

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

**CHAMBER SUMMONS NO.861 OF 2016
IN
SUIT NO.420 OF 2015
WITH
CHAMBER SUMMONS NO.1826 OF 2016
IN
SUIT NO.420 OF 2015**

Errol Daniel Gomes & Ors.	...	Plaintiffs
Versus		
R.N. Tata & 9 Others	...	Defendants

.....

Dr. Birendra Saraf, a/w. Ms. Deepti Panda, Mr. Zain Mookhi, Ms. Akanksha Patil and Ms. Parvathy Iyer, i/b. M/s. Narayanan & Narayanan, for the Plaintiffs.

Mr. Darius Khambata, Senior Advocate, a/w. Mr. Karl Tamboly, Mr. Phiroze Mehta, Ms. Vijaya Bhat and Ms. Avan Ardeshir, i/b. Mulla & Mulla & Craigie Blunt & Caroe, for Defendant Nos. 1, 3 to 7/Applicants to Chamber Summons No.861 of 2016.

Mr. Vijay Dhingreja, a/w. Mr. Ravish Mishra and Mr. Jayraj Shinde, for Defendant No.10 and for the Applicant to Chamber Summons No.1826 of 2016.

.....

CORAM : S.C.GUPTE, J.

DATED : 14 AUGUST 2019

P.C.:

. This chamber summons has been taken out by original Defendants (Defendant Nos. 1 and 3 to 7) under Order 7 Rule 11 of the Code of Civil Procedure for rejection of the plaint on the ground of bar of law.

2. The Plaintiffs and Defendant Nos. 8 to 10, who are children of Daniel Felix Gomes (“Daniel”), claim to be absolute owners of the suit property described in Exhibit “A” to the plaint. It is their case that the suit property, along with its adjacent property, was being cultivated by one Maryan Gomes, upon whose death his son Felix became the possessor thereof cultivating the property. Upon the death of Felix, the property was cultivated by Daniel. The ancestors of the Plaintiffs and Defendant Nos. 8 to 10, and after them, the latter have thus been claimed to be in open, settled, continuous and uninterrupted possession of the suit property. It is their case that Defendant Nos. 1 to 7, who are trustees of Sir Ratan Tata Trust (“Trust”), who claim to be owners of the suit property and whose names stand in the record of rights as such owners, have been seeking to forcibly dispossess the Plaintiffs. The Plaintiffs, accordingly, seek to protect their possession. They pray for a declaration of (a) their ownership by adverse possession; (b) extinguishment of title of Defendant Nos. 1 to 7 as trustees of the Trust; and (c) a perpetual injunction *inter alia* against their dispossession.

3. Defendant Nos. 1 and 3 to 7 have filed the present chamber summons seeking rejection of the plaint on account of (a) want of cause of action; and (b) bar of law. Their case is that no suit for declaration of title on the strength of adverse possession is maintainable. They rely on the decision of Supreme Court in the case of **Gurdwara Sahib vs. Gram Panchayat Village Sirthala**¹. They submit that the present suit is essentially a declaratory suit based on adverse possession and the perpetual

¹ (2014) 1 SCC 669

injunction sought therein is merely a consequential prayer.

4. The chamber summons is taken out solely on the basis of the law stated by the Supreme Court in the case of **Gurdwara Sahib** (supra). The Supreme Court in that case held that no declaration could be sought on the basis of adverse possession inasmuch as adverse possession could only be used as a shield and not as a sword. Based on this law, it is claimed by the Defendants in support of their chambers summons that the Plaintiffs cannot seek a declaration to the effect that their so called adverse possession has matured into ownership. It is submitted that only if proceedings are filed against the Plaintiffs and they are arrayed as Defendants, they could use their possession as a shield or defence.

5. This law, stated in the **Gurdwara Sahib** (supra), has since been expressly overruled by the Supreme Court in the case of **Ravinder Kaur Grewal vs. Manjit Kaur**². The Supreme Court in that case in categorical terms held that a person in possession could not be ousted by another except by due process of law and once the 12 years' period prescribed as the period of limitation under Article 64 and 65 is over, even the owner's right to eject the possessor is lost forever and the possessor acquires the right, title and interest possessed by the outgoing person/owner. The Supreme Court held that as a consequence, once such right, title or interest is acquired, it could be used either as a sword or a shield within ken of Article 65 of the Limitation Act, and any person, who has thus perfected his title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. By the same token, even

2 2019 SCC OnLine 975

a suit seeking a restraint on obstruction to, or interference with, such right or title acquired through adverse possession can certainly be maintained against persons interested in denying such right or title or seeking to interfere with such possession. Thus, the whole basis of the present chamber summons, which was squarely premised on the dicta of the Supreme Court in **Gurdwara Sahib** (supra), has been undermined and a suit for declaration of a right acquired by adverse possession can no longer be said to be barred by law.

6. Accordingly, there is no merit in the chamber summons. The chamber summons is dismissed.

7. The other additional points, which are raised by the Defendants in support of the chamber summons, and which are not pressed at the hearing of the present chamber summons as also the Plaintiffs' reply in support of their defence that their claim for perpetual injunction is anyway independent of their right, title or interest perfected through adverse possession, are not considered or decided by this Court. It will be open both to the Defendants and the Plaintiffs to urge these points at the hearing of the suit. All rights and contentions of the parties in that behalf are kept open.

8. Chamber Summons No.1826 of 2016 to appear before the regular Court taking chamber matters.

(S.C.GUPTE, J.)