

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**NOTICE OF MOTION NO. 2512 OF 2012**  
**IN**  
**SUIT NO. 2180 OF 1997**  
**AND**  
**NOTICE OF MOTION NO. 1429 OF 2013**

|                                  |               |
|----------------------------------|---------------|
| Amey Jagdish Rane                | ...Plaintiff  |
| <i>Versus</i>                    |               |
| Ravindra Laxmidas Panjwani & Ors | ...Defendants |

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**Mr Deepak Shukla**, *i/b Vinod Mistry & Co, for the Applicant in NMS/2512/12.*

**Mr VA Joshi**, *with Akashay Sawant, i/b Chitnis Vaithy & Co, for the Respondent in Notice of Motion and for the Applicant in Suit.*

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**CORAM: G.S. PATEL, J**  
**DATED: 13th March 2019**

**PC:-**

1. The application is misconceived. It is filed by one Hardik Panjwani. The Motion seeks to recall an ex parte judgment and decree dated 6th July 2009 of Dr DY Chandrachud J (as he then was).

2. The suit was for specific performance of an Agreement of Sale dated 23rd August 1991 in respect of a property of about 20000 sq yards at Borivali. Chandrachud J noted that though served the Defendants did not appear or contest the proceedings. He decreed the suit subject to the Plaintiff depositing the balance consideration and directed execution of Deed of Conveyance within four weeks. The judgment noted that the agreement was to sale was executed by the owners of the property for Rs. 32 lakhs.

3. This applicant Hardik Rajendra Panjwani was not a signatory to this agreement of 23rd August 1991. He could not have been. He was seven years old at the time of the agreement. He says that he ought to have been joined as a defendant to the suit. The submission is thoroughly misconceived. This was not a suit for partition. It was for enforcement of an agreement of sale. Hardik relies on some letter of 21st February 1992 addressed M/s Chitnis and Vaity by Ms HH Mehta, an advocate of this Court. M/s Chitnis and Vaity were for the Plaintiffs in the suit. In the letter she said that one Hansagauri Panjwani died leaving heirs including Rajendra Panjwani and Aruna Panjwani. Rajendra Panjwani seems to have died thereafter. His brother Ravindra was the 1st Defendant to the suit. Another brother Surendra was another Defendant to the suit and the applicant's mother Aruna, Rajendra's widow, was also a Defendant to the suit. These were the signatories to the Agreement. How any other heir of Rajendra could claim to be entitled to be arrayed as Defendant in such a suit is unclear and unexplained.

4. That apart, there is the question of unexplained delay. The Applicant attained majority in 2002. He does not explain what he

did thereafter. The suit itself was decreed only in 2009. The Applicant was living with his mother Aruna and in adulthood could not have been of unaware of these proceedings. I am told the property is fully developed and third party rights created. If the applicant believes that the property was ancestral or joint and he had some rights in it, he must adopt substantive proceedings. He cannot seek a recall of the decree of specific performance of an agreement to which he was not, and could not have been, a signatory.

5. There is an attempt made to cite all manner of authorities alleging that the suit was barred by limitation and the decree was obtained by fraud and so on. I have not permitted Mr Shukla to cite these authorities. None are necessary. He cannot maintain an application under Order 9 Rule 13 of the Code of Civil Procedure, 1908 to begin with. The applicant is not a defendant, and that provision in the CPC speaks of a right available to a *defendant*. His remedies, if he has any, lie elsewhere.

6. The Motion is misconceived. It is dismissed. There will be no order as to costs.

#### **NOTICE OF MOTION NO. 1429 OF 2013:**

7. I have already dismissed this Applicant's Notice of Motion No. 2512 of 2012 seeking to set aside the decree dated 6th July 2009.

8. This Motion is one that he has filed in the decreed suit where he is not a defendant and not a party. He seeks the appointment of a Receiver and an injunction against the Plaintiff who obtained a decree.

9. This Motion is a triumph of ambition over law.

10. It is dismissed.

**(G. S. PATEL, J)**