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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
CHAMBER SUMMONS NO. 114 OF 2014
IN
TESTAMENTARY SUIT NO. 22 OF 1990
IN
TESTAMENTARY PETITION NO. 509 OF 1989

JYOTSNA RASIKLAL MANIAR

D/o Late Shri Prabhudas Chhaganlal Mehta,
Residing at Flt No. 1, Ganga Gruk, Sir Vithaldas
Nagar, Sarojini Road, Santacruz (W), Mumbai
400 054

...Applicant

In the matter between

YOGESH CHUNILAL MANIYAR

an Inhabitant of Mumbai, residing at Krishna
Nivas, Laxmi Narayan Lane, Kandivali West,
Mumbai 400 067

...Plaintiff

Versus

BAKUL CHANDULAL MEHTA

adult Indian Inhabitant of Mumbai, residing at 1st
Floor, Shanti Sadan 183-parekh Lane, Kandivali
West, Mumbai 400 067

...Defendant

WITH
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 422 OF 2014

IN

SUIT NO. 690 OF 1987

JYOTSNA RASIKLAL MANIAR

D/o Late Shri Prabhudas Chhaganlal Mehta,
Residing at Flt No. 1, Ganga Gruk, Sir Vithaldas
Nagar, Sarojini Road, Santacruz (W), Mumbai
400 054

...Applicant

In the matter between

BAKUL CHANDULAL MEHTA

adult Indian Inhabitant of Mumbai, residing at 1st
Floor, Shanti Sadan 183-Parekh Lane, Kandivali
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...Plaintiff

Versus

YOGESH CHUNILAL MANIYAR

an Inhabitant of Mumbai, residing at Krishna
Nivas, Laxmi Narayan Lane, Kandivali West,
Mubmai 400 067

...Defendant

**Mr. Rajesh Shah, i/b Mr. Atul Tungare, for the Plaintiff in TS/22/90
& for the Defendant in S/690/1987.**

**Mr. Induprakash Tripathi, with Ms. Bhagyashree Gawas, i/b Mr.
C.K. Tripathi, for the Applicant in both the matters.**

CORAM: G.S. PATEL, J
DATED: 23rd June 2016

ORAL JUDGMENT:

1. These two Chamber Summonses are filed by one Jyotsna Rasiklal Maniar (“**Jyotsna**”). She claims to be the daughter of one Prabhudas Chaganlal Mehta (“**Prabhudas**”), the predeceased brother of the Testator, Shantilal Chaganlal Mehta (“**Shantilal**”). There are two Testamentary Suits: Testamentary Suit No. 22 of 1990 and Testamentary Suit No. 136 of 2015. I may note, in passing, that the latter, Testamentary Suit No. 136 of 2015, has come to be numbered in the quite peculiar circumstances that are set out in my order dated 27th July 2015.

2. As previously noted, two Wills are propounded, both said to have been made by Shantilal. Yogesh Chunilal Maniar, the Plaintiff in Testamentary Suit No. 22 of 1990, propounds a Will dated 27th May 1983; Dr. Bakul Chandulal Mehta, a neighbour of Shantilal Mehta, propounds a Will dated 19th July 1987 in Testamentary Suit No. 136 of 2015. I have previously directed that the Suit relating to the later Will will, i.e., where Dr Bakul Mehta is the Plaintiff, must be tried first. In addition, Dr. Bakul Mehta has also filed a specific performance Suit No. 690 of 1987.

3. Now Jyotsna seeks in these Chamber Summonses that she be made a party-Defendant to both Suits. She has also filed a substantially similar Chamber Summons in Suit No. 690 of 1987, also seeking to be joined as a party-Defendant. Her claim is based on the assertion that she is Shantilal’s heir, his predeceased brother’s

daughter, Shantilal having no children of his own, and, as such, is entitled to succeed to his estate.

4. These two Chamber Summonses were first considered by this Court on 8th October 2014 (R.S. Dalvi, J.). The learned Judge found, *prima facie*, that the documents then produced by Mrs. Jyotsna did not inspire confidence and did not establish her heirship, i.e., that she had not shown that she was an heir who could succeed to any part of Shantilal Mehta's estate. Some of her documents were considered. Then, in paragraph 8, the learned Judge directed as follows:

“8. In view of the aforesaid controversy, oral evidence shall have to be led by the Applicant to prove her heirship and she shall have to be cross-examined by the Petitioner/Plaintiff in the above suit and both the above petitions. The Applicant shall also have to explain the delay of 25 years in taking out this application for challenging the respective wills in the above suits.”

