

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13121 OF 2019

Ramesh Dharamdas Nasta .. Petitioner

Vs.

Vinay Kishinchand Nasta & Ors. .. Respondents

...

Mr. M.S. Bhandari h/f. Ms. Pranjali Bhandari for the petitioner.

Mr. Nimesh M. Bhatt for respondent Nos.1 to 3 and 5.

Mr. A.L. Thakkar i/b M/s. Thakkar & Co. for respondent Nos.7B, 7C, 7D and 8.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 28TH OCTOBER, 2021.

P.C:-

1. The petitioner, who is defendant No.2 in Suit No.9292 of 1995 (Original High Court Suit No.4592 of 1995) is aggrieved by the impugned order passed by the Additional Judge, Bombay City Civil Court, Mumbai on the Chamber Summons No.979 of 2018, which was taken out for amending the Chamber Summons No.1051 of 2015 as per the schedule. Under the impugned

order, the Chamber Summons No.979 of 2018 is made absolute and the plaintiffs are permitted to carry out the necessary amendments as per schedule, within a period of 14 days from the date of the order.

2. Being aggrieved, the present writ petition is instituted in this court on 12/11/2019. I must state that on the petition being filed, there is no stay granted.

3. Broadly, the nature of dispute between the parties i.e. the original plaintiffs Ishu Kishinchand Nasta, who has been substituted with her legal heirs being plaintiff Nos.1(a) to 1(e) and the defendants, which include defendant No.2, who is the petitioner before this court, can be roughly stated to the effect that four brothers being (1) Kishinchand Kalumal Nasta, (2) Vishindas Kalumal Nasta, (3) Dharamdas Kalumal Nasta and (4) Hiranand Kalumal Nasta were entitled to 1/4th undivided share in respect of two immovable properties viz. the property known as “Thariani Building” at plot bearing C.S. Registration No.23, Cadastral Survey No. FP 228 of TPS IV situated at Ranade Road, Dadar, which is occupied by the tenants/occupants and referred to as the “Ranade Road property” and another property known as “Vincent View” at plot bearing Cadastral Survey No.53/26 along with shops and premises therein and known as the “Vincent View property”. The descendants of Kishinchand Nasta filed a suit originally in the High Court, which came to be

transferred to the Bombay City Civil Court at Mumbai and the plaintiffs claim entitlement of the undivided share in each of the suit properties.

4. Chamber Summons No.1051 of 2015 was taken out by the plaintiffs seeking amendment of the plaint and proceedings in terms of schedule annexed thereto.

5. By the said schedule, plaintiff No.2 was sought to be inserted in the plaint and deletion of defendant No.1 was sought on account of he being dead and he was sought to be substituted by his legal heirs. Similarly, relief was sought qua defendant No.3 (since deceased), who was sought to be substituted by his legal heirs and defendant No.4(a), 4(b) and 4(c) were also sought to be added. Apart from this, the plaintiffs sought deletion of defendant nos.1 and 2 from the array of defendants in the title as well as elsewhere, wherever it was necessary. The schedule appended to the Chamber Summons also sought to be amended in the form of paragraphs 5A to 5F in the plaint and the pleadings to be inserted in the plaint justified the deletion of defendant Nos.1 and 2 on the ground that the third brother Dharamdas Nasta, during his life time had entered into between himself as the Vendor and his three sons as the purchasers, a conveyance dated 13/09/1962, whereby he transferred 1/4th share in the Ranade Road property in favour of his three sons and the transfer was given effect to in the property card. His heirs being

defendant Nos.1 and 2 were not amongst the purchasers and, therefore, they cannot claim any share, right, title and interest in the Ranade Road property as his heirs, and it was sought to be pleaded that the original defendant nos.1 and 2 never had and do not have any right, title or interest whatsoever in the said property and, therefore, they were sought to be deleted. In support of the said Chamber Summons, the applicant/original plaintiffs have filed an affidavit justifying the amendment in the plaint as per schedule by praying for striking out the names of defendants, who were improperly joined through *bonafide* mistake and/or lack of knowledge and/or suppression on part of defendant No.2 about the true and correct facts and/or incorrect legal advise.

6. Chamber Summons No.1051 of 2015 was argued by the parties before the learned Judge presiding over the proceedings, who reserved the order on 27/03/2018. In the meantime, another Chamber Summons No.979 of 2018 came to be filed by the plaintiff Nos.1(a) to 1(e) seeking amendment to the schedule appended to Chamber Summons No.1051 of 2015 and seeking precedence of hearing of the Chamber Summons numbered as Chamber Summons No.979 of 2018, since the earlier Chamber Summons No.1051 of 2015 was not yet disposed of. In support of the Chamber Summons, an affidavit sworn by plaintiff No.1(a) Vinay K. Nasta was also placed on record.

7. By the said Chamber Summons, amendment was sought to be made in the Chamber Summons No.1051 of 2015 by deleting all allegations made and reliefs claimed against defendant Nos.1 and 2 in the plaint and the proceedings and the deletion of various pleadings in the plaint were set out in the schedule appended to the said Chamber Summons in the form of paragraph No.“VA”. The affidavit in support justified the proposed amendment and it was stated that after moving the Chamber Summons No.1051 of 2015 and even after seeking deletion and/or striking out of the names of defendant Nos.1 and 2, certain pleadings qua the said defendants are continued in the plaint. This necessitated the plaintiffs to take out an amendment to delete the pleadings against defendant Nos.1 and 2, when they had already sought deletion of defendant Nos.1 and 2 by filing Chamber Summons No.1051 of 2015, which is pending.

