

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.1127 OF 2015
IN
SUIT NO.1040 OF 1984**

Thomas John Gomes & Ors.	...Applicants (Org.Defendants)
In the matter of Deena Baldota	...Plaintiff
Versus	
Thomas John Gomes & Ors.	...Defendants

Mr.Saeed Akhtar with Mr.Hitesh Anil Thorat, Mr.Rehan Ansari,
Ms.Pinny Pathak and Ms.Pradnya Meshram, Advocates for
Applicants/org. Defendants.

Mr.Atul Daga with Mr.F.A. Wasif i/b. Mr.N.R. Bubna, Advocates for
Plaintiff.

**CORAM : K. K. TATED, J.
DATE : SEPTEMBER 18, 2017**

P.C.:

1. Heard learned Counsel for the parties.
2. This Chamber Summons is preferred by the original defendants for declaration that the suit stands abated on the demise of original plaintiff Ratanchand Hirachand Baldota on 12th March 1997.
3. Learned Counsel Mr.Saeed Akhtar for the applicant/org. defendants submits that original plaintiff in the present proceeding has been expired on 12th March 1997. Thereafter the legal heirs of original plaintiff preferred Chamber Summons No.620 of 2004 for setting aside abatement, condonation of delay and allowing applicants in that Chamber Summons to be treated as plaintiffs. The

Chamber Summons No.620 of 2004 was allowed by this Court by order dated 28th February 2005 which reads thus:-

“The present chamber summons has been taken out for bringing the legal heirs of the defendant no.1 on record. There is a delay in taking out the present chamber summons. The objection raised by respondent nos.3a to 9 is that there is gross delay of a period of six years and in view thereof, the chamber summons should not be granted. In my view, in the interest of justice the present chamber summons is required to be granted. The abatement is set aside. Delay condoned. The chamber summons is made absolute in terms of prayer clauses (a), (a-1), (b) and (d). The applicant is directed to pay costs of the chamber summons to the respondent nos.3a to 9 quantified at Rs.3,500/-.”

4. Learned Counsel appearing on behalf of the defendants submits that during the course of evidence, they learnt that one Lalita Ratanchand Baldota and Chandrakant Ratanchand Baldota, the legal heirs of original plaintiff, filed Miscellaneous Petition No.111 of 2015 in Testamentary Petition No.625 of 2000 for revocation and annulment of the Probate granted by this Court on 11th May 2001 in favour of respondent nos.1, 2 and 3 in that Miscellaneous Petition i.e. (1) Mrs.Gulabai Ratanchand Baldota (since deceased), (2) Pramod Ratanchand Baldota and (3) Subash Ratanchand Baldota.

5. Learned Counsel appearing on behalf of the defendants submits that that in that proceeding, they filed Consent Terms between petitioner Nos.1 & 2 and respondent No.2 dated 2nd September 2016. He submits that as per Consent Terms, Miscellaneous Petition No.111

of 2015 was decreed. Clause (2) of the said Consent Terms states that the execution of the said decree not to take place at least for 6 months. He further submits that as per clause (5) of the said Consent Terms, respondent No.2 in Miscellaneous Petition i.e. Pramod was supposed to pay Rs.8 Crores to the petitioners Lalita Baldota and Chandrakant Baldota. He submits that whether the said amount was paid or not is not on record in the present proceeding. He submits that if revocation order comes into force, then the plaintiff in the present matter has no right to join herself as a legal heir of the deceased (original plaintiff). He relies on the clauses (2) and (6) of the Consent Terms filed in Miscellaneous Petition No.111 of 2015. On the basis of his submission, the learned Counsel Mr.Saeed Akhtar appearing on behalf of org. defendants submits that chamber summons preferred by him be made absolute in terms of prayer clauses (a) and (b). He submits that this Court be pleased to declare that the suit stands abated on the death of original plaintiff Ratanchand Hirachand Baldota.

6. On the other hand, learned Counsel Mr.Daga appearing on behalf of the plaintiff vehemently opposed the present Chamber Summons. They filed their reply dated 14th August 2017. He submits that in the present proceeding, the plaintiff preferred Chamber Summons No.620 of 2004 for bringing herself on record as a plaintiff in place of deceased (original plaintiff). He further submits that the said Chamber Summons was allowed by this Court after hearing both the sides. He submits that by order dated 28th February 2005 in Chamber Summons No.620 of 2004, this Court set aside the abatement and delay was condoned on bringing the legal heirs of the sole plaintiff on record. He submits that the said order was neither challenged by the defendants in appeal nor they filed any review

petition. Therefore, there is no question of entertaining the present Chamber Summons which is for dismissing the suit as abated.

7. Heard both the sides at length.

8. It is to be noted that by this Chamber Summons, applicants/org. defendants are seeking an order of abatement of suit on the death of sole plaintiff Ratanchand Hirachand Baldota on 12th March 1997. It is to be noted that this Court by order dated 28th February 2005 in Chamber Summons No.620 of 2004, set aside the abatement and allowed the legal heirs to amend the plaint, by joining them as plaintiffs. The said order was neither challenged by the applicants/defendants, nor they filed any review petition. The said order is final as on today and pursuant to the said order, the legal heirs of the deceased plaintiff were brought on record. Therefore, prayer clause (a) made by the applicants in present Chamber Summons cannot be considered at all.

9. Other objection raised by the learned Counsel for the applicants is that if revocation of petition of a Will dated 23rd September 1996 comes into force, then plaintiffs have no right to go on with the present suit as a legal heirs of the deceased original plaintiff. It is to be noted that the applicants have not placed on record whether there is any violation of Consent Terms dated 2nd September 2016 between the parties in Miscellaneous Petition No.111 of 2015. In any case, prayer made by the applicants/org. defendants in present Chamber Summons itself is not maintainable. Hence, Chamber Summons stands rejected. No order as to costs.

(K.K.TATED, J.)