

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 727 OF 2015**

Javed Meer Khan & Anr	...Plaintiffs
<i>Versus</i>	
Cecil Kinny Alias Cecilia N Coutinho & Ors	...Defendants

Appearance not given.

**CORAM: G.S. PATEL, J
DATED: 30th January 2019**

PC:-

1. On 23rd May 2016 Consent Terms were filed in this suit for specific performance of an Agreement for Sale of land between the Plaintiffs and Defendants, except Defendant No. 16. The order of SJ Kathawalla J of that date notes that Defendant No. 16 was overseas at that time. The order dated 23rd May 2016 of this Court required Defendant No. 16 to remain present in Court on 29th June 2016. She failed to appear. She said she was unwell. The Court was told that she would appear on 4th July 2016. On that date, she was absent and the Court was told that she was refusing to appear. Accordingly, Kathawalla J directed that the matter would continue against her and she was directed to file her Written Statement on or before 18th July 2016.

2. On the next date, 18th July 2016, Kathawalla J noted some of these facts. Again Defendant No. 16 was absent. In view thereof, Kathawalla J directed the suit to be set down for an *ex parte* decree on 25th July 2016.

3. The 16th Defendant has not appeared at any time. She has not filed a Written Statement. The Plaintiff is entitled to an *ex parte* decree against the 16th Defendant.

4. An Affidavit of Service of the Writ of Summons on the 16th Defendant is taken on file.

5. The learned Advocate for the Plaintiffs tenders an Affidavit of Documents and Compilation of Documents. The Compilation of Documents is taken on record and marked **Exhibit “P1”** in evidence. The Plaintiffs’ witness, Mr Javen Mir Khan, Plaintiff No. 1 is present in Court. He tenders an Affidavit in lieu of examination-in-chief. He confirms the correctness of what is stated in his Evidence Affidavit and offers himself for cross-examination.

6. The name of the 16th Defendant is called out. None appears. The cross-examination of the Plaintiff No. 1 by the 16th Defendant is closed.

7. The Plaintiffs close their case.

8. None for the only contesting 16th Defendant. The case of the 16th Defendant is closed.

9. The suit itself is in respect of Old Survey No. 140, Hissa No. 11 as described in prayer clause (b) of the Plaint. According to the Plaintiffs, by an Agreement dated 10th December 2013 between the Plaintiffs and Defendant No. 1 the Plaintiff No. 1 was to be the purchaser and the Defendant No. 1 was to convey his property to the Plaintiff No. 1.

10. Having regard to the Consent Terms filed on 23rd May 2016 obviously there cannot be a decree as prayed. The reason is that the Consent Terms themselves contain various undertakings and declarations and the Plaintiffs have accepted these.

11. The order to be made, therefore, on the suit is that the Consent Terms will operate as a decree as against Defendant No. 16 on the same terms and conditions and the 16th Defendant will now be bound by virtue of this order read with those Consent Terms by all those terms and conditions. Decree accordingly.

12. Refund of court fee in accordance with the Rules.

13. Drawn up decree is expedited.

14. The original documents will be returned to the Plaintiffs in accordance with Rule 306 of the Bombay High Court (Original Side) Rules.

15. The suit is disposed of in these terms. No costs.

(G. S. PATEL, J)