

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****CHAMBER SUMMONS NO.818 OF 2013****IN****SUIT NO.252 OF 2013**

Naina P. Mahtani & Anr.

... Plaintiffs

Versus

Reena Dhir Nee Reena Malani And 6 Ors.

... Defendants

.....

Mr. Mohan Bir Singh, a/w. Ms. Pooja Jalan, i/b. MBS & Co., for the Plaintiffs.

Mr. Ashish Kamat, i/b. Nainesh M. Amin, for Defendant No.1.

Mr. Aspi Chinoy, Senior Counsel, a/w. Mr. Ashish Kamat, Mr. Kedar Desai, Ms. Sneh Nainan and Ms. Insiya Ali, i/b. Desai Desai Carrimjee & Mulla, for Defendant No.3.

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CORAM**: S.C.GUPTE, J.****DATED****: 25 SEPTEMBER 2018****P.C.:**

. Heard learned Counsel for the parties. This chamber summons seeks amendment of the plaint by adding the relief of cancellation of documents, voidness and illegality of which is sought to be declared in the suit herein. It is the Plaintiffs' case that Defendant No.2, who is the mother of the Plaintiffs and Defendant No.1, had long desired her assets and estate to be equally divided amongst her three surviving daughters and that the gift deed and the two power of attorneys purportedly executed by her were illegally procured from her by Defendant No.1 and/or Defendant No.3 by manipulating or coercing her. The Plaintiffs in the suit have prayed for a

declaration to the effect that the gift deed of 29 June 2010 and the power of attorneys of 29 June 2010 and 27 June 2011 (wrongly referred to as power of attorney dated 28 June 2011 in the plaint) executed by Defendant No.2 in favour of Defendant Nos. 3 and 1, respectively, are void and of no legal effect. The present chamber summons seeks to add the relief of cancellation of the documents to the prayer of declaration.

2. The application is opposed by Defendant Nos.1 and 3. Mr. Chinoy, learned Senior Counsel appearing for Defendant No.3, submits that the suit, as originally framed, seeks a mere relief of declaration without any consequential prayer which the Plaintiffs are able to seek, and is accordingly liable to be dismissed under the proviso to Section 34 of the Specific Relief Act, 1963. Learned Counsel submits that that is one of the bases on which his client has taken out the companion notice of motion for rejection of the plaint under Order 7 Rule 11 of the Code of Civil Procedure. Learned Counsel further submits that the relief, such as the one sought to be added by the present application, cannot be permitted by way of an amendment under Order 6 Rule 17, since, on the date of the amendment application, the relief was clearly barred by the law of limitation. Learned Counsel relies on the judgment of the Supreme Court in the case of **Muni Lal vs. Oriental Fire and General Insurance Co. Ltd.**¹ in support of his contention.

3. Cancellation of instruments is a subject, which is provided for in Chapter 5 of the Specific Relief Act, 1963. Section 31 of that Act is a

¹ (1996) 1 Supreme Court Cases 90

pivotal section in that chapter. Section 31 provides that any person, against whom a written instrument is void or voidable, and who has reasonable apprehension that such instrument, if left outstanding, may cause serious injury to him, may sue to have it adjudged void or voidable. In any such case, the court may not only adjudge it to be void or voidable but thereafter even order it to be delivered up and cancelled. That is a matter of discretion of the court. It is doubtful if the plaintiffs has, in any such case, to specifically seek a prayer of cancellation of the document. In fact, Punjab and Haryana High Court has considered this very question in the case of **Indar Singh vs. Nihal Kaur**². The Court, after considering an earlier judgment of its own Division Bench and also a judgment of Patna High Court on the point, observed that it was not necessary for a plaintiff in a case, where he claims a document to be void or voidable, to specifically ask for delivery up or cancellation of the document. The Court was of the view that if the Court were to find the claim of the plaintiff to be correct and adjudge the document as void or voidable, it had the discretion to make a further order directing the document to be delivered up and cancelled. Be that as it may, we are not here considering strictly whether, in a case where adjudgement of a document as void or voidable is sought and the Court is called upon to order delivery up and cancellation of the document without there being a prayer for the same. We are considering here a case, where the Plaintiffs are seeking to add by way of amendment the relief of delivery up and cancellation of the document as an adjunct of the relief of adjudgement of the document as void or voidable and the Court has to consider whether or not to allow such amendment.

