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

NOTICE OF MOTION NO.210 OF 2016
IN
TESTAMENTARY SUIT NO.40 OF 2009
IN
TESTAMENTARY PETITION NO.48 OF 2009

Amarlal B. Gaba	...Plaintiff
V/s.	
Chander V. Dudani	...Defendant

WITH
CHAMBER SUMMONS NO.2 OF 2017
IN
TESTAMENTARY SUIT NO.40 OF 2009
IN
TESTAMENTARY PETITION NO.48 OF 2009

Amarlal B. Gaba	...Plaintiff
V/s.	
Chander V. Dudani	...Defendant
And	
Chanda C. Dudani & Anr.	...Proposed Defendants

Mr.Ramesh Ramamurthy for the Applicant in NMT No.210 of 2016.

Ms.Ratna Bhargavan i/b R. Bhargavan & Associates for the Defendant and Applicant (Proposed Defendants) in CST 2 of 2017.

CORAM : R.D. DHANUKA, J.
DATE : 21ST JUNE, 2017.

P.C. :-

1. The Notice of Motion no.210 of 2016 is filed by the applicant (original petitioner) *inter-alia* praying for allowing the suit on

the ground that the person who was the only caveator has already expired and thus cause of action does not survive. Chamber Summons No.2 of 2017 is filed by the applicants (proposed defendants) *inter-alia* praying for amendment of the testamentary petition as per schedule annexed to the chamber summons and to implead them as legal heirs of the deceased and to take on record.

2. Mr.Ramamurthy, learned counsel for the applicant in Notice of Motion No.210 of 2016 submits that Chander Dudani, who was brother of the deceased Ms.Indira Dudani, who had filed the caveat himself had no caveatable interest and thus upon his demise, the so called caveator's interest came to an end and there being no other caveator, the Testamentary Suit No.40 of 1998 be decreed as prayed as uncontested matter.

3. Insofar as the Chamber Summons No.2 of 2017 is concerned, it is submitted by the learned counsel for the original plaintiff and the applicant in Notice of Motion No.210 of 2016 that since the original caveator himself had no caveatable interest, the petitioner in chamber summons cannot be impleaded as legal heirs of the deceased caveator in place of the original caveator on record.

4. Learned counsel for the applicant in the chamber summons invited my attention to the order dated 29th September, 2009 passed by this Court in Notice of Motion No.88 of 2009, which

was filed by the original petitioner *inter-alia* praying for dismissal of the caveat filed by the original caveator, who is now expired. He submits that the notice of motion filed by the original petitioner came to be dismissed by the said order dated 29th September, 2009. She submits that since the original petitioner had caveatable interest upon his demise, her clients also being the legal heirs of the original caveator, who have caveatable interest are thus required to be impleaded as party defendants to the said testamentary suit in place of the original caveator.

5. A perusal of the order dated 29th September, 2009 passed in the Notice of Motion No.88 of 2009 clearly indicates that it is an admitted position that the original caveator was the brother of the deceased. This Court after adverting to the judgment of the Supreme Court in case of **G.Gopal vs. C. Baskar & Ors. (2008) 10 SCC 489,** in which it was held that even a slightest caveatable interest is sufficient to consider the objection in accordance with law, dismissed the said Notice of Motion No.88 of 2009 filed by the original petitioner *inter-alia* praying for dismissal of the caveat. It is held by this Court that as there is interest of the caveator and in view of the averments made, it was sufficient to recognize his interest keeping all the points open. The said order passed by this Court on 29th September, 2009 has not been impugned by the original petitioner.

6. Insofar as the submissions of the applicant in chamber summons are concerned, they are the widow of the original caveator and daughter of the deceased caveator respectively. In my view, they will have to be thus impleaded as party defendants in place of the original caveator (defendant) being necessary parties.

7. The question whether the legal heirs which are sought to be impleaded as party defendants are having any caveatable interest after the demise of the original caveator or not, will be finally decided by this Court in Testamentary Suit No.40 of 2009.

8. In my view there is no merits in the notice of motion filed by the applicant and the same is accordingly dismissed.

9. Chamber Summons No.2 of 2017 is allowed in terms of prayer clause (a). The amendment to be carried out within two weeks from today.

10. Learned counsel appearing for the applicant in Chamber Summons No.2 of 2017 waives service of citation. The applicant is however, permitted to file an additional affidavit within two weeks from today and a copy thereof shall be served upon the plaintiff's advocate simultaneously.

11. Learned counsel appearing for the applicants states that the original defendant had already led documentary as well as oral evidence. The applicants would rely upon the evidence already led

by the original defendant and her clients do not propose to give any further additional oral evidence. The statement is accepted.

12. Since some of the parties are senior citizens, hearing of the suit is expedited. Place the matter on board in the list of "Expedited suits for hearing and final disposal".

(R.D. DHANUKA, J.)