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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 708 OF 2018
IN
SUIT NO. 825 OF 2015**

Milind Sumant Raut	...Applicant
<i>In the matter between</i>	
Mihir G Raut & Ors	...Plaintiffs
<i>Versus</i>	
Shalini S Raut & Ors	...Defendants

**WITH
NOTICE OF MOTION NO. 41 OF 2018
IN
SUIT NO. 825 OF 2015
WITH
NOTICE OF MOTION NO. 1775 OF 2016
IN
SUIT NO. 825 OF 2015
WITH
NOTICE OF MOTION NO. 708 OF 2017
IN
SUIT NO. 1295 OF 2017
WITH
NOTICE OF MOTION NO. 1775 OF 2016**

IN

SUIT NO. 825 OF 2015

Mr Yatin Malvankar, *for the Plaintiff.*

Ms Uma S, *i/b Dharam & Company, for Defendant No.1.*

Mr Ashok V Jain, *for Respondents Nos. 3, 4 & 5.*

Mr Vinay Bhate, *for Defendants Nos. 10 to 12, 14, 15 & 17 &
Applicant in Chamber Summons No. 708 of 2018.*

Mr YS Bhate, *for Defendant No.19 & Applicant in Notice of Motion
No. 41 of 2018.*

Mr Wasim Ansari, *for Defendant No.18.*

Mr Vasim Shaikh, *with Ms Laxmi Jassani, i/b Pravin Mehta &
Mithi, for Defendant No.22.*

CORAM: G.S. PATEL, J

DATED: 11th July 2018

PC:-

CHAMBER SUMMONS NO. 708 OF 2018

IN

SUIT NO. 825 OF 2015

1. Not on board. By consent, taken on board. The Chamber Summons is filed by original 11th Defendant seeking that the Plaintiff be directed to amend the Plaint to join as Defendants from Sr. No. 23 onwards, the 38 Respondents named in the cause title of the Chamber Summons.

2. The Suit itself proceeds on the basis that several properties, movable and immovable were coparcenary properties and that the Karta at the relevant time was one Rajaram Balkrishna Raut

(“**Rajaram**”). The partition is sought of these coparcenary properties.

3. The 19th Defendant has independently filed Notice of Motion No. 41 of 2018. This is pending. The 19th Defendant does not accept that any of these properties were coparcenary properties. It is submitted that these properties were the self-acquired properties of the deceased Rajaram since he was the only son of his father Balkrishna. Thus, according to 19th Defendant represented by Mr Bhate, the partition should be of the estate of Rajaram and should be governed by the statutory provisions of the Succession Acts i.e. Indian Succession Act read with the Hindu Succession Act. The order of priority of heirs would of course be governed by the provisions of the Hindu Succession Act in his submission.

4. Whatever be the contentions of Defendant No. 19, and although in a Suit like this it is correctly said that each party is a plaintiff and each party is a defendant, one must have regard to the manner in which the Suit is laid. Here, the stand taken by the 19th Defendant is totally immaterial. The Plaintiff has come to Court specifically with the case that what is sought is a partition of coparcenary property. It is pointed out that in a previous Suit No. 143 of 2010, these very Plaintiffs filed Chamber Summons No. 2123 of 2011 seeking impleadment as Party-Defendants. By a detailed order and judgment dated 14th December 2012 that Chamber Summons was dismissed and the present Plaintiffs were held not to be entitled to be joined as Party-Defendants to that Suit. It was held that they would require to join other coparceners who are also the

children of other parties to that Suit and that the present Plaintiffs would have to value their share in the premises as coparceners.

5. The stand of 19th Defendant cannot improve or alter the case of the Plaintiffs. If the Plaintiffs have sought partition of any properties on the basis of a coparcenary, and this cannot be disputed, and in fairness is not disputed by the learned Advocate for the Plaintiffs, then the present Chamber Summons is one that must be allowed even if this involves some annoyance or inconvenience to the 19th Defendant and delays her Notice of Motion.

6. Accordingly, the present Chamber Summons is made absolute in terms of prayer clauses (a) and (b).

7. The Plaintiffs will carry out the necessary amendments and will join the Respondents Nos. 1 to 38 as party-Defendants after Sr. No. 22 i.e. from Sr. No. 23 onwards. Reverification is dispensed with.

8. For the present, the Advocates for the Plaintiffs will effect service of the Writ of Summons and other proceedings on the learned Advocates for the Applicant in Chamber Summons No. 708 of 2018 and he will take instructions as to which of the newly added Defendants he is authorised to represent and which he is not. He will communicate to the Advocates for the Plaintiffs within one week of service which of the Defendants he is not representing and the Advocates for the Plaintiffs will then have to serve those Defendants directly.

9. The Chamber Summons is disposed of accordingly.

NOTICE OF MOTION NO. 41 OF 2018:

10. The Notice of Motion filed by 19th Defendant being Notice of Motion No. 41 of 2018 will now also need to be amended. Mr Bhate will make the necessary amendments without need of reverification joining the newly added Defendants to the Notice of Motion. These will also be served.

11. Liberty to all Defendants to Notice of Motion No. 41 of 2018 to file their Affidavits or further Affidavits.

12. All pending Notice of Motions will have to be amended accordingly. Similar directions will be issued in Notice of Motion Nos. 1775 of 2016, 708 of 2017 and 1295 of 2017. All amendments to be carried out within two weeks from today. In all Notice of Motions, Reply and Rejoinder to be filed in the Registry.

13. Liberty to apply.

(G. S. PATEL, J)