

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 348 OF 2019
IN
COUNTER CLAIM NO. 20 OF 2015
IN
SUIT NO. 2823 OF 2006**

Mugwort Land Holdings Private Limited

...Applicant/
Plaintiffs to the
Counter Claim

Versus

Phoenix Tower Cooperative Housing Society Ltd
& Ors

...Defendants

**WITH
NOTICE OF MOTION NO. 1979 OF 2016
IN
COUNTER CLAIM NO. 20 OF 2015
IN
SUIT NO. 2823 OF 2006**

Mr Girish S Godbole, *with Ms Rujuta Patil and Ms Niyathi Kalra,
i/b Negandhi, Shah & Himayatullah, for the Applicant in
Chamber Summons No.348 of 2019, Original Defendant No.7 in
Suit No. 2823 of 2006 and the Plaintiffs in Counter Claim No.
20 of 2015.*

Mr DV Deoky, with Mr Pinakin Modi, i/b M/s Parimal K Shroff & Co, for Defendants Nos. 7 and 8 in Notice of Motion No. 1979 of 2016.

Mr Sharan Jagtiani, with Ms B Dave, Mr Ragav Gupta and Mr A Gandhi, i/b Wadia Ghandy & Co, for the Original Plaintiffs in Notice of Motion No. 1979 of 2016.

CORAM: G.S. PATEL, J
DATED: 1st April 2019

PC:-

1. The Chamber Summons is not on board. By consent, it is taken up.
2. The Chamber Summons is by the 7th Defendant to the suit, Mugwort Land Holdings Private Limited, seeking to amend its Counter Claim. On 13th December 2018, I held that the Counter Claim, as it then stood, would not lie as a counter claim because it sought no relief against the Plaintiff but only against the fellow defendants. The correct course of action was to file a Third Party Notice under the Bombay High Court (Original Side) Rules. I did say that if the parties had not settled by 16th January 2019, the Counter Claim would stand dismissed as withdrawn.
3. The Chamber Summons seeks to add a single prayer a(i) to the Counter Claim, for a declaration that the original Plaintiff to the Suit is not entitled to the portion of land admeasuring approximately 2153.5 sq mtrs of the suit property.

4. This Chamber Summons is made absolute in terms of the schedule. The amendment to the Counter Claim is to be carried out tomorrow, 2nd April 2019 without need of reverification. No further amendment to the Counter Claim is now going to be permitted.

5. The original Plaintiffs' Notice of Motion No. 1979 of 2016 under Order VII Rule 11 of the Code of Civil Procedure 1908 for rejection of the Counter Claim will be taken up for hearing and final disposal on 5th April 2019.

6. It is clarified that this order permitting the amendment is not to be read as a direction that the amendment relates back to the date of the institution of the Counter Claim. All contentions in that behalf, include limitation, are left open.

7. List the Motion on 5th April 2019, at the end of the supplementary board.

(G. S. PATEL, J)