

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

**CHAMBER SUMMONS NO.147 OF 2016
IN
TESTAMENTARY SUIT NO.75 OF 2014
IN
TESTAMENTARY PETITION NO.109 OF 2012**

Harish Brijmohan Loyalka & Anr.Applicants

IN THE MATTER BETWEEN :

Harish Brijmohan Loyalka & Anr.Plaintiffs/petitioners

V/s.

Shri Dileep NevatiaDefendant

Ms.Deepti Panda a/w Mr.Abhineet Pange i/by Pardiwala & Co. for the plaintiffs/applicants.

Mr.Dileep Balkrishna Nevatia-defendant in person.

Ms.Kavita Ambekar-2nd Assistant to the Court Receiver present in court.

CORAM : K.R.SHRIRAM,J

DATE : 11.1.2017

P.C.:-

1 This chamber summons is taken out for leave to amend Exhibit-C, Schedule-1 to the petition. The counsel for the applicants states that the schedule has to be amended in view of the inventory taken of the locker which was opened pursuant to orders passed by this court. Admittedly, items which were found in the locker have also been valued following orders passed by this court. The defendant in person states that many of the items which were found in the locker were his/his wife's personal properties and cannot form

part of the estate. At the same time, it is also admitted in the affidavit in reply that when this point was raised by the defendant when the defendant moved a Notice of Motion bearing (L) No.103 of 2015 in Testamentary petition No.75 of 2014, this court held that the claim to title to those specific movable items cannot be possibly decided in a Notice of Motion in a contested Probate petition and there was insufficient material at this stage to arrive at a determinative finding of ownership and it will be open for the defendant to adopt such proceeding as he may think fit to establish his or his wife's ownership of those items. It is also stated in the affidavit in reply that the court permitted the defendant to withdraw the said Notice of Motion with liberty to take appropriate proceedings, keeping all contentions specifically open. The defendant states that he is in the process of filing a suit and the same will be filed very soon.

2 The opposition to this chamber summons is only on the footing that the many of the movables actually belonged to the defendant and his wife and cannot form part of the estate. It has been held earlier that cannot be decided at this stage and court does not go into the merits of the proposed amendment.

3 In view of the above, chamber summons is allowed in terms of prayer clause-(a) and accordingly disposed.

4 Ms.Panda appearing for the plaintiffs states that Court Receiver was appointed only for the purpose of opening of locker and making an inventory and the Court Receiver be discharged. Whereas the defendant has no objection. The Court Receiver is discharged without passing of account. The undertaking of the plaintiffs to pay all costs and charges of the Court Receiver within two weeks of receiving intimation from the court receiver accepted.

(K.R.SHRIRAM,J)