

VPH

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

APPEAL No. 719 OF 2014
IN
CHAMBER SUMMONS No. 1334 OF 2012
IN
SUIT No. 2494 OF 1997

Anthony Patrick Lewis	...	Appellant (Orig. Plaintiff No. 1)
Vs.		
Rajendra Jamnadas Thakkar & Anr.	...	Respondents (Orig. Defendants)
AND		
Kiran L. Kapadia	...	Respondent (Orig. Plaintiff No. 2)

Mr. U. J. Makhija a/w R. L. Tolat a/w Ms. Arya Ambre i/b M/s. L. C. Tolat & Co., for the Appellant.

Mr. Madhusoodanan Nair i/b KPMC Legal, for Respondent No. 3.

CORAM : V. M. KANADE, &
B. P. COLABAWALLA, JJ.

DATE : JUNE 8, 2015

PC.

1. Appellant / Plaintiff No. 1 is challenging the order of learned Single Judge dated 24th November, 2014. By the said order the learned Single Judge was pleased to dismiss the chamber summons on the ground that after the property was transferred by Plaintiff No. 1 by filing consent terms, it has no locus to file an application for substitution.

2. In our view, the chamber summons filed by Plaintiff No. 1 cannot be dismissed on this ground. It is always open for the Defendants to file an application for dismissal of the suit filed by Plaintiff No. 1, on the ground that cause of action does not survive. Plaintiff No. 1, in such a suit, is entitled to file an application for substitution.

3. The impugned order, therefore, is set aside and the chamber summons, filed by Plaintiff No. 1 for substitution of Plaintiff No. 2 as Defendant No. 3, is allowed. Liberty is granted to the Defendants to take out an appropriate proceeding. All contentions of Plaintiff No. 2 (who is now substituted as Defendant No. 3) are kept open.

. Appeal is accordingly allowed and disposed of in the aforesaid terms.

Sd/-
[B. P. COLABAWALLA, J.]

Sd/-
[V. M. KANADE, J.]

Vinayak Halemath