

Sharayu.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 951 OF 2015
IN
SUIT NO. 169 OF 2003

Aly Shirazi	...Applicant
<i>In the matter between</i>	
Aly Shirazi	...Plaintiff
<i>Versus</i>	
Mehdi Sadeq Shirazi & Ors.	...Defendants

Mr. Mayur Khandeparkar, i/b Tanvir Shaikh, for the Plaintiff.
Mr. Omkar Kulkarni, i/b Mr. Y.M. Chaudhari, for the Defendant
No. 1.
Mr. Jabbar Shaikh, i/b G.M. Joshi, for the Defendants No. 2 to 5.

CORAM: G.S. PATEL, J
DATED: 25th August 2015

PC:-

1. This Chamber Summons seeks to set aside part of an Order dated 29th April 2015 of the Prothonotary and Senior Master passed in a Chamber Order No. 205 of 2015 filed by Defendant No. 1. The Chamber Order sought a transfer back to this High Court of Suit No. 169 of 2003 on the ground that the value of the property in question exceeds Rs. One crore. The entire property is said to be of

a value of Rs. 6.00 crores. The trial of the suit in the meantime was completed, and the suit is now ready for final hearing.

2. By the order dated 29th April 2015 the Prothonotary and Senior Master directed the retransfer of the Suit to this Court to the Original Side. There is no quarrel as to that part of the order. However, the Prothonotary and Senior Master also directed that the Plaintiff must pay the deficit in Court Fee since the property was valued as Rs. 6.00 crores. It is to this portion of this order that an objection is taken by the Plaintiff in this Chamber Summons.

3. The Suit is for administration. The Plaintiff claims an 11.11% share in the estate. Prayer clause (a) is for declaration of heirship; prayer clause (b) is for declaration that the parties are entitled to have the assets administered in accordance with Muslim Shia Law; and prayer clause (c) asks that the parties be given their respective shares in the suit property. The Prothonotary and Senior Master proceeded on the footing that since prayer clause (c) deals with the property valued at Rs. 6.00 crores this necessarily requires the Plaintiff to pay the maximum *ad valorem* Court fees on the value of this property. I do not think this is correct. The Plaintiff claims a *share* in joint property. This claim falls under Section 6(vii) of the Bombay Court Fees Act, 1959. That Section makes it clear that the Plaintiff's claim in suit is to be valued on the basis of the value of his share in the property in respect of which the Suit is instituted. The impugned order, however, proceeds on the basis that the Plaintiff must pay the Court Fee on an assessment of the value of the entire property, and not just the Plaintiff's share in it.

4. This portion of the order, in my view, cannot be sustained. Mr. Khandeparkar for the Plaintiff does not press prayer clause (c) in the Chamber Summons which is for amendment.

5. In view thereof, the Chamber Summons is made absolute in terms of prayer clauses (a) and (b) with no order as to costs.

6. Since the Suit is ready for final hearing, Advocates are directed to rearrange the record to prepare the matter for final disposal. The Suit is to be added to the list of final hearing matters commencing from 3rd September 2015.

(G. S. PATEL, J.)