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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1041 OF 2017

IN

SUIT NO.603 OF 2015

Hiro Jhamandas Chandnani And 2 Ors. ...Plaintiffs

vs

Uttam Mulchand Amarnani ...Defendant

....

Ms. Priyanka Pawar, for the Applicants/Plaintiffs.

Mr. Firoz Bharucha, a/w. Ms. Sarbari Chatterjee, i/b. A.G. Pandit, for the Defendant.

Mr. Cherag Balsara, i/b. Mr. Yatin R. Shah, for Proposed Defendant No.2.

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CORAM : S.C. GUPTE, J.

DATED : OCTOBER 15, 2018

P.C. :

. Heard learned Counsel for the parties. This chamber summons seeks amendment of the plaint inter alia by impleading the Respondent as a party Defendant, i.e. Defendant No.2, and also seeking relief against the newly added Defendant and adding averments in respect thereof in the plaint.

2. The present suit is filed by the Plaintiffs, who claim to be legal heirs of the deceased Jaya H. Chandnani, who was a partner of M/s. Dimple Enterprises with the Defendant herein. It is the case of the Plaintiffs that contrary to Clause No.25 of the Partnership Deed, which requires the continuing partner, in case of death of a partner, to admit legal heirs of the

deceased as partners of the firm, the Defendant has appropriated the entire business to himself. The suit is for declaring the Plaintiffs' entitlement to join the firm of M/s. Dimple Enterprises as partners and to be permitted to carry out the partnership business. In the alternative, a prayer of dissolution is made in respect of the partnership of M/s. Dimple Enterprises with declaration of 25% share of the Plaintiffs in the profits and right, title and interest of the partnership firm, including the right, title and interest in the suit land, which is described in Exhibit 'C' to the plaint. The case of the Plaintiffs in the present chamber summons is that contrary to the Plaintiffs' rights in the suit partnership and without consent of either the Plaintiffs or their predecessor, the Defendant has entered into a joint venture with M/s. Chandiwala Enterprises on 12 October 2007. It is submitted that any joint venture entered between the Defendant and M/s. Chandiwala Enterprises would be in gross violation of the terms of the partnership deed. It is claimed that the alleged joint venture may be declared as illegal and invalid and, accordingly, M/s. Chandiwala Enterprises are sought to be added and a relief in that behalf is sought to be included in the plaint.

3. It may be seen from the Plaintiffs' own averments in the plaint (paragraph 14 of the plaint) that the joint venture agreement between the Defendant and M/s. Chandiwala Enterprises, which was executed on 12 October 2007, and which was also registered with the Sub-Registrar of the Assurances on the same date, came to the knowledge of the Plaintiffs in August 2010. What is important to note is that despite this knowledge, there was neither impleadment of M/s. Chandiwala Enterprises nor any relief claimed against them in the plaint filed as late as on 24 April 2015. In the premises, the present application for impleadment of M/s. Chandiwala Enterprises and incorporating appropriate prayers against them, which is

made by the present chamber summons filed on 27 October 2017, is hopelessly barred by the law of limitation. Any cause of action that the Plaintiffs really have against M/s. Chandiwala Enterprises is a cause of action of their deceased predecessor against the firm of M/s. Dimple Enterprises. One does not know when the deceased predecessor of the Plaintiffs came to know of the transaction between the Defendant and M/s. Chandiwala Enterprises. At any rate, the Plaintiffs' knowledge is with effect from August 2010. There is no question of this cause of action being agitated in September 2017. Any claim in that behalf is clearly and unquestionably barred by the law of limitation. There is no averment to suggest any circumstance, which saves limitation, in the proposed schedule of amendment.

4. Accordingly, there is no case for amendment. The chamber summons is dismissed. Costs to be costs in the cause.

(S.C. GUPTE, J.)