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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY & INTESTATE JURISDICTION

CHAMBER SUMMONS NO.126 OF 2016
IN
TESTAMENTARY SUIT NO.183 OF 2015
IN
TESTAMENTARY PETITION NO.156 OF 2015

Dhirubhai @ Dhrajlal Desai & Ors. ...Applicants

IN THE MATTER BETWEEN :

Dhirubhai @ Dhrajlal Desai & Ors. ...Plaintiffs

V/s.

Meenaben B. Desai & Anr. ...Defendants

Mr.Snehal Shah with Mr.Ieshan Shah i/b Wadia Ghandy & Co. for
the Applicants / Plaintiffs.

Mr.Anirudh Hariani with Mr.Rishikesh Bidkar and Mr.Satchit Bhogle
i/b Hariani & Co. for the Defendants.

CORAM : R.D. DHANUKA, J.

DATE : 21ST JUNE, 2017.

P.C. :-

1. By this chamber summons, the applicants seek amendment to the Schedule-I, Exhibit-C to the testamentary petition as per schedule appended to the chamber summons. Mr.Shah, learned counsel appearing for the applicants invited my attention to the schedule appended to the chamber summons and also the averments made in support of the chamber summons. He also invited

my attention to the order dated 20th March, 2017 passed by Shri Justice K.R. Shriram in Chamber Summons No.1729 of 2016 in Suit No.624 of 2016. He submits that in the said Administrative Suit No.624 of 2016 in respect of same estate of the deceased, this Court has already permitted the amendment to the plaint as per schedule annexed thereto in the said chamber summons. He submits that similar amendment is being sought by the applicants in this testamentary suit. It is submitted by the learned counsel that certain properties which are sought to be included in the Schedule-I annexed to the testamentary suit have inadvertently remained to be impleaded and thus the applicants seek amendment to the schedule so as to bring the remaining properties forming part of the estate on record.

2. Learned counsel appearing for the defendants on the other hand seeks time to file affidavit in reply and submits that most of the properties sought to be impleaded in Chamber Summons No.1729 of 2016 in Suit No.624 of 2016 are different properties sought to be impleaded in the chamber summons.

3. Mr.Shah, learned counsel for the applicants in rejoinder submits that the defendants were served the copy of the chamber summons on 1st October, 2016. Insofar as the submission of the learned counsel for the defendants that the properties sought to be included in the schedule in both the matters are different is

concerned, he submits that after the amendment to the suit in this matter, the properties which are described in the schedule in both the proceedings shall be the same. The statement is accepted.

4. In view of the fact that the defendants were served with the papers and proceedings of this chamber summons on 1st October, 2016, I am not inclined to grant any adjournment to file affidavit in reply at this stage. A perusal of the chamber summons with the schedule appended to the chamber summons clearly indicates that the applicants seek to amend schedule by including some of the properties of some of the assets of the estate of the deceased which are left out according to the applicants inadvertently.

5. I therefore, pass the following order :-

a). The chamber summons is made absolute in terms of prayer clauses (a) and (b).

b). The amendment to be carried out within two weeks from today. The amended copy of the plaint shall be served upon the learned advocate representing the defendants within one week from the date of carrying out amendment.

c). No order as to costs.

(R.D. DHANUKA, J.)