

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION

CHAMBER SUMMONS NO.1253 OF 2015

Ashok Gupta And Another	...	Applicants
Versus		
Rohini D/o. Sita Devi Gupta And Another and Suman Mittal D/o Om Prakash Gupta	...	Respondents

ALONGWITH
CHAMBER SUMMONS (L) NO.51 OF 2017
IN
MISCELLANEOUS PETITION NO.15 OF 1986
IN
TESTAMENTARY PETITION NO.481 OF 1982

Ashok Gupta And Another	...	Applicants
Versus		
Kumari Rohini And Another and Mahesh Chand Gupta (Applicant)	...	Respondents

**ALONGWITH
CHAMBER SUMMONS (L) NO.360 OF 2017
IN
SUIT NO.2332 OF 1985**

Ashok Gupta And Another	...	Applicants
Versus		
Rohini D/o. Sita Devi And Another And Mahesh Chand Gupta (Applicant/ Intervenor)	...	Respondents

ALONGWITH
CHAMBER SUMMONS (L) NO.137 OF 2017
IN
SUIT NO.2332 OF 1985

Ashok Gupta And Another ... Applicants

Versus
Rohini D/o. Sitadevi Gupta And
Another ... Respondents

**ALONGWITH
CHAMBER SUMMONS NO.44 OF 2017
IN
MISCELLANEOUS PETITION NO.15 OF 1986
IN
TESTAMENTARY PETITION NO.481 OF 1982**

Ashok Gupta ... Applicant

In the matter between

Ashok Gupta And Another ... Petitioners
Versus
Rohini, D/o. Sita Devi And Others ... Respondents

**ALONGWITH
MISCELLANEOUS PETITION NO.15 OF 1986
IN
TESTAMENTARY PETITION NO.481 OF 1982
IN
SUIT NO.2332 OF 1985**

Ashok Gupta And Another ... Petitioners
Versus
Kumari Rohini And Another ... Respondents

**ALONGWITH
SUIT NO.2332 OF 1985**

Ashok Gupta And Another ... Plaintiffs
Versus
Rohini D/o. Sitadevi Gupta And Another ... Defendants

**ALONGWITH
NOTICE OF MOTION NO.969 OF 2011**

Ashok Gupta And Another ... Applicants

Versus
Rohini D/o. Sitadevi Gupta And
Another ... Respondents

**ALONGWITH
NOTICE OF MOTION NO.49 OF 2011
IN
MISCELLANEOUS PETITION NO.15 OF 1986**

Om Prakash Gupta And Others Applicants
Versus
Sita Devi And Others ... Respondents

.....

Mr. Karan Bhosale a/w Abhay Arora i/b NDB Law for Plaintiff No.1A in Suit No.2332 of 1985 and the Applicants in Chamber Summons No.137 of 2017 and Chamber Summons No.44 of 2017.
Mr. Vinay Rathi for the Applicants in Chamber Summons No.360 of 2017.
Kirti Mushi a/w Shlok Parekh i/b Rustomji & Ginwalla for Defendant Nos.2 and 3.
Mr. Rakesh Piproda a/w Mukesh Pahari i/b RMP Legal for the Intervenor.

.....

CORAM : S.C.GUPTE, J.

DATE : 6 NOVEMBER 2017

P.C. :

. Heard learned Counsel for the parties.

2 The main proceedings herein are (i) a suit for declaration, partition and possession of separate shares of original Plaintiffs, Om Prakash Gupta ("Om Prakash") and Savitri Devi, who claim through their deceased father, Kundan Lal Gupta ("Kundan Lal"), and (ii) a miscellaneous petition filed by Om Prakash and Savitri Devi for revocation of letters of administration of the property and credits of Kundan Lal granted to the alleged legal heirs of Kundan Lal, through his other marriage, namely, Sita Gupta (his wife),

and Rohini and Mohini (his daughters). The chambers summonses taken out in these two proceedings are being disposed of by the present order.

