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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 1865 OF 1980**

Bro Philip Pinto & Ors ...Plaintiffs
Versus
Nilkanth Shrikhande & Ors ...Defendants

**WITH
NOTICE OF MOTION NO. 931 OF 2014
IN
SUIT NO. 1865 OF 1980
WITH
NOTICE OF MOTION NO. 134 OF 2017
IN
SUIT NO. 1865 OF 1980
WITH
NOTICE OF MOTION NO. 931 OF 2014
IN
SUIT NO. 1865 OF 1980
WITH
CHAMBER SUMMONS NO. 86 OF 2016
IN
TESTAMENTARY SUIT NO. 5 OF 2004
WITH
CHAMBER SUMMONS NO. 6 OF 2017**

IN
TESTAMENTARY SUIT NO. 5 OF 2004
WITH
NOTICE OF MOTION NO. 134 OF 2017
IN
SUIT NO. 1865 OF 1980

Mr Karl Tamboly, *with Mrs Nandini Joshi, i/b Harish Joshi & Company, for the Plaintiff in Testamentary Suit No. 5 of 2004 and Defendants Nos. 1A & 2 in Suit No. 1865 of 1980.*

Mr Zal Andhyarujina, *with Kunal Dworkadas, Vidya Chaudhari, i/b Chambers of Javed Gaya, for the Plaintiffs in Suit No. 1865 of 1980 and for the Defendants in Testamentary Suit No. 5 of 2004.*

Mr VA Almeida, *i/b Sanjay Bhatia, for the Applicant in Chamber Summons No. 86 of 2016.*

Mr Nimay Dave, *with Ms Dipti Das & Mr D Prasad, i/b Divya Shah Associates, for Applicant in Chamber Summons No. 6 of 2017.*

CORAM: G.S. PATEL, J

DATED: 18th July 2018

PC:-

1. There is a complicated family tree of the deceased Cosmos Damian T Pinto (“**Pinto**”). It is taken on record and marked ‘F’ for identification with today’s date.

2. Pinto was twice married. By the first wife Mary he had two sons, Francis and Anthony. By his second wife Hilda, he had three sons and three daughters.

3. Chamber Summons No. 86 of 2016 is filed by Mary's grandchildren. These are the children of her son Francis and his wife Laura. Francis died in 1986 before the Testamentary Petition was filed. Laura herself was mentioned as an heir in the Testamentary Petition. Her three children, the present Applicants, Ruth, Jennifer and David were not. This is a material defect in the Petition, because clearly Laura and her three children, the present Applicants, each had a caveatable interest in Pinto's estate. As on the date of the Petition, Mary and Francis were both dead. Therefore Laura and her three children were entitled to be cited and served.

4. Consequently the Chamber Summons No. 86 of 2016 is made absolute in terms of prayer clause (a). The three applicants will be joined as party defendants to the suit. Amendment to be carried out within one week without need of reverification. The amendment is permitted in black ink, since all other colours are apparently exhausted.

5. A further direction is necessary in regard to the filing of the Caveat. Mr Almeida on behalf of the Applicants waives service of the citation. He states that three Caveats and three Affidavits in Support, one for each applicant either by themselves or by their duly Constituted Attorneys, will be filed and served on or before 13th August 2018. There will be no extension under any circumstances. If the Caveats and Affidavits are not filed by that date, these three Applicants will stand deleted as party Defendants to the suit.

6. Chamber Summons No. 6 of 2017 is filed by Agnes D'Lima. She is one of Pinto's daughters by his second wife, Hilda. She was named in the Testamentary Petition. The controversy is whether she was properly served with a citation. The Affidavit in Support of the Chamber Summons says that service was purportedly effected on her by courier and that this is supposed to have been left with some person named Manoj Kumar at her residence. Mr Dave for Agnes says that there are several discrepancies about the service that remained unexplained; principal among these are that Agnes had no person named Manoj Kumar in her household.

7. Before one even gets to the question of whether that service was properly done or not, a preliminary question is how such service could have been effected directly by courier in the first place. The record does not seem to reflect any attempt being made to serve Agnes through the Bailiff's office in the manner required by law for service of Writ of Summonses, Caveats, etc. The document at page 11 is an Evidence Affidavit of a clerk in the Testamentary Department. It says that packets were sent by registered post only to parties outside Mumbai; the others were served through courier. This is most irregular — not that it cannot be done, just that it requires leave or permission. If the Plaintiffs wants to contest this, at the very least the Plaintiffs will have to lead the necessary evidence to demonstrate that not only was Agnes properly served but that service on her by courier was authorised by the Court. At present there is nothing to show this.

8. Taking evidence on the question of service will require much time. That apart, the entire Petition will remain in an inconclusive

state. No grant can properly ever be issued unless the record shows proper service. A grant of Letters of Administration with Will annexed is necessarily an order *in rem*, and, for that reason, there cannot be a slightest irregularity in these matters.

9. Consequently, the present Chamber Summons No. 6 of 2017 will also be made absolute in terms of prayer clause (a). Agnes D'Lima will be joined as a party defendant to the suit. Amendment to be carried out within one week without need of reverification. The amendment is permitted in black ink.

10. Mr Dave has instructions to state that his attorneys also waive fresh service of the service of the citation. The Applicant, Agnes D'lima, will, on or before 13th August 2018, file her Caveat and Affidavit in Support, with no possibility of an extension of time, failing which she will stand deleted as a party defendant to the Suit.

11. Apart from these two Chamber Summons there now remains open the question of establishing service on all heirs of the deceased in the circumstances mentioned earlier. Mr Tamboly will take the necessary instructions. I will list the matter on 7th August 2018, by which time he will indicate whether he needs a separate order for service or will attempt service afresh on any of the heirs. Leave to the Plaintiffs' attorneys to take inspection of the Court records and copies where necessary.

(G. S. PATEL, J)