

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

CHAMBER SUMMONS NO.154 OF 2012

IN

SUIT NO.81 OF 2006

WITH

NOTICE OF MOTION NO.64 OF 2017

Paramjeet Kaur Baljit Duggal

....Applicant

IN THE MATTER BETWEEN :

Nirmal Kaur Randhirsingh Anand @ Bakshi

....Plaintiff

V/s.

Amarjeetsingh R.Anand @ Bakshi & Ors.

....Defendants

Ms.V.V.Thorat a/w Mr.Karan V.Thorat for the defendant no.8/applicant in chamber summons.

Mr.Hardik J.Desai i/by D.A.Sakhalkar for defendant nos.1 & 4 to 7.

Mr.Amarjeetsingh R.Anand Bakshi-defendant no.1 present in person.

CORAM : K.R.SHRIRAM,J

DATE : 30.1.2017

P.C.:-

1 This chamber summons is taken out by defendant no.8 to transpose defendant no.8 as plaintiff in view of the demise of the plaintiff.

2 This is a suit for partition, one of those unfortunate cases where the parties litigate for a share in a property, which they have not built.

3 The original plaintiff is the mother. Defendant nos.1, 2, 3 are her 3 sons, defendant no.4 is the widow of a predeceased son and defendant nos.5, 6 & 7 are the children of defendant no.4 and the predeceased son. Defendant no.8-the applicant is the daughter of the plaintiff.

4 Ms.Thorat appearing for the applicant states that defendant nos.2 & 3 support the application. Nobody is present for defendant nos.2 & 3 to oppose. It is only defendant nos.1 and 4 to 7 who have problem with this chamber summons.

5 The original plaintiff expired on 27.9.2010. This chamber summons has been registered on 21.1.2012. Of course, there is a delay of a little over one year. The relief sought is to condone the delay, set aside the abatement and transpose defendant no.8 as plaintiff.

6 In the affidavit in support which is less than 2 pages the reason given is that after the death of the plaintiff i.e., the mother of the applicant, the applicant went into severe depression for quite some time and could not think straight as to what should be done in the above suit. It is also stated that when she approached the

advocate with a copy of the Will, which, according to the applicant, was prepared by the plaintiff mother, she was advised by the advocate that the applicant should first get transposed herself as plaintiff. The applicant states that based on this advise, this application was taken out.

7 To this 2 pages affidavit in support, an affidavit in reply running into almost 390 pages is filed. Rejoinder has been filed and sur-rejoinder has also been filed. Ms.Thorat submits that affidavits and documents opposing the application run into about 600 pages. The primary opposition is that the applicant has made false statement and the counsel relied on the judgment in the case of ¹***Balwant Singh Vs. Jagdish Singh & Ors.*** to state that if false statements are made, the court should view very strictly and not entertain any application of such a party. According to Mr.Desai applicant in fact conducted the marriage of her son within less than 3 weeks of the demise of her mother (plaintiff) and it was a very lavish function and if according to the applicant she was under depression, the festivities would not been there. At the same time, counsel also stated that his clients have not attended the ceremony but they have come to know from newspaper reports and from other sources that it was a lavish affair. They are relying upon some 3rd party information.

1 (2010) 8 SCC 685

8 The dispute is for partition. It is trite that a highly technical and pedantic approach in such matters should be eschewed as ultimately the endeavour should be to see that a party is able to prosecute the remedy available in law on merits. A lenient approach as regards abatement of a suit is required to be taken. A liberal view is required to be taken and the rules of procedure are enacted to further cause of justice and not to create obstacles in their way or to impede it and if the delay is not condoned, it would involve a fresh suit and one more round of litigation, both of which has to be avoided.

9 In the judgment of this court in ²**Vasant J.Malkar Teli Vs. Parvati Ananda Phatak & Ors.** a single Judge of this court (R.M.Savant,J) has held that even if the reasons mentioned does not appear to be satisfactory the court should still take a very lenient approach. In fact the court has gone ahead and stated that even if there is no prayer to set aside abatement, once prayer for bringing legal heirs on record is allowed, there is no need to make a separate prayer to set aside abatement. Moreover, in a family dispute particularly, the court has always preached that they should be more liberal in considering such applications.

It is settled law that a family dispute is of a special nature and family settlement are governed by a special equity principal

2 2012(6) Mh.LJ 138

taking into account the well being of a family. The court should always endeavour to protect family from long drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. The courts in my view, should deal in favour of ensuring that the relationship between the members of the family which has already got strained should not go down further. The petitioner unfortunately during her life time, had to file the suit for partition. Ms.Thorat submits that main reason for filing of the suit was defendant no.1 who was an obstacle for the original plaintiff's attempt to have her children live peacefully. I am not going into those aspects as to whether Ms.Thorat is correct but in view of the facts and circumstances of the case, I am satisfied that a lenient approach has to be taken.

10 I even asked the counsel whether defendant no.1 would be inclined to step into the shoes of the plaintiff. Mr.Desai on instructions from defendant no.1 who is present in court states 'no'.

11 In the circumstances, chamber summons allowed in terms of prayer clauses-(a), (b) & (c). Amendment to be carried out and amended plaint to be served within two weeks. Should any of the defendants wish to file any further written statement, the same to be

filed within two weeks of receiving the amended plaint.

12 Mr.Desai states that the defendant no.1 has taken out a Notice of Motion bearing No.64 of 2017. Ms.Thorat seeks 3 weeks time to file affidavit in reply. Affidavit in reply to be filed within 3 weeks. Rejoinder if any, to be filed within 2 weeks thereafter. Notice of Motion to be listed in due course.

13 Suit be listed for issues on 7.3.2017.

 In the meanwhile, parties will also file their respective affidavit of documents and complete discovery and inspection and also file statement of admission and denial with reasons for denial. Cost of this chamber summons to be costs in the suit.

(K.R.SHRIRAM,J)