

SHEPHALI

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
CHAMBER SUMMONS NO. 1270 OF 2016  
IN  
SUIT NO. 2219 OF 2000  
WITH  
CHAMBER ORDER (L) NO. 472 OF 2016**

|                             |               |
|-----------------------------|---------------|
| Dudhnat Kallu Yadav         | ...Plaintiff  |
| <i>Versus</i>               |               |
| Ramshankar R. Yadhav & Ors. | ...Defendants |
| <i>And</i>                  |               |
| Motichand Jagannath Yadav   | ...Applicant  |

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**Mr. Satish Upadadhay**, *for the Applicant.*  
**Mr. Ram Yadav**, *a/w Mr. Netaji Gawde, MR. Rahul Shelke, i/b Sanjay Udeshi & Co., for the Applicant in CHOL/472/16 and for Defendant No. 14.*  
**Mr. Omar Khaiyam Shaikh**, *a/w Ms. Madhumita Yadav, i/b J. S. Yadav, for Defendants Nos. 9 to 12.*  
**Mr. V. R. Yadav**, *Constituted Attorney for Defendant No. 4, I person, present.*  
**Mr. A. R. Shaikh**, *i/b R. K. Singh, for Defendants Nos. 16 to 20.*

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

**PC:-**

**CHAMBER SUMMONS NO. 1270 OF 2016:**

1. Heard. The Applicant one Mr. Motichand J. Yadav claims to be not a lineal descendant of the original Defendant No. 5, Yashodadevi Fekuram Yadav (“**Yashodadevi**”) but a legatee under her Will and related to her through her late husband’s brother. Prayer clause (b) of the Chamber Summons sought a DNA test be conducted to determine the paternity. This is inconceivable in a partition action. In any case, this prayer is not pressed. If that is not pressed then prayer (a) for impleadment cannot survive because clearly prayer (a) is dependent on the result of prayer (b).

2. If the Applicant has any rights in respect of the property, he is at liberty to adopt such civil proceedings as he may be advised. At present, it is difficult to see how he can claim to be a heir and legal representative of the original Defendant No. 5, Yashodadevi, especially since the newly added Defendant No. 5, Kilachand Fekuram Yadav has already been impleaded in the Suit as her heir.

3. The Chamber Summons is dismissed. There will be no order as to costs.

**CHAMBER ORDER NO. 472 OF 2016:**

4. This Chamber Order is withdrawn to Court. It seeks to bring on record the heirs of the deceased, Defendant No. 6. One of the heirs is the Applicant in Chamber Summons No. 1270 of 2016, which I have just dismissed and in which he sought to be impleaded in place and stead of the deceased original Defendant No. 5.

5. Proposed Defendant No. 6(a) is already on record as legal heir of Defendant No. 5. He says he is not an heir of the deceased original Defendant No. 6. The present amendment is therefore only allowed to bring on record Defendant Nos. 6(b) and 6(c) as legal heirs of original Defendant No. 6, and they are who are now arrayed as Defendants Nos. 6(a) and 6(b). Mr. Premchand Jagannath Yadav will be added as Defendant No. 6(a) and Mr. Motichand Jagannath Yadav will be added as Defendant No. 6(b).

6. The Chamber Order is disposed of in these terms. There will be no order as to costs. Amendment in Chamber Order is allowed in part.

7. Amendment to be carried out on or before 9th December 2016.

8. List the matter for direction on 9th January 2017.

**(G. S. PATEL, J.)**