

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

**CHAMBER SUMMONS NO. 1688 OF 2011
IN
SUIT NO. 3572 OF 2006**

Richardson and Cruddas [1972] Ltd. .. Plaintiff/Applicant
Vs.
Mrunal Bhagat & Ors. .. Defendants

Mr.Anil Singh, Addl. Solicitor General a/w. Mr.J.P. Sen, senior advocate
a/w. Ms.Deepti Panda i/b M/s. Purnanand & Co. for plaintiff/Applicant.

Mr.Pradeep J. Thorat for Defendant Nos.1 and 2.

Mr.G.S. Godbole, senior advocate i/b Nitin Mulye for Defendant No.3.

Mr. Nitin J. Thakkar, senior advocate a/w. Mr.Zal Andhyarujina and
Mr.Satye i/b Vigil Juris for Defendant No.4.

**CORAM : K.R.SHRIRAM, J.
DATE : 18TH JULY, 2017**

P.C.

1 This chamber summons is taken out for leave to amend the plaint as per the Schedule annexed thereto. The chamber summons has been taken out on the basis that various facts came to light after the suit was filed. Ld.Additional Solicitor General Mr.Singh appearing for the Applicant submitted (a) proposed amendments are necessary for effective adjudication of the suit and do not change the nature and character of the suit; (b) there can be no mala-fide that can be attributed to the Applicant; (c) they came to

know about the facts to be introduced by the proposed amendment only sometime in 2009 whereas the chamber summons was lodged on 7th April 2011 and hence not hit by law of limitation.

2 Shri Nitin Thakkar, counsel for Defendant No.4 submitted that one document was registered on or about 16th January 2007 and the others on or about 14th July 2008 and hence Plaintiff was deemed to have notice of registration. Therefore, the chamber summons is ex-facie barred by limitation.

3 Mr.Godbole for Defendant No.3 while adopting what Shri Thakker submitted, added that on or about 19th October 2007 when the matter was listed, Defendant No.3 informed Plaintiff in Court and has been so recorded in the order that Defendant No.3 has sold his share to Defendant No.4 and hence, three years should be counted from that date. Shri Godbole also submitted that when the registration takes place, the date reverts to the date of the agreement and in any event, inspection of the documents between Defendant No.3 and Defendant No.4 were given on 18th December 2007 and the period of limitation would begin from that date. In the alternative, Mr.Godbole also submitted that on 10th December 2008, Plaintiff had taken out a chamber summons bearing No.82 of 2008 to implead Defendant No.4

and all the proposed amendments which are being sought to be introduced today, could have been brought on record with that chamber summons but instead Plaintiff only added Defendant No.4 without any consequential amendments to the plaint and therefore, Plaintiff is deemed to have waived or omitted to sue and the amendment should be disallowed on principals analogous to Order II, Rule 2 of the Code of Civil Procedure, 1908 (CPC).

4 Mr.Thorat for Defendant Nos.1 and 2 adopted the submissions of Mr.Thakkar and Mr.Godbole.

5 In rejoinder, Ld. Additinal Solicitor General submitted that first of all, Defendant No. 3 was always a party to this suit and had been served the writ of summons sometime in January 2007 and on 23rd January 2007, the Advocate filed his Vakalatnama. For the first time Plaintiff was made aware of the alleged agreement with Defendant No.4 was only in Court on 19th October 2007 and on that date, the agreement was not even registered. Even inspection of the original was not given but what was admittedly shown was only photocopy. The Ld. Additional Solicitor General also submitted that even after the registration was allegedly done on 14th July 2008 by Defendant No.3 of the Conveyance to Defendant No. 4 conveying 12.5% of the entire property (50% is with Plaintiff) still Defendant No.3 did not

