

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****APPEAL NO. 25 OF 2016****IN****CHAMBER SUMMONS (L) NO. 1049 OF 2009****IN****SUIT NO. 2955 OF 2009**

Nadeem Majid Omerbhoy	..	Appellant
versus		
Mr. Rashid Sattar Omerbhoy & Ors.	..	Respondents

Ms Sonal with F. Jariwala i/b. M/s. Thakore Jariwala & Associates for Appellant.

Ms Nisha Shah i/b. M/s. Kalpesh Joshi & Associates for Respondent No. 1.

Mr. S. R. Nargolkar i/b. Mr. A. Joshi for Respondent Nos. 10, 11 and 35.

**CORAM: DR. MANJULA CHELLUR, C. J. AND
M. S. SONAK, J.**

DATE : 24 AUGUST 2016

P.C.:

1] The challenge in this appeal is to the order dated 30 July 2015 made by the learned Single Judge dismissing chamber summons (I) no. 1049 of 2014 in suit no. 2955 of 2009 seeking to impleadment of almost 152 additional defendants to the suit and to declare as a null and void, several deeds and documents allegedly executed by the present defendants purporting to sell or alienate properties allegedly belonging to the partnership firm, in favour of such parties.

2] Ms Sonal, learned counsel for the appellant submits that the properties in question belong to the partnership firm of which

dissolution and accounts have been applied for in the main suit. It is the case of the appellant that some of the partners have unauthorisedly alienated such properties to the prejudice of the appellant. Ms Sonal therefore submits that if all issues relating to dissolution, accounts and properties of the firm are adjudicated in one and the same suit, the same will not only avoid multiplicity of proceedings but also obviate any possibility of conflicting orders. For this reason, Ms Sonal submits that the impugned order declining leave to amend the suit and implead 152 parties to it, may be set aside and the chamber summons made absolute as prayed for.

3] In our judgment, no case is made out to interfere with the impugned order. The suit in the present case is for dissolution of partnership and accounts. Even assuming that the property in question belongs to the firm or that the same has been unauthorisedly alienated by some of the partners, that by itself, cannot be a ground to change the entire nature of the suit as instituted or to club in such a suit, alleged causes of action which are quite different and distinct from the suit as originally instituted. Permitting the appellant to implead 152 parties and to challenge the several deeds and documents by which properties are stated to have been alienated in their favour, will really amount to permitting misjoinder of causes of action thereby embarrassing the progress and trial in the suit as originally instituted. If the amendment and impleadment is permitted, the suit, will suffer from the vice of multifariousness. The amendment and impleadment of 152 parties as proposed cannot be said to be necessary for the determination of the real question in controversy as raised in the suit. The amendment in this case, if permitted, will fundamentally change the nature and character of the suit as originally instituted.

4] Besides, this is also not a case where refusal of amendment will lead to any substantial injustice to the appellant. In respect of at least one of the property, which is the subject matter of the proposed amendment, the appellant has already instituted a substantive suit questioning alienations by impleading parties in whose favour alienations are alleged to have taken place. There is accordingly no serious difficulty in instituting some substantive proceedings in relating to the other property which is subject matter of the proposed amendments. Needless to add that such suits / proceedings will be considered and decided strictly in accordance with law.

5] We detect neither any jurisdictional error nor any unreasonableness or perversity in the exercise of discretion by the learned Single Judge in dismissing the appellant's chamber summons. Accordingly, the present appeal is dismissed. There shall be no order as to costs.

CHIEF JUSTICE

(M. S. SONAK, J.)