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

CHAMBER SUMMONS NO.1525 OF 2016
IN
SUIT NO.1301 OF 2011

WITH
SUIT NO.1301 OF 2011

Ramesh H. Rachh

...Applicant

IN THE MATTER BETWEEN :

Mrs.Damayantiben D. Aiya & Ors.
V/s.

...Plaintiffs

Jayant A. Rachh & Ors.

...Defendants

Mr.A.J. Rizvi I/b Mr.M.B. Joshi for the Applicant in the Chamber Summons.

Mr.Rajesh Patil I/b Ms.Leena Patil for the Original Plaintiffs.

Mr.Ram Upadhyay with Mr.U. Singh I/b Law Complete for the Defendant No.7.

Ms.Karishma Shirke I/b Gordhandas & Fozdar for the Respondent No.7(a).

Mr.Bipin Joshi for the Defendant Nos.4 to 7.

CORAM : R.D. DHANUKA, J.
DATE : 7TH DECEMBER, 2018.

P.C. :-

1. By this chamber summons, the applicant seeks impladment as a party defendant in this suit filed for partition of the

property left behind by the deceased Arjun Velji Rachh and seeks distributionship of the properties amongst various parties to the suit.

2. Insofar as the applicant is concerned, the applicant is the son of Ramesh Hirji Rachh, grandson of Bhachibai Velji Rachh. Bhachibai Velji Rachh had three sons viz. Meghji, Hirji and Arjun Rachh. The present suit is in respect of the properties of Arjun Velji Rachh. It is the case of the applicant that upon the demise of Arjun Velji Rachh, his mother Bhachibai Velji Rachh also became entitled to a share in the property and upon demise of Bhachibai Velji Rachh, Arjun Velji Rachh, who was the father of the applicant will have share and through Arjun Velji Rachh, the applicant will have also share in the property which would have come to the share of Arjun Velji Rachh. He also independently claimed a share in the property of Arjun Velji Rachh in respect of which the suit for partition came to be filed.

3. None of the defendants dispute that the applicant is the son of Ramesh Hirji Rachh and that the said Bhachibai Velji Rachh was the mother of Arjun Velji Rachh.

4. The chamber summons is opposed by the contesting defendants on the ground that some of the parties had filed a Suit bearing No.807 of 1975 against various parties including against the father of the applicant for possession and damages. In the said suit,

the learned Trial Court passed an order and decree against the defendant nos.5 to 8 to deliver vacant possession of the suit site to the plaintiffs. The father of the applicant was impleaded as the defendant no.8 in the said suit.

5. A perusal of the said judgment indicates that the learned Trial Court in the said suit has rendered a finding that the plaintiffs had proved that they along with seven others were the exclusive and absolute owners of the suit land along with the legal heirs of Bhachibai Velji Rachh. In my *prima-facie* view, the said judgment also would assist the case of the applicant who claims through his father Ramesh Hirji Rachh, who was admittedly the grandson of Bhachibai Velji Rachh.

6. Learned counsel appearing for the contesting parties placed reliance on the judgment of this Court in case of **Dhondi Mahipaty vs. Radhabai Shabaji, 1991(14) Bom.L.R. 569** in support of the submission that even if the said Bhachibai Belji Rachh would have some share in the property upon the demise of her son Arjun Velji Rachh, the said share of the deceased grandmother would be limited to that share and not exclusive share. There is no dispute about the proposition of law laid down in the said judgment. However, at this stage, the Court is not deciding whether the applicant has any share in the suit property or not and the same would be considered

at the stage of hearing and final disposal of the suit. In my view, the said judgment would not assist the case of one of the defendant who seeks the reliefs on this judgment.

7. Since the applicant claims through Ramesh Hirji Rachh, who was the grandson of Bhachibai Velji Rachh, in my view the applicant is one of the necessary party to the suit for partition.

8. I therefore, pass the following order :-

a). The chamber summons is made absolute in terms of prayer clause (a) and (b). It is made clear that this Court has not expressed any views whether the applicant will have any share in the suit property or not. All the issues about title of the property are kept open. The amendment to be carried out within two weeks from today. The amended copy of the plaint shall be served upon all the defendants within two weeks from the date of carrying out the amendment.

b). There shall be no order as to costs.

c). Since some of the parties are senior citizens, hearing of the suit is expedited. The applicant is permitted to file the written statement within four weeks from the date of service of the amended copy of the plaint. A copy of the written statement shall be served upon the plaintiffs' advocate simultaneously. The parties are directed to exchange the draft issues within two weeks from the date of

service of additional written statement.

d). The plaintiffs are directed to serve the papers and proceedings in the suit along with copies of the written statement filed by all the defendants so far to the applicant's advocate within two weeks from today.

e). Place the suit for framing issues on 31st January, 2019.

(R.D. DHANUKA, J.)