

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

**CHAMBER SUMMONS NO. 313 OF 2014
IN
SUIT NO. 2928 OF 2011**

Kashmir Kaur Balbir Singh Phelay & Ors. .. Applicants/Plaintiffs

In the matter between :

Kashmir Kaur Balbir Singh Phelay & Ors. .. Plaintiffs

Vs.

Govind Niwas C.H.S. Ltd. & Ors. .. Defendants

Mr.R.V. Govilkar i/b Jahan Ara A Sarkhot for plaintiffs/applicants.

Mr.Bhushan Deshmukh a/w. Mr.Vishesh Karla i/b Vidhii Partners for defendant no.3.

**CORAM : K.R.SHRIRAM, J.
DATE : 14TH SEPTEMBER, 2016**

P.C.

1 This chamber summons is taken out for leave to amend the plaint as per the schedule annexed thereto and the Schedule tendered in Court and marked 'X' for identification.

The crux of the amendment application is that after filing of the suit, the plaintiffs filed an application under Right to Information Act, 2005 to defendant no.2 and based on the said application, defendant no.2 gave details which required to be reflected in the plaint.

2 The plaintiffs are also seeking deletion of certain portions of the plaint and prayer clauses (b) and (f) and in place of these two prayers seeking insertion of prayer clauses (C-1) and (C-2) and (G-1) to (G-6).

3 The defendants have filed affidavit in reply opposing the application. The counsel for the defendants stated that the amendment application should not be allowed since it changes the nature of the suit.

4 Heard the counsels.

The relief as sought in the plaint is : (a) to declare that the Agreement for Sale, dated 3rd October 1981 and the Conveyance dated 26th June 1982, both entered between late Shri Gokulsingh Bhuttar and defendant nos.1's promoters are illegal, null and void and are not binding on the plaintiffs. (b) for a declaration that the plaintiffs are not the owners of the suit property; (c) for a declaration that the alleged development/redevelopment agreement dated 16th April 2010 between defendant no.1 and defendant no.3 is illegal, null and void and are not binding on the plaintiffs; (d) Defendant nos.1 and 3 be restrained from acting in furtherance to the Development Agreement dated 16th April 2010 entered into between defendant no.3 and defendant no.1 from carrying out the development or redevelopment of defendant no.1-society; and (e) direction to defendant no.2 to withdraw the IOD issued

by defendant no.2 in favour of defendant no.3.

5 In the amendment application, the plaintiffs are seeking to introduce the details obtained from defendant no.2 following an application filed under Right to Information Act, 2002. In this chamber summons, the plaintiffs are substantially seeking to introduce prayers basically similar to prayer clause (d) in the plaint with some modification. The remaining prayers sought to be introduced are only for interim reliefs pending the disposal of the suit.

6 The stage of the suit is that the defendants have filed written statement but even issues are yet to be settled. It is well settled that under Order 6 Rule 17 of the Code of Civil Procedure, wide powers and unfettered discretion have been conferred on the Court to allow amendment of the pleadings to a party in such a manner and on such terms as it appears to the Court to be just and proper. In the judgment of ***Revajeetu Builders and Developers Vs. Narayanswamy & Sons & Ors.***¹, paragraph 63 spells out the factors to be taken into consideration as under :

63 On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

(1) Whether the amendment sought is

1 (2009) 10 SCC 84

imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala-fide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? And

(6) As a general rule, the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

7 Having considered the proposed amendment, I find that there is nothing mala-fide, it does not change the nature and character of the case and will not cause any injustice to the defendants.

8 In the circumstances, the chamber summons is allowed and accordingly disposed.

The amendment as per the schedule annexed to the chamber summons and as per the schedule tendered in the Court and marked 'X' for identification is allowed. The amendment to be carried out and copy of the amended plaint to be served within three weeks from today. The defendants

to file additional written statement, should they wish to, within three weeks of receiving the amended plaint.

9 The suit be listed on 28th November 2016 for issues.

10 Parties in the meanwhile to file their respective affidavit of documents, complete discovery and inspection and also exchange their respective statements of admission and denial with reasons for denial.

(K.R. SHRIRAM, J.)