

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1078 OF 2014
IN
SUIT NO.2292 OF 2008

Balraj Parmanand Mehra	...	Applicant / plaintiff.
Vs.		
Opera Properties P. Ltd. & 12 Ors.	...	Defendants

Dr. Brijmohan Dhir, Adv. for plaintiff.
Mr. Cherag Balsara, Sr. Adv., a/w. Ms. Jaylaxmi Goud, Adv. a/w.
Dhruvesh Parikh, Adv. i/b. Parimal K Shroff & Co. for defendant No.4.
Mr. Mandar Soman, Adv. for defendant Nos.1 to 3.

CORAM : MRS. ROSHAN DALVI, J.
DATE : 18th April, 2015.

P.C. :

1. The Chamber Summons has been served upon parties as also upon other parties shown as further defendants in the schedule to the Chamber Summons. The Chamber Summons is for extensive amendments to the plaint. It is the plaintiff's case that his advocate did not represent him correctly. He would desire to amend the plaint to place on record the correct facts, submissions and prayers.

2. These amendments are sought not only against the present defendants but also other parties. Those parties are not yet on record and have not been served writ of summons. They are sought to be made parties as reflected in the amendment. Despite the service by personal service as shown in the plaintiff's affidavit of service of the Chamber Summons, none has appeared except defendant Nos.1, 3 and 4.

3. The plaintiff's action is in respect of certain memorandum of intent and Power of Attorney. Whereas in the plaint the plaintiff has stated how the execution of these documents is invalid, in the amendment he claims that the documents have been executed by him upon practicing fraud and are, therefore, not valid.

4. The plaintiff has averred that the deed of assignment was fabricated and executed by defendant No.2 without authority. The plaintiff has sought to cancel the deed of assignment in the plaint. The plaintiff has sought cancellation of the deed of assignment in the amended plaint also.

5. The plaintiff has sought the relief of declaration that he was the owner of the suit property, that the deed of assignment was null and void, that the memorandum of intent was invalid and that the deed of assignment be cancelled.

6. In the amended plaint, the plaintiff has sought the declaration of ownership. The declaration is that he is owner in possession, for recovery of possession, for order in respect of the deed of assignment and the ancillary relief of refund of funds received from defendant Nos.1 and 2.

7. The various parameters of the plaint which are shown in the amendment shown substitution of the earlier paragraphs. The earlier paragraphs, therefore, must be struck off.

8. Interest of justice requires the plaintiff to be allowed to agitate his plea as amended.

9. Hence the following order :

1. The plaintiff is allowed to amend the plaint as per the schedule to the Chamber Summons.
2. The plaintiff shall incorporate the amendments in the plaint within four weeks from today. The plaintiff shall also carry out the similar amendments in the plaint served upon the defendants to the suit within four weeks from today.
3. The plaintiff shall serve the amended plaint upon the other defendants who are sought to be brought on record. The plaintiff shall strike off the paragraphs in the plaint which are substituted by the amended plaint.
4. The plaintiff shall thereafter put on record a clean copy of the plaint as amended. The plaintiff shall also serve a copy of such plaint upon all the defendants as also the new defendants sought to be brought on record within four weeks from today.
5. The defendants shall be entitled to file further written statement within 30 days of the service of the amended plaint or within 30 days of the amendments having been carried out in their copy of the plaint.
6. Defendant Nos.1, 3 and 4 waive service of the amended writ of summons.
7. Chamber Summons is disposed of accordingly.

(ROSHAN DALVI, J.)