

Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 234 OF 2019

IN

CHAMBER SUMMONS NO. 716 OF 2010

IN

SUIT NO. 2434 OF 1987

Vijay Prataprai Mehta

...Appellant

Versus

Jayant N Shah & Ors

...Respondents

Mr Vijay P Mehta, Appellant, present in person.

Mr Sunil Patel, i/b Sunil & Co, for Respondents Nos. 3 and 4.

CORAM G.S. Patel &

Gauri Godse, JJ.

DATED: 26th July 2022

PC:-

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RAMCHNDRA
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1. The present Appellant is the son of the original Plaintiff. The Suit was for a declaration that an agreement dated 15th April 1985 and another dated 15th November 1985 were valid, subsisting and binding. The Suit sought a declaration that the Defendants were in possession of the suit property and of Flat Nos. 1 and 3 on the ground floor of the building which stands at Plot No. 191, Road No. 13, Jawahar Nagar CHSL, Goregaon (West), Mumbai – 40062. **The Suit was also for specific performance of the Agreement dated 15th April 1985.**

2. On 21st September 1987, the Defendants submitted to a consent decree by way of Minutes of the Order. A drawn up decree was then issued. The Plaintiff/Decree Holder has been in execution since. He has tried to obtain orders of this Court for forcible possession of various other flats in the building including, importantly for our purposes today, Flat No. 4. On 2nd September 1994, the Plaintiff filed Chamber Summons No. 902 of 1992 for such a relief of immediate possession. At that time, one Niruben S Shah objected saying that she was a tenant of the original Defendants. The Chamber Summons was dismissed by SH Kapadia J (as he then was). On 13th January 1998 Kapadia J rejected a Review Petition. He, however, made it clear that in the Chamber Summons that was originally before him, there was only a prayer for summary eviction but not a prayer of adjudication of the competing rights. This situation has continued. The Plaintiff filed Chamber Summons No. 716 of 2010. In this, he now sought specifically that the *obstruction or resistance* in respect of Flat No.4 be removed and that he be given possession. However it may be worded, this becomes an application under Order XXI Rule 96 and 97 of the Code of Civil Procedure 1908 (“CPC”). Obviously, the rival contentions will be decided here and not by way of a separate Suit. This is, however, subject to a self-evident caveat, namely, that if there is a statutory bar of jurisdiction, the person in occupation of Flat No. 4 will be entitled to take that objection. All contentions in that regard including as to jurisdiction are expressly kept open. This order is not be construed as conferring on the executing Court a jurisdiction it may not have or taking away a jurisdiction that it might have.

3. By the impugned order dated 13th July 2016, this Chamber Summons was dismissed without any assessment on merits only on the basis that there was a previous Chamber Summons decided in 1994 (by SH Kapadia J, as noted above) followed by an order on the Review Petition. The impugned order overlooked that the reliefs sought in the two Chamber Summonses then and now are materially different. Chamber Summons No. 902 of 1992 sought forcible eviction and not an adjudication within the meaning of Order XXI Rules 96. We do not believe that the present Chamber Summons could have been summarily dismissed on the basis of the previous orders by Kapadia J. It will need to be tried as an obstructionist proceeding and, if necessary, to be numbered by the Registry.

4. The Appeal succeeds. The impugned order is set aside.

5. Chamber Summons No. 716 of 2010 is restored to file.

6. Liberty to the Plaintiff/Decree Holder to make an application before the learned Single Judge for an early listing of the restored Chamber Summons and for other necessary directions.

7. The Appeal is disposed of in these terms with no order as to costs.

(Gauri Godse, J)

(G. S. Patel, J)

Note: This order is modified as per order dated 3rd August 2022. The corrections are shown in bold, italics and underlined.