8. It is in the backdrop of the aforesaid factual aspect, the learned Judge adjudicated upon the Chamber Summons No.979 of 2018. After highlighting the nature of dispute between the parties and on consideration of rival contentions, the learned Judge has recorded as under:

“9. It is the contention of the plaintiff that the Dharamdas Kalumal Nasta have already disposed off his 1/4th share as per the law in both the properties. Therefore, the names of defendant no.1 and 2 needs to be deleted from the suit. The plaintiff by way of present

Chamber Summons further seeking to delete the allegations made against defendant no.2 in the plaint. In my view, in order to decide the controversy raised for deletion of names of defendant no.1 and 2 in Chamber Summons No.1051 of 2015, the present proposed amendments are necessary to be incorporated in Chamber Summons no.1051 of 2015. In my view, the proposed amendment did not change the nature of relief claimed in Chamber Summons No.1051 of 2015. Moreover, if present Chamber Summons is allowed, no prejudice would be caused to the defendant no.1 and 2. Hence, the present Chamber Summons can be allowed.”

9. As far as tenability of the present Chamber Summons is concerned, it is recorded by learned Judge that Rule 43 of the Bombay City Civil Court Rules 1948 do not prohibit filing of the Chamber Summons to amend the pending Chamber Summons.

10. I am in agreement with the view expressed by the learned Judge. If the Chamber Business as enlisted in Rule 43 of the Bombay City Civil Court Rules 1948 is perused, which enlists the matters which can be permitted to be disposed of by a Judge in Chambers, item (i) provides for “applications to amend the plaint or subsequent proceedings or to strike out any matter therein”. Looking at it from the nature of power conferred upon the learned Judge, where the work can be disposed of by a Judge in chambers, if an application to amend the plaint, which can be

permitted by taking out the Chamber Summons, I see no reason why the subsequent proceedings or striking out of the pleadings cannot be considered as part of the chamber work. Clause (i) of Rule 43 of the Bombay City Civil Court Rules will have to be construed widely as not restricting to amendment of plaint, but amendment of any subsequent proceedings or striking out any matter therein, meaning thereby, that the application to amend the plaint or any subsequent proceedings in relation to the plaint or striking out any matter in the plaint or the subsequent proceedings, which can be in the form of Chamber Summons can be entertained by the learned Judge in the chambers in the light of the power conferred on him by Rule 43. The power conferred cannot be construed only to the initial Chamber Summons by which the plaint is sought to be amended, but on a broader interpretation being accorded to clause (i), when an application for amendment to the Chamber Summons is taken out, I see no reason why the same cannot be decided by the learned Judge in the form of chamber proceedings and in any case, by referring to the nature of the Chamber Summons, which has been allowed by the learned Judge, what is sought is only the deletion of the pleadings in the plaint qua defendant Nos.1 and 2, who are already sought to be deleted by Chamber Summons No.1051 of 2015, I see no legal impropriety in the impugned order.

11. On conclusion of hearing, my attention was invited to the

AJN

order sheet of the Bombay City Civil Court dated 11/10/2021 where the learned Judge has recorded that the suit is pending since last 26 years and it is already expedited and the adjournments, which were sought on the pretext that the matter is pending in the High Court will further delay the proceedings. My attention is also invited to order dated 22/10/2021, where it is recorded as under :

“Adv. Nimesh Bhatt for plff. present. Advocate Bhandari for defendant no.2 present. Adv. for deft stated that, the plaintiff to state whether they will filed additional affidavit in respect of additional amendment carried out in scheduled. After hearing of both the parties the dated order passed by me in 11/10/2021. The direction is given to deft no.2 to file reply today. There is further direction that suit is pending since 1995 and already expedited and being pending since 26 years. Adv. for deft seeking adjournment to file reply. Considering that chamber summons is pending since 2015 the same cannot be prolonged. The defendant as to liberty to file reply till 5.30 today else be ready for argument on next date, Adj'd for argument to 10/11/2011. Adv. for deft. is requesting to file reply till Monday in view of the reason stated above. The further adjournment for reply cannot be granted.

12. However, since the Chamber Summons has been allowed by the impugned order, I deem it appropriate to afford an opportunity to defendant No.2 to file his reply on the merits of

the matter in the wake of the amendment to the Chamber Summons No.1051 of 2015. However, if he is desirous of filing the reply, it shall be filed on or before 10/11/2021 which is the next date scheduled for arguments. If such a reply is filed, an advance copy of the reply shall be served upon the other side. This leave is granted by way of indulgence and shall, in no manner, be construed that the urgency expressed by learned Judge to proceed with the Chamber Summons has been interfered with. On 10/11/2021, the learned Judge shall hear the arguments of the parties as per his schedule.

13. With the aforesaid observations, the writ petition stands dismissed.

[SMT. BHARATI DANGRE, J.]