

(2014) 08 BOM CK 0033

In the Bombay High Court

Case No : Chamber Summons No. 55 of 2014 in Suit No. 1964 of 2012 and
Chamber Summons (L) No. 1075 of 2014 in Suit No. 1964 of 2012

Sharayu Ramkrishna Mhatre

APPELLANT

Vs

Chandrakant Ramkrishna Mhatre

RESPONDENT

Date of Decision : 01-08-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 153

Constitution of India, 1950 — Article 227

Registration Act, 1908 — Section 15(1), 15(1)(b), 26, 26(4), 34

Citation : (2015) 4 ALLMR 572 : (2014) 5 BomCR 269 : (2015) 5 MhLj 773

Hon'ble Judges : R.D. Dhanuka, J

Bench : Single Bench

Advocate : J.P. Sen, Senior Advocate, P. Jaiswal i/b. Kanga and CO, Advocate for the Appellant; D.D. Madon, Senior Advocate, Rohan Cama i/b. Sanjay Udeshi, Simil Purohit i/b. Sandeep Mahadik and Bharat Zaveri, Advocate for the Respondent

Judgement

R.D. Dhanuka, J.—Applicants who are original plaintiffs have filed chamber summons no. 55 of 2014 inter alia praying for amendment to the plaint as per schedule appended thereto. The applicants seek to implead two of the parties as party defendants to the suit. Chamber Summons (L) No. 1075 of 2014 is filed by the applicants inter alia praying for amendment to the plaint as per schedule appended thereto by which the applicant seeks to amend some of the paragraphs of the plaint.

2. The applicants have filed the suit inter alia praying for declaration that each of the plaintiffs are entitled to 1/5th undivided share, right title and interest or such other share as may be determined by this court in the estate of the deceased Mr. Ramkrishna P. Mhatre who was father of the plaintiffs and the defendants. The Applicants have also prayed for partition of the entire estate by metes and bounds and have also challenged the alleged gift deed dated 31st December, 2003 executed by the said deceased in favour of defendant no. 1 and for a

declaration that the same is invalid, void, forged, fabricated and not binding upon the plaintiffs.

Some of the relevant for the purpose of deciding these two chamber summons which were heard together and are being disposed of by common order are as under :

3. It is the case of the applicants that prior to 1970 the deceased was karta or manager of the joint family and/or Hindu Undivided Family comprising of his wife along with the plaintiffs and the defendants. On 27th February, 1971 by deed of partition, executed by and between the said deceased, his wife Mrs. Sumati R. Mhatre, the plaintiffs and the defendants various properties came to be partitioned. On 30th November, 2009, mother of the parties herein died intestate. On 21st February, 2004 the said deceased father of the parties expired intestate at the age of 94 years.

4. It is the case of the applicants that during the period between 2010 and 2012 the applicants and the defendants amicably administered some of the known properties forming part of the estate of their late mother with an exception of her rights in the said properties. Plaintiff no. 2 became secretary of Kasturi Apartment Co-operative Society Limited in the year 2008 which building was located on the portion of the land bearing CTS No. 94(D) which land was adjoining the property bearing CTS No. 94(C). In the plaint it is the case of the applicants that in the year 1999, in the managing committee meeting of the said society, the applicant no. 2 came across the property card in respect of the said property which showed that the defendant no. 1 was the owner of not only plot bearing CTS No. 94(D) on which the said society building was constructed but also in respect of the adjoining plot bearing CTS NO. 94(C) on which residential house known as Pandurang Ashram was located.

5. The applicant no. 2 thereafter applied for conducting search in the office of sub registrar on 22nd June, 2009 in respect of the title of the said property. She also applied to the Public Information Officer of the Sub Registrar's office in the month of June, 2010 for seeking information in respect of the alleged gift deed. The authorities stated that the registration was rejected u/s 34 of the Registration Act, 1908. During the period between 2010 and 2011, the applicant no. 2 applied for various other details from the office of the Sub Registrar and also Nagar Bhumapan Officer regarding improper transfer of the property bearing CTS No. 94(C). Applicant no. 1 also independently applied for various details in respect of the plots in question. On 29th June, 2012 applicants filed this suit (1964 of 2012).

6. In the suit no. 1964 of 2012, plaintiffs filed notice of motion for interim reliefs. The defendant no. 1 filed affidavit in reply in the said notice of motion (2139 of 2012). In paragraph 10 of the affidavit in reply it is contended by the defendant no. 1 that under the same gift deed, the said deceased had gifted property bearing CTS No. 94(C) and also the adjoining plot bearing CTS No. 94(D) to

defendant no. 1. The applicants have accepted the ownership of defendant no. 1 in respect of CTS No. 94(D) as legal and proper which constituted an admission as to the existence, validity and sanctity of the gift deed dated 31st December, 2003.

7. Applicants filed a rejoinder in the said notice of motion to the said affidavit of the defendant no. 1. In paragraph 16 of the rejoinder it is averred by the applicants that plot no. 94(D) was developed by the said deceased during his life time and a building known as Kasturi was constructed thereon, flats were sold to various flat purchasers who had formed a society known as Kasturi Apartments CHS Ltd. During the life time of the said deceased, he was under an obligation to convey the plot bearing no. 94(D) to the society which he failed to do and on his demise the said obligation stood transferred to his heirs being the plaintiffs and defendants herein.

8. It is averred that on the society having been formed, no rights continued to remain in the hands of the said deceased and after his demise in the hands of his heirs including the plaintiffs with respect to plot no. 94(D) save and except the statutory and mandatory obligation to transfer/convey the said plot in favour of the society. It is averred that the plaintiffs are challenging the validity of the alleged gift deed and thus the attempt of the defendant no. 1 to split the properties mentioned in the gift deed and diverting the issues in the suit ought not to be considered. It is also averred that the plaintiffs had no rights in respect of plot bearing no. 94(D) and hence have not made any claims in respect thereof in the suit. It is stated that defendant no. 1 is claiming to have rights in respect of plot bearing no. 94(D) which claim is frivolous and defeats the statutory obligations of defendant no. 1 under the provisions of Maharashtra Ownership of Flats Act, 1963.

