

Nos.3 and 4 did not appear before the Trial Court. The Trial Court by the impugned order dismissed the Chamber Summons. The only reasoning given by the Trial Court can be found in paragraphs 12 and 13 thereof. The Trial Court has come to the conclusion that the amendments were not necessary for deciding the controversy in the suit and that the same would change the nature of the suit as originally filed.

3 I have gone through the schedule to the Chamber Summons in great detail. I think that the findings given by the Trial Court are completely erroneous and perverse. All that this amendment application seeks to do is to bring certain facts on record and include certain prayer clauses. Even on going through the prayer clauses, I do not think that in any way it alters the nature of the suit. In fact the prayers sought to be added appear to be consequential prayers to the main prayer already sought, namely, that Defendant Nos.3 and 4 have no right of whatsoever nature in respect of the suit property. This being the case, and especially considering that the amendment application was filed at the pre-trial stage, the Trial Court ought to have allowed the Chamber Summons.

4 Learned advocate appearing on behalf of Defendant

No.1A, 3 and 4 has however submitted that the reliefs claimed by the Plaintiff by virtue of this amendment would be barred by the Law of Limitation.

5 I make it clear that by merely allowing the amendment, I have not decided the issue of limitation. The issue of limitation with reference to the prayers now sought to be brought in by virtue of this amendment is expressly kept open for the Defendants to agitate before the Trial Court and which will be decided on its own merits and in accordance with law. Even the merits of the facts pleaded in the amendment will not be deemed to be admitted by any of the Defendants. Considering that the amendment is being allowed, the Defendants shall be at liberty to file additional Written Statement to the amended plaint and also raise any additional issues if they so desire before the Trial Court.

6 In these circumstances, the Writ Petition is allowed and the impugned order dated 17th June, 2017 is set aside and Chamber Summons No. 216 of 2016 is allowed in terms of prayer clause (a) thereof which reads thus -

“(a) That the Plaintiff be permitted to amend the Plaint as per the Schedule annexed to the Chamber Summons.”

7 Considering that the Chamber Summons has been filed after some delay the Plaintiffs shall pay costs of Rs.25,000/- to the Kirtikar Law Library and deposit in this Court a receipt evidencing the payment of costs. The costs shall be paid within a period of two weeks from today, failing which this Writ Petition shall stand dismissed without further reference to the Court. The Writ Petition is disposed of in the aforesaid terms.

(B.P.COLABAWALLA, J.)