

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****CHAMBER SUMMONS NO.450 OF 2016****IN****SUIT NO.351 OF 2013**

Tilakdhari Jagannath Mishra, s/o. Jagannath
Mishra And Anr.

... Plaintiffs

Versus

Asha Developers And 9 Ors.

... Defendants

.....

Mr. Sarosh Bharucha, a/w. Mr. Shrey Fatterpekar, i/b. Ashish J. Dubey, for
the Plaintiffs.

Mr. Chaitanya D. Bhandarkar, for Defendant No.1.

.....

CORAM

: S.C.GUPTE, J.

DATED

: 19 SEPTEMBER 2018

P.C.:

. Heard learned Counsel for the parties. This Chamber Summons is taken out by the Plaintiffs for amendment of their plaint. Plaintiff No.1 is a partner of Plaintiff No.2 firm. Defendant No.1 is another partnership firm, of which Defendant No.2 is a partner. Defendant Nos. 3 to 9 are legal heirs of the other deceased partners of Plaintiff No.2 firm. The deceased partners were brothers of Plaintiff No.1. It is the case of the Plaintiffs in the present suit that with the use of a forged power of attorney purportedly executed by Plaintiff No.1 in favour of Defendant No.2, the partnership firm, through the constituted attorney of Plaintiff No.1 and Defendant Nos. 3 to 6, is claimed to have executed a conveyance in respect of the suit property in favour of Defendant No.1. This conveyance is

challenged in the present suit. The chamber summons is for bringing on record additional facts, which have transpired since the filing of the suit and also to amend the prayer clause of the plaint by adding a specific prayer for declaration of the alleged power of attorney executed by Plaintiff No.1 in favour of Defendant No.2 as null and void on account of fabrication and forgery. The chamber summons is opposed by the Defendants on the ground, firstly, that the facts sought to be introduced are not relevant for the purposes of the suit and, secondly, the relief sought to be added in the suit is barred by the law of limitation. The relevance of the facts from the point of view of their suit is for the Plaintiffs to decide, in the first place. All contentions of the parties on their true relevance in the suit can be kept open. So also, whether or not the amendment, insofar as the relief proposed to be added is concerned, relates back to the date of the suit or not is a question, which can be appropriately determined at the trial of the suit. This Court need not at this stage consider the question one way or the other. The chamber summons is, accordingly, made absolute in terms of prayer clause (a), subject to a clarification that all rights and contentious of the parties on merits of the amendment as well as the limitation concerning the newly added prayers are kept open. Amendment to be carried out within three weeks. The chamber summons is disposed of. The Defendants shall be entitled to file additional written statement dealing with the amended suit. Such additional written statement may be filed within a period of four weeks from the service of the amended plaint.