

SHEPHALI

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 957 OF 2015
IN
PAUPER PETITION NO. 2 OF 2006**

Leelawati Pandharinath Sonke & Ors	... Applicants
<i>In the matter between</i>	
Pandharinath Nana Sonke	...Petitioner
<i>Versus</i>	
Dwarkabai B Sonke & Ors	...Respondents

Sonali Kunekar, *with Bhakti Sutar & Gouri Kale i/b Vikas K Mahangare for the Petitioner.*
Mr Hasan Khan, *i/b Monisha Kapadia for the Respondents Nos. 2 to 6.*

CORAM: G.S. PATEL, J
DATED: 17th February 2017

PC:-

1. This Chamber Summons is filed by the original Plaintiff's heirs, viz., his widow and children. The original Plaintiff filed this Suit *in forma pauperis*. The original plaintiff's claim to pauperism was fully investigated in Pauper Petition No. 2 of 2006. His evidence was taken.

2. The original Plaintiff brought this suit against the 1st Defendant, his sister-in-law. The dispute was about a Flat No. 87, at Siddhesh Deep, A Wing, 8th Floor, Pandurang Bhutkar Marg, Mumbai 400 008. The Plaintiff claimed that he alone was entitled to this flat and that the agreement for permanent alternate accommodation between the builder and the 1st Defendant, the original Plaintiff's widowed sister-in-law, Dwarkabai, was illegal. Prayer (e) of the Plaint sought possession. Prayer (f) was for a decree in damages for Rs. 10 Crores.

3. The Plaintiff died some time in 2007. The Suit abated.

4. This Chamber Summons was filed in February 2015. The Applicants are the original Plaintiff's widow Lilawati and their children Sushma, Narendra and Pushpa.

5. Lilawati filed an Affidavit in Support of this Chamber Summons. She says she is illiterate. She did not know about this suit. There were no papers in their house in Satara. Her children also did not know about the suit. Then she says her husband used to go from the house at Satara to Mumbai to attend this litigation. Even if she did not know about this particular case, I find it difficult to believe that she did not know he was travelling between Satara and Mumbai to attend to a case in this Court.

6. She then says in paragraph 6 that one Anil Waidande, a resident of the same village, had some litigation in Mumbai for which he used to visit this city often. Lilawati claims that she told

Waidande to look into her husband's case — again establishing she knew there was a case, even if not the details of it. Waidande asked her about the case status. Lilawati claims she told him she knew nothing about it. Waidande then told Lilawati to meet the advocate who was handling the case. When Waidande visited Mumbai for his own litigation, he met the original Plaintiff's advocate and was told that the matter had been disposed in 2008.

7. The difficulty with this paragraph is that it does not tell us when Lilawati met Waidande. We do not know if it was in 2008. It could not have been: the paragraph itself indicates that it was much later. How much later we do not know. If it was in 2014, then there is no explanation at all for what Lilawati was doing between 2008 and 2014, and why she abruptly awoke to the realization that her husband had some litigation in this Court. Waidande was or is a fellow resident of the same village. She knew him even in 2008. She herself says she knew he had litigations in Mumbai and came here often to attend to them.

8. Lilawati only says in paragraph 7 that in 2014 she met her late husband's Advocate. He then applied for copies of the papers and filed this Chamber Summons.

9. Lilawati may have my sympathy, but then so too must Dwarkabai; she deserve no lesser consideration. After all, once the suit abated, her rights crystallised. I see no reason why her rights, long settled for the past eight or nine years, should now be thrown into disarray or her life, family and household be threatened with

upheaval and possible eviction merely because Lilawati says that until 2015 she was, on this unacceptably thin material, 'unaware' of her husband's case against Dwarkabai and did nothing to ascertain the status. These are competing rights and they must be balanced. The assumption in this application that a Court must accept that only the Plaintiff is right, and only the Plaintiff has rights, and that the Defendant is always in the wrong and has no rights is without basis.

10. There is nothing to indicate that Lilawati's children are illiterate. They have filed no Affidavit of their own. Their father brought suit *in forma pauperis*. Before me, it is conceded that the children are not in that condition and will have to pay requisite Court Fee. This is in fact a reason not to allow the present application. If these Applicants today have the means to pay Court Fee then surely they would have had the means and the skills to check on the necessary status of the matter and to make an application in good time. There is an admitted delay of a staggering 2599 days, more than seven years, in making this application. The explanation offered is wholly inadequate. Attempts to invoke sympathy by claiming illiteracy can only go so far. They should not be allowed to be used to unseat settled rights. The challenge to Dwarkabai's rights to the flat in question ended when the suit abated. That abatement might have been set aside and the suit continued on an application brought in good time with a reasonable explanation for the delay, if any. After this length of time, and on such precariously inadequate material, it would in my view be manifestly unjust to expect Dwarkabai to have to defend her rights all over again.

11. The Chamber Summons is dismissed. However in the facts of the case there is no order as to costs.

(G. S. PATEL, J.)