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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 1724 OF 2016
IN
SUIT NO. 684 OF 2014**

Rajesh Gopal Chawan & Others	...Plaintiffs
<i>Versus</i>	
Mrs. Shalini Bajirao Sawant	...Defendant

Mr. Sanjay Jain, *with Ms. Aditi Pathak & Mr. Chetan Mhatre, i/b
M/s. Utangale & Co., for the Plaintiffs.*

Mr. Maravoor Wamorkar, *i/b Maravoor Wamorkar & Co., for the
Defendant.*

CORAM: G.S. PATEL, J
DATED: 16th November 2016

PC:-

1. This is the Plaintiffs' Chamber Summons for amendment. Before I proceed to the merits, I will note that in this Suit no Written Statement has been filed as yet. The Suit is thus a considerable distance from commencement of the trial.

2. The Affidavit in Reply to the Chamber Summons is taken on record.

3. The dispute is essentially between the 1st Plaintiff (“**Rajesh**”) and one of his sisters, the Defendant (“**Shalini**”). Shalini has filed Testamentary Petition No. 877 of 2014, now renumbered as Testamentary Suit No. 160 of 2014, in which she seeks probate to a registered Will dated 22nd May 2009 of her mother Anusaya Gopal Chawan. Shalini’s case is that this is her mother’s last Will and Testament, and that her mother revoked two previous Wills dated 25th April 2005 and 29th September 2001.

4. Rajesh has entered a Caveat and is contesting this Testamentary Suit. One of his grounds of defence is that the Will Shalini propounds is not their mother’s last Will; her last Will, he says, was of 29th September 2001.

5. Very recently, Mr. Jain on behalf of Rajesh sought to move an amendment to Rajesh’s Affidavit in Support of his Caveat in the Testamentary Suit. In this, he sought to take a plea that Anusaya and her husband Gopal made mutual Wills dated 29th September 2001. By an order dated 29th September 2016, I dismissed that Chamber Summons for amendment of the Caveat but I reserved to Rajesh his right to found a submission on that basis and to put his case to the Plaintiff also on that basis. I did so *inter alia* because on my reading of the Affidavit in Support of the Caveat I found that there was a sufficient averment already made in regard to the 29th September 2001 Will.

6. It now appears that Rajesh has filed Testamentary Petition (L) No. 1850 of 2016 seeking probate to the Will of 29th September 2001. That Petition is also pending.

7. The present Suit was filed by Rajesh and three of his other siblings against Shalini claiming a partition of certain properties described in the plaint. This plaint proceeds on a most peculiar basis. I find that there is, from paragraphs 2 to 12, a recitation by Rajesh and his fellow Plaintiffs of the validity of Anusaya's 29th September 2001 Will. In this plaint, the Plaintiffs specifically contest Shalini's claim that Anusaya left the Will of a later date, *i.e.*, of 22nd May 2009. The plaint specifically assails Anusaya's 22nd May 2009 Will. However, the prayers seem to be at odds with the averment in the sense that the very first prayer proceeds on the basis of intestacy, *i.e.*, that Anusaya left no Will at all.

8. Mr. Wamorkar for the Defendant submits that allowing the present Chamber Summons would amount to changing entirely the nature of the Suit. I do not think this is correct, and I believe Mr. Jain is justified in his submission that by this amendment he is only setting right the fundamental inconsistency or incongruity in the plaint. All the averments in fact support his case of there being a mutual Will of 29th September 2001. A specific averment to that effect seems to have omitted. The present prayer (a) is actually a prayer that ought to have been taken in the alternative, *i.e.*, as on intestacy. He submits, and I think quite correctly, that on any logical reading of the plaint, the first prayer would have to be for the distribution of the estate in terms of 29th September 2001 Will that

Rajesh propounds. Otherwise, none of the preceding paragraphs in the Complaint were at all necessary.

9. There is a consistency in Rajesh's stand taken in all three proceedings, *i.e.*, the present Suit, his Affidavit in Support of his Caveat in opposition to Shalini's Testamentary Suit and in his own Testamentary Petition in which he propounds the 29th September 2001 Will said to have been left by Anusaya.

10. I believe the rival rights are balanced in such a way that the Plaintiffs would be considerably and possibly irretrievably prejudiced if this Chamber Summons is not allowed. On the other hand, the Defendant's rights can be fully protected by leaving open all rights and contentions given that no Written Statement has yet been filed.

11. I will, therefore, allow the Chamber Summons and make it absolute in terms of prayer clause (a). Amendment in terms of the schedule annexed to the Chamber Summons to be carried out on or before 25th November 2016. A copy of the amended complaint is to be served on Mr. Wamorkar for the Defendant on or before 2nd December 2016.

12. By consent, the suit itself is taken up for the following directions:

- (a) Written Statement to be filed and served on or before 23rd December 2016;

- (b) Discovery and inspection to be completed within two weeks thereafter, i.e., on or before 13th January 2017;
- (c) List the Suit for further directions on 18th January 2017.

13. The Chamber Summons is disposed of in these terms with no order as to costs.

(G. S. PATEL, J.)