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

WRIT PETITION NO. 2856 OF 2017

Miss Pallavi H. Patil & Anr.

...Petitioners.

vs

Smt. Pratima Chandrashekhar Singh & Ors

...Respondents

.....

Mr Vindu Prakash Pandey a/w Pramod Kumar Pandya I/b Legal Edge LLP for the Petitioners.

Mr Sanjeev R. Singh a/w Ritesh A. Singh & Ms Jyoti S. Agrawal for Respondent Nos.1(A) to 1(D).

Mr Chetan Agrawal a/w Pravin Mengane and Pranav Dhakne, S. Panjabi for Respondent Nos.2 and 3.

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**CORAM : B.P.COLABAWALLA, J.
NOVEMBER 28, 2018.**

P.C. :

Rule. Respondents waive service. By consent of parties, rule made returnable forthwith and heard finally.

2 This Writ Petition has been filed seeking to challenge the order dated 29th January, 2013 passed in Chamber Summons No. 163 of 2012 in Suit No. 1866 of 2006 pending before the City Civil Court, Birivali Division, Dindoshi, Goregaon, Mumbai. The amendment sought by this Chamber Summons was to add certain parties as Defendant Nos.2 and 3 who claimed to be the purchasers of the suit flat along with consequential amendments with reference to these parties. Another amendment sought was in relation to the shop premises, which according to the plaintiffs was intended to be given

free of costs. It was the case of the plaintiffs that these amendments were necessary as through oversight the relief in respect of the shop premises remained to be included in the plaint. After realizing their mistake, the amendment application was filed for bringing the necessary averments also with reference to the shop premises.

3 As far as the suit flat (Flat No.201) was concerned, it was the case of the plaintiffs that in the month of February 2011, the plaintiffs came to know that the original defendant had already sold the suit flat (Flat No.201) to Respondent Nos.2 and 3 herein under a registered agreement dated 23rd August, 2005. After coming to know of these facts, the plaintiffs took out a Chamber Summons to add these parties as Defendants. Both these amendments, namely with reference to the Shop premises as well as with reference to the suit flat (Flat No.201) were the subject matter of Chamber Summons No.163 of 2012.

4 This Chamber Summons was partly allowed whereby Respondent Nos.2 and 3 herein were allowed to be brought on record as Defendant Nos.2 and 3 to the suit. However, the consequential amendments were not allowed. The reasoning given by the Trial Court for not allowing the consequential amendments as well as for rejecting the amendment to include the shop premises (Shop No.5), can be found in paragraph 7 of the impugned order which reads thus:

“7. Admittedly, the suit is filed in the year 2006. The Chamber Summons for amendment is moved in the year 2011 with regards to the joining respondent Nos.1 and 2 as party defendants. Submissions of Ld. Advocate for plaintiffs that, they were not aware of the flat i.e. suit premises being sold and only

came to know about it from reliable source cannot be accepted. For the reason that, in the written statement filed by the defendants, it is mentioned that, suit premises is already sold to one Mr Alex Carbo. The written statement is filed in the year 2006, till date the plaintiffs have not taken any steps to amend the pleadings. Moreover now as per the Chamber Summons, the plaintiffs further wants to add his relief with regards to the shop No.5 which according to him was agreed to be sold to him and the possession of which is with him. In case, the possession of shop No.5 is with the plaintiffs, according to me, he can take appropriate step for getting necessary agreement executed with the defendants and it could be a question of separate litigation and not the present suit. Allowing the inclusion of shop No.5 would now definitely enlarge the scope of suit filed by the plaintiffs. With regards to joining respondent Nos.1 and 2 as party defendants is concerned, though the same was to the notice of the plaintiffs since the year 2005. No steps whatsoever have been taken. However, looking into the facts that, by including the respondent Nos.1 and 2, the rights of the plaintiffs as well as the respondents would be affected. It would according to me be proper and appropriated, if respondent Nos.1 and 2 are made party defendants to the suit. As far as shop premises is concerned, I am not inclined to grant any relief to include the same in the plaint. Hence, I proceed to pass the following order."

5 It is not in dispute that this amendment application was filed much prior to the commencement of trial of the suit. It is surprising that the Trial Court allowed the Chamber Summons in part, namely, joining of Defendant Nos.2 and 3 but not allowing the consequential amendments. I fail to see the purpose as to why then Defendant Nos.2 and 3 were joined at all. It would be ludicrous to

suggest that a party is allowed to be added at the instance of the plaintiffs but the averments in relation to that party are denied. In these circumstances, I find that disallowing the consequential amendments *qua* Defendant Nos. 2 and 3 is wholly unsustainable.

6 Even as far as shop No.5 is concerned, I do not see any reason why the amendment could not have been allowed. This is for simple reason that according to the plaintiff, Shop No.5 also forms the subject matter of the dispute between the original Defendant and the Plaintiffs. Admittedly, the trial of the suit has not commenced. Furthermore, it is the specific case of the plaintiffs that it was due to mistake and oversight that the reliefs and the averments with reference to shop No.5 were not included in the plaint as originally filed. This being the case, and considering that merely by allowing the amendments no prejudice would have been caused to the defendant, I think that the Trial Court was in gross error in partly allowing the Chamber Summons.

7 In these circumstances, the impugned order is set aside and the amended Chamber Summons No. 163 of 2012 is allowed. The Plaintiffs shall carry out the amendment in the trial court proceedings within a period of two weeks from today and serve a copy of the amended plaint on the advocates for all the defendants. Once the amended copies of the plaint are served on the defendants, the defendants shall be at liberty to file their Written Statement / additional Written Statement, if any, within a period of four weeks thereafter. It is clarified that I have not examined merits of the matter and the defendants are at liberty to take up all contentions with reference to merits of the amendment in the Written Statement/

Additional Written Statement, if any.

8 Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

(B.P.COLABAWALLA, J.)