

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****CHAMBER SUMMONS NO. 626 OF 2017****IN****SUIT NO. 2923 OF 2005****Vinesh Rashmikant Shah****..... Applicant/
Org. Defendant No.3****IN THE MATTER BETWEEN****Vijay Rashmikant Shah & Anr.****..... Plaintiffs****VERSUS****Aakshay Narendra Sheth & Ors.****..... Defendants**

Ms.Rita Yadav, i/b. Reeti Law Associates for the Plaintiff.

Mr.Chetan Kapadia, a/w.Mr.Abhishek Bhadang, Ms.Kanchan Gupta,
i/b. VBA Legal for the Applicant/Defendant No.3.

Ms.Deepti Panda, a/w. Mr.Harshil Parekh, i/b. M/s.Purnanand & Co. for
the Defendant no.6.

CORAM : R.D. DHANUKA, J.**DATE : 30th OCTOBER, 2017****P.C.**

By this chamber summons, the applicant (original defendant no.3) seeks his transposition as plaintiff and further seeks transposition of the plaintiffs as defendant nos. 3(a) and 3(b) in view of the order passed by this Court on 28th April, 2017 in Notice of Motion (L) No.1004 of 2017 in Suit No.258 of 2014 filed by the applicant against the plaintiffs. By the said order, the said suit filed by the applicant herein came to be decreed in terms of prayer clause (a) of the plaint. It is the case of the applicant that under the family settlement which was

subject matter of the said suit, all rights in respect of the two plots of the land which was subject matter of this suit has been transferred to the applicant. The plaintiffs are the resident of United State. In these circumstances, the applicant seeks his transposition as the plaintiffs and simultaneously transposition of the plaintiffs as defendant nos. 3(a) and 3(b). Learned counsel for the plaintiffs has no objection if her clients are transposed as defendant nos. 3(a) and 3(b). Learned counsel does not dispute the decree passed by this Court in Suit No.258 of 2014 filed by the applicant against her clients. Statement is accepted.

2. Ms.Panda, learned counsel for the defendant no.6 states that the original plaintiffs have already filed affidavit in lieu of examination in chief in Suit No.2923 of 2005 and are not attending the proceedings for their cross examination. She submits that if this Court permits the applicant to transpose the plaintiffs as defendant nos. 3(a) and 3(b), in that event, the affidavits in lieu of examination in chief already filed by the plaintiffs shall not be allowed to be withdrawn and shall remain on record as evidence in the suit. She submits that the adverse inference shall be drawn by this Court against the original plaintiffs in view of the plaintiffs remaining absent for the purpose of cross examination.

3. In view of the order passed by this Court in Suit No.258 of 2014 filed by the applicant against the present plaintiffs and in view of the statement made by the learned counsel for the plaintiffs, I am inclined to allow this chamber summons. Chamber summons is accordingly made absolute in terms of prayer clause (a). It is however made clear that the affidavits in lieu of examination in chief filed by the plaintiffs

and further examination in chief recorded before the learned Court Commissioner shall be remain on record as evidence of the original plaintiffs. The defendant no.6 would be at liberty to pray for drawing an adverse inference against the original plaintiffs based on the fact that the original plaintiffs remained absent for the purpose of cross examination. No order as to costs. The amendment to be carried out within two weeks from today.

4. Place the suit on board for directions on **8th November,2017**.

(R.D.DHANUKA, J.)