

Sharayu.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
CHAMBER SUMMONS NO. 60 OF 2015
IN
TESTAMENTARY SUIT NO. 53 OF 2000
IN
TESTAMENTARY PETITION NO. 358 OF 2000**

Deepak Suresh Hamand & Ors.	...Applicants
<i>In the matter between</i>	
Suresh Dinanath Hamand	...Plaintiff
<i>And</i>	
Sunil Rajaram Hamand	...Defendant

Mrs. K.C. Nichani, *i/b Deepa Kamath, for the Applicants.*

CORAM: G.S. PATEL, J
DATED: 15th June 2015

PC:-

1. The Chamber Summons seeks conversion of the probate petition into one for Letters of Administration with Will annexed.

2. In Chamber Summons No. 46 of 2013 in Testamentary Suit No. 94 of 2000, I allowed a similar application. That was carried in appeal. By an order dated 27th January 2015, the appeal (*Haresh Chetan Thadani v Mrs Komal Suresh Chainani & Ors.*) was

dismissed.¹ The Appeal Court (V.M. Kanade & Ms. Revati Mohite Dere, JJ) held that the Division Bench decision in *Thrity Sam Shroff v Shiraz Byramji Anklesaria & Anr.*,² and which had also been cited before me in opposition to the Chamber Summons, did not notice the decision of the Supreme Court in *Shambu Prasad Agarwal v Bhola Ram Agarwal*,³ which *inter alia* held:

“5. We find that it is not disputed that Matadin Agarwal was a legatee under the will. It is true that Matadin Agarwal ought to have applied for issue of letters of administration and not for probate. However, this did not debar his heirs to get the probate petition amended. The trial court rejected both the applications of the appellants on the ground that since the probate petition filed by the legatee related to his personal right, therefore, no right accrued to the appellants for their substitution in his place. This view, according to us, is not correct. Matadin Agarwal as stated above, was a legatee and not an executor under the will. It is true that where an executor dies, his heirs cannot be substituted because the executor possessed personal right, but this is not applicable where the heirs of a legatee apply for issue of letters of administration. It is not disputed that today the appellants can file a petition for issue of letter of administration. Since considerable time has elapsed, we feel that the interest of justice demands that the proceedings should come to an end as early as possible and we should not dismiss this appeal merely on highly technical ground.”

3. In its order, the Appeal Court in *Thadani* held:

¹ Appeal No. 1 of 2015

² 2007 (2) Bom. C.R. 560

³ (2000) 9 SCC 714

9. We are, therefore, of the view that the learned Single Judge has rightly permitted the Respondents/original Plaintiff to amend the Petition for Probate and seek Letters of Administration. It is not in dispute that the Respondents/original Plaintiff were entitled to file a Petition for issuance of Letters of Administration. No useful purpose will be served therefore in now asking them to file a separate Petition for Letters of Administration. As it is, Petition for Probate was filed in 1999 and it is pending in this Court for last about 14 years.

4. The present situation is identical in almost every respect. It would be most inequitable to force the present Applicants to file a separate petition. The estate will have to bear court fees twice over, and the entire process will have to start afresh, for no useful purpose that I can make out. Any opposition to the probate petition will continue in opposition to the petition for letters of administration with will annexed. In both types of petitions, the will is required to be proved in its solemn form. The will is the same, and it makes little difference whether it is probate that is sought or letters of administration with will annexed.

5. For all these reasons, the Chamber Summons is made absolute in terms of prayer clauses (a) and (b). Amendment to be carried out on or before 29th June 2015. Amended Petition to be verified by Dipak Hamand, the Deponent of proposed Petition No. 1(a). Amended Petition to be served as required by the rules. Chamber Summons is disposed of in these terms.

(G. S. PATEL, J.)