

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

CHAMBER SUMMONS NO.89 OF 2014

Mohan Ramchandra Gurav & Ors. ... Applicants

In the matter of

Raghunath Namdeo Nikam & Ors. ... Plaintiffs.

Vs.

Smt. Padmavati Mohanlal Parekh & Ors. ... Defendants

ALONGWITH
CHAMBER SUMMON (L.) NO.716 OF 2015
IN
SUIT NO.2231 OF 1986

Ashok Raghunath Nikam & Ors. ... Applicants

In the matter of

Raghunath Namdeo Nikam & Ors. ... Plaintiffs.

Vs.

Smt. Padmavati Mohanlal Parekh & Ors. ... Defendants

Mrs. Anita A Agarwal, Adv. a/w. Mr. Mohan P Tekavde, Adv. a/w.
Mrs. S M Tekavde, Adv. a/w. Mr. Mukesh Subramaniam, Adv. a/w.
Mr. Sachin Dere, Adv. a/w. Ms. Amruta Mhapalkar, Adv. for plaintiffs.
Mr Madhav Jamdar, Adv. for intervenor.
Mr. Chandrakant N Chavan, Adv. for Legal heirs of plaintiff No.1 and
applicant in CHS (L.) 716 of 2015.

CORAM : MRS. ROSHAN DALVI, J.
DATE : 30th April, 2015.

P.C. :

1. Mentioned. Not on board. Taken on board.
2. These Chamber Summonses are for bringing the heirs of

plaintiff Nos.1 and 4 on record. Plaintiff No.4 was given liberty to be transposed as a defendant earlier. The Chamber Summonses are heard and disposed of by consent of the parties to the suit.

3. The intervenor, who has already taken out a Chamber Summons for intervention, on the ground that he is the present promoter of the society consisting of the plaintiffs, has applied for setting aside the order passed in the above Chamber Summonses yesterday by an oral application with notice to all the plaintiffs.

4. The plaintiffs have appeared pursuant to the notice.

5. It is seen that the Chamber Summons is to bring the heirs on record. The heirs would have to be brought on record in all cases in which the cause of action would survive to the heirs.

6. The plaintiffs have sued as promoters of the proposed Pateshwar CHS Ltd. This is evidenced from the cause title in the plaint.

7. In the first sentence of paragraph 1 of the plaint itself it is stated that the plaintiffs are the promoters of the said society.

8. The agreement entered into by the plaintiffs as purchasers, Exh.B to the plaint also shows the plaintiffs as the promoters of Pateshwar CHS Ltd. It is this agreement that is sought to be enforced.

9. The promoters of a society worked for the society carrying out their statutory duties under the Maharashtra Ownership Flat Act,

1963 (MOFA). The rights, duties and responsibilities of the promoters do not survive to their heirs and legal representatives.

10. It is contended on behalf of the plaintiffs that they are the members of the society and hence their membership rights would survive to their heirs. However, the suit is not filed by the plaintiffs as members, but as promoters.

11. Consequently it is seen that the cause of action will not survive to the heirs and legal representatives of the deceased plaintiffs. Of course, if they have become members, and if that is seen in the suit, the membership rights would even otherwise accrue to the heirs and legal representatives, who are not brought on record of this suit but who would be the members nonetheless.

12. Consequently both the Chamber Summonses are misconceived. The heirs cannot be brought on record and are, therefore, not to be brought on record.

13. The order passed yesterday is recalled and accordingly both the Chamber Summonses are dismissed. The plaintiff Nos.1 and 4 shall be deleted from the record. The plaintiff Nos.2, 3 and 5 shall continue to prosecute the suit.

(ROSHAN DALVI, J.)