9. In Chamber summons No. 55 of 2013, it is the case of the applicants that in the affidavit in reply filed by the defendant no. 1 it was stated that on 30th April, 2012 he had negotiated with the respondents to the chamber summons i.e. M/s. Sarvodaya and Mhatre Associates and another and the said negotiations had fructified and he had agreed to develop the said plot of land as a joint venture project. The said affidavit was served on the applicants on 2nd July, 2013. The applicants thereafter applied for inspection of documents from the defendant no. 1. Inspection of documents was given on 5th December, 2013. It is the case of the applicants that prior to the date of filing of the suit, the applicants were not aware of the said writing and joint venture partnership agreement dated 4th May, 2012. It is the case of the applicants that the defendant no. 1 and the respondents are not entitled to enter into any such agreement and the said transaction is not a bona fide transaction. The applicants have thus prayed for impleadment of the respondents as party defendants and have prayed for amendment so as to seek declaration that the said writing dated 4th May, 2012 is illegal, null and void and not binding on the plaintiffs and for other reliefs. The said chamber summons is opposed by the defendant no. 1 and also by the

respondents on various grounds including on the ground of limitation.

10. By a separate order passed by this court on 23rd January, 2014 in the notice of motion No. 982 of 2013, in view of the defendant no. 1 having raised plea of limitation, and prayed for framing a preliminary issue u/s 9A of CPC 1908, this court has framed a preliminary issue of limitation.

11. During the pendency of chamber summons no. 55 of 2014, the applicants filed chamber summons (I) No. 1075 of 2014 for seeking amendment of the averments made in paragraph 2(b), 2(d) on page 51 of the plaint as set out in the schedule appended to the chamber summons. In the affidavit in support of the chamber summons, it is the case of the applicants that when the suit was filed by the applicants, at that time, the applicants genuinely and bona fide believed that Kasturi CHS Ltd. alone stood upon the land bearing CTS No. 94(D) and similarly Pandurang Ashram alone stood upon the land bearing CTS No. 94(C). It is the case of the applicants that in the plaint as well as in the rejoinder to the notice of Motion No. 2139 of 2012 and the other pleadings filed by the applicants, the applicants made such pleadings based upon the premise that save and except the statutory duty to convey the land to the society under the provisions of MOFA, there remained no rights in the hands of the deceased in respect of land bearing CTS No. 94D. It is the case of the applicants that in Exh. D to the plaint where the suit property has been described, the applicants have specifically claimed the interest in the land on which Bungalow Pandurang Ashram is situated. It is now brought to the light by defendant no. 1 that the said Pandurang Ashram Bungalow is situated on property of land bearing no. 94(D). The applicants were not aware about the extent of the estate of the said deceased and the exact details thereof and have therefore, prayed for disclosure of assets of the said deceased forming part of the estate of the said deceased.

12. It is case of the applicants that such disclosure is made only in the affidavit dated 3rd July, 2014 by the defendant no. 1 that Pandurang Ashram and the two out houses and garage were in fact situate on the land bearing CTS No. 94(D) and only thereafter the applicants revisited the plans and the schedule to the impugned gift deed and realised that inadvertent error and thus filed this chamber summons to seek amendment to the plaint to rectify such error. It is case of the applicants that prior to the said affidavit dated 3rd July, 2014, applicants were not aware of the scope of the estate of the deceased and were under the genuine and bona fide belief that the land bearing CTS No. 94(D) belong to the Kasturi Apartments CHS alone.

13. Mr. Sen, learned senior counsel appearing for the applicants submits that there is mis-description of the suit property in the plaint under a bona fide mistake which mistake continued not only in plaint but also in the rejoinder. It is submitted that it is not in dispute that the gift deed which is impugned by the applicants in the plaint includes both the plots. Learned senior counsel submits that in prayer (a) of the plaint it is specifically prayed by the plaintiffs for declaration of the share of the plaintiffs in the estate of the deceased including

but not limited to the property described in Ex. D to the plaint and in prayer (b) prayed for administration of the estate of the said deceased including the property setout in Ex. D and for partition of such estate by metes and bound. Learned senior counsel submits that in prayer (e) of the plaint, the plaintiffs have also prayed for an order and decree against the defendants to disclose on oath all the assets including moveables, immoveables and extract forming part of the estate etc. and to render the true and complete accounts of the dealings in respect of estate of the said deceased.

14. It is submitted by the learned senior counsel that it is not case of the defendants that these two chamber summons are filed with any malafide intention. Chamber summons are necessitated in view of the realisation of mistake based on the reply filed by the defendants.

Learned senior counsel for the applicants relied upon the following judgments :-

(a) Judgment of Supreme Court in case of A.K. Gupta and Sons Vs. Damodar Valley Corporation, and in particular paragraphs 7 to 10 thereof. Paragraphs 7 to 10 of the said judgment read thus :-

7. It is not in dispute that at the date of the application for amendment, a suit for a money claim under the contract was barred. The general rule, no doubt, is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on the new case or cause of action is barred: *Weldon v. Neale*. But it is also well recognised that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation: see *L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co.*,

8. The Principal reasons that have led to the rule last mentioned are, first, that the object of Courts and rules of procedure is to decide the rights of the parties and not to punish them for their mistakes [*Cropper v. Smith*] and secondly, that a party is strictly not entitled to rely on the statute of limitation when what is sought to be brought in by the amendment can be said in substance to be already in the pleading sought to be amended *Kisandas Rupchand v. Rachappa Vithoba* approved in *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil*.

9. The expression cause of action in the present context does not mean very fact which it is material to be proved to entitle the plaintiff to succeed as was said in *Cooke v. Gill* in a different context, for if it were so, no material fact could ever be amended or added and, of course, no one would want to change or add an immaterial allegation by amendment. That expression for the present purpose only means, a new claim made on a new basis constituted by new facts. Such a view was taken in *Robinson v. Unicos Property corporation Ltd.* and it seems to us to be the only possible view to take. Any other view would make the rule futile. The words new case have been under stood to mean new set of ideas: *Dornan v. J.W. Ellis and Co. Ltd.* This also seems to us to be a reasonable view to

take. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time.

