

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

**CHAMBER SUMMONS NO. 1190 OF 2016
IN
SUIT NO. 3079 OF 2011**

Rudra Shroff Connal

...Plaintiff/Applicant

vs.

Sri Lotus Real Estate and Creators (India) Pvt.Ltd. & Anr.

...Defendants

Mr.Kunal Dwarkadas with Ms.Apurva Manwani I/b. Siddhesh Bhole for
Plaintiff.

Mr.Pravin Samdani, Senior Advocate I/b. Maniar Srivastava Associates for
Respondent/Newly added Defendant No.2.

CORAM : S.C. GUPTE, J.

9 JUNE 2017

P.C. :

Heard learned Counsel for the parties.

2 This chamber summons seeks amendment *inter alia* by deleting prayer clause (d) of the suit and making averments in the plaint to explain such deletion. The original prayer clause (d) sought an order of possession of a particular structure forming part of the suit property, namely, the outhouse, from the Defendant.

3 It is submitted in the schedule of amendments that subsequent to the filing of the suit, neither Defendant No.1 nor Defendant No.2 (which is added as a party Defendant by way of the accompanying chamber summons) was in possession and occupation of this outhouse, having abandoned it during the pendency of the suit.

4 The original Defendant opposes the chamber summons on the ground that the during the pendency of the suit, the original Defendant was dispossessed of the outhouse and by seeking to delete the prayer and incorporating averments, which suggest that the premises were abandoned by the original Defendant, the Plaintiff is seeking an imprimatur of this court on his unauthorized act of dispossessing the original Defendant during the pendency of the suit.

5 Whether the Defendant in fact abandoned the suit structure or was dispossessed of it unauthorizedly by the Plaintiff is a matter of trial. As of now, the Plaintiff cannot be prevented from deleting his prayer on the basis of subsequent developments, which he wants to place on record. The Defendants will be free to contend that the original Defendant was dispossessed of the structure and did not abandon the same and even claim an appropriate relief in that behalf by way of counter-claim or otherwise. As of now, all rights and contentions of the parties on merits can be kept open.

6 The chamber summons is, accordingly, allowed, subject to the merits of the controversy sought to be added by the amendment being kept open, in terms of prayer clause (a). Amendment to be carried out within two weeks. Amended copy of the plaint be served on the newly added Defendant. The original Defendant will be entitled to file an additional written statement after four weeks of the service of amended plaint on it. The newly added Defendant shall also be permitted to file his written statement dealing with the amended plaint within four weeks of service of the plaint and the writ of summons (as ordered in the accompanying chamber summons).

(S.C. Gupte, J.)