

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

CHAMBER SUMMONS NO.26 OF 2017

IN

SUIT NO.4155 OF 2001

Arun Omprakash Sirodhiwala @ Kanodia and Ors.Applicants/Plaintiffs

Vs.

Niranjanlal G. Kanodia and Ors.

....Defendants

And

Ms. Madhu Sunder Poddar & Anr.

....Respondents

Mr. Kamaljit Singh for applicants/plaintiffs.

Mr. Manoj Agre i/b. Mr. Girish B. Kedia for defendant no.2.

CORAM : K.R.SHRIRAM, J.

DATE : 13th APRIL, 2017

P.C.:

1 Mr. Singh, counsel appearing for applicants/plaintiffs states that all the defendants have been served copy of the chamber summons with affidavit in support. Mr. Singh further states that the respondents refused to accept service and undertakes to file affidavit of service within one week from today.

2 Counsel appearing for defendant no.2 states that he has no objection to the proposed amendment except for the first paragraph of paragraph 4A that is proposed to be introduced.

3 I have considered the portion to which counsel for defendant no.2 states he has objection. In my view, the said paragraph does not

change the nature and character of the suit. The suit property has to be split into two, half of which will go to the original defendant no.4 and other half will go to the other family members. In the proposed amendment, paragraph 4A only states that half portion should be distributed amongst the legal heirs of defendant no.4, viz., three respondents. Therefore, I cannot accept the objection raised by counsel for defendant no.2. Moreover, this is a pre-trial amendment application.

4 In the circumstances, the chamber summons is allowed and accordingly disposed in terms of prayer clauses – (a) and (b).

5 If there are any legal heirs other than the three respondents, the three respondents shall disclose the same to the plaintiffs' advocate within four weeks from today.

6 Mr. Singh, counsel for plaintiffs states that after the above chamber summons was taken out, defendant no.1 also expired on 8th January, 2017. Mr. Singh further states that the advocate for defendant no.2 has provided the details of the legal heirs and he has mentioned there are seven legal heirs. Mr. Singh tenders draft amendment to introduce only six legal heirs and consequential amendment. Mr. Singh points out that the 7th legal heir is already a party to the suit as defendant no.2.

7 The draft amendment is taken on record and marked 'X' for identification. Leave to amend is granted.

8 Amendment to be carried out and copy of the amended plaint to be served within four weeks from today. Should the defendants including the newly added defendants wish to file any written statement, the same to be filed and copy served within four weeks of receiving the copy of the amended plaint.

(K.R. SHRIRAM, J.)