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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.55 OF 2015
IN
NOTICE OF MOTION NO.837 OF 2014
IN
CHAMBER SUMMONS NO.1469 OF 2013
IN
SUIT NO.2615 OF 1983

WITH
CIVIL APPLICATION NO.63 OF 2015
IN
APPEAL FROM ORDER NO.55 OF 2015
IN
NOTICE OF MOTION NO.837 OF 2014
IN
CHAMBER SUMMONS NO.1469 OF 2013
IN
SUIT NO.2615 OF 1983

Haresh C. Thadani

...Appellant

V/s.

Anita Bhojwani & Ors.

...Respondents

Mr.R.S. Tripathi with Mr.Ashish Ghadge i/b M/s.Tamhane & Co. for
the Appellant.

Ms.R.C. Nichani for the Respondent Nos.3(aa) and 6.

Mr.Durgaprasad Poojari i/b PDS Legal for the Respondent Nos.1(a),
1(c), 1(d) and 2.

CORAM : R.D. DHANUKA, J.

DATE : 16TH NOVEMBER, 2015.

P.C. :-

1. By this appeal the appellant has impugned the order

passed by the learned trial Judge on 14th October, 2014 granting part relief in favour of the original applicants by which the original applicants had applied for restoration / recall of the order dated 28th September, 2013, which was passed by the learned trial Judge in Chamber Summons No.1469 of 2013. Chamber Summons No.1469 of 2013 was filed by the original applicants for impleadment of the legal heirs of the original defendant no.1, who expired. The chamber summons was opposed by the daughters of the respondent no.1 on the ground that the husband of the respondent no.1 was not a necessary party. The learned trial Judge accordingly disposed of the said chamber summons by passing an order of impleadment only insofar as the daughters are concerned and rejected the request of the applicant (original plaintiff) for impleadment of the husband of the deceased.

2. The husband of the original respondent no.1 thereafter filed a notice of motion for recall of the said order by which the learned trial Judge has allowed his impleadment also as a legal heir and representative in place of defendant no.1(a) to the suit.

3. Mr.Tripathi, learned counsel appearing for the appellant submits that the husband of the original defendant no.1 could not have been impleaded as a party defendant to the suit by the said impugned order which is under challenge in the present proceeding.

In support of this submission, learned counsel placed reliance on the order passed by this Court in Chamber Summons No.40 of 2013 in Suit No.93 of 2000 on 29th July, 2013. The said chamber summons was filed by the husband of the original defendant no.1 herein for impleadment in the said testamentary proceedings. The learned single Judge of this Court has disposed of the said chamber summons and has upheld the order passed by the Prothonotary & Senior Master. It was however, made clear that if the applicants propound any Will of the deceased plaintiff and if any such Will is probated, the applicant no.1 (husband) can apply for impleadment in that proceedings at that stage.

4. Ms.Nichani, learned counsel for the applicants before the trial Court on the other hand submits that the husband of the original defendant no.1 is entitled to be impleaded as a party defendant to the suit not only on the basis of the alleged Will propounded by the husband of the original defendant no.1 but also as the husband. She submits that the applicant has already filed a probate petition which is pending in this Court. Learned counsel also invited my attention to the order passed by the learned trial Judge in the chamber summons allowing impleadment insofar as the daughters are concerned. She submits that the plaintiffs had applied for impleadment of all the legal representatives including the husband of the original defendant no.1,

and thus the learned trial Judge could not have rejected the impleadment as far as husband is concerned at the instance of the other legal heirs.

5. A perusal of the plaint filed by the original plaintiffs clearly indicates that the original plaintiffs had applied for a declaration that the plaintiffs hold, possess, occupy and enjoy the suit property in their own right and for several other reliefs. The plaintiffs have also applied for an order and decree against the defendants to execute in favour of the plaintiffs Deed of Assignment in respect of the suit property. In my view, merely because the learned trial Judge has impleaded the husband of the original defendant no.1 that does not decide the issue whether the defendant no.1 is entitled to represent the estate of the original defendant no.1 or not. The plaintiffs had applied for impleadment of all the legal heirs. In my view, no prejudice would be thus caused to the other defendants if the husband of the original defendant no.1 is also impleaded as a party defendant in addition to the other legal heirs. It is however made clear that the impleadment of the husband of the original defendant no.1 would be subject to the outcome of the probate proceedings filed by the husband of the original defendant no.1.

6. It is made clear that this Court has not rendered any finding on the issue as to whether the husband of the original

defendant no.1 is entitled to represent the estate of the original defendant no.1 or not and the said issue can be decided in the appropriate proceedings, including in the suit filed by the plaintiffs.

7. The appeal from order is accordingly disposed of in aforesaid terms. No order as to costs.

8. In view of disposal of the appeal from order, the civil application does not survive and is accordingly disposed of.

(R.D. DHANUKA, J.)