

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
CHAMBER SUMMONS NO. 105 OF 2015
IN
TESTAMENTARY SUIT NO. 132 OF 2015
IN
TESTAMENTARY PETITION NO. 214 OF 2011**

Bhavesh Vasantrai Mehta	...Plaintiff
<i>Versus</i>	
Prakash Bhuralal Vyas & 2 Ors.	...Defendants
<i>And</i>	
Ashok Bhuralal Vyas	...Applicant

None for the Applicant.

**CORAM: G.S. PATEL, J
DATED: 26th October 2015**

PC:-

1. None for the Applicant.

2. This Chamber Summons is thoroughly misconceived. The Petition is for probate. The Petitioner is one Mr. Bhavesh Vasantrai Mehta named in Clause 2 of the Will dated 15th June 2009 as the sole executor. That clause says in terms that should Bhavesh Mehta

not act as an executor, then the present Applicant, Ashok Bhuralal Vyas, the executrix's son should act as an executor. Mr. Bhavesh Mehta has not declined to act as an executor. In fact, he has so acted. He has filed the present Petition. This Petition is being contested and has been renumbered as a suit.

3. The present Chamber Summons is filed by Mr. Ashok Vyas seeking a removal of the name of the executor and the substitution of his own name. There is no doubt that Mr. Ashok Vyas is a heir; that he is also a beneficiary under the Will; and that he is an alternate executor named in the Will. However, he is not entitled to act as an executor unless and until Mr. Bhavesh Mehta refuses to act as an executor. Mr. Mehta has not renounced executorship.

4. There is no ground made out in the Chamber Summons for the removal of Mr. Bhavesh Mehta. The applicant only says that the deceased's entire estate vests in him. That is no reason to unseat the executor. A completely untenable submission is made that the executor named in the Will is "not a necessary party" to the testamentary suit. This is a petition for probate. It can only be brought by an executor. It has been brought by an executor. The applicant is not an executor so long as Mr. Mehta continues to act. The applicant cannot be made the petitioner, or even a co-petitioner.

5. There is no substance in the Chamber Summons. It is dismissed.

(G. S. PATEL, J.)