

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

WRIT PETITION NO. 7472 OF 2015

Union of India through

Dy.Salt Commissioner-Mumbai

.. Petitioner

Vs

Mohammed Hafeez

(Since deceased)

1(a) Faiyaz Ahmed Azmatullah Shaikh & ors. .. Respondents

Ms.Lata Patne a/w Arun Roy i/b Vinod Joshi, for the Petitioner.

Mr.Dushyant Pagare i/b Rajesh Datar, for Respondent No.3.

***CORAM : N.M.Jamdar, J.
Tuesday, 27 September 2016.***

P.C. :

The Petitioner Union of India has challenged the order passed by the City Civil Court Judge Mumbai, dated 16 February 2015 allowing the Chamber Summons No.682 of 2012 filed by the Applicants. The prayer of the Applicants to delete Defendant No.3(a) to 3(c) from array of Defendants has been refused.

2. Heard learned counsel for the parties.

3. The enquiry at this stage to decide the legal heirs is of summary nature. The learned City Civil Court Judge has not accepted the

Chamber Summons taken out by the Petitioner in toto and has not granted deletion of the other Defendants to the suit. The learned Judge in the impugned order has held that the controversy will not be decided unless the Applicants are joined meaning thereby that the contentions of the parties as to whether the Applicants are legal heirs or not of the deceased Defendant No.3 would be considered after the evidence is led. In view of this position the question as to who are the legal heirs of the deceased Defendant No.3 to represent the estate of Defendant No.3 will have to be considered after detailed adjudication between the parties. Merely because the Applicants are brought on record as legal representatives the question whether they should be permitted to represent the estate of Defendant No.3 or the Defendant No.3(a) to 3(c) and Nos.5 to 7 already on record, is a question which learned City Civil Court Judge will decide at the time of trial. The learned City Civil Court Judge, Mumbai at the time of trial will decide the question as to who is entitled to represent the estate of deceased Defendant No.3 after giving opportunity to all the parties. Therefore, clarifying that the observations made while permitting the Applicants as legal representative on record, are prima facie, the Writ Petition is disposed of.

(N.M.Jamdar, J.)