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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
CHAMBER SUMMONS NO. 393 OF 2018  
IN  
SUIT NO. 455 OF 2017**

|                     |               |
|---------------------|---------------|
| Zeenat Shiraz Kasam | ...Plaintiff  |
| <i>Versus</i>       |               |
| MA Battliwala & Ors | ...Defendants |

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**Mr MP Vashi, Senior Advocate, with Rajendra Sorankar, Mr  
Anand Pai & Mr Durgesh Kulkarni, for the Applicant/Plaintiff.**  
**Mr Sharan Jagtiani, with Mr Arun Panicker & Mr Jacob Kadantot,  
i/b Nitin Parkhe, for the Defendants.**

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**CORAM: G.S. PATEL, J  
DATED: 29th August 2018**

**PC:-**

1. Heard.
  
2. This Chamber Summons by the Plaintiff seeks to amend the  
plaint. The fact that the proposed amendment runs from page no. 5  
to page no 190 is in itself an invitation to a dismissal, given that the  
Plaintiff's original plaint is about one-fourth the length. That,  
however, is not a reason to succumb to temptation and hold against  
the Plaintiff.

3. All this consumption of paper and wanton destruction of our threatened forests is for a very limited clarification. The Plaintiff claims that she has a right to the proceeds in respect of two properties described in Schedule C. The first is a residential tenancy of 1,400 sq ft on the ground floor of Anand Villa, 30, Pali Mala Road, Bandra (West), Mumbai and the second is a shop of 180 sq ft called Care Medical adjacent to the residential flat. Mr Vashi says that both premises were on tenancy and formed part of the estate of Anwarali Esmail Battliwala, sought to be partitioned in the Suit.

4. Mr Jagtiani for the contesting Defendants disputes that these premises ever formed part of that estate.

5. Prayer (a) of the plaint seeks a relief in the usual form for an order and decree for administration of Anwarali's estate and to secure to the Plaintiff, one of Anwarali's children, her share in that estate. The prayer itself contains no mention of any specific property and, as is usual in such cases, the Commissioner for Taking Accounts will at some point draw up a ledger of the property comprised in the estate and their respective values. This will then be followed by a decree of partition. All of this will of course necessarily be preceded by a preliminary decree ascertaining the shares of the respective parties.

6. It is, therefore, only necessary to clarify that at the time of inventorying and valuing the estate of the deceased Anwarali, the contentions of the Plaintiff in regard to the two properties at Bandra as also the contentions of the Defendants in opposition are expressly

kept open. The disposal of this Chamber Summons by this order will not preclude the Plaintiff from submitting that the proceeds or consideration for the tenancy surrender of the two Bandra properties, one commercial and one residential, must be included in the estate of the deceased and must be accounted for by the Defendants. Equally, the Defendants' contentions including (but not limited to) the submission that there was no such consideration, that the two premises were not the estate of the deceased, and that the plaintiff has no share in those premises are also kept at large.

7. Schedule A to the Chamber Summons seeks to add the names of five persons listed to be joined as Defendants Nos. 6 to 10. Defendants Nos. 6 to 9 are the other sisters of the deceased Anwarali or their heirs. Defendant No. 10 is the landlord of the Bandra premises. I do not believe that proposed Defendant No. 10 is either a necessary or a proper party to the Suit, the premises having been surrendered. He may well be a witness, but that is about all. I will allow the amendment to the plaint to add Defendants Nos. 6 to 9. This is without prejudice to all rights and contentions and also without prejudice to the contention of the Defendants that this amendment might itself render the plaint, as amended, not maintainable for different reasons.

8. It is clarified that this order is not to be construed to mean that the Defendants have even accepted that the Plaintiff has any share at all in the estate of the deceased or in particular in the two Bandra properties.

9. The Chamber Summons is disposed of in these terms. There will be no order as to costs.

**(G. S. PATEL, J)**