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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 1907 OF 2011
IN
SUIT NO. 3851 OF 1990**

Mathurabhai Kishan Koli & Another	...Plaintiffs
<i>Versus</i>	
Bhaskar Govind Bhoir & Others	...Defendants
<i>And</i>	
Mohammed Shamim Badgujar & Others	...Respondents

Mr. Shailesh Shah, Senior Advocate, with Mr. Prakash Ganwani, Ms. Soniya Putta, & Ms. Devyani Deshmukh, i/b Solomon & Co., for the Plaintiffs.

Mr. Joaquim Reis, Senior Advocate, with Mr. Ankur Kalal, i/b Markand Gandhi & Co., for Respondent No. 1.

Ms. Manjari Shah, with Ms. Radha Kapadia, i/b Thakore Jariwala & Associates, for Respondents Nos. 4 to 6.

**CORAM: G.S. PATEL, J
DATED: 30th September 2016**

PC:-

1. This is the Plaintiffs' Chamber Summons for amendment. It seeks to add a number of Respondents and introduced a number of paragraphs and prayers. The Chamber Summons is opposed by Ms. Shah for Respondents Nos. 4 to 6 (among the parties proposed to be joined as party defendants to the suit). These Respondents have

claimed rights to a certain property *inter alia* under a Deed of Release dated 27th April 1997, as also certain other documents. The Plaintiffs' case in the amendment is that that Deed of Release wrongfully and unlawfully binds the Plaintiffs by misusing a Power of Attorney, and that the Deed of Release is liable to be delivered up for cancellation.

2. I do not see how I can prevent the Plaintiffs, who are *dominus litus*, from making the plea. If they challenge this document, obviously Respondents Nos. 4 to 6 are affected, since they trace their title through that document, and are therefore necessary parties.

3. Ms. Shah for these Respondents says that the amendment sought is *mala fide* and is meant for the benefit of the 1st Respondent represented by Mr. Reis. She states that the title documents relating to property allegedly acquired by the 1st Respondent from some other Defendants are not sought to be challenged in these proceedings, but that only her clients have been singled out.

4. This is not the stage to consider the merits of the proposed amendment or the consequences of that amendment. The Plaintiffs are challenging, by means of this amendment, a document that, if left outstanding, would bind them. This is one of the very documents under which Respondents Nos. 4 to 6 draw their title. Whether as a result of this amendment the 1st Respondent is affected or unaffected is irrelevant. *Prima facie*, it seems to me that

in a partition Suit if the 1st Respondent has derived title from some of the other Defendants and the rights of these Defendants are brought into question then evidently the rights of the 1st Respondent will also be inevitably affected; the 1st Respondent is, therefore, equally a necessary party, and Mr. Reis does not dispute this. All these Respondents, including Ms. Shah's clients, will, therefore, need to be given a fair opportunity of defending their respective transactions and their respective titles.

5. Ms. Shah relies on a decision of the Supreme Court in *Revajeetu Builders & Developers v Narayanaswamy & Sons & Ors.*¹ to submit that a *mala fide* amendment should not be permitted. In my view, this decision is possibly against Ms. Shah. Apart from anything else, I believe this amendment is imperative for an effective and proper adjudication of the case. Granting the amendment will not prejudice the Respondents. On the other hand, not granting it would prejudice them considerably. A refusal to allow the amendment would undoubtedly lead to multiple litigations and possibly in multiple Courts. In a case such as this there is no question of such an amendment altering the nature of the case.

6. I finally note that while some Defendants have filed their Written Statements, the remaining have not. Issues are yet to be settled. The Suit is still at a distance from trial.

7. I will, therefore, allow the amendment.

¹(2009) 10 SCC 84

8. The Chamber Summons is made absolute in terms of prayer clauses (a) to (c). Amendment to be carried out on or before 21st October 2016. Copies of the amended Plaint to be served on the Advocates for the Defendants who have entered appearance on or before 2nd December 2016 and on the Defendants who are not as yet represented on or before that date as well. Those Defendants who have not filed their Written Statements will have till 29th January 2017 to file their Written Statements.

9. I come now to the question of whether this amendment should be allowed to relate back to the date of institution of the Suit. Given the circumstances and the manner in which at least Respondents Nos. 4 to 6 claim their title, in my view, it would not be either appropriate or just to say that the amendment relates back to the date of the Suit. Merely by virtue of the Chamber Summons being allowed and the amendment being granted, the amendment is not to be deemed to relate back to the date of institution of the Suit. All questions of limitation are expressly kept open, as also all questions of maintainability.

10. The Chamber Summons is disposed in these terms. No order as to costs.

(G. S. PATEL, J.)