

Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 808 OF 2018
IN
SUIT NO. 2563 OF 1985

Kulbir Singh Harcharan Singh	...Applicant
<i>In the matter between</i>	
Harcharan Singh Sadhu Singh Gabadia	...Plaintiff
<i>Versus</i>	
Charansingh Harisingh Osahan	...Defendant

Mr Aziz Khan, i/b Mr Abhijeet Rane, for the Applicant.

CORAM: G.S. PATEL, J
DATED: 11th February 2019

PC:-

1. The suit was decreed on 17th October 1985 by consent. The Consent Terms of that date were tendered, taken on record and marked 'X' for identification. Those Consent Terms were made an order of the Court that very day and the decree was drawn up. The drawn up decree specifically said that it was to operate as a conveyance in respect of the property described in Exhibit "A" to the Plaint and the subject matter of the Agreement dated 17th March 1985 at Exhibit "B" to the Plaint.

2. The Defendant admitted receipt of the entire amount of Rs.1.8 lakhs as the agreed full consideration from the Plaintiff.
3. The present Chamber Summons is by the heir of the original Plaintiff and seeks that the decree be adjudicated for stamp, and that he be allowed to collect the decree and to present it for registration.
4. There can be no opposition to this. The learned Advocate who appears for the heirs of the original Defendant says that his clients are unaware of any of this. That is certainly no reason to delay an order on this Chamber Summons. The heirs of the original Defendant are at liberty to take search and copies of the relevant papers, whether ordinary copies or certified copies and the Registry will allow any such application on payment of the necessary fees.
5. I note that no application whatsoever has been made for setting aside the consent decree.
6. The Prothonotary and Senior Master while forwarding the original decree to the Collector of Stamps will do so with a request that the adjudication be completed within six weeks.
7. I am making it clear that the stamp duty has to be adjudicated not as of today's date but as of the date of the decree, i.e., 17th October 1985 at the rates payable at that time. Even for the purposes of capital gains and the definition of transfer under the Income Tax Act 1961, since payment was fully made and is acknowledged in the Consent Terms itself, the transfer was complete on that date. It goes

without saying that if there is a transfer by the heirs of the original Plaintiff hereafter, that transaction and the document under which it is undertaken will be liable to be separately stamped and registered.

8. I will grant both the Prothonotary and Senior Master and the Applicant liberty to apply in case of any difficulty.

9. The Chamber Summons is made absolute in terms of prayer clauses (a) and (b).

(G. S. PATEL, J)