

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

**NOTICE OF MOTION NO.1106 OF 2012
NOTICE OF MOTION NO.2677 OF 2016
CHAMBER SUMMONS NO.288 OF 2017
IN
SUIT NO.254 OF 2008**

Sindhu P.Korgaonkar & Ors.Plaintiffs

V/s.

Vilas Gajanan Mhatre & Ors.Defendants

Mr.Ram Apte, Sr.Advocate i/by Yogesh S.Palve for plaintiffs.

Mr.V.V.Khemka i/by Dipesh Siroya for defendant no.1.

Mr.V.Y.Sanglikar for defendant nos.4A to 4C.

Ms.Savina R.Crasto for defendant nos.6 to 8, 10(a) to 10(b), 11, 12(a) to 12(c), 13(a) to 13(c), 14, 15(b) to 15(d).

Mr.Tarun Kumar Sinha for defendant no.16.

**CORAM : K.R.SHRIRAM,J
DATE : 24.4.2017**

P.C.:-

NOTICE OF MOTION NO.2677 OF 2016

1 Mr.Sanglikar appearing for the applicant seeks leave to withdraw the Notice of Motion. Notice of Motion No.2677 of 2016 dismissed as withdrawn.

CHAMBER SUMMONS NO.288 OF 2017

2 This chamber summons is to bring on record the legal heirs of defendant no.10 as per Schedule-A annexed thereto. Ms.Crasto who was appearing for defendant no.10 states that she

has instructions to appear for the proposed defendant nos.10(a) & 10(b) as well and has no objection if the reliefs sought in the chamber summons are granted. Therefore, Chamber summons allowed in terms of prayer clause-(a).

Amendment to be carried out and amended petition to be served on all the defendants within 3 weeks from today.

Ms.Crasto states that defendant nos.10(a) & 10(b) also waive service of the writ of summons.

3 Ms.Crasto states that she was appearing for defendant no.5 who expired on 20.3.2017 and defendant nos.6, 7 & 8 are the legal heirs of defendant no.5. Ms.Crasto states that defendant no.5 therefore be struck off from the array of defendants. Mr.Palve appearing for the plaintiff states that he has not been provided copy of the death certificate. Ms.Crasto states that they have applied to the Corporation for issuance of the death certificate but they are yet to receive death certificate. Therefore, the concerned Ward office in Bombay Municipal Corporation to whom an application for issuance of death certificate is made is directed to issue death certificate within two weeks from today provided there are no office objections.

The concerned Ward officer shall act on a copy of this order duly authenticated by the Associate of this court.

4 In view of the statement made by Ms.Crasto, defendant no.5 be deleted and the amendment to be carried out within 3 weeks from today. Ms.Crasto to forward a copy of the death certificate of defendant no.5 to Mr.Palve within two weeks of receiving the same from the Corporation.

5 The plaintiff is permitted to amend the cause title for defendant nos.6, 7 & 8 to include "by themselves and also as legal heirs of original defendant no.5".

NOTICE OF MOTION NO.1106 OF 2012

6 Mr.Khemka appearing for the defendant no.1 states that his client has not even been served copy of this Notice of Motion with the affidavit in support. Mr.Khemka also states that the deceased died sometime in 1948 and the suit has been filed in 2008. Therefore, the issue of limitation as well as maintainability has to be considered. Mr.Khemka also submits that one more issue has to be considered, i.e., whether the Hindu Succession Act itself is applicable to the case.

7 Mr.Khemka states that defendant no.1 has filed the written statement. Mr.Apte senior counsel for the plaintiff states that all other defendants have worked out the matter with the plaintiff and only

defendant no.1 is opposing. Mr.Khemka states that the plaintiff has not even approached defendant no.1 so the question of opposing consent terms or working out of the matter does not arise. At the same time, he states that he will confer with Mr.Apte and explore whether the matter could be worked out.

All the counsel state that notwithstanding what is recorded above, they are agreeable to maintain status-quo with respect to the suit property until disposal of the suit. Notice of Motion accordingly disposed.

8 It is clarified that if the plaintiff and other defendants are agreeing to consent on the terms of the settlement, this status-quo order will not come in the way of the parties inter se and the said consent terms or arrangement between the parties inter se will not be binding on defendant no.1 if he is not a party to the consent terms.

9 Suit be listed for issues on 20.6.2017.

In the meanwhile, parties to file their respective affidavit of documents, complete discovery and inspection and also exchange statement of admission and denial with reasons for denial.

(K.R.SHRIRAM,J)