

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**CHAMBER SUMMONS NO.262 OF 2017
IN
SUIT NO.885 OF 2015
WITH
NOTICE OF MOTION NO.543 OF 2016**

Anupama Sharma-Jagtiani And Another ... Applicants

In the matter between :

Mrs. Anupama Sharma-Jagtiani And
Another ... Plaintiffs

Versus

Mr. Vikaram Kamal Jagtiani
And Others ... Defendants

.....

Mr. Y.H. Muchhala, Senior Advocate with Mr. Sharique Nachan I/b Bhave
& Co. for the Applicants/Plaintiffs.

Mr. Amal Patankar a/w Mr. Ravi Mishra I/b MZM Legal for Defendant
No.2.

.....

CORAM : S.C.GUPTE, J.

DATE : 23 OCTOBER 2018

P.C. :

. Heard learned Counsel for the parties.

2 This Chamber Summons has been taken out by the original Plaintiffs for amendment of the plaint. The present Suit is filed by Plaintiff No.1 as a next friend of Plaintiff No.2, who is a minor. The Suit seeks a declaration of entitlement of Plaintiff No.1 to a share in coparcenary property, which is described in Schedules annexed to the plaint. By the present chamber

summons, the Plaintiffs seek to add the reliefs of partition and separate possession in respect of the share, right, title and interest of Plaintiff No.2 in the coparcenary property. So also, the Plaintiffs propose to incorporate in the plaint averments concerning further developments which occurred during the pendency of the suit.

3 The chamber summons is opposed by Defendant No.2 by filing an affidavit in reply. The affidavit basically disputes the Plaintiffs' case on merit in respect of the property. The coparcenary character of the property is contested. Matters of merits are to be decided during the course of the trial. Without prejudice to the rights and contentions of the parties, any amendment, which seeks to bring out the real controversy between the parties or redress the real grievance of the parties, ought to be permitted, so long as the same does not either alter or substitute the cause of action or take away vested rights in favour of the opponent. The amendment proposed herein satisfies these requirements. Accordingly, the Chamber Summons is made absolute by allowing the Plaintiffs to amend the plaint as per the Schedule annexed to the affidavit in support of the chamber summons. All rights and contentions of the parties on merits of the amended case are kept open. The Defendants shall be entitled to file additional written statement, if any, dealing with the amended plaint. Such written statement may be filed within four weeks of service of the amended plaint. The Chamber Summons is disposed of in these terms.

(S.C. GUPTE, J.)