3 The deceased Kundal Lal was married to one Chandrawati in the year 1922. Kundal Lal died in the year 1981, whilst his wife Chandrawati died in the year 1970. Kundal Lal and Chandrawati were survived by two legal heirs and next of kin, namely, their son and daughter, Om Prakash and Savitri Devi (both now deceased). The third child, one Shrichand, predeceased them. Om Prakash and Savitri Devi filed the present suit, Suit No.2332 of 1985, for declaration of their interest in the properties of the deceased and partition and separate possession of their shares. Around that time, Sita Gupta (the second wife of Kundan Lal), Rohini and Mohini (her daughters), claiming as legal heirs and next of kin of the deceased Kundan Lal, were granted letters of administration of the property and credits of Kundan Lal. This grant was challenged by Om Prakash and Savitri Devi by filing the present misc. petition, namely, Misc. Petition No.15 of 1986. During the pendency of the suit and the misc. petition, Om Prakash died. As a legatee/beneficiary under the last will and testament of the deceased Om Prakash, one Ashok Gupta, son of Savitri Devi, was brought on record as a legal representative of the deceased Om Prakash in the suit as well as the misc. petition. That order was passed on 23 July 2009. When Savitri Devi passed away, her son, Mahesh Chand Gupta, who is the Applicant in **Chamber Summons (L) No.51 of 2017 and Chamber Summons (L) No.360 of 2017**, took out these applications for impleadment as legal representative of the deceased Savitri Devi in the pending partition suit and misc. petition. The third Chamber Summons, namely, **Chamber Summons No.1253 of 2012**, is taken out by one

Suman, who claims to be the daughter of the deceased Om Prakash. By this Chamber Summons, she also claims to be impleaded as legal representative of the deceased Om Prakash.

4 These three Chamber Summonses are opposed by Ashok Gupta on several grounds. One of the grounds is that in a suit filed in Bahadurgad in Haryana, the parties including Suman had entered into a compromise before Lok Adalat, accepting *inter alia* the genuineness of the will of the deceased Om Prakash and beneficial interest of Ashok Gupta in the properties of the deceased Om Prakash through that will. Learned Counsel submits that the consent decree passed in the Bahadurgad suit operates as an estoppel against Suman and is valid and binding unless set aside by the Court which passed that decree under the proviso of Rule 3 of Order 23 of the Code of Civil Procedure, 1908. Learned Counsel relies on the judgment of the Supreme Court in the case of **Purshpa Devi Bhagat Vs. Rajinder Singh**¹ in support of his contention. In **Pushpa Devi's** case, the Supreme Court held that the only remedy available to a party to a consent decree to avoid such consent decree was to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. There is no quarrel with the proposition as such. Suman's claim for legal representation to the estate of the deceased Kundan Lal will have to be tested in the light of the compromise decree passed in the Bahadurgad suit. The Court will have to consider if it operates as an estoppel in the facts of the case and what is the effect of such estoppel. The moot question is, at what stage should the Court consider this. The deceased Om Prakash was one of the original plaintiffs in the partition suit.

1 (2006) 5 Supreme Court Cases 566

When one of the several plaintiffs dies and the right to sue survives, the Court, on an application made in that behalf, causes a legal representative of the deceased plaintiff to be made a party to the suit and thereafter to proceed with the suit. Whenever an issue arises as to whether the applicant is the true legal representative of the deceased plaintiff, that issue has to be determined by the Court. The question is at what stage the Court should determine this question. Is this question is to be finally determined when the Applicant applies to the Court for impleadment as a legal representative or is it to be decided at the trial of the suit after allowing rival claimants to lead evidence and make submissions. It has been held by this Court as well as many other High Courts that at the stage when an application for impleadment as legal representative is moved, the Court orders such impleadment on a mere *prima facie* proof that the applicant, who claims such impleadment, is the legal representative of the deceased. Even if such impleadment is ordered, it does not foreclose any further inquiry as to the devolution of or succession to the interest of the deceased. That question is still at large, to be decided between the rivals who claim to succeed to that interest upon devolution or otherwise. Our Court in fact in the case of **Jawaharlal Vs. Smt. Saraswatibai Babulal Joshi**², has clearly laid down that no detailed enquiry is contemplated at the stage of grant of leave under Order 22 Rule 10 of the Code. The Court has only to be *prima facie* satisfied for exercising its discretion in granting leave for continuing the suit by or against the person on whom the interest has devolved by assignment or devolution and the validity of the assignment or devolution can be considered at the trial of the suit on merits. This view was affirmed by the Supreme Court in the case of **Amit Kuma Shaw Vs.**

2 AIR 1987 Bombay 276

Farida Khatoon³ in the following words :

“12. Under Order 22 Rule 10, no detailed inquiry at the stage of granting leave is contemplated. The court has only to be *prima facie* satisfied for exercising its discretion in granting leave for continuing the suit by or against the person on whom the interest has devolved by assignment or devolution. The question about existence and validity of the assignment or devolution can be considered at the final hearing of the proceedings.”

The objections raised by Ashok Gupta for the impleadment application of Suman, thus, need not be finally disposed of at the hearing of the Chamber Summons and the Chamber Summons can well be allowed by keeping the question of devolution of interest open as between Suman and Ashok Gupta.

