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

CHAMBER SUMMONS NO. 1178 OF 2011

**IN
SUIT NO. 2656 OF 2006**

**WITH
SUIT NO. 2656 OF 2006**

**WITH
NOTICE OF MOTION NO. 3177 OF 2006
IN
SUIT NO. 2656 OF 2006**

Sarla Harsukh Kothari & Ors.	...Plaintiffs
VS	
Dipak Nandlal Shah & Ors.	...Defendants
And	
Krishna Developers Pvt. Ltd.	...Respondent

.....
Mr Vishal Kanade a/w Murari Madekar i/b Madekar & Co. for the Plaintiffs
Mr Deepak Chitnis i/b Deepak Chitnis – Chiparikar for Defendant No.12 and 13.
Mr R.M.Vasudeo for Defendant No.14.
.....

CORAM : S.C. GUPTE, J.

JANUARY 05, 2016

P.C. :

Chamber Summons No.1178 of 2011 seeks to amend the plaint in terms of the schedule of amendment annexed to the Chamber Summons. Basically, the schedule seeks to incorporate averments concerning an agreement executed between Defendant Nos.12 and 13 and the Respondent who is proposed to be joined as a party Defendant to the suit. The amendment seeks to challenge the Development Agreement and seeks appropriate reliefs in respect thereof.

2 The suit is basically for dissolution of a partnership firm. It is the

case of the Plaintiffs in the suit that the property, which is sought to be transacted by Defendant Nos.12 and 13 in terms of the Development Agreement, belongs to the partnership firm. A Chamber Summons, seeking to incorporate the same averments and prayers which are part of the schedule herein, was earlier moved before this Court. That was Chamber Summons No.7 of 2007. Along with that Chamber Summons, other two Chamber Summonses taken out by the Plaintiffs were also heard. These latter Chamber Summonses were for setting aside abetment of the suit and bringing legal heirs of the deceased Plaintiff as also the deceased Defendant No.10 on record. Chamber Summonses to set aside the abetment and bringing legal heirs on record were rejected by a learned Single Judge of this Court by an order dated 15 March 2015. In view of the disposal of those Chamber Summonses, Chamber Summons No. 7 of 2007 was not pressed before the Court and the same was disposed of as “ **not pressed for the present**”. The order of the learned Single Judge passed on the other Chamber Summonses was set aside by the Appeal Court by its order dated 27 June 2011. The order of 27 June 2011 has since been corrected by another order of the Appeal Court dated 31 March 2015. The net result of the orders passed by the Appeal Court is that the Plaintiffs' Chamber Summonses for setting aside the abetment of the suit and bringing legal heirs of the deceased Plaintiff and Defendant No.10 on record, stand allowed. After the Chamber Summonses were thus allowed, the Plaintiffs took out the present Chamber Summons, seeking the very same reliefs which were sought earlier in Chamber Summons No. 7 of 2007.

3 The Chamber Summons is opposed by Defendant No.14 as well as Defendant No.12. It is the case of these Defendants, firstly, that the cause of action of the Plaintiffs insofar as the development agreement executed between Defendant Nos.12 and 13 on one hand and the Respondent on the other is concerned, is a separate cause of action and the same is foreign to the frame of the present suit. Secondly, it is submitted that the suit is barred by limitation insofar as that cause of action is concerned.

4 The present suit is for dissolution of the partnership and accounts in respect of the assets and liabilities of the partnership firm. It is Plaintiffs' case that

the property, which is purportedly dealt with by two of the partners of the partnership firm, namely, Defendant Nos.12 and 13, is the property of the partnership firm. If that is so, any dealing with the property by any of the partners would undoubtedly form part of the Plaintiffs' cause of action in the suit for dissolution and account. Any grievance concerning any unauthorized dealing with the property cannot be said to be foreign to the frame of the present suit.

5 As far as the aspect of limitation is concerned, since that would involve leading of evidence, it can be conveniently kept open, to be agitated in the course of the trial.

6 In the premises, Chamber Summons No. 1178 of 2011 is made absolute in terms of prayer clause (a). There shall be no order as to costs. The amendment to be carried out within a period of two weeks from today.

(S.C.GUPTE J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/ Order.