

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6488 OF 2017

Romney Pereira & Ors. ... Petitioners

Vs.

Aggie (Agnes) Alfred Pereira & Ors. ... Respondents

Mr.S.Shamim i/b Shamim & Co. for the Petitioners

Mr.Tejas Deshmukh i/b N.R. Kothari for Resp. Nos.1 to 4

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 5, 2017**

P.C. :

1. This Writ Petition is directed against the order dated 28.4.2017 thereby rejecting the Chamber Summons No.190 of 2017 in S.C. Suit No.811 of 2012. The plaintiffs want to amend the plaint as per the schedule wherein they want to add additional relief of damages and mesne profits.

2. The learned Counsel for the petitioners submitted that through the suit is for injunction simpliciter, the plaintiffs want to claim damages and mesne profits. He submitted that the learned trial Judge ought to have allowed the Chamber Summons. He

further submitted the observations made by the learned trial Judge that the plaintiffs have taken out the Chamber Summons at a late stage is not correct. The trial Court has not yet begun with the trial and in between the Chamber Summons is taken out and, therefore, the trial Judge ought to have allowed this Chamber Summons to avoid multiplicity of the proceedings. In support of his submissions, the learned Counsel relied on the judgment of the Delhi High Court in the case of **Hassan Ali vs. Akbari Begum @ Akbari Hajjan**¹. He submitted that in the said case, the suit was filed for mandatory injunction and occupation charges.

3. Perused the Chamber Summons. Perused the petition and the prayers mentioned therein so also the order passed by the learned City Civil Court. The suit is for simpliciter injunction and now, the petitioners want to add a prayer for mesne profits and damages which cannot be allowed. The petitioners have already moved application under Order 2 Rule which is granted. However, a separate suit is not filed for other reliefs. The learned Judge of the trial Court has rightly observed that the enquiry for mesne profit can be directed for a particular period if suit for possession came to be decreed. However, the present suit is for injunction and not

1 1330 (206) Delhi Law Times 26.

for possession. The order passed by the learned Judge is well reasoned and nothing can be faulted with. No interference is required in the order rejecting the Chamber Summons No.190 of 2017.

4. As regards the ruling of the Delhi High Court in the case of **Akbari Begum (supra)**, I find it is not at all applicable to the present set of facts.

5. In the circumstances, the petition is dismissed.

6. The plaintiff to take note that he has to respect the order of the Supreme Court and shall proceed with the matter. The defendants also to cooperate with the Court.

7. At this stage, the learned Counsel for petitioners submits that the petitioners want to challenge this order before the Hon'ble Supreme Court and, therefore, this order be stayed for four weeks.

8. Stay of this order granted for four weeks.

9. The learned Counsel for the petitioners also seeks extension of earlier interim relief granted by this Court. However, there are specific directions given by the hon'ble Supreme Court on

26.7.2015 in Special Leave to Appeal No.3768 of 2014 as under:

“... we dispose of this Civil Appeal with direction to the Trial Court to dispose of the Suit pending before it as early as possible, at any rate, within a year's time from today.”

10. In view of the above, the oral prayer of the learned Counsel for the petitioner for extension of the interim relief is refused.

(MRIDULA BHATKAR, J.)