

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

**WRIT PETITION STAMP NO.31376 OF 2014
WITH
CIVIL APPLICATION STAMP NO.654 OF 2015**

**Bharati Rajendra Thakkar : Petitioner
versus
Vimaldeo Hirjibhai Thakkar and ors. : Respondents**

**Mr. Chirag Mody with Mr. Sachin Mahagaonkar and Mr. Uzair Kazi i/by
Divya Shah Associates for the Petitioner.**

**Mr. P K Dhakephalkar, Senior Advocate with Mr. Amol P Mhatre for the
Respondent Nos.1 to 4.**

**CORAM : R. M. SAVANT, J.
DATE : 21st January 2015**

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 13/10/2014 passed by the learned Judge of the City Civil Court Greater Bombay by which order the Chamber Summons No.1066 of 2009 filed by the Respondent Nos. 1 to 4 herein i.e. the original Plaintiffs came to be allowed and the Respondent Nos.1 to 4 i.e. the original Plaintiffs were permitted to amend the plaint in terms of the schedule to the affidavit in support of the said Chamber Summons.

2 In terms of the said schedule, the Plaintiffs seek incorporation of Paragraphs 15(a), 15(b), 16(a), 16(b), 17(a), 17(b), 37(a), 37(b), 37(c), 40-A, and 43-A, and add prayer clauses (h-1) to (h-7) after the prayer clause (h) and

prayer clause (n-1) after the prayer clause (n). The cause for moving the amendment application finds a place in Paragraph 2 of the Affidavit in Support of the said Chamber Summons. The sum and substance of the case of the Plaintiffs for seeking the amendments is that on a proper consideration of the plaint and the documents, it has come to the knowledge of the Plaintiffs that bequests made by Chandrabala by her Will dated 8th March 1990 which pertain to the property belonging to the Plaintiffs are void. It has further been mentioned that in terms of the Family Arrangement dated 14th July 1972, the parties to the said Family Arrangement had agreed to distribute the property in the manner set out therein. It has further been stated that as per the Family Arrangement, Chandrabala had no power of disposition in respect of the assets which came to the share of the Plaintiff No.1. It has further been stated that in so far as the Chowpatty Flat is concerned, the tenancy rights could not be bequeathed. It has further been averred that in so far as the tenancy rights in respect of the office premises at Manu Mansion are concerned, the same stood in the name of the Plaintiff No.1, and therefore, there was no question of Chandrabala making a bequest in respect of the same. It has further been stated that three flats and one garage in Building No.4 in the said Chandrabala Estate at Bandra were got vacated with the efforts and the funds of the Plaintiff No.1 and therefore he is entitled to the same. It has further been averred that the consideration paid by the Plaintiff No.1 to the Defendant Nos.1 and 2 for giving up their non-existent claim in respect of Noor Mansion was so paid with

the belief that the Defendants will also similar understand the family values and will co-operate for an out of court settlement in the future by extending a clear title of the Plaintiff No.1. It has further been stated that the amounts paid by the Plaintiff No.1 to the Defendant Nos.1 and 2 were applied by the Defendant Nos.1 and 2 for purchase of the Flat on the 2nd floor in Sangam building at Peddar Road behind Jaslok Hospital and Flat in Khar on Plot No.353, 21st Road, Mumbai-400 050 respectively. It is stated that the said two flats have been purchased by the Defendant Nos.1 and 2 with the funds of the Plaintiff No.1, the receipt whereof has been admitted by the said Defendants. The said facts on the basis of which the averments were sought were translated into detailed averments which are now comprised in the Paragraphs which the Plaintiffs seek to incorporate, which have been adverted to herein above. The prayer clauses which are sought to incorporate i.e. prayer clauses (h-1) to (h-7) and prayer clause (n-1) are the consequential to the averments which were sought to be incorporated.

3 It is required to be noted that the suit in question being Suit No.2666 of 1992 has been filed for the administration of the estate of Chandrabala Thakkar who is the mother of the Plaintiff No.1 and the Defendant Nos.1 to 3. The Plaintiff No.1 and the Defendant Nos.1 and 2 are the brothers whereas the Defendant No.3 is their sister. The Suit as originally filed seeks a declaration that the estate of the late Chandrabala Tahkkar

comprises the properties at Exhibit “R”, that the Plaintiff No.1 has 1/4th share in the properties constituting the estate of the late Chandrabala Tahkkar set out in the list at Exhibit “R”; for partitioning and handing over the possession of the share of the Plaintiff No.1 in the estate of the late Chandrabala Thakkar; for a declaration that the properties set out at Exhibit G are the properties exclusively belonging to the Plaintiff No.1; for a decree against the Defendants directing them to hand over the properties belonging to the Plaintiff No.1 as set out in Exhibit G to the plaintiff, for a declaration that the jewellery and ornaments set out in the list at Exhibit D belong to the Plaintiff No.2 exclusively. Hence in the prayers the Plaintiffs are seeking administration of the estate of the said Chandrabala Thakkar in respect of which the substantive relief by way of prayer clause (a), the gist of which has been adverted to herein above. The amendments sought disclose that the Plaintiffs are claiming further relief is sought in respect of the properties in respect of whom the averments have been made in the paragraphs which are now sought to be incorporated by way of the amendments.

4 The said Chamber Summons was opposed to on behalf of the Defendant Nos.1 to 3.

5 The Trial Court as indicated above has by the impugned order dated 13/10/2014 allowed the application for amendment. The Trial Court

was of the view that the amendments are necessary for the purposes of determining the real dispute between the parties and that the Defendants would have a right to deny the allegations which are now sought to be incorporated.

6 The learned counsel appearing for the Petitioner Shri Mody would advance two fold submissions, firstly that the amendments, if allowed, would result in time barred claims being allowed to be incorporated in the suit. The second submission of the learned counsel is that allowing the amendments would result in the nature of the suit being changed as also cause of action.

7 In my view, it is not possible to accept the submissions of the learned counsel for the Petitioner. The reliefs which have been sought in the suit as originally filed have been adverted to in the earlier part of this Order. The amendments can always be allowed subject to the issue of limitation. Hence it would be open for the Defendants to take up the defence of limitation in the additional written statement that would be required to be filed to the amended plaint, if so advised. In so far as the second contention is concerned, in my view, if the amendments are allowed, the same would not change the nature of the suit nor the cause of action as the suit as originally filed contains the reliefs which the Plaintiffs have sought for themselves. It is trite that to avoid multiplicity of the proceedings and the parties being vexed over twice, an

application for amendment can be allowed if it results in giving a quietus to the dispute between the parties. As indicated above, the parties are closely related and the dispute is as regards the estate of their mother Chandrabala Thakkar. In my view, the approach of the Trial Court in allowing the amendment application in the facts of the present case therefore cannot be faulted with. It is also required to be borne in mind that the suit has been listed before City Civil Court for Greater Bombay after it was transferred from this Court where it was originally filed to the City Civil Court on the pecuniary jurisdiction of the City Civil Court being enhanced in or about October 2012. It is also required to be noted that the issues have also not been framed and therefore after the Defendants file their additional written statement, proper issues can be framed in the suit. The learned counsel for the Petitioner states that the Defendants would file their additional written statement within six weeks from date. The Trial Court would thereafter frame issues in the light of the pleadings on record. Hence no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

8 In view of the dismissal of the above Writ Petition, Civil Application Stamp No.654 of 2015 does not survive and the same to accordingly stand disposed of as such.

[R.M.SAVANT, J]