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

**CHAMBER SUMMONS NO.735 OF 2019
IN
SUIT NO.516 OF 2010**

Mumbai International AIRP ... Applicant/Plaintiff.
V/s.
Mukand Ltd. And 2 ors ... Defendants

- Mr. Snehal Shah a/w Ms. Sneh Parekh and Ms. Unnati Vijay i/by J. Sagar Associates, or the plaintiff.
- Mrs. Uma Palsule Desai, AGP for Defendant No.3.
- Mrs. N. V. Sanglikar, for defendant No.1.
- Ms. Kavita Anchan, a/w Mr. Arsh Misra i/by M/s M.V. Kini & Co., for defendant No.2.

CORAM : N. J. JAMADAR, J.

DATE : 3rd January, 2020.

PC. :

1] The plaintiff has taken out this Chamber Summons to amend the plaint. The plaintiff desires to incorporate amendment in paragraph Nos. 2, 7, 8, 22A, 22B and Exhibit - PP, to correct the description of the suit property.

2] The plaintiff has instituted a suit for declaration that the defendant No.2 Airport Authority of India, is the owner of the suit properties and that the order dated 22 June, 1983 and agreement dated 22nd January, 1991

executed between defendant Nos. 1 and defendant No.3, are void, non est, illegal, bad in-law, inoperative and not binding on the plaintiff, and for other consequential reliefs.

3] The plaintiff's claim is based on the lease deed executed by defendant No.2 Airport Authority of India on 26th April, 2006. The plaintiff avers that in the said lease deed, the properties including the suit properties bearing C.T.S. No.105 part, C.T.S.No.195 part and survey No.5A part, referred to in para Nos.2, 7, 8, 22A and 22B of the plaint, were leased out to the plaintiff. Defendant No.1 asserts ownership over the suit properties. Thus, the suit for declaration of title of defendant No.2, over the suit property.

4] It is the claim of the plaintiff that while preparing an affidavit-in-lieu of examination-in-chief of plaintiff's witness Rajendra Kalakayya Hiremath, the Manager and the authorized representative of the plaintiff, it was realised that the description of the suit property, particularly C.T.S. and Survey Numbers, in the plaint is incorrect and not in conformity with the Revenue and City Survey record. The plaintiff has, thus, filed this Chamber Summons to incorporate the requisite changes in the description of the suit property and to correct C.T.S. and Survey Numbers,.

5] The defendant No.1 has resisted the Chamber Summons by filing affidavit in-reply. The defendant No.1 contends that the Chamber Summons was taken out belatedly, and the plaintiff has not led evidence despite a

series of orders and directions by this Court. The Chamber Summons was taken out at the fag end of the period finally stipulated for filing affidavit-in-lieu of examination-in-chief. It suffers from inordinate delay and latches. The Chamber Summons is a creature of afterthought. Since the prayer of the plaintiff lacks bonafide, the Chamber Summons be dismissed.

6] Heard the learned counsel for the plaintiff and defendant No,.1 at some length.

7] It was submitted on behalf of plaintiff that the amendment proposed to be carried out by the plaintiff is merely to correct inadvertent errors in describing the suit properties. Even the record on which reliance has been placed by the defendant No.2 indicates that the Survey Numbers proposed to be corrected by the plaintiff are correct numbers of the respective part and parcel of the suit properties. It was further submitted that the corrections in the description of the suit property would not cause prejudice to the defendants. The delay in taking out the Chamber Summons is sought to be explained by putting forth a submission that initially the matter was posted for hearing and decision on the preliminary issue in pursuance of the provisions contained in Section 9A of the Code of Civil Procedure, in its application to the State of Maharashtra. However, consequent to the legislative changes, plaintiff was directed to file comprehensive affidavit and at that stage the mistake in describing the suit property was noticed.

