

JSN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.39 OF 2015
IN
TESTAMENTARY SUIT NO.55 OF 2014
IN
TESTAMENTARY PETITION NO.281 OF 2014

Jayraj Jayant Salgaonkar & Anr. ...Plaintiffs
Versus
Jayanand Jayant Salgonkar ...Defendant

Mr. R.V. Pai, *with Mr. A. Pai, Ms. N. Thakkar, i/b Bina Pai for the Plaintiffs.*
Mr. Snehal Shah, *i/b Yatin R. Shah for the Caveator..*
Dr. Santosh Raje, *i/b Rajiv Jadhav for Petitioner No.2.*

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

PC:-

1. This is the 1st Plaintiff's Chamber Summons for amendment. Mr. Pai for the Applicant-1st Plaintiff seeks to amend the Petition to delete one of the assets included in the Schedule of Assets annexed to the Probate Petition. This is an immovable property at Dadar. It is shown at Item 2 in that Schedule. There is also a second prayer to amend the title of the Suit so as to transpose Plaintiff No.2 as the 2nd Defendant. That second amendment is not pressed.

2. It is some what strange that in this Chamber Summons the two Plaintiffs seem to be opposing each other. I will, however, let that pass for now, in view of the order I propose to make.

3. Mr. Pai's claim is that the immovable property in question at Sr. No. 2 of the Schedule is one that was covered by clause 5 and clause 6 of the Will. He says that in clause 5 there is no bequest as such but merely a noting by the testator of past events or transactions, or an expression of his desire for disposition of the property in terms of a decision made *inter vivos*.

4. Mr. Shah for the Caveator-Defendant contends that the claim in the Chamber Summons is not only a claim for title to the immovable property, but is a claim that is adverse to the estate. This requires either that the Petition be dismissed or that Plaintiff Petitioner No.1 be transposed as Defendant No.2.

5. I believe neither order is necessary. It is sufficient to note that the grant of Probate in this matter cannot and will not determine title to any property. It cannot. That is well settled. Questions of title are not decided in probate proceedings. The reason is self-evident: the subject-matter of any such proceeding is not any particular property but only the Will and, specifically, whether or not the Will in question is proved in its solemn form. Consequently, whoever claims title to the Dadar property, be it the 1st Plaintiff or the Defendant, will necessarily have to file a civil suit for appropriate reliefs to establish title. It is sufficient for the purposes of this Chamber Summons to note that all questions, contentions

and submissions in that regard are specifically kept open on all sides. None of these are in any way determined by this order on the Chamber Summons, and, further, they cannot and will not be determined by the final order on the Probate Petition.

6. Mr. Pai accepts that this is sufficient for his purposes. He seeks leave to withdraw the Chamber Summons with liberty to adopt suitable civil proceedings. Leave granted with liberty as prayed. Liberty also to the other parties to file their own suits for the same purpose, if so advised.

7. Mr. Shah submits that the withdrawal of the Chamber Summons should also not impede or affect the Defendant's right to contend that the Petition should be summarily dismissed, or that the 1st Plaintiff should be transposed as a defendant, on account of his allegedly having set up a title adverse to the estate. It is clarified that the Defendant's rights and contentions in that regard are also expressly kept open, and the Defendant is at liberty to file a Motion or other appropriate application for such relief; and to submit that an issue in that behalf should be framed in the suit; or both.

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

9. Finally, I must observe that it is not open to the two Plaintiffs to engage separate representation and also continue as co-Plaintiffs. By the next occasion, I expect them to arrange their affairs so that both Plaintiffs are represented by only one set of Advocates. Mr.

Pai's attorneys and Mr. Raje cannot file separate vakalatnamas for the two Plaintiffs, as our Rules do not permit any such thing. One of the Plaintiffs may elect to be transposed as a Defendant, but both Plaintiffs cannot have separate representation as co-Plaintiffs. I am making it clear that unless this is done by the next date, I *will* dismiss the suit peremptorily only on this ground. The only reason for not doing so today is because Mr. Pai's Chamber Summons sought, *inter alia*, the transposition of Plaintiff No.2 as Defendant No.2, a relief that was ultimately not pressed.

(G. S. PATEL, J.)