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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1394 OF 2015

IN

SUMMARY SUIT NO.2949 OF 1993

Mr. Vinod Parashuram Mahajan & Anr. ...Applicants/Plaintiffs

vs

Kanubhai Ashabhai Patel & Ors. ...Defendants

.....

Mr. Atul Daga, i/b. Kunal Bhanage, for the Plaintiffs.

Mr. Simil Purohit, a/w. Ms. Priyanka Kothari and Ms. Neha Bhatt, i/b. Bilawala & Co., for Defendant No.6.

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CORAM : S.C. GUPTE, J.

DATED : JUNE 9, 2017

P.C. :

. Heard learned Counsel for the parties.

2. This Chamber Summons seeks amendment of the plaint in accordance with the Schedule of Amendment to the Chamber Summons. The amendment is necessitated as a result of termination by Defendant No.6 of the agreements, on the basis of which the original suit was filed.

3. Defendant No.6 was originally Plaintiff No.1 in the present suit. The suit claims certain reliefs against Defendant Nos. 1 to 4 in respect of an alleged trespass by the Defendants of the suit property, which was claimed to be of the ownership of the Plaintiffs. During the

pendency of this suit, original Plaintiff No.1, who had executed a development agreement in favour of original Plaintiff No.2, who, in turn, had entered into a development agreement with original Plaintiff No.3, terminated the suit agreements and disputed the rights of the other Plaintiffs to develop the suit property. As a result of this development, original Plaintiff No.1 was transposed as Defendant No.6. The present amendment is necessitated as a result of that transposition and a stand taken by Defendant No.6 after the transposition in its written statement filed in the suit.

4. Learned Counsel for Defendant No.6 objects to clause XIX of the Schedule of Amendment. Learned Counsel submits that declaration of ownership cannot be claimed qua any particular Defendant/s. That is a matter of merits. Subject to the controversy in this behalf being kept open, the amendment to the plaint deserves to be allowed. It is for the Plaintiffs to set out in the plaint the relief that they seek from the Court. Whether or not the relief can be granted in the form in which it is sought, is a matter of merits. The amendment is necessary for determining the real controversy between the parties.

5. Accordingly, the Chamber Summons is made absolute in terms of prayer clause (a). The amendment to be carried out within two weeks. The amended plaint to be served on all Defendants. Liberty to the Defendants to file an additional written statement dealing with the amended plaint. The Chamber Summons is disposed of accordingly.

(S.C. GUPTE, J.)