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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
APPEAL NO. 399 OF 2017  
IN  
CHAMBER SUMMONS NO. 405 OF 2016  
IN  
SUIT NO. 2762 OF 2009  
WITH  
NOTICE OF MOTION LODGING NO. 452 OF 2017

1. Smt. Rosy Charles Almeida and ors. ..Appellants

Vs.

Francis James Almeida ..Respondent

Mr. Sanjay Jain a/w Mr. Chetan Mhatre, Mr. Suyash Gadre i/by Utangale & Co. for appellants.

Mr. Yogeshwar S. Bhate for respondent.

CORAM: NARESH H. PATIL &  
G. S. KULKARNI, JJ.

MARCH 07, 2018.

P.C.

1. The appeal is directed against the order dated 5/1/2017 passed by the learned Single Judge (Coram: K. R. Shriram,J.) in Chamber Summons No. 405 of 2016.

2. The contesting parties are related to each other. The Chamber

Summons No. 405 of 2016 was filed by the respondent-plaintiff seeking leave to amend the plaint as per the schedule annexed thereto.

3. The learned counsel appearing for the appellants-defendants submits that by the impugned order of amendment the plaintiff is seeking to include the property which was deleted from the pleadings by an order passed on 30/7/2015 in Notice of Motion No. 1897 of 2012. The said order was not challenged by the plaintiff. The counsel submits that the properties were purchased when the father of the defendants was alive. It should not be now reopened in view of the transaction of sale and purchase getting completed during the life time of the father. The counsel further submitted that the learned Single Judge erred in allowing the Chamber Summons by observing that the plaintiff is entitled to amend the pleadings.

4. The learned counsel appearing for the respondent submits that though the order dated 30/7/2015 passed in Notice of Motion No. 1897 of 2012 was not challenged, the plaintiff was entitled to file application for amendment of plaint. It was observed by the learned Single Judge that the observations made in order dated 30/7/2015 will not come in the way of the plaintiff applying for leave to amend the plaint. The learned Single

Judge, after taking into consideration the pleadings and the material placed on record, was of the view to allow the amendment of plaint. The plaintiff will have to establish his case and after considering the evidence on record, the court would decide the subject matter of the suit. In the interest of justice the amendment was necessary. The learned counsel, in support of his submissions, has referred to the judgment of the Division Bench of this court in the case of Brigida De Souza alias Brigida Miranda vs. Julino De Souza **[2014(1) Bom. C.R. 697]**.

5. We have perused the order dated 30/7/2015 passed in Notice of Motion No. 1897 of 2012, the impugned order and the relevant record placed before us. By an order dated 30/7/2015, the learned Single Judge observed in paras 16 and 17 as under :-

“16. In my view, it is not possible to prevent the Plaintiff from seeking an amendment if he so wishes. However, the Plaintiff must also be put to terms keeping in mind the fact that an adequate disclosure has been made and further that the documents disclosed by the Defendants, prima facie, indicate that they are all dispositions or sales or transfers by registered documents, many of which were executed in the lifetime of the deceased or very shortly after his demise. Consequently, the Plaintiff must, on or before 17<sup>th</sup> August, 2015, not only

move whatever application for amendment he seeks, but also obtain necessary orders of injunction. If he does not do so, the present order will operate as the final order in the Notice of Motion No. 3794 of 2009.

17. Further, in the event that the Plaintiff does not obtain appropriate orders by that date, the Defendants' Notice of Motion No. 1897 of 2012 will also stand made absolute in terms of prayer clauses (a), (b) and (c) except in regard to the documents at Sr. Nos. VI and VII of the chart appended to this order. In respect of those items, the order indicated above will continue.

6. In the facts of the case, in Chamber Summons filed by the plaintiff, the learned Single Judge considered the material placed before him and allowed the amendment of plaint. The learned Single Judge observed in para 18 of the impugned order as under :-

“18. Having observed as above and having considered the proposed amendments, I also find that the amendment sought is imperative for proper and effective adjudication of the case. The application for amendment is not malafide and allowing the application would not cause / lead to any injustice to the defendants. The proposed amendments also do not change the nature and character of the case.”

7. It is settled position that request for amendment for pleadings has to be liberally considered if it is necessary to do complete justice between the parties and to avoid multiplicity of litigations. The view adopted by the learned Single Judge is a reasonable and possible one. We do not notice any perversity in the view adopted by the learned Single Judge.

8. The appeal is dismissed. Notice of Motion (L) No. 452 of 2017 does not survive and stands disposed of as such.

9. At this stage the learned counsel for the appellants submits that four weeks time be granted to file additional Written Statement to the amended plaint. The learned counsel for the respondent has no objection for the same. The appellants are at liberty to file additional Written Statement to the amended plaint within four weeks time from today.

10. The parties may also explore possibility of settlement through mediation process too.

**(G. S. KULKARNI J.)**

**(NARESH H. PATIL,J.)**