

SHEPHALI

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 1215 OF 2016
IN
SUIT NO. 1120 OF 2015
WITH
CHAMBER SUMMONS NO. 1297 OF 2016**

Cedric Kenny & Anr.	...Plaintiffs
<i>Versus</i>	
Vivian Kenny & 2 Ors.	...Defendants
<i>And</i>	
La Vista Co-operative Housing Society Ltd.	...Respondent

**Mr. Sandeep Parekh, i/b M/s. Shantilal & Co., for the
Applicant/Plaintiffs.**
Mr. Joel D'Souza, i/b V. V. Mohite, for Applicant in CHS/1297/16.
Mr. Rafique Vanoo, for the Defendant No. 2.

CORAM: G.S. PATEL, J
DATED: 5th October 2016

PC:-

Chamber Summons No. 1215 of 2016:

1. The Plaintiffs seek an amendment to their Plaint in this partition Suit. The unusual aspect about this is that the Plaintiffs accept that the basis on which they proceeded in the Plaint was incorrect. There was a document which, Mr. Parekh for the

Plaintiffs now readily concedes was erroneously interpreted. That interpretation, he submits, is unsustainable. It is not, in his submission, so much a question of withdrawing an admission as making an admission that the earlier stand in the Plaint was untenable.

2. Although Written Statements have been filed and, I am told that there is also a Counter Claim by the 1st Defendant, issues have not been settled as yet. I do not see how disallowing this Chamber Summons would in any way assist in a matter such as this. In a partition Suit every party is Plaintiff and every party is a Defendant. Also, there will be first the question of determination of the shares of the parties. This determination is not dependant on averments in the Plaint or the Written Statement exclusively nor on any admission or statement made by one party or the other but on assessment of shares and entitlements each party has in law in regard to the property in question. Determining the shares of co-sharers is a question of determining their entitlement in accordance with well settled legal principles. Evidently, all sides will be fully heard on this aspect of the matter. Allowing the amendment does not determine or take away any rights or any defences.

3. I will allow the amendment. It is to be effected on or before 24th October 2016. Copy of the amended Plaint is to be served on the Advocates for all the Defendants. The Defendants who have already filed Written Statements will be entitled to file Additional Written Statements by 2nd December 2016. Defendant No. 4 sought to be added will be served by 18th November 2016 and will have till 13th January 2017 to file a Written Statement. Defendant

No. 3 has been served but has not entered appearance or filed their Written Statement.

4. The 1st Defendant who has filed a Counter Claim will be entitled to move an amendment to that Counter Claim, if necessary, and if so required.

5. This amendment is entirely without prejudice to all the rights and contentions of the parties. Specifically this amendment will not relate back to the date of institution of the Suit; for obvious reasons, it cannot. All contentions of the Defendants including as to maintainability and limitation are, therefore, expressly kept open.

6. Chamber Summons No. 1215 of 2016 is made absolute in terms of prayer clauses (a) and (b) with the aforesaid observations. No order as to costs.

Chamber Summons No. 1297 of 2016.

7. Mr. Parekh states that he will give inspection of the necessary documents within the course of the week. Noting this statement, the Chamber Summons is disposed as infructuous. No order as to costs.

8. Liberty to the Defendants to apply.

(G. S. PATEL, J.)