5 Learned Counsel for Ashok Gupta also raises some other contentions, concerning limitation and suppression of facts on the part of Suman. Learned Counsel submits that the deceased Om Prakash died in the year 2008; the application of Suman for impleadment made in the year 2012 is barred by limitation. Learned Counsel also submits that Suman has suppressed the fact of her having filed an affidavit before the Bahadurgad Court, where the compromise decree was passed, making a reference to the present suit and therefore, her averment that she was not aware of the proceedings in the present suit till sometime before filing of her impleadment application, is a false statement. Once again, the question of limitation as also of the alleged suppression or misrepresentation need not be finally decided at this stage. Considering the nature of the controversy

3 (2005) 11 Supreme Court Cases 403

and the rival stands taken by the parties, it is in the fitness of things that these matters should also be left for determination at the trial of the suit. They cannot be determined at this stage merely on affidavits. Evidence may have to be led on these at the trial. The Chamber Summons of Suman, thus, deserves to be allowed.

6 As far the two Chamber Summonses of Mahesh Chand Gupta are concerned, the objections raised by Ashok Gupta to the application of Suman are not material here, since Mahesh Chand Gupta is applying for impleadment as a legal representative of Savitri Devi, who is his mother, and not as a legal representative of Om Prakash. The only objection raised in the case of Mahesh Chand Gupta's application is that there was a letter addressed by Mahesh Chand Gupta specifically giving up his right to contest the suit and leaving the conduct of the suit to Ashok Gupta. That is neither here nor there. A party may well leave the conduct of the suit to another and may at any time later, if dissatisfied with the manner in which his interest is looked after by such other, choose to represent his own interest by himself. No possible exception can be taken to it. The present applications, i.e the two Chamber Summonses of Mahesh Chand Gupta, thus, also deserve to be allowed.

7 Learned Counsel for Ashok Gupta also submits that he has a registered will of Savitri Devi, bequeathing her property on Ashok Gupta. Once again, this is a matter of merits and will have to be decided at the trial of the suit. There is no decree as yet acknowledging the claim of Ashok Gupta to the beneficial interest under the alleged will of Savitri Devi. That will be a question which will squarely fall for determination in the

present suit. Learned Counsel also submits that the claim for impleadment of Mahesh Chand Gupta is on the basis of certain portions of the purported will of Savitri Devi set up by him. Learned Counsel submits that one Ishwar, who is the son of the deceased Om Prakash and who is a witness to the will of Savitri Devi, has filed an affidavit stating that the portion of the will of the deceased Savitri Devi claimed by Mahesh Chand Gupta does not actually form part of her will. Again this question is purely of merits and cannot be decided on affidavits at the stage of the impleadment application.

8 The fourth Chamber Summons is the Chamber Summons of Ashok Gupta himself for impleadment as legal representative of Savitri Devi. Ashok Gupta, as noticed above, claims his beneficial right to the property of the deceased Savitri Devi on the basis of her will set up by him. The will shows his *prima facie* right to succeed to the property of Savitri Devi through this will, as noticed above, is the subject matter of inquiry in the present trial. Accordingly, the Chamber Summons of Ashok Gupta for impleadment also deserves to be allowed.

9 The fifth Chamber summons is the Chamber Summons of Ashok Gupta for being impleaded as as a petitioner in place and stead of Savitri Devi in the Misc. Petition for revocation of the grant of letters of administration to the property and credits of Kundan Lal. For the reasons stated in the foregoing paragraph, even this Chamber Summons deserves to be allowed.

10 Accordingly, all five Chamber Summonses, namely, Chamber

Summons No.1253 of 2012, Chamber Summons (L) No.51 of 2017, Chamber Summons (L) NO.360 of 2017, Chamber Summons (L) No.137 of 2017 and Chamber Summons No.44 of 2017, are allowed. Costs to be costs in cause.

11 It is clarified that the two Chamber Summonses of Ashok Gupta, namely, Chamber Summons (L) No.137 of 2017 and Chamber Summons No.44 of 2017, are allowed on the basis that Ashok Gupta is entitled to be impleaded as one of the legatees and legal representatives of the deceased Savitri Devi and not as a sole legatee and legal representative. The description in the averment proposed to be added by him in the body of the plaint and the petition, will have to be corrected accordingly.

12 All rights and contentions of the parties on the merits of their respective cases are kept open, to be tried in the main proceedings, namely, the partition suit and the miscellaneous petition.

13 The amendments ordered above shall be carried out after expiry of four weeks from today.

14 Notice of Motion No.969 of 2011 to come up for directions after six weeks.

(S.C. GUPTE, J.)