

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**SUIT NO. 2470 OF 1994
WITH
NOTICE OF MOTION NO. 789 OF 2013
WITH
CHAMBER SUMMONS NO. 101 OF 2017
IN
SUIT NO. 2470 OF 1994**

Divyakant Ranjitsinh Khatau .. Plaintiff
Vs.
Mrs.Krishnabai Abhay Khatau & Ors. .. Defendants

Mr.Saurabh C. Nagarsheth i/b Mehul Shah for plaintiff.

Mr.Aditya N. Raut i/b Desai Desai and Carrimjee for defendant nos.1B, 1C and 9.

Mr.Ranjeev Carvalho i/b N. N. Amin and Co. for defendant no.1D.

Ms.Kanchan Gupta i/b Vigil Juris for defendant nos.2 to 5.

Mr.Vishal Kanade a/w. Mr.Vishesh Malviya and Ms.Khushboo Deshmukh i/b M/s. Federal and Rashmikan for defendant no.6.

Mr.Tushar Mittal i/b Bharucha and Partners for defendant nos.10 and 11.

Mr.Mehul A. Rathod for defendant no.12.

Ms.Aasma Khan a/w. Mr.Nilesh Modi i/b Rustomji and Ginwala for defendant nos.15 and 16.

CORAM : K.R.SHRIRAM, J.

DATE : 3RD MAY, 2017

P.C.

1 Mr Nagarsheth appearing for the plaintiff states that that the plaintiff closed their evidence.

2 Mr.Kanade states that defendant nos.2 to 5 and 13 to 17 are supporting the plaintiff. Heirs of defendant no.13, 14 and 17 are not represented even today. Ms. Asma Khan appearing for defendant nos.15 and 16 states that they are supporting the plaintiff. Ms.Gupta appearing for defendant nos.2 to 5 states that they are not supporting the plaintiff and in fact they have cross-examined the plaintiff.

At the same time, it should be noted that defendant nos.2 to 5 have not filed any written statement which means that they are agreeable for the plaintiff to obtain a decree against them.

3 In my view, before the contesting defendants lead their evidence, it will be for the parties who are supporting the plaintiff and for parties who are not opposing the plaintiff to lead their evidence first. Therefore, defendant nos.2 to 5 and defendant nos.15 and 16 to file their evidence affidavit.

4 At this stage, Ms.Asma Khan for defendant nos.15 and 16 states, on instructions from Mr.Modi, that defendant nos.15 and 16 do not wish to lead any evidence in the matter. At this stage, Ms.Gupta also states that defendant nos.2 to 5 do not wish to lead any evidence in the matter. Heirs of defendant nos.13, 14 and 17, who have chosen not to remain present today and on the

earlier occasions, it should be noted that heirs of defendant no.13 have not been appearing at all in the matter though Vakalatnama has been filed on behalf of defendant nos.14 and 17. The cause list shows one Sangramsinh Yadav, as Advocate for defendant nos.14 and 17.

Therefore, evidence of the legal heirs of defendant nos.13 and 14 and 17 is closed.

5 Mr.Raut states that defendant no.1A has expired and he is concerned for defendant nos.1B, 1C and 9. Mr.Raut states that within six weeks from today, the affidavit in lieu of examination in chief will be filed on behalf of defendant nos.1B and 1C and 9 and copy served upon the plaintiff and on the others together with compilation of documents and list of witnesses.

Statement accepted.

6 It is also clarified that should the legal heirs of defendant nos.13, 14 and 17 wish to lead evidence, they shall approach the Court for leave to lead evidence before defendant no.1B, 1C and 9 file their evidence. If they do not approach, they will not be granted leave later.

A copy of this order be sent by the registry to the legal heirs of defendant nos.13, 14 and 17. The plaintiff also is at liberty to forward a copy of this order to the legal heirs of defendant nos.13, 14 and 17.

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7 Shri Nagarsheth states that the plaintiff has taken out the chamber summons.

Mr.Raut states that his instructing advocates had also entered appearance 1B, 1C and 9 and for defendant no.1A as well and in view of the demise of defendant no.1A, the name of defendant no.1A be deleted. Mr.Raut states that the legal heirs of defendant no.1A are already on record as defendant no.1B and 1C. Mr.Raut has no objection if the chamber summons is allowed.

8 Therefore, the chamber summons is allowed in terms of prayer clauses (a) and (b) which read as under :

(a) That this Hon'ble Court be pleased to condone the delay of about 44 days in filing the present chamber summons.

(b) That this Hon'ble Court be pleased to allow the plaintiff to delete the name of Defendant No.1(a) and mention the word "Deceased" next to the name of Defendant No.1(a).

The amendment to be carried out and the amended plaint to be served within three weeks from today.

9 The chamber summons accordingly disposed.

10 The counsel for the plaintiff states that the Commissioner Ms.Shubha Dandekar has addressed a communication stating that defendant nos. 7 and 8 and defendant nos.15 and 16 are not sharing costs of the commission. Defendant Nos.7 and 8 have not been appearing.

11 Mr.Modi appearing for defendant nos.15 and 16 states that his clients have not been attending the commission and they are not interested in contesting the suit. He states that he is present in Court only because defendant nos.15 and 16 are parties to the suit.

12 Therefore, the costs of the Commissioner to be shared by the plaintiff and the contesting defendants equally and the same will be costs in the suit.

13 Stand over to 3rd July 2017 for framing of issues/receiving evidence.

(K.R. SHRIRAM, J.)