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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 935 OF 2017

IN

EXECUTION APPLICATION NO. 1302 OF 2017

IN

SUIT NO. 111 OF 1992

Vishal Harish Chellaram ...Applicant
Versus
Lokumal Kishinchand Chellaram & Ors ...Defendants

WITH

CHAMBER SUMMONS NO. 936 OF 2017

IN

EXECUTION APPLICATION NO. 1303 OF 2017

IN

SUIT NO. 111 OF 1992

Ashwin Harish Chellaram ...Plaintiff
Versus
Lokumal Kishinchand Chellaram & Ors ...Defendants

AND

TESTAMENATARY & INTESTATE JURISDICTION

TESTAMENATARY PETITION NO. 408 OF 2016

Sivaramakrishnan Subramohian ...Petitioner
And
Lachmibai Sewakram Chellaram Alias Laxmi S Chellaram ...Deceased

Mr Ajit Anekar, *with Thomas James, i/b Auris Legal, for the Applicant in CHS/936/2017 & CHS/935/2017*
Mr Firoz Bharucha, *with Namrata Vora, i/b Mulla & Mulla & Craigie Blunt & Caroe, for Defendants Nos. 11A to 11D & 11F to 11K in both the Chamber Summons.*
Mr Jehangir Jeejeebhoy, *i/b Jatin Sheth, for Defendant No. 13 in both the Chamber Summons.*
Mr H.S.R. Vakil, *i/b Mulla & Mulla & Craigie Blunt & Caroe, for Defendant No.12.*

CORAM: G.S. PATEL, J
DATED: 4th September 2018

PC:-

1. The Applicants have unequivocally accepted in the past, whether Mr Anekar has instructions to that effect or not, that their grandmother Lachmibai Shewakram Chellaram (**"Lachmibai"**), under an agreement of 21st January 1983, acquired no more than a one-third, or more precisely 34.64% share, right, title and interest in certain firms, assets and properties covered by that agreement. It is also now a matter of record that since January 2018 and even earlier, the Applicants have never once contested this. This statement appears in paragraph 3 of my Order dated 18th January 2018, never challenged or sought to be corrected or varied. If there was the slightest ambiguity about that, it is put to rest by what is said in paragraph 2 on page 3 of my Order dated 13th February 2018.

2. This is something that the Applicants have accepted all along. It is not open for them to now argue that because there were two groups involved, Lachmibai would have acquired a 50% interest for her branch in those assets, or even that the aggregate of the division was, notwithstanding what the 1983 agreement explicitly states at page 56, a 50% share, right, title and interest. Pointing to page 57, which mentions groups, and saying that the previous page 56, which sets out the three-way division, is only a recital is meaningless because page 57 is also a recital. The whole of the agreement, correctly read, makes it abundantly clear that the separation of properties was in accordance with the shares held and is shown at page 56.

3. Nothing in the 1983 agreement indicates that these assets were to be shared or divided or distributed in any other percentage or proportion. This is in fact nobody's case and never has been. It has never been pointed out that there is any dispute about Lachmibai's share. All that the Applicants have said in execution is that they are unaware of the exact details of the assets that came to Lachmibai's share and her liabilities and, therefore, the exact amount of the estate that they stand to receive.

4. Previous orders have made it clear that Lachmibai had two sons. One was the Applicants' paternal uncle, their father's brother. He died unmarried. The other son was the Applicants' father. Thus, the Applicants' collective share together cannot exceed Lachmibai's one-third share under the 1983 agreement. This was something that the Applicants themselves accepted in their Consent Terms on 4th July 2005, at page 27, when they re-affirmed and accepted the writing of 21st January 1983. They withdrew their challenge to that writing and in clause 3 they said that they were entitled to a one-third share in the assets of one branch (the Sewakram branch) through their late father. They also accepted that a one-third share in the properties and assets under the 1983 agreement came to Lachmibai.

5. It is sought to be argued today that while within the Sewakram branch, Lachmibai had a one-third share, despite the specific recitals and the frame of that writing of 21st January 1983, Lachmibai, representing the Sewakram branch, had a more than one-third share in the assets and properties covered by that writing. That she was representing the Sewakram branch is clear from the writing dated 21st January 1983.

6. Thus, until today, the Applicants accepted (i) that Lachmibai stood to receive a one-third share in the assets under the 1983 Agreement; (ii) that this one-third share was further split into three between herself and her two sons; and therefore (iii) that the Applicants, being the two sons of one of Lachmibai's sons, cannot get more than one-third of the assets covered by the 1983 agreement. It is only today, and based not on any affidavit or pleading but merely a chart sought to be tendered, and which I have refused to accept, that Mr Anekar is instructed to argue that Lachmibai took a 50% share, or, at any rate, more than a one-third share in the assets covered by the 1983 agreement. Mr Anekar's arguments on instructions are contrary to not only the agreement but to the Consent Terms signed by the Applicants themselves.

7. I will not permit these Applicants to play ducks and drakes with the Court and constantly shift the goalposts. None of the opposing counsel have ever heard or understood the Applicants to take the position they do today. Neither have I. The Applicants are entitled to no more than Lachmibai's share at best. They can have no higher or greater right. They cannot seek to expand their share by claiming — and claiming only now — that Lachmibai herself had a much larger right than is stated in the agreement dated 21st January 1983. The Applicants are both bound by all acts and relinquishments of Lachmibai as also of their father, Harish. There is no question of them claiming any greater or larger right whatsoever. I refuse to show any indulgence to the parties to take such not only inconsistent but deliberately contrary stands.

8. Both the Chamber Summons are dismissed with costs.

9. Both the Execution Applications are also dismissed with costs.

10. The Applicants' written consent to the grant of Probate to Lachmibai's estate is also dispensed with.

11. On the last occasion, Mr Bharucha handed over two cheques in favour of the Applicants in the amount of Rs. 15,25,593/-. These were returned because there were some discrepancies as to the title of the account. Mr Bharucha's instructions are to state that with the simple endorsement of a stamp on the cheques these can be presented again and there are sufficient funds in the Lachmibai's estate account to clear both the cheques. However, having regard to what has transpired in Court today, and the dismissal of the two Chamber Summonses and the Execution Applications I will not direct Mr Bharucha to make any such endorsement. The cheques are not to be endorsed. The amounts are not required to be paid to the Applicants.

(G. S. PATEL, J)