

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

CHAMBER SUMMONS NO.240 OF 2019

IN

SUIT NO.78 OF 2017

Mala Rajan Bhatia & Anr.	)....Applicants/Plaintiffs
V/s.	
Ravi Foundation	)....Defendant
And	
Manmandir Properties	)....Respondent

Mr.Shashipal Shankar for applicants/plaintiffs.
Mr.Ruchit Tolat I/by L.C.Tolat for respondent in Chamber summons.
None for defendant.

**CORAM : K.R.SHRIRAM,J
DATE : 25.4.2019**

P.C.:-

1. This Chamber summons is for leave to amend the plaint including add respondent as party defendant. According to applicants and rightly so, respondent is a proper and necessary party to the suit.

2. The suit as filed is for specific performance of an agreement as contained in letters dated 13.9.1994, copies whereof are at Exhibit-A & Exhibit-B to the plaint.

3. On 31.1.2017 when an application was made by plaintiffs for urgent ad-interim relief in Notice of Motion No.417 of 2017, a statement was made by the Advocate for defendant stating that defendant will not, pending further orders, create any 3rd party rights or part with possession, alienate or encumber in any manner the flats which are the subject matter of the suit. The court also accepted that statement as an undertaking to this Court.

4. On 22.2.2017, Advocate for plaintiffs received a notice from the Advocate for defendant seeking inspection of certain documents and inspection was fixed on 4.3.2017. During the inspection one Virendra Tiwari, representative of defendant was also present and copies were made available of all the documents. Notice of Motion No.417 of 2017 was finally heard and disposed on 7.12.2018. The order passed on 31.1.2017 was confirmed as the order in the Notice of Motion.

5. It is the case of applicant that when the applicant visited India in October-2018 and went to see the suit flats on 25.10.2018, it was found that the suit flats were already occupied by a 3rd party. In view thereof, plaintiffs' Advocate gave notice to defendant. Defendant through its Advocate's letter dated 29.12.2018 informed plaintiffs'

advocate that the suit flats were already sold to respondent by a registered agreement dated 25.8.2015 and possession thereof was handed over to them on 19.10.2015. According to plaintiffs it was also incorrectly stated that defendant was not aware of any statement made to and recorded by this Court on 31.1.2017 as the said Virendra Tiwari never informed defendant and Virendra Tiwari resigned from the service of defendant sometime on or about 14.11.2017. This is the stand taken by defendant also in reply to the Chamber summons.

6. On receiving the reply, plaintiffs have taken out this Chamber summons to add respondent as a co-defendant and for carrying out suitable amendment to the plaint.

7. Mr.Tolat for respondent pointed out that defendant has already stated that defendant has no knowledge of any statement made to the Court as recorded on 31.1.2017 and respondent has been given possession as way back in 2015 pursuant to a registered agreement entered into in 2015.

8. In my view, respondent is a proper and necessary party to the suit. This is because respondent claims to be the owner of the suit flats pursuant to a registered agreement since 2015 which according to

plaintiffs was, even if what Mr.Tolat states is correct, in breach of the agreement that plaintiffs had with defendant. Counsel for plaintiffs also submitted that it is also in breach of the undertaking given to the Court by defendant on 31.1.2017 because if what Mr.Tolat states is correct, then it should have been brought to the notice of the Court by defendant.

9. Therefore, if plaintiffs succeed in the suit, certainly respondent will be affected because the decree will be for specific performance of an agreement of the said flats over which 3rd party rights have been created in favour of respondent.

10. In the circumstances, in my view, Chamber summons has to be allowed. Chamber summons allowed in terms of prayer clauses-(a) and (b) and the same read as under :-

“(a) That this Hon'ble Court be pleased to allow the Respondents to be joined and impleaded as party Defendant No.2 to the suit ;

(b) That this Hon'ble Court be pleased to allow the Plaintiffs to carry out amendment to the suit as per the Schedule annexed to the Chamber Summons.

11. Amendment to be carried out and amended plaint to be served on defendant and newly added defendant on or before 31.5.2019. Written statement to be filed by defendant within four weeks of receiving the amended plaint.

12. Counsel for plaintiff/applicant states that defendant has already filed the written statement. Mr.Tolat waives service of writ of summons. Written statement/additional written statement to be filed within 4 weeks of receiving the plaint/amended plaint.

13. Suit be listed for directions on 12.7.2019.

(K.R.SHRIRAM,J)