5. The trial in Dr. Bakul Mehta's suit, one that was to proceed first, has remained at this stage ever since. For the past two years, without any progress.

6. Mr. Shah, who appears for Yogesh Maniar, submits that these Chamber Summonses are only an attempt to delay the progress of the two competing testamentary actions. There is no valid explanation for the delay on Jyotsna's part. He also points out that although Shantilal Mehta had no biological children, he did have an adopted daughter, Usha Mehta. That adoption has never been

challenged in any proceeding. Jyotsna herself has never brought suit to have that adoption invalidated. In his submission, so long as that adoption remains unchallenged, it is Usha, the adopted daughter, who alone who can succeed to Shantilal Mehta's estate upon intestacy. She alone will have a caveatable interest. I believe he is correct.

7. Mr. Tripathi, who represents Jyotsna, submits that no adoption deed has been produced. Jyotsna has now placed additional documents explaining more fully her claim to heirship; for instance, how it is that she came to be taking her schooling in Fort, Mumbai though living at Kadivali at the relevant time, a point on which Mrs Dalvi J expressed doubt in her order. He also submits that Jyotsna learnt of these suits only in 2013 when, in response to a public notice that she issued proposing to sell the property, both Yogesh Maniar and Dr. Bakul Mehta sent in written objections. It is only thereafter that she was able to file these Chamber Summonses.

8. Finally, he submits that in view of the directions in paragraph 8 of the order of 8th October 2014, the Chamber Summonses itself must be tried as would a suit. I take this submission to mean that, in the Chamber Summonses, not only must issues be struck and directions given for a full-dress trial, but that the Chamber Summons itself can possibly be used to try, determine and yield a substantive relief to Jyotsna Maniar, although she has filed no substantive civil proceedings at any time to assert those rights or establish those claims. I regret that I am unable to see how this can be done under our procedure, either under the Code of Civil Procedure, 1908 (“CPC”) or the Original Side Rules (“**Rules**”).

None are able to show me how such a substantive relief can ever be obtained in a Chamber Summons. Leaving aside the nice distinctions between a Chamber Summons and a Notice of Motion in our Rules, and taking the Chamber Summons to be an application for interim or interlocutory relief, I am unable to understand how a substantive final relief can be obtained in any such proceeding without an underlying substantive, properly brought civil Suit. The relief that Jyotsna seeks, of her declaration of heirship, can only be a final relief. That requires her to also obtain an adjudication invalidating Usha's adoption. These are necessarily reliefs in the form of final prayers. They are not even sought in the present Chamber Summonses. The only relief sought in these Chamber Summonses is being added as a party-defendant. That relief assumes that Jyotsna has been able to establish her heirship. Evidently, that cannot be done in a Chamber Summons or any application for interim relief. In short, what Mr. Tripathi seems to suggest is that in these Chamber Summonses for impleadment, he ought to be able to obtain a decree, one that can only be obtained in a suit, yet without ever having filed, or being required to file, any such suit. I do not see how Mr. Tripathi could ever seek a decree in these Chamber Summonses; yet that is precisely what he seeks, by necessary implication, and that is precisely what he must have before he can seek impleadment for Jyotsna. That relief is impossible in a Chamber Summons for impleadment.

9. Am I "bound" by paragraph 8 of the 8th October 2014 order? What does that paragraph actually do? In my view, whether or not any party says so, this direction in the order of 8th October 2014 is an error arising from an accidental slip or perhaps even an omission.

There is no known method or process by which these directions can be put into effect. There is no question of taking the Chamber Summonses “to trial”. To that extent, paragraph 8 of the previous order is clearly an error, and it seems to me to have arisen by accident. That paragraph is not in any sense a finding in law. It determines no rights. It is merely a procedural or ministerial direction, and one that is incorrect, and ought to have been pointed out. A procedural direction, one that does not affect the rights of the parties, can always be corrected. If it were otherwise, and Courts could not correct course when such a correction was palpably required, the result would be jurisprudential mayhem. This is the reason there is the power not only in Section 151 of the CPC but a plainly worded power in Section 152:

152. Amendment of judgments, decrees or orders:—

Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of the parties.

