applicants that they have entered into a development agreement dated 6th September, 2008 with defendant Nos. 1 and 2. Recitals (X) and (XI) of this Development Agreement read thus :-

“(X) That Survey No. 24, Hissa No. 19, C.T.S.No.81 is subdivided in three Parts being C.T.S. 81-A admeasuring 1791.1 Sq. Meters, CTS 81-B admeasuring 809.3 and CTS 81-C admeasuring 126.1 sq. meters on or about 15.01.1999 without giving any notice to the owners. One Mr Santosh Anant Pednekar is wrongly shown as Land Owner of CTS 81-B admeasuring about 809.3 Sq. Meters and Late Mr Maneklal Amulkhrai Mehta is shown as Land Owner of CTS 81-A admeasuring 1791.1 and CTS 81-C admeasuring 126.1 Sq. Meters.

(XI) That neither Mr Maneklal Amulkhrai Mehta nor any of his legal heirs executed any conveyance of Plot bearing Survey No. 24, Hissa No. 19, CTS No. 81 in favour of said Mr Santosh Anant Pednekar or any other person till date. As per knowledge of Vendors, Santosh Anant Pednekar acquired land bearing Survey No. 24, Hissa No. 18, CTS No. 82 admeasuring about 798.9 from Mr Lakhaji Manaji Rajput on or about 04/05/1979 but erroneously or intentionally entered his name on Index II and our property Card of Plot bearing Survey No.24, Hissa No.19, CTS No. 81 and on that basis obtained sub-division of Survey No. 24, Hissa No. 19 CTS No. 81 as CTS 81A, 81-B and 81-C. Said Mr Santosh Anant Pednekar is wrongly shown as owner of CTS No. 81-B admeasuring 809.3 Sq. Meters on property card.”

(Emphasis supplied)

7. What these recitals show is that defendant No.1 and defendant No.2 represented to the applicants that the plaintiff herein (Santosh Anant Pednekar) had not acquired land Survey No.24, Hissa No.19, CTS No. 81/B, admeasuring 809.3 square meters. He, according to other vendors, had acquired land at Survey No.24, Hissa No.18, CTS No.82. However, in the present suit the plaintiff is claiming a declaration that he is the owner of Survey No.24, Hissa No.19, CTS No. 81/A and which according to the applicants, was transferred by defendant No. 1 and 2 to the applicants. This being the factual position, I find considerable force in the arguments canvassed by Mr. Khandeparkar that any decision in this suit would certainly affect the applicants rights and consequently the suit filed by them, namely, Suit No. 317/2015. To my mind, the applicants would certainly be at least proper parties, if not necessary parties, to the present suit. If this be the case, then, certainly they need to be added as party defendants.

8. As far as the decision relied upon by Mr. Sasidharan in the case of **Ramesh Hirachand Kundanmal (supra)** is concerned, I find that this Judgment to be wholly inapplicable to the facts of the present case. In this case, a notice was issued under Section 351 of

the Mumbai Municipal Corporation Act, 1888 by the Corporation to one of the tenants who had allegedly carried out unauthorized construction in his own premises. That notice was challenged by the tenant in Court. In that proceedings the landlord sought to intervene and wanted to be impleaded as a party defendant. The Hon'ble Supreme Court in such facts held that the landlord was not a necessary party as none of his rights were being affected by virtue of the litigation between owner and the tenant. I fail to see how this judgment can be of any assistance to the plaintiff in the present case. It is clearly distinguishable on facts. In fact, as held earlier, here the rights of the applicants are certainly going to be affected by any decision that would be rendered in the present suit. This being the case, this decision of the Supreme Court is of no assistance to the plaintiffs.

9. The next decision relied upon by Mr. Sasidharan in the case of Mumbai International Airport Private Limited (*supra*) is also of no assistance to the plaintiff. The proposition laid down in this decision can hardly be disputed, namely, that only a proper or a necessary party can seek impleadment in the proceedings. As held earlier, I find that the applicants are certainly at least proper, if not necessary parties to the present litigation and therefore, would need to be

added.

10. The last judgment relied upon by Mr. Sasidharan was a decision of another learned Single Judge of this Court in the case of **Maooli Land Developers & Ors (Supra)**. This decision, in fact, lays down in a great detail the law as enunciated by the Supreme Court under Order I Rule 10 of the Code of Civil Procedure. What is important to note is that in this decision, after relying upon several decisions of the Supreme Court which in turn relied upon a judgment in the case of **Amon vs. Raphael Tuck & Sons Ltd** reported in (1956) 1 All. E.R. 273, the learned Single Judge came to the conclusion that what is required to be seen is whether adding the applicants as the defendants to the suit is necessary for the Court to enable it to effectively and completely adjudicate upon and settle all the questions involved in the suit. If the answer to the said question is in the affirmative, then, they ought to be joined. The statement of law by Devlin J is also reproduced that states that the test is whether the order for which the plaintiff is asking directly affects the intervener in enjoyment of his legal rights. If I were to apply these tests it is then clear that the applicants are certainly proper parties, if not necessary to the present litigation.

11. In view of the forgoing discussion, these circumstances, the Chamber Summons is allowed in terms prayer clause (a) which reads thus :-

a) This Hon'ble Court be pleased to add the applicants as party, defendant Nos. 3 and 4 in Suit No. 1380 of 2012 and the plaintiff be directed to amend the plaint thereby adding the applicants as a party defendants Nos. 3 and 4 in Suit No.1380 of 2012 and the applicants be permitted to contest in Suit No. 1380 of 2012.

12. The plaintiff is directed to carry out the amendment and join the applicants as defendant Nos. 3 and 4 in the suit within a period of one week from today and serve the amended copy of the plaint on all the defendants within a period of one week thereafter. On being served with the amended copy of the plaint, defendant Nos. 3 and 4 shall file their written statement within a period of three weeks thereafter. The Chamber Summons is disposed of accordingly.

13. It is made clear that I have not opined one way or the other on the merits of the amendment and all contentions of the plaintiffs are expressly kept open including whether newly added defendants can enlarge the scope of the suit or otherwise.

14. Place the suit on board for framing issues on 9th August,
2019.

(B.P. COLABAWALLA, J.)

Radhakishan
S. Ladda

Digitally signed
by Radhakishan
S. Ladda
Date: 2019.07.03
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