

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

**CHAMBER SUMMONS No. 323 OF 2017
IN
SUIT No. 1375 OF 2011**

Neela Vilas Shinde

....Applicant

In the matter between

Geeta Patel D'Souza and Ors.

....Plaintiffs

Vs.

Sushilarani Patel & Ors.

...Defendants

And

Neela Vilas Shinde

....Applicant/Third Party

Ms. Sheetal Kumar a/w. Mr. Abhishek Khare a/w. Ms. Tanvi Nandgaonkar i/b.
Khare Legal Chambers for Plaintiffs

Mr. K.T. Kukreja a/w. Mr. N.A. Gharkar i/b. Arvind Manghramalani for Applicant
Mr. Vishwajeet Sawant a/w Mr. Jayraj Shinde i/b. V.B. Dhingreja for Defendant
No.18.

CORAM : M.S. SANKLECHA, J.
FRIDAY, 17TH NOVEMBER, 2017

P.C.

1. The Applicant in this Chamber Summons is only pressing prayer clause (b) thereof i.e. seeking to be impleaded in the suit as also in all the pending interim applications made in the suit are originally filed, inter alia, against Mrs. Sushilarani Patel. In fact on 24th July, 2014 Mrs. Sushilarani Patel passed away.

During her life time, the late Mrs. Sushilarani Patel had executed a Will dated 20th September, 2010 appointing the Applicant as an Executrix. It is the applicant's claim that in view of the above Will she is entitled to represent the estate of the late Mrs. Sushilarani Patel as an executrix, even before the grant of probate which is pending in this Court being Testamentary Suit No. 84 of 2015.

2. The suit as filed by the Plaintiffs is for the administration of the estate of her deceased father the late Mr. Suryakant Baburao Patel, who was the son of the Late Mrs. Sushilarani Patel. It is an undisputed position between the parties that one of the properties in issue in the administration suit filed is, inter alia, with regard to the property known as Girnar Property. The Applicant claiming to be the executrix of the Will dated 20th September, 2010 by which she has been directed as an executrix of the Will to take care of all the pending litigations in respect of the Girnar property.

3. Mr.Kukreja, learned counsel appearing on behalf of the Applicant, in support of the Chamber Summons, invites my attention to the decision of this Court in ***Ramniklal Amritlal Shah v. Bhupendra Impex Pvt. Ltd. and others*** [AIR 2001 Bombay 224], wherein the Division Bench of this Court as held that

the bar under section 213 of the Succession Act, 1925 is against passing of a decree without obtaining a probate certificate. However, Mr. Kukreja states that the probate proceedings in respect of the Will dated 20th September, 2010 of Late Mrs. Sushilarani Patel is pending in this Court and is now converted in a Testamentary Suit No. 84 of 2015. However, the said Section would not bar an executor in his capacity as an executor to protect the estate. It is only that the final decree would not be passed in the absence of a probate certificate in favour of the Executor. On the basis of the above decision, it is submitted that the Applicant should be added as a party Defendant to the present suit.

4. Ms. Sheetal Kumar, learned counsel appearing for the Plaintiffs opposes the application on the ground that the similar application had been made by the Applicant in her capacity as a trustee of a trust created by Late Mrs. Sushilarani Patel. The application made by the trustees including the Applicant herein was also to be added as party Defendants to this suit by taking out Chambers Summons (L) No. 1223 of 2014. This Court by an order dated 1st September, 2014 rejected the claim of the trustees of the trust including that of the Applicant herein as one of the trustees, to be added as a party Defendant to the suit. Thus this Court has already decided that the applicant cannot be added as a party to the suit.

Therefore, this application also be dismissed. She further submits that the Applicant has no interest in the dispute between the parties as presently arraigned. This is so as a suit pertains to the estate of the Plaintiffs' father viz. deceased Suryakant Patel and has nothing to do with the estate of the late Mrs. Sushilarani Patel.

5. In view of the decision of this Court in ***Ramniklal Amritlal Shah (Supra.)***, the executrix is obliged to protect the estate of the deceased in her capacity as an executrix. This even before the grant of probate. Therefore, at this stage, considering the fact that once of the issues involved in the present suit is admittedly in respect of the Girnar Property, the Applicant is in her capacity as an executrix obliged / entitled to be a party defendant to the present proceedings. This will also avoid multiplicity of the proceedings. The earlier order dated 1st September, 2014 passed by this Court in the Chamber Summons taken out by the Applicant in her capacity of a trustee of trust will not govern this application. The basis of the present application is in her capacity as the Executor of the Will dated 20th September, 2010 of the late Ms. Sushilarani Patil. Thus in a completely different capacity. So far as the other objections that the Applicant is no way interested in this dispute as it is with regard to administration of the estate of the

late Mr. Suryakant Baburao Patel, cannot be accepted. This for the reasons that it is an admitted position before me that one of the properties in issue in this suit is Girnar Property of which admittedly the Will dated 20th September, 2010 has made the executrix therein i.e. the Applicant herein responsible to protect. Thus the applicant has an interest in the present proceedings and is required to be made a party to avoid multiplicity of proceedings.

6. Accordingly, the Chamber Summons is allowed in terms of prayer clause (b). Amendment to be carried out within two weeks.

Chamber summons is disposed of in the aforesaid terms.

[M. S. SANKLECHA, J.]