

JSN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMON NO. 483 OF 2012
IN
SUIT NO. 1920 OF 2011

Errol Gomes and others ...Plaintiffs
Versus
Anthony Gomes and others ...Defendants

Mr. Fredun DeVitre, Senior Advocate, with Mr. Naushad Engineer, Rohaan Cama, Murtuza Federal, Robin Fernandes and Ayushi A. for the Plaintiffs.
Mr. Atul Daga, with Mr. Jarimala, Mr. Ganesh Ambekar i/b Thakore Jarimala and Associates for the Defendants Nos. 1 to 4.

CORAM: G.S. PATEL, J
DATED: 22nd September 2016

PC:-

1. Mr. DeVitre for the Plaintiffs points out that this is a Chamber Summons for amendment to the Plaint in an administration Suit. The Chamber Summons was filed in 2012. The Suit itself contains a challenge to a release deed dated 22nd October 2008 said to have been executed *inter vivos* by the deceased (the 1st Plaintiff and the 1st Defendant's father). By that release deed the 1st Defendant's father released certain properties to the 1st Defendant and his wife. The Plaint as originally filed disputed the authenticity of a Will dated 27th September 2010, said to have been made by the deceased and which bequeathed the deceased's estate in favour of

the 1st Defendant and his wife. The Plaint did not then contain a prayer in regard to the Will itself. It seems that on a reconsideration and in particular on a reading of Section 213 of the Indian Succession Act, the Plaintiffs were advised that they needed to incorporate such a prayer because probate to a Will by Indian Christian is not compulsory. The proposed amendments seek to introduce that prayer and supporting grounds. In addition, there is now a challenge to a deed of gift and setting out the grounds of impeaching that deed of gift as well.

2. The Chamber Summons has been pending since 2012. Since then the Plaintiffs have also learnt of an additional material including certain changes in official records which, according to them, reflect a fraudulent pattern of conduct by the Defendants. These are now sought to be incorporated by draft amendments to the schedule to the Chamber Summons. The draft amendments tendered by Mr. DeVitre are taken on record and marked “X” for identification.

3. There is no written statement as yet. I will, therefore, allow these amendments. I will, however, keep expressly open all rights and contentions of the Defendants including in particular the contentions as to limitation, the ground under Order 2 Rule 2 and all contentions under the Indian Succession Act as well. It is further clarified that the Defendants will be entitled to take these grounds not only in the written statements but also in opposition to any applications for further reliefs, as also in any applications that the Defendants may choose to file.

4. The Chamber Summons is allowed in terms of prayer (a). The amendments, in terms of the amended schedule to the Chamber Summons (as per the draft marked "X"), are to be carried on or before 14th October 2016. A copy of the amended Plaint will be served on the Advocates for all the Defendants on or before 26th October 2016.

5. There is a pending Notice of Motion No.2324 of 2011 in which Replies and Rejoinders have been filed. I am not permitting an amendment to that Notice of Motion, simply because filings are already complete. However, I will, grant the Plaintiffs liberty to file a supplementary Notice of Motion for any additional interim reliefs on the basis of amendments.

(G. S. PATEL, J.)