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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****CHAMBER SUMMONS NO. 3 OF 2015****IN****SUIT NO. 16 OF 2012**

Messers Libra Corporation ...Plaintiff

Versus

Messers Jaycee Construction Co & 5 Ors ...Defendants

And

Barse Jawahar Anastasio D'souza ...Applicant

**Mr DD Madon, Senior Advocate, with Mr Niranjan Pandit & Ms
Maya Sarkar, i/b Madhukar Munim & Co, for the Plaintiff.****Mr Rakesh Agrawal, for the Applicant.****Mr Ramchanran Narayanan, with Tejjas P Shah, i/b M/s.
Narayanan & Narayanan, for Defendants Nos. 1 to 4.****CORAM: G.S. PATEL, J****DATED: 8th February 2019****PC:-**

1. This is a Chamber Summons of 2015 by the Applicant seeking impleadment. It has been repeatedly adjourned after the Rejoinder was filed on 29th January 2015. It was adjourned at the request of the Applicant before KK Tated J on 23rd August 2017. It was again adjourned on 15th September 2017. On 9th October 2017, the Applicant sought time on the ground that his counsel was not available. The matter was adjourned. On 12th March 2018 the Applicant sought time to file an Additional Affidavit. On 27th

March 2018, the Applicant filed a sur-sur-rejoinder and served it only that morning. On 17th April 2018, the Applicant again sought an adjournment.

2. The Chamber Summons was before me on 4th February 2019. The Applicant yet again sought time. I kept it today and specifically indicated that it would be on the supplementary board. When it is called out the Advocate on record asked again for an adjournment or for having the matter kept back. The request is declined. Enough is enough.

3. I have heard Mr Agrawal, who is on record for the Applicant, and Mr Madon and Mr Narayanan in opposition.

4. The Chamber Summons is thoroughly misconceived. The Applicant is not a party to the suit. He is not a party to the agreement of which specific performance is sought. He does not even claim to be the owner of the land covered by the agreement of which specific performance is sought. This is clear from a reading of the schedule of the suit property at Exhibit "A" at page 49 of the Plaint. The suit property is CTS No. 1191-A part and one of its boundaries, the one to the south, is said to be land bearing CTS No. 1191-B of village Versova, Taluka Andheri. In the Affidavit in Support, the Applicant claims he owns this adjacent land, CTS No.1191-B. The argument that the suit property includes CTS No.1191-B, and this is what was contended, is clearly incorrect. The parties to suit do not accept (and indeed are not required to accept or deny) the claim of the Applicant to CTS No.1191-B.

5. It appears that in the course of the proceedings in the suit, in a dispute between the Plaintiff and the Defendants, a question arose about constructing a gate marked “G2” on the plan at Exhibit “B” to the Plaint. The question before RD Dhanuka J on 11th November 2014 was whether the Plaintiff or the Defendants should be entrusted with this work of gate construction. All that Dhanuka J did was to note the statement made on behalf of Defendants Nos. 1 to 4 that those Defendants were not a position to construct the gate for various reasons, but they had no objection if the Plaintiff constructed and provided that gate at its own cost. This was the statement that was accepted and it was the only statement that was accepted.

6. Mr Agrawal says that the gate construction affects the applicant’s rights over his own adjacent property. This does not in any sense give the present Applicant a right to impleadment in this specific performance suit. The Applicant is neither a necessary or a proper party in these proceedings. He is not concerned with the suit property. He is at liberty to adopt such proceedings as he may be advised in law to establish his title to the property over which he claims right and seek such relief as is available to him.

7. The Chamber Summons is dismissed. No costs.

(G. S. PATEL, J)