8] In order to lend support to the submission that it is a case of mis-description, which can be corrected at any stage of the proceeding, the learned counsel for the plaintiff has placed reliance on the judgment of Supreme Court, in the case of **Sheodhyan Singh and ors vs Mst Sanichara Kuer and ors**¹, on the judgment of the Division Bench of this Court, in the case of **Indian Bank -vs Fuel Injections Ltd and ors**² and the judgment of Madras High Court, in the case of **Shree Sankara Rameshwarar Devasthanam through its Executive Officer, Tuticorin vs Pitchaimmal and five others**³

9] In opposition to this, the learned counsel for the defendant No.1 submitted that the plaintiff has all along approached not only this Court but Revenue Authorities with a case that the name of Airport Authority of India /defendant No.2 be mutated to the record of rights of the suit land, as described in the plaint. The plaintiff has filed two affidavits of evidence, for determination of the preliminary issue, and in those affidavits also, the suit properties were described, as described in the plaint. The learned counsel for the defendant No.1 further urged that application lacks bonafide and it was taken out when the time finally stipulated for filing affidavit in lieu of examination-in-chief was about to expire. It was thus submitted that the

1 AIR 1963 SC 1879

2 1994 Mh. L.J.36

3 1999 (II) CTS 426

interdict contained in the proviso to Order VI Rule 17 comes into play and there is no plausible explanation as to why the prayer so made could not be made at an earlier point of time. Thus, the Chamber Summons deserve to be dismissed.

10] Indisputably the interdict contained in the proviso to Order VI Rule 17 enjoins a party seeking amendment, after commencement of the trial, to demonstrate as to why it could not seek the amendment at an earlier point of time. The element of due diligence is required to be shown. However, the substance of the matter cannot be lost sight of. The nature of the proposed amendment is required to be kept in view.

11] It is trite that the amendments which are necessary for the determination of real question in controversy between the parties are required to be permitted. In the case at hand, the documents especially the property card of the suit property placed on record by the defendant No.1. indicate that the property at village Kurla is described as C.T.S.No.105. Secondly the property at village Kirol Taluka : Ghatkopar is described as property bearing C.T.S.195/A/3. The name of defendant No.1 is shown to have been mutated as holder, vide mutation dated 5th March, 2008. Thirdly, the possession receipt dated 19th February, 1958 in respect of property situated at Kirol, village Kurla indicates that the possession of the suit property, including survey Survey No.5A part was delivered to the defendant

No.2. The defendant No.1 had described one of the suit properties as Survey No.105, 105/1/A at Sr.No.34, of the compilation of documents.

12] The situation which thus, obtains is that there is material on record, especially the City Survey and Revenue record, which indicates that the description of the property as given in the plaint is incorrect. Undoubtedly, the question as to whether the properties over which the plaintiff has laid claim, in pursuance of the lease deed, were, in fact, formed subject matter, of lease and were, accordingly, leased out to the plaintiff, is a matter for trial. However, at this stage, in view of the ample material on record warranting correction of mis-description, the prayer of the plaintiff seeking permission to amend the plaint so as to correct the description of the suit property cannot be said to be unjustifiable. The amendment is necessary for determination of the real question in controversy between the parties.

13] It is true that there is an element of delay on the part of the plaintiff in taking out the Chamber Summons. The indolence on the part of plaintiff, and the inconvenience caused to the defendant No.1 can be addressed by directing the plaintiff to pay costs to the defendant No.1. Hence, the following order

Order

i] The Chamber Summons stands allowed.

ii] The plaintiff shall carry out necessary amendment in

accordance with the Schedule of amendment, appended to the Chamber Summons, within a period of three weeks from today and serve copy of amended plaint on the defendants.

iii] The plaintiff shall pay costs of Rs.10,000/- to the defendant No.1 within a period of three weeks.

iv] The plaintiff shall file an affidavit in lieu of examination in chief of plaintiff's first witness within a period of three weeks thereafter.

v] In the event, the amendment is carried out and affidavit in lieu of examination-in-chief of plaintiff's first witness is filed, plaintiff shall keep it's witness present for recording further evidence and marking of documents.

v] List on 21.02.2020.

[N. J. JAMADAR, J.]