(Emphasis added)

10. It is settled law that the principle behind this Section is *actus curiae neminem gravabit* — none should be prejudiced by an act of the Court. This was recognized by the Supreme Court in *Niyamat Ali Molla v Sonargaon Housing Cooperative Society Ltd.*¹ The Supreme Court held:

¹ (2007) 13 SCC 421

18. Section 152 of the Code of Civil Procedure empowers the court to correct its own error in a judgment, decree or order from any accidental slip or omission. **The principle behind the said provision is *actus curiae neminem gravabit* i.e. nobody shall be prejudiced by an act of court.**

19. The Code of Civil Procedure recognises the inherent power of the court. It is not only confined to the amendment of the judgment or decree as envisaged under Section 152 of the Code but also inherent power in general. The courts also have duty to see that the records are true and present the correct state of affairs. There cannot, however, be any doubt whatsoever that the court cannot exercise the said jurisdiction so as to review its judgment. It cannot also exercise its jurisdiction when no mistake or slip occurred in the decree or order. This provision, in our opinion, should, however, not be construed in a pedantic manner. A decree may, therefore, be corrected by the court both in exercise of its power under Section 152 as also under Section 151 of the Code of Civil Procedure. Such a power of the court is well recognised.

11. In *State of Punjab v Darshan Singh* (also cited in *Niyamat Ali Molla*), the Supreme Court said:²

12. Section 152 provides for correction of clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission. The exercise of this power contemplates the correction of mistakes by the court of its ministerial actions and does not contemplate passing of

2 (2004) 1 SCC 328.

effective judicial orders after the judgment, decree or order. The settled position of law is that after the passing of the judgment, decree or order, the same becomes final subject to any further avenues of remedies provided in respect of the same and the very court or the tribunal cannot, on mere change of view, is not entitled to vary the terms of the judgments, decrees and orders earlier passed except by means of review, if statutorily provided specifically therefor and subject to the conditions or limitations provided therein. The powers under Section 152 of the Code are neither to be equated with the power of review nor can be said to be akin to review or even said to clothe the court concerned under the guise of invoking after the result of the judgment earlier rendered, in its entirety or any portion or part of it. **The corrections contemplated are of correcting only accidental omissions or mistakes and not all omissions and mistakes** which might have been committed by the court while passing the judgment, decree or order. **The omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152** as if it is looking into it for the first time, for which the proper remedy for the aggrieved party, if at all, is to file an appeal or revision before the higher forum or review application before the very forum, subject to the limitations in respect of such review. It implies that the section cannot be pressed into service to correct an omission which is intentional, however erroneous that may be. It has been noticed that the courts below have been liberally construing and applying the provisions of Sections 151 and 152 of the Code even after passing of effective orders in the lis pending before them. No court can, under the cover of the aforesaid sections, modify, alter or add to the terms of its original judgment, decree or

order. Similar view was expressed by this Court in Dwaraka Das v. State of M.P. [(1999) 3 SCC 500] and Jayalakshmi Coelho v. Oswald Joseph Coelho [(2001) 4 SCC 181].

12. The direction in paragraph 8 seems to me to fall squarely within this frame. It prejudices the trial of a properly brought brace of suits (by Bakul Mehta and Yogesh Maniar), and it causes each of those Plaintiffs the most severe prejudice. It is an erroneous ministerial direction to conduct a trial in the Chamber Summonses in aid of a final, substantive relief not sought and incapable of being granted in any such interim application for impleadment. The accidental slip or omission lay in not directing or permitting Jyotsna to file a substantive suit to establish her rights and title, and to assail Usha's adoption. Absent that adjudication, no application for impleadment was maintainable.

13. In my view, the Chamber Summonses are not maintainable. The Chamber Summonses will have to be dismissed. However, keeping in mind the previous order, all rights, remedies and contentions raised by Jyotsna Maniar are expressly left open. The findings in the order of 8th October 2014 will also not operate as findings against Jyotsna in any such proceeding that she may file, and that proceeding will have to be decided on its own merits, unfettered by the observations in the order on the Chamber Summons or in this order. Jyotsna will be entitled to adopt such civil proceedings in an appropriate, jurisdictionally competent court, as she is advised to establish her heirship, as also to challenge the adoption of Usha Mehta.

14. Both the Chamber Summonses are dismissed. No costs. The two suits are to be listed for directions on 8th July 2016.

(G. S. PATEL, J.)