consider it necessary to inform Plaintiff. It is also submitted that even though registration means that it is knowledge or notice to the world at large but when parties are in litigation, they owe a duty to the opponent to inform any further development. Mr.Singh also submitted that only when Plaintiff received a notice dated 31st January 2007 from the City Survey Officer, they came to know that Defendant No.4 has acquired interest in the property from Defendant No.1 and Defendant No.2 also, but nobody informed Plaintiff. Thereafter, on 23rd October 20007, the City Survey Officer allowed and granted permission for mutation of entries to the extent of 25% undivided share of the suit property which was in the name of Indravadhan D. Bhagat in favour of Defendant No.2 and Defendant No.3 who where the legal heirs of Indravadhan D. Bhagat. After that order, sometime towards end of 2009, Plaintiff took search of the records in the office of the Sub-Registrar of Assurance when they realized about the Agreement of Sale, dated 14th December 2006 between Defendant Nos.1, 2 and Defendant No.3 on the one part and Defendant No.4 on the other and Plaintiff came to know about the following :

1. 14.12.2006 : 3 alleged Agreements of Sale between Defendant No.1 to Defendant No.3 and Defendant No.4-16.01.2007
2. 20.12.2006 : alleged Deeds of Conveyance between Defendant No.1 to Defendant No.3 as the Vendors and Defendant No.4 as the Purchaser.
3. 31.12.2006 : 6 alleged Deeds of Correction purporting to correct the

CTS Nos. in the Deeds of Conveyance.

4. 01.07.2008 : 6 alleged Deeds of Confirmation purporting to confirm the alleged Deeds of Conveyance, and
5. 14.07.2008 : Registration of Deed of Conveyance.

6 This is a pre-trial amendment application. Order VI, Rule 17 of the CPC reads as under :

Order VI, Rule 17 : Amendment of pleadings— *The Court may at any stage of 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.

7 The Apex Court in **Revajeetu Builders & Developers Versus Narayanaswamy & Sons & Ors.**¹ in paragraph 63 has laid-down the factors to be considered which reads as under :

63 *On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.*

- (1) *Whether the amendment sought is im-perative for proper and effective adjudication of the case?*
- (2) *Whether the application for amendment is bona fide or mala fide?*
- (3) *The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*
- (4) *Refusing amendment would in fact lead to injustice or lead to multiple litigation;*

1 (2009) 10 SCC 84

(5) *Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and*

(6) *As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.*

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

8 It is also settled law that at the stage of an amendment application, the Court should not go into the merits of the proposed amendment.

9 One Virumati Kapadia, Kiran Kapadia, Indravadhan Bhagat, Rameshchandra Bhagat and Mrunal Bhagat owning 12.5%, 12.5%, 25%, 25%, 25%, respectively, were seized and possessed of a property admeasuring 52,718.16 sq.mtrs. (said property).

The entire property of 52718.16 sq.mtrs. was leased initially by an Agreement of Lease dated 27th April 1974 to Plaintiff. Plaintiff has been in possession of the entire property since 2nd August 1975 and are running their factory. The lease provided a right of pre-emption whereby Plaintiff had the option to buy within 10 years the entire property for a consideration of Rs.18.50 lakhs.

Virumati Kapadia and Kiran Kapadia conveyed their 25% (12.5% +

12.5%) to Plaintiff on 29th March 1988 and on 13th August 1988, respectively. On 26th September 1988, Rameshchandra Bhagat conveyed his 25% to Plaintiff. Therefore, by end of September 1988, Plaintiff was owner of 50% of the said property. After death of Indravadhan Bhagat, his 25% went equally, i.e., 12.5% + 12.5%, to Pallavi Bhagat (Defendant No.2) and Avanish Bhagat (Defendant No.3), respectively. Mrunal Bhagat (Defendant No.1) retained her 25%.

10 On 26th August 2006, the advocate for Defendant No.1 sent a letter calling upon Plaintiff to vacate 50% of the said property not owned by Plaintiff. In response, Plaintiff's advocate called upon the advocate to complete the transaction of handing their 50% to Plaintiff as per the Agreement of Lease. As the Defendants refused, Plaintiff filed this suit for specific performance of the Agreement dated 27th April 1974 against Defendant Nos.1 to 3 for conveying the balance 50%.