² AIR 1968 Punjab & Haryana 495 (V 55 C 112)

4. Mr. Chinoy submits that ordinarily in a case, where the amendment application seeking to add the relief of delivery up and cancellation is filed within time, there may not be any difficulty in allowing that application. Learned Counsel, however, submits that in the present case, the relief is sought to be added at a stage when that relief is clearly barred by the law of limitation. Learned Counsel relies on the judgment of the Supreme Court in the case of **Muni Lal** (supra), which was also a case of a suit for a declaration without seeking any consequential relief. That suit was dismissed by the trial court purportedly on the ground that it was not maintainable by reason of the proviso to Section 34 of the Specific Relief Act. After dismissal of the suit, before the appellate court, an application for amendment was made under Order 6 Rule 17 seeking to add the consequential relief. The amendment was declined by the appellate court and that order was upheld by the Supreme Court. That was a case where the plaintiff before the court was aggrieved by denial of his insurance claim by the insurance company. The plaintiff's case was that he was entitled to payment of the sum insured on the basis of loss of his insured vehicle. The plaintiff went to the court with a prayer for a mere declaration concerning his entitlement to payment in terms of the contract. He did not pray for the consequential relief of payment of any quantified sum. As a result, his suit was dismissed by the trial court relying on the proviso to Section 34 of the Specific Relief Act, which restricts the discretion of the court to grant declaration of any status or right, if the aggrieved person entitled to such status or right, being able to seek further relief than a mere declaration, omits to do so. In **Muni Lal's** case, evidently the plaintiff's claim was for payment of money for loss of his vehicle under an insurance contract. When that payment was denied to

him, he merely sought a declaration concerning his entitlement to the payment without applying for a decree for actual payment of the sum insured. The plea before the Supreme Court, on behalf of the insured, was that the amendment sought at the appellate stage did not change the cause of action and ought to have been granted. The Court held that it was well recognised that an amendment, which did not constitute addition of a new cause of action, ought to be allowed even after the statutory period of limitation. The Court, however, held, on a consideration of the case in its proper perspective, that granting of the amendment in the case before it would have allowed introduction of an alternative relief of mandatory injunction for payment of the specified sum, when such relief was clearly barred on the date it was applied for and, in the premises, the Court would not be justified in granting the amendment so as to defeat a valuable right of defence accrued in favour of the defendant. This was a completely different case, where the positive relief of a decree for payment was substantially different from the relief of declaration relating to mere entitlement. In the present case, the Plaintiffs are merely seeking proper moulding of the relief in keeping with the original relief claimed in the suit. In a case, where a party has applied for adjudgement of a document as void or voidable, it is clearly arguable that it may be proper for the Court to mould the relief of delivery up and cancellation of the document; such relief may be said to be necessary for rendering substantial justice without causing any injustice to the other party or violating any rule of fair play. The Supreme Court in **Muni Lal's** case itself has considered this aspect, holding that the Court is entitled to grant proper relief even at the appellate stage so as to render substantial justice without causing injustice to the other side or violating any consideration of fair play.

5. Anyway these are matters of merit. At the stage of amendment, the Court need not in every case be overtly oppressed with the question of bar of limitation concerning any new plea or relief sought to be included in the cause by way of amendment. In an appropriate case, the issue may well be kept open, to be agitated at the trial of the suit and no final view may be taken by the Court on it one way or the other. I am of the view that in the interest of justice the present case calls for adoption of such course.

6. In the premises, the chamber summons is allowed in terms of prayer clause (a). The amendment to be carried out within two weeks. It is made clear that whether or not the amendment allowed today relates back to the date of the suit, is a matter open to debate by the parties at the time of trial. All rights and contentions of the parties in that behalf are kept open.