

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

**CHAMBER SUMMONS NO.1551 OF 2015
WITH
NOTICE OF MOTION NO.819 OF 2014
IN
SUIT NO.551 OF 2013**

Radhika Mehta Arora

....Applicant/Plaintiff

V/s.

Ranjana Dariyas Chibber

....Defendant

Mr. Uday Mahajan i/b. M/s. Divekar and Co. for the applicant/plaintiff.

Mr. Y.R. Shah a/w. Ms. Aditi Bhat i/b. Y.R. Shah for the defendant.

CORAM : K.R.SHRIRAM,J

DATE : 16th NOVEMBER, 2016

P.C.:-

CHAMBER SUMMONS NO.1551 OF 2015

1 This chamber summons is for leave to amend the plaint as per the Schedule annexed to the additional affidavit dated 11th December, 2015. Mr. Shah, counsel appearing for the defendant strongly opposes the chamber summons and submits that the amendment sought if filed by way of a fresh action, the suit will be barred by limitation.

2 The dispute primarily is between two siblings. The prayer sought in the plaint is for a declaration that the suit properties mentioned in Exhibit “A” to the plaint were owned by late Bhanu Nanalal Mehta, father of the plaintiff and defendant and the same form part of his estate and the defendant be directed to hand over vacant and peaceful possession of the suit property at item no.1 in Exhibit “A” to the plaint, i.e., flat no.2 on the 9th floor of the building known as Ajanta Apartments situated at Colaba and the five shares relating to the said flat.

3 In this chamber summons the applicant has stated that the applicant has filed a petition for probate of the last Will and Codicil of late Bhanu Nanalal Mehta in which the plaintiff has included the assets which the plaintiff seeks to add by way of this amendment. At the same time, it is also stated that the plaintiff was not aware about the particulars regarding the same and just before the application was taken out the plaintiff came to know the particulars thereto. It is also stated in the additional affidavit that the defendant has filed an affidavit dated 29th December, 2006 in suit lodging no.3657 of 2006 in which the defendant has admitted that some of the properties are in her possession but has falsely alleged that they were given to her at

various times by late Bhanu Nanlal Mehta.

4 The counsel for the defendant states that therefore, these details were not available and hence could not be included in the plaint. Mr. Shah submits that the plaintiff always knew which were the assets of their late father and should have included the same in the plaint and since these are movable items the claim today will be barred by limitation as under Article 69 in the Schedule to Limitation Act, 1963 the time provided is three years when the property was wrongfully taken.

5 Since it is stated by the plaintiff that they did not have the particulars and further that they came to know about these details only after the affidavit as mentioned above was filed by defendant in suit lodging no.3657 of 2006, I am inclined to allow the chamber summons. As to whether the plaintiff knew earlier and whether it is barred by limitation, will be a mixed question of law and fact. Therefore, it is clarified that the defendant's right to raise the issue of limitation is kept open. Moreover, in this suit, as even issues are yet to be settled, by virtue of provision of Order 6 Rule 17 the courts are more liberal in granting such application for leave to amend. Leave to

amend as per the Schedule annexed to the additional affidavit dated 11th December, 2015 is granted.

6 The chamber summons accordingly stands disposed.

7 The amendment to the plaint to be carried out and copy of the amended plaint to be served within three weeks from today.

8 Additional written statement to be filed and copy served within three weeks of receiving the copy of the amended plaint.

9 The suit to be listed for issues on 30th January, 2017. In the meanwhile parties to also file their respective affidavit of documents, complete discovery and inspection and also file and exchange their statement of admission and denial with reasons for denial.

(K.R.SHRIRAM,J)