11 The suit was lodged on 13th December 2006. Plaintiff took out a notice of motion No.2545 of 2007, at the hearing of which, as stated above, Avanish Bhagat, i.e., Defendant No.3 informed the Court that he had created third party rights in favour of Defendant No.4. On 27th October 2007, copies of the unregistered Deed of Conveyance was provided to Plaintiff by

Defendant No.3 but as stated earlier, inspection was not given of original documents. Though in the chamber summons No.82 of 2008 lodged on 10th December 2008, Plaintiff sought only addition of Defendant No.4 without any consequential amendments to the plaint, it has to be noted that at that stage, Plaintiff was made to know only about the sale of 12.5% which Defendant No.3 had in the entire property. It is true that registration of a document would be notice to the whole world but when the parties are in litigation, Defendant Nos.1, 2 and 3, in my view, owed a duty to communicate to Plaintiff that they had entered into an agreement with Defendant No.4 and those agreements have been registered. Mr.Thakkar submitted that three alleged Agreements of Sale were entered into between Defendant No.1 and Defendant No.2 and Defendant No.4 on 14th December 2006 and the document was registered on 16th January 2007. In my view, since plaintiff was the owner of 50% undivided share in the property, Defendants owed a duty to inform Plaintiff. They did not and only Defendant No.3 informed in Court on 19th October 2007. Mr.Thorat submitted that Defendant No.1 and Defendant No.2 were not even aware that Plaintiff has filed the suit because the writ of summons were served much later. That would still be not be an excuse because Defendant Nos.1 and 2 always knew that Plaintiff was owning 50% of undivided shares and Plaintiff has also given notice to the Defendants to perform their obligations

under the Lease Agreement. The fact is Defendant Nos.1, 2 and 3 always knew about Plaintiff's interest in buying their share by exercising its right of pre-emption under the Lease Agreement. It is not that Plaintiff was a total stranger. Plaintiff lodged this chamber summons only after it received notice from the City Survey Officer and after Plaintiff took search and inspection.

12 It should also be noted that the only documents which Defendant No.3 had given to Plaintiff were photocopies of two Deeds of Conveyance, dated 20th December 2006 between Defendant No.3 and Defendant No.4. Defendant Nos.1 to 3 also never informed Plaintiff that they had entered into Deeds of Corrections with Defendant No.4 on 31st December 2006 purporting to correct the city survey numbers or they had also entered into Deeds of Confirmation dated 1st July 2008 purporting to confirm the alleged Deeds of Conveyance or registration of Deed of Conveyance was done on 14th July 2008. Considering the facts and circumstances of the case, I am not able to come to a conclusion that the proposed amendments are ex-facie barred by limitation.

13 As it is a pre-trial amendment, basically the facts which the Court keeps in mind are (i) whether the amendment is necessary for the effective adjudication of the suit; (ii) whether amendment changes the nature and

circumstances of the case; (iii) whether the amendment is mala fide and only taken out to delay the disposal of the suit; or (iv) whether if a separate suit is brought for the amendment sought, the suit will be ex-facie barred by limitation.

14 Having heard the counsels and having considered the affidavits in support and in opposition, I am of the view that (i) the amendment is necessary for effective adjudication of the suit; (b) it does not change the nature and character of the suit; (c) there is nothing mala fide [these three points were not even argued by Defendants] and (d) as stated earlier, I am unable to come to a conclusion at this stage that it is ex-facie barred by limitation.

15 In the circumstances, keeping open the rights of the Defendants to file further written statement raising all grounds and defence including on limitation, the chamber summons is allowed in terms of prayer clause (a). Whether the amendment will relate back to the date of suit is also kept open to be raised in the written statement.

16 Plaint to be amended and the amended plaint to be served within three weeks from today. Additional written statements to be filed within three

weeks of receiving the amended plaint.

17 Within two weeks thereafter, parties to file their respective affidavits of documents, complete inspection and discovery and exchange statements of admission and denial with reasons for denial.

18 The suit be listed for issues on 10th October 2017.

(K.R. SHRIRAM, J.)