10. Now, how does the present case stand on these principles? Does the amendment introduce a new cause of action or a new case? We do not think it does. The suit was on the contract. It Sought the interpretation of a clause in the contract only for a decision of the rights of the parties under it and for no other purpose. It was the contract which formed the cause of action on which the suit was based. The amendment seeks to introduce a claim based on the same cause of action, that is, the same contract. It introduces no new case or facts. Indeed the facts on which the money claim sought to be added is based are not in dispute. Even the amount of the claim now sought to be made by amendment, was mentioned in the plaint in stating the valuation of the suit for the purposes of jurisdiction. The respondent had notice of it. It is quite clear that the interpretation of the clause was sought only for quantifying the money claim. In the written statement the respondent specifically expressed its willingness to pay the appellant's legitimate dues which could only mean such amount as might be due according to the rates applicable on a proper interpretation of the clause. The respondent was fully aware that the ultimate object of the appellant in filing the suit was to obtain the payment of that amount. It was equally aware that the amount had not been specifically claimed in the suit because the respondent had led the appellant to believe that it would pay whatever the court legitimately found to be due. It in fact said so in the written statement. If there was any case where the respondent was not entitled to the benefit of the law of limitation, the present is that one. The respondent cannot legitimately claim that the amendment will prejudicially effect his right under that law for really he had no such right. It is a case in which the claim for money was in substance in the plaint from the beginning though it had not formally been made.

(b) Judgment of Supreme Court in case of Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon, and in particular paragraphs 1 to 3, 5 to 7. Paragraphs 1 to 3, 5 to 7 of the said judgment read thus :-

1. On March 11, 1950, Manohar Lal s/o Jai Jai Ram commenced an action in the Court of the Subordinate Judge, Nainital, for a decree for Rs. 10,139/12/- being the value of timber supplied to the defendant-the National Building Material Supply, Gurgaon. The action was instituted in the name of "Jai Jai Ram Manohar Lal" which was the name in which the business was carried on. The plaintiff Manohar Lal subscribed his signature at the foot of the plaint as "Jai Jai Ram Manohar Lal, by the pen of Manohar Lal", and the plaint was also similarly verified. The defendant by its written statement contended that the plaintiff was an unregistered firm and on that account incompetent to sue.

2. On July 18, 1952, the plaintiff applied for leave to amend the plaint. Manohar Lal stated that "the business name of the plaintiff is Jai Jai Ram Manohar Lal and therein Manohar Lal the owner and proprietor is clearly shown and named. It is a joint Hindu family business and the defendant and all knew it that Manohar Lal

whose name is there along with the father's name is the proprietor of it. The name is not an assumed or fictitious one". The plaintiff on those averments applied for leave to describe himself in the cause title as "Manohar Lal proprietor of Jai Jai Ram Mamohar Lal" and in paragraph 1 to state that he carried on the business in timber in the name of Jai Jai Ram Manohar Lal. Apparently no reply was filed to this application by the defendant. The Subordinate Judge granted leave to amend the plaint. He observed that there was no doubt that the real plaintiff was Manohar Lal himself, that it was Manohar Lal who intended to file and did in fact file the action, and that the "amendment was intended to bring what in effect had been done in conformity with what in fact should have been done.

3. The defendant then filed a supplementary written statement raising two additional contentions-(1) that Manohar Lal was not the sole owner of the business and that his other brothers were also the owners of the business; and (2) that in any event the amendment became effective from July 18, 1952, and on that account the suit was barred by the law of limitation.

5. The order passed by the High Court cannot be sustained. Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party Applying, was acting mala fide, or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. However negligent or careless may have been the first omission, and, however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side. In *Amulakchand Mewaram and Ors. v. Babulal Kanlal Taliwala Beaumont, C.J.*, in delivering the judgment of the Bombay High Court set out the principles applicable to cases like the present and observed:

... the question whether there should be an amendment or not really turns upon whether the name in which the suit is brought in the name of a non-existent person or whether it is merely a misdescription of existing persons. If the former is the case, the suit is a nullity and no amendment can cure it. If the latter is the case, prima facie, there ought to be an amendment because the general rule, subject no doubt to certain exceptions, is that the Court should always allow an amendment where any loss to the opposing party can be compensated for by costs.

In *Amulakchand Mewaram Vs. Babulal Kanlal Taliwala*, a Hindu undivided family sued in its business name. It was not appreciated at an early stage of the suit that in fact the firm name was not of a partnership, but was the name of a joint Hindu family. An objection was raised by the defendant that the suit as filed was not maintainable. An application to amend the plaint, by substituting the names of the three members of the joint family for the name of the family firm as plaintiffs, was rejected by the Court of First Instance. In appeal the High Court

observed that a suit brought in the name of a firm in a case not within O. 30 C.P. Code being in fact a case of misdescription of existing persons, leave to amend ought to have been given.

6. This Court considered a somewhat similar case in *Purushottam Umedbhai and Co. Vs. Manilal and Sons*, A firm carrying on business outside India filed a suit in the firm name in the High Court of Calcutta for a decree for compensation for breach of contract. The plaintiff then applied for amendment of the plaint by describing the names of all the partners and striking out the name of the firm as a mere misdescription. The application for amendment was rejected on the view that the original plaint was no plaint in law and it was not a case of misnomer or misdescription, but a case of a non-existent firm or a non-existent person suing. In appeal, the High Court held that the description of the plaintiff by a firm name in a case where the CPC did not permit a suit to be brought in the firm name should properly be considered a case of description of the individual partners of the business and as such a misdescription, which in law can be corrected and should not be considered to amount to a description of a non-existent person. Against the order of the High Court an appeal was preferred to this Court. This Court observed (at p. 994):

Since, however, a firm is not a legal entity the privilege of suing in the name of a firm is permissible only to those persons who, as partners, are doing business in India. Such privilege is not extended to persons who are doing business as partners outside India. In their case they still have to sue in their individual names. If, however, under some misapprehension, persons doing business as partners outside India do file a plaint in the name of their firm they are misdescribing themselves, as the suit instituted is by them, they being known collectively as a firm. It seems, therefore, that a plaint filed in a court in India in the name of a firm doing business outside India is not by itself nullity. It is a plaint by all the partners of the firm with a defective description of themselves for the purpose of the CPC. In these circumstances, a civil court could permit, under the provisions of Section 153 of the Code (or possibly under O. VI. Rule 17, about which we say nothing), an amendment of the plaint to enable a proper description of the plaintiffs to appear in it in order to assist the Court in determining the real question or issue between the parties.

These cases do no more than illustrate the well-settled rule that all amendments should be permitted as may be necessary for the purpose of determining the real question in controversy between the parties, unless by permitting the amendment injustice may result to the other side.

