

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY AND INTESTATE JURISDICTION

CHAMBER SUMMONS NO. 114 OF 2017

IN

TESTAMENTARY SUIT NO. 81 OF 2000

[COVERTED FROM PETITION NO. 1035 OF 1999]

Jagdish Senu Badhe] Applicant

IN THE MATTER BETWEEN:

Shri Senu Budha Badhe] Deceased

Shri Madhusudan Senu Badhe] Plaintiff

Vs.

Vimal Gangadhar Badhe & Ors.] Defendants

.....

Mr. S.S. Jinsiwale, for plaintiff.

Ms. Pooja P. Joshi, for defendants No.1 and 4.

Ms. S.J. Kalwar, for defendant No.3.

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CORAM : R.G. KETKAR, J.

DATE : 22nd SEPTEMBER, 2017.

P.C:

Heard Mr. Jinsiwale, learned Counsel for the plaintiff,
Ms. Joshi, learned Counsel for defendants No.1 and 4 and Ms.
Kalwar, learned Counsel for defendant No.3.

2. This Chamber Summons is taken out for adding
applicant Jagdish Senu Badhe as plaintiff No.2 in Testamentary
Suit No. 81 of 2000.

3. In support of this Chamber Summons, Mr. Jinsiwale submitted that plaintiff Madhusudan Senu Badhe is aged about 88 years and is suffering from Parkinson. He is not in a position to give further evidence in the matter. He submitted that he had already filed affidavit of evidence in the year 2011. As applicant is the brother of the plaintiff and plaintiff is not in a position to lead evidence, he may be added as plaintiff No.2. He submitted that the plaintiff has filed Petition for Letters of Administration with Will annexed. As applicant is beneficiary and legatee under the Will, he may be impleaded as plaintiff No.2.

4. On the other hand, Ms. Joshi submitted that by order dated 4th May, 2017, evidence of plaintiff was closed after recording that evidence of the plaintiff's attesting witness on 31st March, 2017 was over. She submitted that applicant has not substantiated contentions raised in paragraph 2 of the affidavit by producing any certificate issued by medical practitioner.

5. As noted earlier, plaintiff has filed Petition for grant of letters of Administration with Will annexed. Order dated 4th May, 2017 records that evidence of the plaintiffs' attesting witness is over. Said order also directs defendants No.1 and 4 to file evidence of their witness by 17th June, 2017.

6. In view of the order dated 4th May, 2017, closing of evidence of plaintiff, I do not find that any case is made out for granting any relief in the Chamber Summons.

7. Ms. Joshi assures that within two weeks from today, she will file affidavit of the first witness and serve copy in advance on the other side. Chamber Summons is disposed of.

8. In view thereof, list the matter after 2 weeks.

[R.G. KETKAR, J.]