

**CHAMBER SUMMONS NO.1233 OF 2015
WITH
NOTICE OF MOTION NO.1471 OF 2015
IN
SUIT NO.514 OF 2015**

 $V_S.$

.....

— — — —

P.C.

2 This chamber summons is filed for leave to amend the plaintiff. According to the plaintiff/applicant due to inadvertence the proposed amendments were not introduced when the plaintiff was filed. The counsel for the applicant states that all the averments relating to the amendment sought are already there in the plaintiff.

3 Mr. Jain, counsel appearing for the defendant no.1, who is the
contesting defendant strongly opposes the chamber summons and states
that ex facie the prayer that the applicant is seeking to introduce is barred
by limitation. Mr. Jain further states that the court, therefore, should not
allow the application for amendment.

4 The dispute primarily is between an 87 years old father, who is
the plaintiff and his son, who is about 54 years old.

5 Order 6, Rule 17 of the Code of Civil Procedure, 1908 reads as
under :

*“17. Amendment of Pleadings.- the Court may at any stage at the
proceedings allow either party to alter or amend his pleadings in such
manner and on such terms as may be just, and all such amendments
shall be made as may be necessary for the purpose of determining the
real questions in controversy between the parties:*

*Provided that no application for amendment shall be allowed after the
trial has commenced, unless the court comes to the conclusion that in
spite of due diligence, the party could not have raised the matter before
the commencement of trial.”*

6 Though the written statement has been filed, issues are yet to
be settled. The courts in a situation where even issues are yet to be settled,
are generally liberal while considering an application for amendment. That
does not mean that any application for amendment where issues are yet to
be settled will be granted for the asking. If the amendment appears to
be ex facie barred by limitation, the court will not exercise its discretion in

allowing the amendment application.

7 By the proposed amendment, the applicant seeks to introduce paragraph 29(a) to sum up what has been stated in paragraphs prior to paragraph 29. The prayer clause which the applicant proposes to be added is to adjudge the writing dated 24th December, 2010 as null and void and to directed the defendant no.1 to deliver the same to this court for cancellation. Mr. Jain, counsel for the defendant no.1 states that this chamber summons was lodged on 10th September, 2015 and, therefore, ex facie it is barred by limitation.

8 It is the case of the plaintiff in the plaint that he had signed this writing dated 24th December, 2010 relying on a fatwa dated 25th March, 2007 given by one Mufti Abdul Rasheed Nomani and purportedly confirmed by Mufti Azizur Rahman Fatehpuri. It is stated in the plaint that only on 25th January, 2013 the plaintiff came to know that the confirmation of fatwa by Mufti Azizur Rahman Fatehpuri was forged because the said Mufti Azizur Rahman Fatehpuri informed the plaintiff by a correspondence which was received on 25th January, 2013 that he had not even signed the said fatwa confirmation.

9 Mr. Jain, counsel for the defendant no.1 states that in the earlier paragraphs the plaintiff has stated that he had doubted the veracity

and truthfulness of the fatwa before he signed the writing dated 24th December, 2010 and therefore, the court cannot accept the statement of the plaintiff that he got to know for the first time on 25th January, 2013 that the fatwa was not signed by Mufti Azizur Rahman Fatehpuri .

10 These are subject matters where evidence has to be led. While hearing an application for amendment of plaint, the courts do not go on the merits of the proposed amendment. In this case I am unable to conclude that the amendment sought is ex facie barred by limitation. Whether the claim as proposed to be introduced is barred by limitation or not can be determined only after the trial is over.

I also do not find the amendment application to be malafide and the proposed amendment also does not change the nature and character of the suit.

11 Therefore, in my view, the amendment application can be allowed. The chamber summons is allowed and accordingly disposed in terms of prayer clause – (a).

At the same time, it is clarified that the rights of the defendants to raise all their defences including limitation in the further written statement are kept open. It is further clarified that the amendment will not relate back to the date of the suit.

12 The amendment to be carried out and copy of the amended
plaint to be served within three weeks from today. Further written
statement to be filed and copy served within two weeks of receiving the
copy of the amended plaint.

13 Mr. Jain, counsel for the defendant no.1 and Mr. Nachan,
counsel for the plaintiff state that their respective clients are ready to go for
mediation since it is a family dispute between a father and his son.

14 Therefore, Mr. C.M. Korde, senior advocate is appointed as
Mediator. Since Mr. Korde, who is present in court has graciously at the
request of the court, agreed to mediate. The fees and administrative
expenses of the Mediator to be shared equally between the plaintiff and
defendant no.1.

 The Mediator Mr. Korde is requested to endeavor to complete
mediation and submit his report by 31st January, 2017.

15 Suit to be listed for directions on 3rd February, 2017.

(K.R. SHRIRAM, J.)