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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO.26937 OF 2018  
WITH  
WRIT PETITION (STAMP) NO.26938 OF 2018

Ravinder K. Agarwal & Ors. ...Petitioners  
V/s.  
Ashok K. Agarwal & Ors. ...Respondents

Mr.Raj Patel with Ms.Pinky Patel and Mr.Sahil Harjani i/b Desai & Diwanji for the Petitioners.

Mr.Gautam Ankhad with Mr.Darshan Mehta and Mr.Niket Jani I/b Ms.Dhruve Liladhar & Co. for the Respondent No.1.

**CORAM : R.D. DHANUKA, J.**  
**DATE : 26TH SEPTEMBER, 2018.**

**P.C. :-**

1. By these petitions filed under under Article 227 of the Constitution of India, the petitioners (original defendant nos.1 to 4 in the Suit No.7778 of 2000) have impugned the order dated 24<sup>th</sup> August, 2018 passed by the learned Trial Judge in Chamber Summons No.782 of 2018 dismissing the chamber summons *inter-alia* praying for an amendment to the written statement and the order dated 24<sup>th</sup> August, 2018 dismissing the Chamber Summons No.954 of 2018.

2. Heard learned counsel for the parties. With the assistance of the learned counsel for the parties, I have perused the averments

made in the original written statement filed by the petitioners and also the proposed amendment annexed to the writ petition, which was schedule of amendment annexed to the chamber summons filed by the petitioner.

3. In Chamber Summons No.782 of 2018, the petitioners applied for amendment stating that “the deceased Sardarilal had settled the plaintiff, defendant no.1 and defendants no.2 and 3 and their families and provided them for their accommodation and place to abode out of HUF income”. Whereas in paragraph 5(h) of the written statement it was averred by the petitioners that “the Jolly Maker 1 flat was allotted to this defendant inasmuch as he had a big family. Further more, this defendant had given money to the plaintiff to buy a flat in Bandra, Bombay.

4. It is the case of the petitioners that while preparing for trial in the suit for partition, the petitioners realized that their reference in paragraph 5(h) of the written statement was wrong and thus the said chamber summons was filed by the petitioners *inter-alia* praying for amendment.

5. Insofar as the Chamber Summons No.954 of 2018 is concerned, the said chamber summons was also for seeking amendment and to delete and substitute few words in paragraph 5(h) of the original written statement.

6. Learned Trial Judge has rejected both these chamber summons on the ground that if the proposed amendment was allowed as prayed by the petitioners, the amendment would contradict to the defence in the written statement produced in paragraph 6 of the order passed in Chamber Summons No.782 of 2018. Learned Trial Judge has rejected the chamber summons also on the ground that the only on the ground mentioned in the affidavit in support of the chamber summons that there was a mistake in the written statement, chamber summons could not be allowed.

7. The suit is of the year 2000. The written statements were filed as far back as on 3<sup>rd</sup> May, 2008. The issues are already framed initially in the year 2014. There is recast of one issue in the month of June, 2018. The plaintiff has already filed affidavit of evidence and is under the cross-examination.

8. It is not in dispute that various interlocutory proceedings were filed by the parties based on the original pleadings. In my view, in these circumstances, though the amendment to the provisions of the Code of Civil Procedure permits the amendment after commencement of trial, the same is permissible if it is applied by due diligence by the parties seeking amendment and that also if there is no contradiction in the original stand taken by a party. In my view, the petitioners have failed to comply with both these requirements for

seeking amendment in the written statement. A perusal of the original stand taken by the petitioners in the written statement and the schedule of amendment proposed in the chamber summons would clearly indicate that there were contradictions. In my view, there is thus no infirmity found in the impugned orders passed by the learned Trial Judge. Both the chamber summons are rightly rejected by the learned Trial Judge.

10. Both the petitions are devoid of merit and are accordingly dismissed. There shall be no order as to costs.

Vasant  
Anandrao Idhol

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Anandrao Idhol  
Date: 2018.09.29 11:09:33  
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**(R.D. DHANUKA, J.)**