

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 1830 OF 2016
IN
SUIT NO. 208 OF 2015

Surinder Chowdhary & Anr. Applicants
IN THE MATTER OF
M/s.Kukreja Construction Company Plaintiff
VERSUS
Shyamsunder Peswani & Ors. Defendants

Gulnar Mistry, i/b. Mr.Pranav Khatkul for the Applicants.

Mr.Mahesh Menon, a/w. Mani Thevar, i/b. Mahesh Menon & Co. for the Plaintiff.

Mr.Abhijeet Mahadeokar for the Defendant no.1.

Mr.Nishant Sasidharan, a/w. Mr.Darshan R. Mehta, i/b. M/s.Dhruve Liladhar & Co. for the Defendant nos. 6 to 8.

Mr.Kedar Dighe, A.G.P. for the State.

CORAM : R.D. DHANUKA, J.

DATE : 11th JANUARY, 2019

P.C.

By this chamber summons, the applicants seek their impleadment as defendant in Suit No.208 of 2015 which is *inter alia* praying for specific performance of the agreement. Admittedly the applicants does not claim through any of the parties to the suit but claims adverse possession in respect of the property in question.

2. The Hon'ble Supreme Court in case of ***Kasturi vs. Iyyamperumal & Ors., (2005) 6 SCC 733*** has held that in the suit for

specific performance of contract, the necessary parties are the only the parties to the contract or the parties claiming under them or a person who had purchased the contracted property from the vendor with or without notice of the contract. Person who claims independent title and possession adversely to title of vendor is not a necessary party, since an effective decree can be passed in his absence and no relief can be claimed against such party. The principles of law laid down by the Hon'ble Supreme Court in case of *Kasturi* (supra) squarely applies to the facts of this case.

3. In my view, the applicants thus not claiming through any of the parties to the suit nor claiming to be a purchaser the property which is subject matter of the suit, is neither the necessary nor the proper party to the suit.

4. Chamber summons is misconceived and is accordingly dismissed.

5. It is made clear that this court has not expressed any alleged rights claimed by the applicants in this chamber summons.

6. All contentions of both the parties are kept open.

7. If any independent proceedings are filed by the applicants, the same shall be decided on its own merits. No order as to costs.

[R.D. DHANUKA, J.]