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## SPECIAL CIVIL SUIT NO. 74 OF 2021

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Order below application at Exh.157 :-

1. By way of filing the present application, the Power of Attorney of the plaintiff has prayed to pass an order for service of summons/notices upon the defendant nos. 3, 10, 14, 26, 43, 44, 45, 47, 48, 49, 51, 65, 67, 68, 70, 74, 75, 79, 82, 93, 96 and 102 by publishing in news paper as per the provisions of Order 5 Rule 20(1-A) of the Code of Civil Procedure.

2. Read this application, plaint and other related papers on record as well as the affidavit and endorsement of made by the bailiff. Heard Mr. A.S. Rana, learned advocate appearing for the plaintiff as well as Mr. M.A. Shaikh, learned advocate appearing for the defrendant nos. 6/1 to 6/7, 23 and 24.

3. Having heard the learned advocate appearing for the respective parties and on perusal of the entire record, it appears that the plaintiff has filed the present suit for partition and cancellation of the registered sale deeds as well as for declaration and permanent injunction against the defendants. On perusal of the record, it appears that the initially, the the plaintiff has filed the present before the court of learned Principal Senior Civil Judge at Surat and the present suit was registered as Special Civil Suit No.10 of 2017. Admittedly, there are total 107 defendants in the present suit. It appears that on service of summons, the defendant nos. 6/1 to 6/7, 23, 24, 25, 53, 71, 72,

73, 75, 100 and 101 appeared through their learned advocates. It also appears that the summons were duly served upon the defendant nos. 22, 27 to 40, 46, 53, 58, 61, 72, 81, 87, 88, 90, 91, 100 and 101. It further transpires from the record that the learned advocate appearing for the defendant nos. 71 to 73 has filed an application vide Exh.44 and prayed to delete the name of the defendant nos. 71 to 73 from the record of the present suit and as such the said application at Exh.44 is allowed by the undersigned by order dated 14<sup>th</sup> March, 2023 and it was ordered to delete the name of the defendant nos. 70 to 73 from the record of the present suit.

4. It is pertinent to note that thereafter, on creation of the new court of learned Principal Senior Civil Judge at Mandvi, the said suit has been transferred from Surat to Mandvi and it was re-numbered as Special Civil Suit No. 139 of 2017. It further transpires from the record that at Mandvi, the defendant nos. 6/1 to 6/7 and defendant nos. 23 to 25 had filed separate applications vide Exhs. 50 and 53 under the provisions of Order 7 Rule 11 (a)(d) of the Code of Civil Procedure. It appears that during the pendency of the said applications at Exhs. 50 and 53, on creation of Court of Principal Senior Civil Judge at Mangrol, the said suit was transferred from Mandvi to Mangrol and it was again re-numbered as Special Civil Suit No. 74 of 2021.

5. On transfer of the said suit from Mandvi to Mangrol, since there are total 107 defendants and only

few defendants have appeared through their learned advocates, it was desirable to issue notices to the respective parties, however, after verification, according to the learned advocate appearing for the plaintiff, the notices issued by registered post to the defendant nos. 3, 10, 14, 26, 43, 44, 45, 47, 48, 49, 51, 65, 67, 68, 70, 74, 75, 79, 82, 93, 96 and 102 returned unserved with different reasons like House Closed / Left / Not residing at given address / Left after selling property etc.

6. Mr. Rana, learned advocate appearing for the plaintiff has submitted that as such he has mentioned the address of the aforesaid defendants from the registered sale deeds executed in their favour and the said defendants are intentionally avoiding the service of summons upon them. It is submitted that though sincere efforts made by the bailiff, the notices could not have been served upon the aforesaid defendants and thereafter, though sufficient opportunities have been afforded to the learned advocate appearing for the plaintiff, he could not get the actual and correct address of the aforesaid defendants. It transpires from the record that since long the plaintiff could not served the summons / notices upon the aforesaid defendants. It appears that the summons/notices have been issued upon the defendants at the address given in the cause title of the present suit. However, it appears that the said defendants are keeping themselves out of the way for the purpose of avoiding service of summons / Notices.

7. Admittedly, the summons/notices have been issued upon the addresses given in the cause title of the present suit and according to the learned advocate appearing for the plaintiff, he has mentioned the addresses of the said defendants from the registered sale deeds executed in their favour, even then, the summons/notices could not have been served upon the said defendants. It transpires from the record that the summons/notices issued upon the defendants returned unserved with different remarks that House Closed / Left / Not residing at given address / Left after selling property etc. and, thus, it is believable that the defendants are avoiding the service of summons upon them.

8. On perusal of the record, it appears that the name of the defendant no.6/1, 70, 71, 72 and 73 are already ordered to be deleted and, therefore, no notices are required to be issued upon the defendant nos. 6/1, 70 to 73. It further transpires from the record that the defendant nos. 6/2 to 6/7 and 23 to 25 have already filed applications under the provisions of Order 7 Rule 11(a)(d) of the Code of Civil Procedure vide Exhs. 50 and 53 through their learned advocates and, therefore, no fresh notice is required to be issued upon the defendant nos. 6/2 to 6/7 and 23 to 25.

9. For the foregoing reasons, now it is difficult to serve the summons/notices personally to the defendants except the defendant nos. 6/2 to 6/7 and 23 to 25 and, therefore, the present application is

required to be allowed and accordingly, I hereby pass the following order :-

**-: O R D E R :-**

The present application at Exh.157 is hereby ALLOWED.

The office is directed to issue fresh summons upon the defendants, except defendant nos. 6/2 to 6/7 and defendant nos. 23, 24, 25, for publishing the same in a daily local news paper "GUJARAT MITRA", SURAT EDITION, as per the provisions of Order 5 Rule 20 (1-A) of the Code of Civil Procedure at the cost of the plaintiff.

The plaintiff is hereby directed to produce the original news paper along with the payment receipt for publication charges on the next returnable date without fail.

Put up on 20<sup>th</sup> June, 2024.

Pronounced in the open court on this 19th day of April, 2024.

Date: 19<sup>th</sup> April, 2024.

(Rajendra Ghanshyambhai Barot)  
Principal Senior Civil Judge  
Mangrol, District : Surat  
Judge Code : GJ00572