7. In the present case, the plaintiff was carrying on business as commission agent in the name of "Jai Jai Ram Manohar Lai". The plaintiff was competent to sue in his own name as Manager of the Hindu undivided family to which the business belonged; he says he sued on behalf of the family in the business name. The observations made by the High Court that the application for amendment of the plaint could not be granted, because there was no averment

therein that the misdescription was on account of a bona fide mistake, and on that account the suit must fail, cannot be accepted. In our view, there is no rule that unless in an application for amendment of the plaint it is expressly averred that the error, omission or misdescription is due to a bona fide mistake, the Court has no power to grant leave to amend the plaint. The power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations.

(c) Judgment of Supreme Court in case of *Puran Ram Vs. Bhaguram and Another*,

13. A reading of these two conditions made u/s 26 of the Act would amply show that either party may institute a suit to have the instrument rectified or a party who has already filed a suit in which any right arising under the instrument is in issue may claim in his pleading that the instrument be rectified. So far as the facts of the present case are concerned, it cannot be doubted that the main issue in the suit for specific performance of the contract for sale was relating to the agreement for sale in which a part of the description of the suit property was wrongly given by mutual mistake and therefore, needed to be amended.

14. Section 26, of course, says that it would be open to a party to institute a suit for correcting the description of the suit property, but the proviso to Section 26 clearly permits that where a party has not claimed any such relief in his pleading, the court shall at any stage of the proceeding allow him to amend the plaint on such terms as may be just for including such claim. From a plain reading of the provisions u/s 26 of the Act, there is no reason why the prayer for amendment of the agreement to correct a part of the description of the suit property from Chak No. 3 SSM to Chak No. 3 SLM, later on converted to Chak No. 3 SWM could not be granted. In our view, it is only a correction or rectification of a part of the description of the suit property, which cannot involve either the question of limitation or the change of nature of suit. In our view, the suit shall remain a suit for specific performance of the contract for sale and a separate independent suit is not needed to be filed when the proviso to Section 26 itself clearly permits either party to correct or rectify the description of the suit property not only in the plaint but also in the agreement itself. So far as the question of limitation is concerned, the agreement was entered into on 12th of April, 1991 and the suit, admittedly, was filed within the period of limitation. Therefore, even if the amendment of plaint or agreement is allowed, that will relate back to the filing of the suit which was filed within the period of limitation.

15. So far as the submission of the learned Counsel for the respondent that the rectification of the agreement cannot be permitted is concerned, we are of the view that Section 26(4) of the Act only says that no relief for rectification of instrument shall be granted unless it is specifically claimed. However, proviso to Section 26, as noted herein earlier, makes it clear that when such relief has not been claimed specifically, the court shall at any stage of the proceeding allow such party to amend the pleading as may be thought fit and proper to include such claim. Therefore, we are not in agreement with the learned Counsel for the

respondent that Section 26 would stand in the way of allowing the application for amendment of the agreement. The views expressed by us find support in a decision of the Madras High Court in Raipur Manufacturing Co. Ltd. Vs. Joolaganti Venkatasubba Rao Veerasami and Co., wherein it was held that where in the course of a suit for damages for breach of contract, the plaintiff contends that there is a clerical error in the document embodying the contract, it is not always necessary that a separate suit should have been brought for rectification of the document and it is open to the court in a proper case to allow the plaintiff to amend the plaint and ask for the necessary rectification.

16. As noted herein earlier, the learned Counsel for the respondent contended before us that the appellant could not get specific performance of the contract for sale unless he sued for rectification of the agreement for sale. We are unable to accept this contention of the learned Counsel for the respondent for the simple reason that in this case, by filing the application for amendment in the suit for specific performance of the contract for sale, the appellant had sought the rectification of the agreement also. It is sufficient to observe that it was not necessary for the appellant to file a separate suit for that purpose as contended by the learned Counsel for the respondent. It is open to the appellant to claim the relief of rectification of the instrument in the instant suit. The amendment, in our view, in the agreement was a formal one and there was no reason why such amendment could not be allowed.

17. The other ground on which the High Court has refused to permit the appellant to amend the plaint is that if the amendment is allowed, the suit shall be converted into a suit for declaration. We are unable to accept this view of the High Court. In our view, the suit is a suit for specific performance of the contract for sale simpliciter and only a part of the description of the suit property in the agreement as well as in the plaint was sought to be corrected or amended by the appellant by filing the application for amendment of the plaint. If we are permitted to look into the description of the suit property from the original plaint as well as from the application for amendment, it would be clear that the description of the suit property has been kept intact excepting that instead of Chak No. 3 SSM, Chak No. 3 SLM, later on converted to Chak No. 3 SWM, has been sought to be replaced. Therefore, it is difficult to conceive that by such amendment, that is, instead of Chak No. 3 SSM, if Chak No. 3 SLM, later on converted to SWM is substituted, either the description of the suit property or the nature of the suit would change. This is only a change in a part of the description of the suit property, which was wrongly described by mutual mistake. Therefore, in our view, this change in a part of the description of the suit property in the plaint cannot convert the suit for specific performance of the contract to a suit for declaration. In any view of the matter, the relief claimed in the suit remained the same i.e. a decree for specific performance of the contract for sale and by amendment, no declaration has been sought for in respect of the instrument.

18. We may now take into consideration as to whether the High Court, in the

exercise of its power under Article 227 of the Constitution, was justified in rejecting the application for amendment of the plaint, which, in the discretion of the trial court, was allowed. We are of the view that the High Court ought not to have interfered with the order of the trial court when the order of the trial court was passed on sound consideration of law and facts and when it cannot be said that the order of the trial court was either without jurisdiction or perverse or arbitrary.

19. Before parting with this judgment, we may deal with the submission of the learned Counsel for the respondent that the application for amendment could not be allowed inasmuch as the same was barred by limitation. We are unable to accept this contention of the learned Counsel for the respondents. In this regard, we may observe that the court may, in its discretion, allow an application for amendment of the plaint even where the relief sought to be added by amendment is allegedly barred by limitation. This view was also expressed by this Court in *Pankaja and Another Vs. Yellappa (D) by Lrs. and Others*, In that decision, it was held that there is no absolute rule that in such a case, the amendment should not be allowed and the discretion of the court in that regard depends on the facts and circumstances of the case and such discretion has to be exercised on a judicious evaluation thereof. It was further held in that decision that an amendment, which subserves the ultimate cause of justice and avoids further litigation, should be allowed.

