

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 1556 OF 2016
IN
EXECUTION APPLICATION NO. 358 OF 2010**

Rajesh Balkrishna Kadam	...Applicant
<i>Versus</i>	
Shanta Jagjeevan Patel & Ors	...Respondents

Mr Parag Tilak, i/b Mr Drupad Patil, for the Applicant.
Mr VS Kapse, for Respondents Nos. 4 & 5.

CORAM: G.S. PATEL, J
DATED: 23rd April 2019

PC:-

1. Having exhausted all legitimate legal avenues to oppose execution, having also exhausted patience, having run out of time and now in imminent danger of trespassing on eternity, Mr Kapse yet attempts one last argument, as valiant as it is ill-advised. He says, and to my very great surprise with all seriousness, that the decree that Dr DY Chandrachud J (as he then was) passed on 27th August 2009 in this suit for specific performance is — and these are Mr Kapse's words not mine — a 'nullity'. He says this because prayer (a) of the Plaint seeks only a decree for specific performance of an Agreement for Sale including for a conveyance but does not

seek a decree for possession. The argument of course overlooks the frame of the prayer. While decreeing the suit Dr Chandrachud J passed a decree in terms of the prayer subject to the Plaintiff depositing balance consideration, and then passed the usual directions for execution of the conveyance should the Defendant fail to do so. The prayer references the Agreement dated 25th December 1997. A copy of this is marked in evidence and also of course annexed to the Plaint as Exhibit "A". Now that agreement itself says at page 20 that on payment of the purchase price the Defendant was to give vacant possession. There is an undertaking to this effect. This is the agreement of which specific performance was decreed. I confess I am wholly unable to follow Mr Kapse's nullity argument. It is wholly misconceived.

2. The next argument is that the true owner of the property is MHADA. It was a party to the Suit. There ought to have been a decree of possession against MHADA. Of this argument perhaps the less said the better. The possession that is sought is the Defendants' possession, not MHADA's, and nobody is depriving MHADA of its superior title.

3. Mr Kapse has nothing further to add. Of course, the Defendants are entitled to the amount to be deposited. But beyond that there is no reason now to delay making an order on this Chamber Summons in execution. It is made absolute in terms of prayer clauses (a), (b) and (c). On the Plaintiff obtaining actual physical vacant possession of the property in question and upon the Court Officer executing the necessary documents of title, Judgment

Debtors Nos. 1 to 5 will be entitled to withdraw the amount deposited by the Plaintiff with all accrued interest.

4. The Chamber Summons is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)