

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

CHAMBER SUMMONS NO. 405 OF 2017
IN
SUIT NO. 799 OF 2014

Mr. Govind Kabra Bhadracha ..Applicant

In the matter between

M/s. Maaoli Land Developers & Ors. ..Plaintiff/s

v/s.

Kashibai Waman Patil (Deceased
through Lrs.) & Ors. ..Defendant/s

Mr. Rushabh Sheth a/w. Ms. Nidhi Boriya I/b. M/s.Bodhanwala &
Co. for the Applicant.
Mr. Shailendra Kanetkar for the Plaintiff.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 28th MARCH, 2019.**

P.C.

1. The Applicant herein has filed this Chamber Summons to implead him as a party Defendant in the above captioned Suit.
2. Heard Mr.Sheth, the learned Counsel for the Applicant. He contends that the property under Survey No. 301/6 was originally owned by one Devubai Thakur. Said Devubai Thakur had entered

into an Agreement dated 23rd January, 1983 in favour of one Taukirahmed Mohd. Hanif Khan, who in turn has agreed to sale the property to the present Applicant by agreement dated 22nd January, 1988. He claims that the Applicant is in possession of the property and his right will be affected if the reliefs as prayed are granted in favour of the Plaintiff.

3. Mr.Kanetkar, the learned Counsel for the Plaintiffs submits that the Applicant is neither a necessary nor proper party. He states that the property was originally owned by one Pandu Mhatre. He had gifted the property under Survey No. 301/6 to his daughter Kashibai Patil. He submits that the property was recorded in the Survey Records jointly in the name of Kashibai as well as Devubai Thakur. He has submitted that heirs of Devubai Thakur have executed an agreement dated 20th February, 1990 in favour of the plaintiff wherein they have clearly stated that they have no right, title or interest in the suit property. He has further stated that the Agreement dated 23rd January, 1983 which was executed by Devubai in the name of Taukirahmed Mohd. Hanif Khan clearly indicates that the possession of the property was not handed over to Taukirahmed

Mohd. Hanif Khan. Said Taukirahmed Mohd. Hanif Khan had not derived any right, title and interest in the property and hence he could not have transferred any right, title or interest in the suit property in favour of the Applicant by Agreement dated 22nd January, 1988, which also again is an unregistered Agreement. He therefore contends that the Applicant is neither a proper nor necessary party to the property and hence he cannot be impleaded as party to the suit.

4. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties.

5. It is well settled that a person who is invoking powers of the Court under Order I Rule 10 of CPC has to show that he has some direct or legal interest in the controversy involved in the suit. In the instant case, the Applicant has filed the Chamber Summons seeking to implead him as party to the suit on the ground that he has right, title and interest in the suit property surveyed under Survey No.301/6 of Village Dahisar.

6. It was not in dispute that the property under Survey No. 301/6 was owned by Pandu Mhatre. He had executed a Gift Deed dated 13th March, 1937 and gifted the suit property under Survey

NO.301/6 to his daughter Kashibai Patil. And the property under Survey No.300/1 has been gifted to his grand-daughter Devubai Thakur. The property was surveyed in the records in the name of Devubahi Thakur and Kashibail Patil. In agreement dated 20th February, 1990, the legal representative of Devubai Thakur have stated that they have no right, title or interest in the suit property. At this juncture, it is not necessary to consider the title or rights of Devubai Thakur in respect of the suit property. As stated earlier, the question is whether the Applicant herein has any right, title or interest in the suit property.

7. The Applicant is claiming right to the property by virtue of an un-registered Agreement dated 22nd January, 1988 executed in his favour by one Taukirahmed Mohd. Hanif Khan. The records indicate that by an Agreement for Sale dated 21st January, 1983 Devubai Thakur had agreed to sale the suit property to said Taukirahmed Mohd. Hanif Khan. Clause (3) of the said Agreement indicates that the possession of the suit property was to be handed over to Taukirahmed Mohd. Hanif Khan upon execution of Sale Deed. It is not in dispute that Devubai Thakur had not executed any

Sale Deed in favour of Taukirahmed Mohd. Hanif Khan. It is thus evident, that neither the title nor possession of the suit property was transferred in favour of Taukirahmed Mohd. Hanif Khan. Consequently, said Taukirahmed Mohd. Hanif Khan could not have transferred any right, title or interest in the suit property in favour of the Applicant, that too on the basis of an unregistered agreement.

8. The Applicant has failed to show that he has any right, title or interest in the suit property. As a result thereof, he is neither a necessary nor a proper party. The Chamber Summons has no merits and is accordingly dismissed.

(ANUJA PRABHUDESSAI, J.)