20. It is well settled by a catena of decisions of this Court that allowing and rejecting an application for amendment of a plaint is really the discretion of the Court and amendment of the plaint also should not be refused on technical grounds. In this connection reliance can be placed on a decision of this Court in *Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon*, In paragraph 8 of the said decision this Court observed that :

8. since the name in which the action was instituted was merely a misdescription of the original plaintiff, no question of limitation arises; the plaint must be deemed on amendment to have been instituted in the name of the real plaintiff on the date on which it was originally instituted.

(d) Judgment of this court in case of *Anant Tukaram Patil Vs. Lata Eknath Patil*, read thus :-

5. The petitioner/original plaintiff, after receipt of written statement, realised that the house number mentioned in the plaint was erroneous. The correct number ought to have been 129/C rather than 100/B as stated in the plaint. He, thus, took out interim notice and filed affidavit in support thereof stating on oath that the plaintiff has issued separate notice u/s 12(2) of the Bombay Rent Act prior to the suit and the said notice was replied by the defendant through his advocate. In the said correspondence suit premises was described as room No. 2 situated on the first floor of house No. 129/C. The reply given by the defendant through his advocate also makes a reference to house No. 129/C. The plaintiff, therefore,

moved motion for amendment and in the affidavit in support thereof stated that in para-1 of the plaint he has wrongly described house number as 100/B through oversight and mistake. He further stated that he is not the owner of house No. 100/B but he is the owner of house No. 129/C. As such he sought correction in the plaint by substituting house No. 100/B with that of house No. 129/C. This amendment sought by the plaintiff came to be rejected by the trial Court vide its order dated 12th November, 2003. This order is a subject matter of challenge in this petition filed under Article 227 of the Constitution of India.

The Submissions :

6. Mr. Dani, learned counsel appearing for the petitioner urged that there was bona fide mistake crept in the plaint, if the amendment is allowed the said amendment is not going to change the nature of the suit. He further submitted that admittedly, he is not the owner of house No, 100/B and, therefore, he could not have filed suit describing the suit property as house No. 100/B. He further pointed out that in all the correspondence between the rival parties, both have referred to house No. 129/C and not house No. 100/B as such he submitted that the mistake crept in the plaint needs to be corrected at the earliest opportunity. He further submitted that if the amendment is allowed no prejudice is going to be caused to the defendant.

7. Mr. Salve, learned counsel appearing for the respondent/original defendant vehemently opposed this petition and went to the extent of filing written submissions contending; how on merits the suit of the plaintiff is untenable. He, thus, tried to support the impugned order.

Consideration:

8. Having examined the impugned order and having considered the proposed amendment in the light of submissions of the rival parties, it cannot be said that the proposed amendment shall cause any prejudice to the respondent/defendant. If the proposed amendment is not allowed, then, it is bound to cause prejudice to the plaintiff. His suit is bound to fail. The suit is yet to go for trial. Admittedly, the plaintiff is not the owner of room No. 2 of house No. 100/B. He is the owner of house No. 129/C. In all the correspondence between the parties the house in question was referred to as house No. 129/C. In this view of the matter, it cannot be said that if the proposed amendment is allowed the defendant would be taken by surprise or that any prejudice would be caused to him. It is needless to mention that if the amendment is allowed in the pleadings it would avoid uncalled for delay and multiplicity of the litigation.

9. The Apex Court in the case of A.K. Gupta and Sons Vs. Damodar Valley Corporation, held :

The general rule, no doubt, is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on new case or cause of action is barred: *Weldon v. Neal*, :. But it is also well recognised that

where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation: See AIR 1921 50 (Privy Council) and L.J. Leach and Company Ltd. Vs. Jardine Skinner and Co.,

The principal reasons that have led to the rule last mentioned are, first, that the object of Courts and rule of procedure is to decide the rights of the parties and not to punish them for their mistakes, Cropper v. Smith:: and secondly, that a party is strictly not entitled to rely on the statute of limitation when what is sought to be brought in by the amendment can be said in substance to be already in the pleading sought to be amended, Kisandas Rupchand v. Rachappa Vithoba Shilwant,: approved in Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil and Others,

10. In Ganesh Trading Co. Vs. Moji Ram, the Apex Court has held as under :

4. It is clear from the foregoing summary of the main rules of pleadings that provisions for the amendment of pleadings, subject to such terms as to costs and giving of all parties concerned necessary opportunities to meet exact situations resulting from amendments, are intended for promoting the ends of justice and not for defeating them. Even if a party or its counsel is inefficient in setting out its case initially the shortcoming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its omission. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued.

15. It is submitted that the court has ample power to grant leave to amend the pleadings of a party unless it is satisfied that the party applying was acting malafide or by blunder he had caused injury to his opponent which may not be compensatory by an order of costs. It is submitted that since no injustice is caused to the defendants, even if there is any mistake which is a bona fide and genuine mistake and even if there is any delay in filing chamber summons, court has power to allow amendment since no injustice would be caused to the defendants. It is submitted by the learned senior counsel that for the purpose of deciding the suit for administration of estate, properties forming part of the estate have to be ascertained and thus inclusion of property bearing City Survey No. 94(D) and other amendment sought would be necessary for the purpose of determining the question in controversy and the reliefs claimed by the plaintiffs. Learned counsel appearing for defendants nos. 2 and 3 have adopted the submissions made by the learned senior counsel appearing for applicants and are supporting the applicants.

16. Mr. D.D. Madon, learned senior counsel appearing for defendant no. 1 on the other hand submits that by these two chamber summons, the applicants are not seeking to correct any mis-description of the properties but are seeking to add

new property by alleging that such property is forming part of the estate. It is submitted that it is a matter of record that the applicants have already given up their alleged rights in property bearing CTS No. 94(D). It is submitted that if the amendments as prayed are granted, grave prejudice would be caused to the defendant no. 1. Since the plaintiffs gave up their alleged rights in property bearing CTS No. 94(D), defendant no. 1 has already created third party rights in respect of the said property.

17. Learned senior counsel invited my attention to the affidavit in reply filed by the defendants no. 1 in Notice of Motion No. 2139 of 2012 and the rejoinder filed by the applicants and would submit that though defendant no. 1 had specifically pleaded that the deceased had gifted the property bearing CTS No. 94(D) alongwith plot bearing CTS No. 93(C), it was specifically pleaded by the applicants that property bearing CTS No. 94(D) was not the property of the said deceased and was accordingly not claimed as part of the estate of the said deceased in the plaint. It is submitted that if according to the applicants, prayers (a) and (b) would include the entire estate including property bearing CTS No. 94(D), applicants will not require any amendment to the plaint as prayed or otherwise. It is submitted that the applicants have made false averments in the affidavit in support of the chamber summons about the date of knowledge in respect of the property bearing City survey no. 94(D) which originally belonged to the said deceased.

