

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

CHAMBER SUMMONS NO.189 OF 2017
IN
SUIT NO.205 OF 2014

Bharatlal Zuri Singh ..Plaintiff

IN THE MATTER BETWEEN

Bharatlal Zuri Singh .. Plaintiff

-Versus-

Raisaheb Ramlakhan Singh & Ors. .. Defendants

And

Mukesh Saremal Khandelwal .. Proposed
Respondents

Mr. Aditya Shiralkar a/w Mr. Nitin Sopan Parkhe for Plaintiff.
Mr. Shreepad Murthy i/b Abhishek Patil for Defendant No.1.
Mr. T.R. Yadav i/b P.Shah for Defendant No.2.

CORAM : K.R.SHRIRAM, J.

DATE : 10th April 2017.

P.C.

1] This chamber summons is taken out for leave to amend the suit which is filed for partition amongst other reliefs. This amendment application is also a pre-trial application. In fact, defendant No.1 has filed written statement. The defendants have opposed the chamber summons. Mr. Murthy appearing for

defendant No.1 submitted that the proposed defendant is not a necessary party. That objection, the proposed defendant, has not raised, though served. Mr. Shiralkar, Counsel appearing for plaintiff undertakes to file an affidavit of service upon the proposed defendant within one week from today.

2] The proposed amendment, as it appears from the affidavit in support, has become necessary in view of certain developments, post filing of the suit. In the suit, the main dispute between the parties is relating to two shops being Shop Nos. A-15 and A-18. This Court by an order dated 26th September 2014 passed in Notice of Motion No.453 of 2014 had restrained all the defendants including defendant Nos. 2, 4 and 5 from creating any third party rights and/or interfering with the use and/or occupation of the suit properties, which include these two shops also.

3] It is the case of the plaintiff that after passing of the said order, some time in June 2016, the defendant No.2 has executed leave and licence agreement in respect of the Shop A-15 with the proposed defendant for a period of 60 months with effect from 1st

July 2016. The plaintiff came to know about this from the details that he obtained under Right to Information Act, 2005. According to plaintiff, the agreement is in breach of the injunctive order and according to defendant No.2, it is not in breach. It is settled law that at the stage of considering an application for amendment, the Court does not go into the merits of the proposed amendments.

4] The Apex Court in *M/s.Revajeetu Builders & Developers Vs. M/s. Narayanaswamy & Sons* , reported in(2009) 10 SCC 84 in para 63 has laid down factors to be considered by the Court while considering the amendment application. The same reads as under:-

FACTORS TO BE TAKEN INTO CONSIDERATION WHILE DEALING WITH APPLICATIONS FOR AMENDMENTS:

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;

(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.

64. The decision on an application made under Order VI Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.

5] Having considered the proposed amendments, in my view, it does not change the nature and character of the suit. It is not barred by limitation in any event, I cannot see anything malafide in the proposed amendments.

6] In the circumstances, the chamber summons is allowed in terms of prayer clause (a). Amendments to be carried out and amended copy be served within four weeks. Written statement/ additional written statement to be filed within four weeks of receiving amended plaint. Suit be listed for directions on 23rd June 2017. If

the written statement / additional written statement is not filed within the stipulated period the suit as against those defendants who have not filed written statement, be transferred to the list of undefended suits without further reference to the court. Notice of Motion No.453 of 2014 be also listed for hearing on 23rd June 2017.

(K.R.SHRIRAM, J.)