

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

CHAMBER SUMMONS NO. 926 OF 2018

IN

SUIT NO. 1426 OF 1996

Omprakash Lalji Gupta

& Ors.

.. Applicants

In the matter between :

Sakubai Wd/o. Shankar Ghatyal

& Ors.

.. Plaintiffs

Vs.

Standard Chartered Grindlays Bank

& 4 Ors.

.. Defendants

ALONG WITH

CHAMBER SUMMONS NO. 927 OF 2018

IN

SUIT NO. 1426 OF 1996

Krishnadevi Satveer Yadav

.. Applicant

In the matter between :

Sakubai Wd/o. Shankar Ghatyal

& Ors.

.. Plaintiffs

Vs.

Standard Chartered Grindlays Bank

& 4 Ors.

.. Defendants

None for plaintiffs.

Mr.A.J. Almeida for applicant in both chamber summons.

Ms. Dhanashree Gaikaiwari i/b Bilawala and Co. for defendant No.1.

Mr.H.B. Takke, AGP for State.

CORAM : N.J. JAMADAR, J.

DATE : 18TH FEBRUARY 2020

P.C.

**CHAMBER SUMMONS NO. 926 OF 2018
AND
CHAMBER SUMMONS NO. 927 OF 2018**

1. Heard the learned counsel for the applicant/s.
2. These chamber summons have been taken out by the applicants seeking their impleadment as party defendants to the suit.
3. The suit is instituted for a declaration that the purported consent decree passed on 15th January 1970 in Suit No. 54 of 1967 is null and void and not binding on the deceased plaintiff Mangla Ladkya Ghatal, who was the defendant in the said suit No.54 of 1967. The original plaintiff died and his legal representatives have been brought on record.
4. The applicants assert that they are in occupation of the portions of the property, which was the subject matter of the Suit No. 54 of 1967. The original plaintiff had also created certain rights in their favour by executing documents. The original plaintiff subsequently instituted proceedings against the applicants contending that the applicants have no right, title and interest in the property. Hence, the applicants are necessary parties to the suit.

5. The learned counsel for the applicants submitted that the applicants have a serious apprehension that the parties to the suit may compromise the dispute and even otherwise, if any order is passed in the instant suit, it may affect the rights of the applicants. Hence, it is necessary to implead the applicants as party defendants.

6. It is trite that addition of a party to a proceedings is not a matter of initial jurisdiction but one of the judicial discretion. The party, who is ought to be impleaded in the proceedings, must have a direct interest in the subject matter as distinguished from a commercial interest. The presence of such a party before the Court must be necessary for an effectual and a complete adjudication of the dispute. A necessary party is one in whose absence, the Court would not be in a position to have a complete and effectual adjudication of the dispute. On the aforesaid touchstone, it becomes evident that the original plaintiff, who was a party to Suit No. 54 of 1967, wherein a consent decree was passed, is seeking a declaration that the said decree is null and void and not enforceable against the plaintiff.

7. The pivotal question which would arise for determination in the suit is whether the consent decree is vitiated on account of the factors like absence of consent, fraud, undue influence and coercion. The

determination of the said question is essentially qua the plaintiff, who was a party defendant to the suit to which the said decree came to be passed. It is not the case that the decree passed in Suit No. 54 of 1967 affects the rights of the applicants. In the event, the applicants claim that the consent decree in Suit No.54 of 1967 affects the rights of the applicants as well and does not bind them, the applicants would be required to take out a substantive proceedings. The impleadment of the applicants is thus not necessary for a complete and effectual adjudication of the dispute between the plaintiff and the defendants. So far as the apprehension on the part of the applicants that the instant suit may be compromised by the parties thereto and in that event, the rights of the applicants may be jeopardized, it would be suffice to direct that in the event, the instant suit is compromised between the parties, the plaintiff and the defendants, (who may be parties to the said compromise) shall intimate the said fact to the applicants within a period of four weeks of entering into such compromise.

8. With these directions, both the chamber summons stand disposed of.

[N.J. JAMADAR, J.]