18. In the alternative, Mr. Madon, learned senior counsel submits that in the event of this court allowing amendment to the plaint and to the notice of motion as prayed, this court shall make it clear that the amendment would not relate back to the date of filing plaint but would be effective from the date of filing chamber summons. Reliance is placed on the judgment of Supreme Court in case of Prithi Pal Singh and Another Vs. Amrik Singh and Others, and in particular paragraph 9. It is submitted that the amendment now sought are also barred by limitation.

Paragraph 9 of the said judgment of the Supreme Court read thus :-

9. After remand the learned Single Judge reconsidered the second appeal and dismissed the same. The learned Single Judge extensively dealt with the question whether the amendment made in the plaint would relate back to the date of institution of the suit or the same will be treated as effective from the date of this Court's order and held: [Amrik Singh case, RCR (Civil) pp. 506-09, paras 8-12]

8. The admitted facts now stand that the Plaintiff and vendor are the co-sharers. The fate of the present appeal hinges upon the question "whether the amendment allowed by the Apex Court vide its judgment dated 10.11.1994 will operate from the date of the order or is deemed to have been incorporated as a part of the plaint from the date of the institution of the suit. If the amendment is considered to be part of the plaint from the date of institution of the suit, the

Plaintiff is bound to succeed, otherwise the suit shall fail if the amendment is found to become operative from the date of the order of the Apex Court allowing amendment. It is settled principle of law that at that time of consideration of the plea of amendment, the court is not required to go into the question of merits of the amendment sought. A party seeking the amendment may ultimately succeed or fail on the basis of the amendment is not the relevant consideration at the time the plea of amendment is to be considered. Only consideration at the time is whether such an amendment is necessary, relevant and relate to the controversy involved in the lis. Hon''ble Supreme Court by allowing the amendment of the plaint vide its order dated 10.11.1994 observed that the amendment should have been allowed, on the basis of the admitted facts. Whether the suit is barred by limitation or is within limitation, all depends upon the effective date of amendment. Mr. Goel, learned Counsel for the Appellants has referred to the judgment passed in the case of Tarlok Singh Vs. Vijay Kumar Sabharwal, In this case, the parties had entered into an agreement to sell. A suit for perpetual injunction was instituted on 23.12.1987. During the pendency of the suit, an application under Order 6 Rule 17 CPC came to be filed on 17.7.1989 for converting the suit for injunction into the one for specific performance of agreement dated 18.8.1984. The amendment was allowed on 25.8.1989. A plea was raised that the suit for specific performance is barred by limitation. This plea was considered by the Apex Court wherein following observations have been made: (SCC pp. 368-69, para 6)

6. Shri Prem Malhotra, learned Counsel for the Respondents contended that since the Respondent had refused performance the suit must be deemed to have been filed on December 23, 1987 and, therefore, when the amendment was allowed, it would relate back to the date of filing the suit which was filed within three years from the date of the refusal. Accordingly, the suit is not barred by limitation. Shri U.R. Lalit, learned senior counsel for the Appellant, contended that in view of the liberty given by the High Court the Appellant is entitled to raise the plea of limitation. The suit filed after expiry of 3 years from 1986 is barred by limitation. The question is as to when the limitation began to run? In view of the admitted position that the contract was to be performed within 15 days after the injunction was vacated, the limitation began to run on April 6, 1986. In view of the position that the suit for perpetual injunction was converted into one for specific performance by order dated August 25, 1989, the suit must be deemed to have been instituted on August 25, 1989 and the suit was clearly barred by limitation. We find force in the stand of the Appellant. We think that parties had, by agreement, determined the date for performance of the contract. Thereby limitation began to run from April 6, 1986. Suit merely for injunction laid on December 23, 1987 would not be of any avail nor the limitation began to run from that date. Suit for perpetual injunction is different from suit for specific performance. The suit for specific performance in fact was claimed by way of amendment application filed under Order 6 Rule 17 CPC on September 12, 1979. It will operate only on the application being ordered. Since the amendment was

ordered on August 25, 1989 the crucial date would be the date on which the amendment was ordered, by which date, admittedly, the suit is barred by limitation. The courts below, therefore, were not right in decreeing the suit.

9. In the case of Sampath Kumar Vs. Ayyakannu and Another, initially, a suit for prohibitory injunction was filed in the year 1988 claiming possession of the suit property. Later in the year 1989, an application under Order VI Rule 17 CPC was made for conversion of the suit into one for declaration of title of the suit property and consequential relief of delivery of possession alleging that during the pendency of the suit, Defendant dispossessed the Plaintiff in January 1989. The amendment was refused. However, in appeal before the Hon''ble Apex Court, the conditional amendment was allowed. The Hon''ble Apex Court observed as under: (SCC pp 563-64, paras 11 & 13)

" 11. In the present case, the amendment is being sought for almost 11 years after the date of the institution of the suit. The Plaintiff is not debarred from instituting a new suit seeking relief of declaration of title and recovery of possession on the same basic facts as are pleaded in the plaint seeking relief of issuance of permanent prohibitory injunction and which is pending. In order to avoid multiplicity of suits it would be a sound exercise of discretion to permit the relief of declaration of title and recovery of possession being sought for in the pending suit. The Plaintiff has alleged the cause of action for the reliefs now sought to be added as having arisen to him during the pendency of the suit. The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment. However, Defendant is right in submitting that if he has already perfected his title by way of adverse possession then the right so accrued should not be. allowed to be defeated by permitting an amendment and seeking a new relief which would relate back to the date of the suit and thereby depriving the Defendant of the advantage accrued to him by lapse of time, by excluding a period of about 11 years in calculating the period of prescriptive title claimed to have been earned by the Defendant. The interest of the Defendant can be protected by directing that so far as the reliefs of declaration of title and recovery of possession, now sought for, are concerned the prayer in that regard shall be deemed to have been made on the date on which the application for amendment has been filed.

