

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 316 OF 2013

Abdul Majid Aboobhai		Petitioner
	Vs	
Mrs. Rashida Fakhruddin Lokhandwala and Ors		.. Respondents

Mr. Chirag Balsara i/b J.R.Vyas, Advocate for Petitioner.

Mr. Rohan Cama i/b T.N.Tripathi & Co, Advocate for respondent no.5.

CORAM : R.G.KETKAR,J.
DATE : 21/07/2015

PC:

1. Heard Mr.Chirag Balsara, learned counsel for the petitioner and Mr. Rohan Cama, learned counsel for respondent no.5 at length. On the oral application made by Mr. Balsara, Civil Revision Application is allowed to be converted into Writ Petition as the impugned order partly allows the Chamber Summons filed by the petitioner-plaintiff. In view thereof, leave to convert Civil Revision Application into Writ Petition is granted. Mr. Balasara submits that defendant no.5 claims to have acquired interest of defendants no.1 to 4 as also 6 and 7. Defendant no.5 is the only contesting defendant. Mr. Balsara orally applies for deleting respondents, except respondent no.5, as no relief is claimed against them in this Application. Leave to delete, as prayed for, is

granted. Amendment shall be carried out forthwith.

2. Rule. Mr.Cama waives service on behalf of the respondent. At the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up finally.

3. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged the Judgment and order dated 10.1.2013 passed by learned Judge, City Civil Court, Bombay in Chamber Summons No.1398 of 2010 in Suit No.2977 of 2007. By that order, the learned trial Judge partly allowed the Chamber Summons only in respect of paragraphs (A) and (B) of paragraph 10 of the Schedule to Chamber Summons and rejected proposed amendment in paragraphs 10(C) to 10(O) and prayers D-1 to D-6.

4. In support of this Chamber Summons, Mr. Balsara submitted that the learned trial Judge has gone into merits of the proposed amendment which is not permissible. He submitted that the learned trial Judge having partly allowed the amendment as proposed in paragraphs 10(A) to 10(B), ought to have allowed rest of amendment as well. He submitted that suit is instituted on 3.10.2007 for redemption of mortgage. In June/July 2007 the plaintiff acquired knowledge that defendant no.5 claims to have acquired interest in the suit property. He submitted that the plaintiff took out Chamber Summons for inspection of documents which was allowed by this Court on 5.8.2009. It is only thereafter

they got documents which indicate that defendants no.1 to 4 executed instrument in favour of defendant no.5 on 27.1.2007. Defendants no.6 and 7 executed instrument in favour of defendant no.5 on 8.9.2007. He, therefore, submitted that the learned trial Judge ought to have allowed the Chamber Summons in its entirety.

5. On the other hand, Mr. Cama supported the impugned order. He submitted that the plaintiffs had knowledge of defendant no.5 acquiring interest in the property in dispute as is evident from prayer clause (a) of the plaint. In paragraph 5 of the plaint, the plaintiff specifically asserted that defendant no.5 took out Chamber Summons 967 of 2007 for bringing him on record as defendant no.2. Thus, the plaintiff had knowledge about acquiring interest by defendant no.5 in June/July 2007 and despite that, the Chamber summons is taken out on 30.9.2010. He submitted that the learned trial Judge, however, did not consider aspect of limitation.

6. Upon taking instructions from the instructing Advocate, Mr. Cama consents for setting aside the impugned orders and submits that all contentions of the parties may be kept open.

7. In view thereof, by consent of plaintiff and defendant no.5, the impugned order is set aside and Chamber Summons No.1398 of 2010 is restored to file of the trial Court. While deciding the Chamber Summons, the learned trial Judge will not go into merits

of the proposed amendment and decide the same in accordance with law. All contentions of the parties are expressly kept open.

(R.G.KETKAR, J.)