

counsel for the petitioners invited my attentions to various pleadings filed by the parties, including the pleadings in the earlier chamber summons, filed by the plaintiffs and Chamber Summons No. 898 of 2013, and the orders passed by the learned trial judge, as well as this Court. The plaintiffs have filed Civil Suit No. 2166 of 2010 on 14.10.2010, inter alia praying for declaration that approval granted to defendant Nos. 1 and 2 by the authorities for amalgamation of the plots was illegal, mala fide and could not have been executed and for other reliefs.

2. In the suit filed by the petitioners, interim relief prayed by the petitioners was rejected. In the year 2011, plaintiffs filed a chamber summons for amendment of the plaint and seeking addition of various prayers relating to issue of amalgamation raised in the plaint. By a detailed order and judgment dated 3.12.2011 Chamber Summons No. 322 of 2011 came to be dismissed. This Court allowed the appeal preferred by the petitioners against the said order dated 3.12.2011. The Hon'ble Supreme Court was pleased to set aside the order passed

by this Court and confirmed the order passed by the learned trial judge on 3.12.2011.

3. On 30.10.2013, the petitioners filed fresh Chamber Summons No. 898 of 2013 under Order VI, Rule 17 of the Code of Civil Procedure, 1908 *inter alia* praying for amendment of plaint. The said chamber summons was opposed by the defendants vehemently. The learned trial judge dismissed the said chamber summons by passing the impugned order 13th February, 2018, partly. The learned trial Judge allowed the amendment, insofar as averments made in paragraph Nos. 30(a), 30(b), 30(c), 30(d) and 30(ee) of the schedule annexed to the chamber summons, were concerned. Rest of the amendments sought in the chamber summons came to be rejected. The petitioners being aggrieved by the order of rejecting amendment prayed by them, have impugned the said order in this petition.

4. The learned counsel for the petitioners invited my attention to the averments made in the affidavit in support of chamber summons and schedule appended thereto. He submits

that part of the chamber summons, which has been rejected by the learned trial judge, was the amendment sought by the petitioners to bring additional facts on record. However, the averment relating to issue of amalgamation was already raised in the plaint by his clients. He submits that defendant No. 1 was under the control and management of Administrator for some time. One of the member had applied for certified copy of records and furnished copies thereof to the petitioners. Thus, petitioners came to know about those facts which would have bearing on the issue of amalgamation. The learned trial judge held that the plaintiffs were aware of facts prior to filing of the suit, and therefore, rightly disallowed part of the amendment sought by the plaintiffs.

5. Mr. Chitnis, learned advocate appearing for respondent No. 1 submits that petitioner No. 1 was Managing Committee Member of defendant No. 1 Society at the relevant time and was fully aware of the facts. He submits that the amendment sought in the second chamber summons was

identical to the amendment sought in the first chamber summons. The said finding of learned trial judge in the first chamber summons has been upheld by the Hon'ble Supreme Court.

6. Learned counsel appearing for respondent No. 2 – Developer invited my attention to the schedule of amendment and the chamber summons and also the fresh chamber summons. He strongly placed reliance on order dated 3.12.2011 passed in Chamber Summons No. 322/2011 and submits that even in the first chamber summon, the plaintiffs had sought various amendments relating to issue of amalgamation. He submits that the learned trial judge in a detailed order and judgment has noticed that prior to 1989, the plaintiff was a member of managing committee of the Respondent No. 1 Society and was Acting Chairman of the Committee in the year 1988. Under his chairmanship, a resolution was passed by the Society in which it was unanimously decided that petitioner No. 1 alongwith one Ashraf will get the deed of conveyance executed. He submits

that the learned trial judge rejected the prayers in respect of deed of conveyance.

7. It is submitted that the petitioners have not acted with due diligence. The suit is of the year 2010. He submits that the events alleged by the petitioners which are subsequent to the date of filing suit have already been allowed by the learned trial judge and the events prior to the date of suit, which were already alleged in the earlier chamber summons, have been rightly rejected by the learned trial judge.

8. Mr. Jha, learned counsel for the petitioners submits that source of information of the additional material, sought to be produced in the Chamber Summons No. 898 of 2013 was post the date of filing the Suit No. 2166 of 2010, and thus, ought to have been allowed by the learned trial judge.

9. A perusal of averments in the plaint clearly indicates that the petitioners have sought certain reliefs in respect of amalgamation of the two plots. There was no prayer seeking any

relief in respect of deed of conveyance. There was no interim relief granted in the suit filed by the petitioners.

10. A perusal of the schedule appended to the first chamber summons clearly indicates that petitioners sought to bring certain allegations on record relating to amalgamation of plots. The learned trial judge passed order dated 3.12.2011 taking cognizance of the fact that petitioner No. 1 was a committee Member of defendant No. 1 Society prior to 1988 and was Acting Chairman of the committee. He was party to the resolution passed by defendant No. 1. After considering the participation of petitioner No. 1 as a Committee Member, as well as an Acting Chairman of the committee, learned trial judge held that all these allegations which were sought to be added, were already to the knowledge of the plaintiff No. 1 prior to the date of filing suit, and thus, could not be permitted by way of amendment. The learned trial judge also held that there was no declaration in respect of alleged forged document dated 8.2.1989 and that the plaintiff was not seeking any declaration in

respect of alleged deed of conveyance. It is not in dispute that finding rendered by the learned trial judge has been upheld by the Hon'ble Supreme Court.

11. A perusal of the schedule to the Chamber Summons No. 898/2013 read with affidavit in support of chamber summons clearly indicates that all these allegations sought to be brought on record once again by the plaintiffs were in respect of allegations made in respect of the amalgamation. The case of the plaintiffs in the affidavit in support that one of the member of the Society had obtained records of the society and he furnished copy thereof to the plaintiffs, is devoid of merits and not convincing. Petitioner No. 1 himself was a member of the committee and Acting Chairman of the Society relating to the transactions which are impugned in the suit, could not have filed a fresh chamber summons, based on these alleged events having taken place prior to the date of filing the suit. In my view, the chamber summons filed by the petitioners seeking such amendment to bring on record the events prior to the date of

filing the suit, was thoroughly misconceived. The learned trial judge has rightly rejected the chamber summons in part.

12. A perusal of schedule to the second chamber summons clearly indicates that prayer in respect of deed of conveyance, which was not made in the earlier round of litigation, is indirectly sought to challenge in the second chamber summons. In my view, no case is made out to interfere with the impugned order. The writ petition is totally devoid of merits and is dismissed with costs of Rs. 50,000/-, which is to be paid by the petitioners to the Respondent No. 1 Society, within two weeks from today.

Sd/-
[R. D. DHANUKA, J.]