13. ... The prayer for declaration of title and recovery of possession shall be deemed to have been made on the date on which the application for amendment was filed. "

10. From the ratio of the aforesaid judgments, following points emerge:

- (a) Merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment;
- (b) The dominant purpose of the amendment is to minimize the litigation;
- (c) The amendment once allowed and incorporated relates back to the date of

the initial institution of the suit;

(d) The Court, however, in appropriate case may restrict the application of doctrine of relation back and permit the application of the amendment from the date the amendment is allowed.

11. This principle has been enunciated by the Hon''ble Apex Court in the case of Siddalingamma and Another Vs. Mamtha Shenoy, wherein the Court observed: (SCC p. 566, para 10)

"10.... On the doctrine of relation back, which generally governs amendment of pleadings unless for reasons the court excludes the applicability of the doctrine in a given case, the petition for eviction as amended could be deemed to have been filed originally as such and the evidence shall have to be appreciated in the light of the averments made in the amended petition. "

12. Mr. C.B. Goel, learned Counsel has strenuously argued that the amendment in the present case should be treated to have effected only from 10.11.1994 and the suit for preemption is deemed to have been instituted on the said date on the ground of the Plaintiff being co-sharer. His precise contention is that the suit for pre-emption filed in the year 1994 under Clause "fourthly" Section 15(1)(b) is barred by time having been filed beyond one year from the date of the sale in question. To appreciate this contention, the sole question is whether a new relief has been introduced way of amendment. In the case of Tarlok Singh (supra), initially, the suit was for permanent prohibitory injunction. However, by way of amendment, a new relief of specific performance was introduced which was held to be barred by time as the cause of action for the relief of specific performance had accrued to the Plaintiff in the said case from the date of the execution of the agreement to sell dated 21.12.1984. Relief of specific performance was introduced in the year 1989 which was admittedly beyond three years from the date cause of action accrued. I have already extracted the relevant observations of the Hon''ble Supreme Court in regard to the amendment. Applying the test to the fact of the present case, the plea of Mr. Goel is not sustainable. In the instant case, it was a suit for preemption from the initial day. Initially, the ground for seeking relief was that the Plaintiff is the brother of the vendor-Defendant. This was one of the grounds available under law by virtue of Clause "secondly" of Section 15(1) of the Act. This provision has, however, come to be struck down by the Supreme Court in the case of Atam Parkash (supra). The Plaintiff by asking for amendment sought to introduce an additional ground on the plea that besides being the brother, he is also a co-sharer in the suit land. As observed by the Hon''ble Supreme Court, and is evident from the judgment impugned as also the report of the trial Court dated 7.3.2006, there is sufficient material/evidence already on record i.e. prior to the introduction of the amendment to establish that the Plaintiff is the co-sharer with the Defendant-vendor. Through the amendment only, a new ground has been incorporated and not the new relief. Since the suit seeking the relief of pre-emption was instituted with the time, by introduction of a new ground to support

the relief the suit cannot become time barred. In the present case, the doctrine of relation back of the amendment has to apply as no new or fresh relief has been incorporated. Apart from above, there is another reason to decline the prayer of the Appellants. It is settled law as is evident from the ratio of the judgment in the case of Siddalingamma (supra), that the court in appropriate case while allowing the amendment, may restrict the application of doctrine of relation back and permit the amendment from the date of the amendment. In the present case, the order of the Apex Court dated 10.11.1994 is clear and unambiguous in its terms. No such restriction has been imposed. To the contrary, the amendment rejected by this Court has been allowed primarily on the ground that the amendment is based upon admitted facts on record. I am of the considered view that the intention of the Apex Court in allowing the amendment was/is to apply the amendment without excluding the doctrine or relation back which normally and generally governs the amendment of pleadings.

(emphasis supplied)

19. Mr. Madon, learned senior counsel distinguished the judgments relied upon by the applicants on the ground that those judgments would not apply to the facts of this case as in this case the applicants are not seeking to correct any mis-description of the property but are seeking to include additional properties which are claimed to be properties of the said deceased.

20. Learned counsel appearing for the respondents in Chamber Summons No. 55 of 2013 supported the case of the defendant no. 1 and would submit that the applicants were fully aware that the plot bearing CTS No. 94(D) originally belonged to the said deceased as the same was described specifically in the gift deed and also the plans annexed to the gift deed which are annexed by the applicants themselves in the plaint. The plan annexed would indicate the only area admeasuring 756.80 sq. mtrs. out of plot bearing CTS No. 94(D) belonging to the society. It is submitted that the suit as well as the amendment sought are barred by law of limitation. Limitation would not be extended by making any applications by the applicants to the authorities for seeking information and/or copies thereof. It is submitted that after demise of the said deceased and the mother of the parties properties were already divided between the parties. It is submitted by the learned counsel that by seeking amendments the plaintiffs are seeking to withdraw the admission made on the factual aspect which cannot be permitted to be withdrawn. The developer has got the plans amended after the applicants having filed rejoinder in the notice of motion admitting that plot bearing CTS No. 94(D) did not belong to the deceased. The developer has already incurred huge expenditure on the development. It is submitted that the applicants have waived their rights in respect of the plot CTS No. 94(D).

21. Mr. Sen, learned senior counsel in rejoinder would submit that it is not the case of the defendant no. 1 or the respondents that the third party rights were created after the applicants filed rejoinder in the notice of motion. It is submitted that on the basis of the disclosure made by the defendant no. 1 about the estate

of the deceased, amendment so as to include such property as part of the estate can be permitted at any stage of the suit. It is submitted that the applicants are not introducing any new cause of action in the chamber summons and thus if amendment is allowed by this court, it has to be given effect and shall relate back to the date of filing plaint and not from the date of filing chamber summons. Learned senior counsel distinguished the judgment of the Supreme Court in case of Prithi Pal Singh and another (supra) relied upon by Mr. Madon, learned senior counsel appearing for the applicants.

22. A perusal of the plaint indicates that the suit is for administration of the estate of the deceased in which the plaintiffs claim 1/5th undivided share, right, title and interest each in such estate. On perusal of prayer (a) of the plaint, it is clear that the plaintiffs have sought declaration of such share in the estate as may be determined by this court including but not limited to the property described in Exhibit D. In prayers (b) and (c) of the plaint, the plaintiffs have sought an order and decree for administration of the estate including the property setout in Ex. D to the plaint and seek partition by metes and bounds. In prayer (d) of the plaint, the plaintiffs have prayed for an order and declaration that the alleged Gift Deed dated 31st December, 2003 between the said deceased and the defendant no. 1 is invalid, void, forged, fabricated and not binding upon the plaintiffs. A perusal of the alleged Gift Deed indicates that the said deceased had gifted the land bearing CTS No. 94 (C) and also 94(D). It is case of the defendants themselves that the said deceased was owner not only of the land bearing CTS No. 94(C) but also of 94(D). Though at one stage the plaintiffs had disputed the said statement of the defendants that the said deceased was also owner of the land bearing CTS No. 94(D), the plaintiffs have realised their mistake and have accepted that the said deceased also owned land bearing CTS No. 94(D).

