

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

**NOTICE OF MOTION NO.1848 OF 2015
IN
SUIT NO.710 OF 2015
WITH
CHAMBER SUMMONS NO.304 OF 2017**

Mr. Keshvraj Lalchand Sakraney
Mr. Ishan Sakraney
And
Mrs. Sabina Anoop Sakraney

... Applicant
(Org.Defendant Nos.1,2 and 3)

In the matter between :

Mr. Narain Lalchand Sakraney
And Another
Versus

... Plaintiffs

Mr. Keshavraj Lalchand Sakraney
And Another

... Defendants

.....

Mr. Vishal Talsania I/b Desai Desai Carrimjee And Mulla for the Plaintiffs
and the Applicants in Chamber Summons No.304 of 2017.

Dr. Birendra Saraf, Mr. Dinesh Pednekar And Ms. A.A. Mujawar I/b
Economic Laws Practice for Defendant No.1, 2 And 3.

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CORAM : S.C.GUPTE, J.

DATE : 10 JANUARY 2018

P.C. :

. Heard learned Counsel for the parties.

2 At present the Chamber Summons is being taken up for hearing. The
Chamber Summons seeks to amend the plaint by deleting certain

paragraphs and incorporating some others in their place. By this amendment, the Plaintiffs propose to correct certain statements made earlier through oversight and state the correct facts. The amendment is opposed by Defendant Nos.1 to 3 on the ground that no amendment which takes away accrued rights of the opponent or retracts from an admission made by the applicant earlier should be allowed.

3 From the text of the amendment, i.e. the paragraphs sought to be deleted and those sought to be added, it is apparent that the Plaintiffs merely propose to rectify certain factual narration. It neither takes away any accrued right of the opponent nor does it purport to retract from any particular admission, which is beneficial to the opponent. If at all, the so called admission in the plaint, which admits the Plaintiffs' knowledge of the will, which is sought to be corrected, is being further strengthened to the advantage of the opponents. The Plaintiffs' knowledge really reflects on the issue of limitation. The proposed amendment of the narration implies that there was knowledge of the will insofar as the Plaintiffs are concerned even prior to the date mentioned earlier. It is difficult to see how this change purports to retract from an earlier admission. If at all, it brings the starting point of limitation even farther, i.e. prior to the earlier proposed date.

4 Accordingly, there is no merit in the submission of the opponents. The Chamber Summons is allowed in terms of prayer clauses -(a) and (b). The amendment to be carried out within three weeks.

5 It is clarified that the Defendants will be entitled to cross examine

the Plaintiffs' witness/es on the earlier factual narration as well as the newly incorporated narration of facts; to that end, the Defendants will be at liberty to rely on the text of the plaint as it stood prior to the amendment. It is also clarified that the observations made in the present order are only for the purpose of deciding the Chamber Summons, and will not affect the case of either parties on merits.

4 The Notice of Motion involves a legal issue concerning the period of limitation for the purpose of an administration suit based on a will. Learned Counsel for the Plaintiffs submits that this issue is presently pending in reference before a Full Bench of this Court and that since the same question is involved in the present suit, this matter be referred to the Full Bench. It is not for me to refer the matter to the Full Bench. I can only reserve liberty unto the Plaintiffs either to apply to the Hon'ble Chief Justice or the Full Bench itself for hearing of the Notice of Motion. It is ordered accordingly.

7 The Notice of Motion to up on the next date along with Chamber Summons (L) No.1548 of 2017.

8 Stand over to 12 February 2018.

(S.C. GUPTE, J.)