

OBE 5. in Suit No. 6829 of 2004

H.C.Suit no. 1650 of 2004

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Date : 17.10.2019

**IN THE BOMBAY CITY CIVIL COURT FOR GREATER MUMBAI**

**ORDER BELOW EXHIBIT NO. 5**

**IN**

**SUIT NO. 6829 OF 2004**

**H.C. SUIT NO. 1650 OF 2004**

**(CNR NO.MHCC01-005194-2004)**

Jolly Steel Industries Private Limited.

.. Plaintiffs

Versus

Shyamsunder Pundalik Dhumatkar HUF & Ors.

.. Defendants

**Appearances :-**

**Adv.Prerana Dhoke for plaintiff present.**

**Adv.Mr.Aditya Nilakantan for defendant no.7 and 8 present.**

**Coram : His Honour Judge**

**Shri. A.H.Laddhad**

**Additional Judge**

**CR No. : 7**

**Date : 17.10.2019**

**ORDER BELOW EXH.5**

1. The defendant no. 7 and 8 have filed instant application for deleting the issue no. 5 which has been framed as below :

***“5. Whether the defendant no. 7 to prove that they have any share, right, title and interest in respect of the suit property?”***

2. It is contended by the defendants that having regard to the frame of the suit which is for specific performance of the alleged Agreement by defendant no. 1 to 6, the ownership of defendant

no. 7 and 8 to the extent of 1/6th share in the suit property can not be in issue in the present suit. Further ownership of defendant no. 7 and 8 of 1/6th share in the suit property is not disputed in the plaint. Therefore, the defendants prayed for deletion of the aforesaid issue no. 5.

3. The application is opposed by the plaintiff by filing say below Exh. 6. It is contended by the plaintiffs that defendant no. 7 is claiming right, title and interest in the suit property to the extent of 1/6th undivided share by the virtue of Assignment Deed dated 22.12.2009. The aforesaid transfer affected during the pendency of the suit and hence, such transfer is not valid. Hence, the claim of the defendant no. 7 and 8 is not valid. Therefore, it is contended by the plaintiffs that the issue no. 5 can not be deleted.

4. Heard both the sides. Perused application and reply. It is not in dispute that the defendant no. 7 and 8 were added as party defendants by virtue of order dated 08.02.2011 passed in Chamber Summons No. 1064 of 2010. I have perused the Affidavit in support of the aforesaid motion. The defendants specifically made averment that during pendency of the suit, the defendant no. 2 being the holder of 1/6th share in the suit property, by Deed of Assignment dated 02.12.2009 assigned all his right, title and interest to the extent of 1/6th undivided share in the property in favour of the defendants and as such they have entered into shoe

of defendant no. 2. It is further mentioned that defendant no. 2 has also executed the registered irrevocable General Power of Attorney in their favour which is valid, subsisting and binding upon defendants. It is further contended by the defendants that upon execution of Assignment Deed, the defendant no. 2 has no authority or interest in the suit property to the extent of 1/6th share and defendants are the necessary parties to be joined in the proceedings in order to protect their property and interest therein. Thus, it is clear that the defendant no. 7 and 8 themselves added in the proceeding to contest the matter. Therefore, in my view, the issue no. 5 is rightly framed and can not be deleted. Thus, in my view, application has not merit and same deserves to be rejected. Thus, I proceed to pass the following order :

**ORDER**

1. Application below Exh. 5 is hereby rejected.
2. Application below Exh. 5 is disposed off accordingly.



**Dated : 17.10.2019**

Dictated on : 17.10.2019  
Typed on : 17.10.2019  
Draft Submitted on : 17.10.2019  
Checked on : 22.10.2019  
Signed on : 22.10.2019

**(A.H.Laddhad)**  
**Additional Judge**  
**Bombay City Civil Court**  
**Greater Mumbai**

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Date : 17.10.2019

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED  
JUDGMENT/ORDER.”

22/10/2019 at 4.00 p.m.  
UPLOAD DATE AND TIME

(Ms. V.V.Sawant)  
NAME OF STENOGRAPHER

|                                          |                                 |
|------------------------------------------|---------------------------------|
| Name of the Judge (With Court room no.)  | Shri A.H.LADDHAD<br>(C.R. No.7) |
| Date of Pronouncement of JUDGMENT/ ORDER | 17/10/2019                      |
| JUDGMENT/ORDER signed by P.O. on         | 22/10/2019                      |
| JUDGMENT/ORDER uploaded on               | 22/10/2019                      |