23. On perusal of prayer (e) of the plaint, it is clear that the plaintiffs have also prayed for an order and decree against the defendants to disclose on oath all the assets including movables, immoveables and extract forming part of the estate of the said deceased and to render the true and complete accounts of the dealings in respect of the estate of the said deceased. The defendant no. 1 has already filed an affidavit contending that the said land bearing CTS No. 94(D) which belong to the said deceased had been gifted in favour of defendant no. 1 and the defendant no. 1 has already alleged to have created some rights in favour of the third party. In my view in a suit for letters for administration both parties are entitled to disclose all the properties forming part of the estate of the deceased which are required to be administered under the directions of this court.

24. On perusal of the prayers in the plaint and the amendments proposed in both the chamber summons, in my view the proposed amendments does not change the nature of the suit. The suit which is filed for administration of the estate prior to the amendment and even after amendment would continue to remain the suit for administration of estate.

25. Supreme Court in case of *Puran Ram* (supra) has held that whether to allow or to reject an application for amendment of a plaint is at the discretion of the court and the amendment of the plaint should not be refused on technical grounds. Supreme court in case of *Jai Jai Ram Manohar Lal* (supra) has held that a party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules or procedure. The court always gives leave to amend the pleading of a party unless it is satisfied that the party applying was acting malafide or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of cost. It is held that however negligent or careless may have been the first omission and however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side. It is held that all amendments should be permitted as may be necessary for the purpose of determining the real question in controversy between the parties unless by permitting the amendment injustice may result to the other side. The power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations.

26. In case of *A.K. Gupta and Sons Ltd.* (supra) the Supreme Court allowed the amendment to the plaint by which the plaintiffs sought to introduce the claim based on same cause of action. In the written statement the other party had expressed its willingness to pay the legitimate dues of the plaintiffs. It is held that the other party was fully aware that the ultimate object of the plaintiffs in filing the suit was to obtain the payment of that amount. In my view the defendants had themselves admitted that the said deceased was owner not only of land bearing CTS No. 93(C) but also of 94(D). In my view the defendants thus cannot raise any objection if the plaintiffs chose to carry out amendment so as to bring on record the said land bearing CTS No. 94(D) as part of the estate of the said deceased. The amendment proposed by the plaintiffs so as to add the plot bearing CTS No. 94(D) as part of the estate or as property originally belong to the said deceased is not inconsistent with the stand of the defendants. Whether the gift deed relied upon by the defendants no. 1 by which both the lands were alleged to have been gifted in favour of defendant no. 1 by the said deceased is valid or not will be decided by this court in the suit.

27. In my view thus there is no new cause of action introduced by the plaintiffs in the amendment proposed. On the contrary the plaintiffs have proposed to bring on record the property of the said deceased which even according to the defendants was property of the deceased at some point of time.

28. I am of the prima facie view that neither the defendants nor the respondents could point out any prejudice that would be caused to them if the amendment as proposed by the plaintiffs would be allowed. It is not the case of the defendants or the respondents that any third party rights are created by the defendant no. 1 in favour of the respondents after plaintiffs filed rejoinder in the notice of motion.

29. I am not inclined to accept the submission of Mr. Madon, learned senior

counsel for the defendant no. 1 that the case of the plaintiffs is not a case of mis-description of the assets of the deceased described in Ex. D to the plaint. Ex. D will have to be read with the averments made in the plaint and also the prayer sought. In my view the judgments relied upon by Mr. Sen, learned senior counsel for the plaintiffs which are highlighted aforesaid are applicable to the facts of this case. I am respectfully bound by the principles of law laid down by the Supreme Court.

30. In my view the impleadment of the respondents as prayed in the Chamber Summons No. 55 of 2014 would be necessary to enable this court effectually and completely to adjudicate upon and settle all the questions involved in the suit. The respondents have claimed certain rights in the suit property and are thus proper parties to the suit. In my view no prejudice would be caused to the defendants or the respondents if the amendment as prayed is granted. Inconsistencies in the pleadings of the plaintiffs if any can always be pointed out by the defendants at the time of evidence or trial of suit.

31. In so far as submission of Mr. Madon, learned senior counsel for the defendant no. 1 that if this court allows amendment as prayed, it should be made effective from the date of filing chamber summons and/or from the date of order is concerned, I am of the view that the plaintiffs already having prayed for administration of entire estate of the deceased and not limited to what is described in Ex. D only and having impugned the entire gift deed which deals with both the lands, submission does not deserve acceptance. In my view the plaintiffs only seek to bring on record the land which was admittedly standing in the name of the said deceased even according to the defendants. The applicants have already claimed interest in the land on which Pandurang Ashram is situate in the plaint which is admittedly on the plot bearing CTS No. 94(D). In my view the amendment thus would relate back to the date of filing suit and would not be made effective from the date of filing chamber summons or this order. Judgment of Supreme Court in case of Prithi Pal Singh (supra) relied upon by Mr. Madon, learned senior counsel supports the case of the applicants.

32. It is made clear that the defendants have already raised a plea of limitation in respect of the claims made in the plaint in respect of which this court has already framed issue of limitation u/s 9A of the Code of Civil Procedure, 1908 which will be tried as preliminary issue under those provisions of law.

33. I, therefore, pass the following order :-

(a) Chamber summons no. 55 of 2014 is made absolute in terms of prayer (a) to (d).

(b) Chamber Summons (L) No. 1075 of 2014 is made absolute in terms of prayer (a) to (c).

(c) Amendment to be carried out within two weeks from the date of this order. Amended copy of the plaint and the notice of motion shall be served upon all the

parties including the newly added defendants within one week from the date of carrying out amendment.

(d) There shall be no order as to costs.

On oral application of Mr. Madon, learned senior counsel appearing for defendant no. 1, operation of this order is stayed for a period of two weeks.