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

CHAMBER SUMMONS NO.357 OF 2012
IN
SUIT NO.3987 OF 1993

Pankaj R. Patel & Ors.	...Plaintiffs
V/s.	
Rajendra A. Jhaveri & Ors.	...Defendants
And	
Santosh M. Tripathi & Ors.	...Respondents Proposed Plff. Nos.3-A to 3-C

Ms.Sarika Mehta i/b LJ Law for the Plaintiff Nos.1-A , 2-A to 2-C.

Mr.Ashutosh Shukla i/b Mr.M.U. Pandey for the Defendant Nos.1 to 3.

Mr.Sudhakar G. Lakhani for the Defendant Nos.6-A to 6-D.

CORAM : R.D. DHANUKA, J.
DATE : 31ST OCTOBER, 2017.

P.C. :-

1. Learned counsel for the applicants (original plaintiff nos.1-A and 2-A to 2-C) tendered a draft amendment seeking amendment to the schedule to Chamber Summons No357 of 2012. Learned counsel for the parties, who are appearing today have no objection if amendment in terms of the amendment handed in is allowed. Leave to amend is granted to carry out amendment to the chamber summons. The amendment to be carried out within one week from

today.

2. By this chamber summons, applicants seeks condonation of delay in filing the chamber summons insofar as prayer for bring on record the legal heirs of the plaintiff no.3 and defendant no.7 is concerned. The applicants also pray for setting aside of the abatement of the suit insofar as the plaintiff no.3 and defendant no.7 are concerned. The applicants also seek transposition of the proposed plaintiff nos.3-A to 3-C and the plaintiff nos.4 to 6 as the defendant nos.12 to 17 and also the consequential amendment in the body of the suit.

3. I have heard the parties and have perused the averments made in the affidavit in support of the chamber summons and also the averments made in the affidavit in reply filed by the defendant nos.1-A to the suit and plaintiff no.1-A to the counter claim. A perusal of the record indicates that during the pendency of Chamber Summons No.1198 of 2010, which was filed to implead the legal heirs of the plaintiff nos.1 and 2, plaintiff no.3 expired on 15th November, 1998 leaving behind respondent nos.2 to 4 as his only legal heirs and representatives. It is the case of the applicants that the previous advocate of the original plaintiffs did not take any steps to bring on record the respondent nos.2 to 4, who are the legal heirs of the plaintiff no.3 on record.

4. It is not in dispute that during the pendency of the suit and during his life time, the plaintiff no.3 has sold his undivided share in the suit property to the defendant nos.1 to 3. Learned counsel for the defendant nos.1 to 3 does not dispute that the share of the original plaintiff no.3 has been allegedly sold in favour of his clients.

5. It is the case of the applicants that their advocates received a letter from the advocate of the defendant no.7 informing about the death of the defendant no.7 on 1st November, 2007. In these circumstances, the applicants seek transposition of the legal heirs of the plaintiff no.3 and also the respondent no.4 to 6 to be transposed as the defendant nos.12 to 17.

6. Learned counsel for the defendant nos.1 to 3 opposed this chamber summons on the ground that the delay is not sufficiently explained. He however, does not dispute that insofar as the plaintiff no.3 is concerned, during his life time he had already sold his undivided share in the property to his clients. He does not raise any objection if the plaintiff no.4 to 6 are transposed as the defendants.

7. None appears for the plaintiff nos.4 to 6 as well as original plaintiff no.3, though served.

8. In these circumstances, I am inclined to allow this chamber summons as prayed. Delay is sufficiently explained. The applicants have made out a case for transposition of few plaintiffs as prayed.

The chamber summons is accordingly made absolute in terms of prayer clauses (a) to (f). The amendment to be carried out within two weeks as prayed in the original chamber summons and also in the draft amendment in respect of which leave is already granted by this order.

9. The amended copy of the plaint shall be served upon the defendants, including the parties, who are transposed as the defendants. The parties who are transposed as the defendants as well as the legal heirs of the defendant no.7 are permitted to file the written statement within eight weeks from the date of service of the amended copy of the plaint.

10. No order as to costs.

(R.D. DHANUKA, J.)