

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

**CHAMBER SUMMONS NO.136 OF 2019
WITH**

**CHAMBER SUMMONS NO.145 OF 2018
NOTICE OF MOTION NO.578 OF 2018
NOTICE OF MOTION NO.583 OF 2018**

IN

SUIT NO.602 OF 2017

Raana (Rana) Haripada Roy)....Plaintiff (since deceased)

Ram Kumar Sen)....Applicant/Executor

V/s.

Shobha Mukherje & Ors.)....Defendants

Ms.Vijaya Ingule I/by Sean Wassoodew for plaintiff's wife and daughters.

Mr.Ubaid Ghawte I/by Zalak M.Parikh for the applicant in CHS 136/2019.

Mr.Bhavin Gada I/by Pratibha Mehta for defendant nos.1 & 2.

CORAM : K.R.SHRIRAM,J

DATE : 22.4.2019

P.C.:-

1. This Chamber summons has been taken out by the applicant to be substituted as plaintiff in place of the original plaintiff who died on or about 17.10.2018.

2. Defendant no.1 is the sister of the deceased plaintiff. The mother of plaintiff and defendant no.1 had gifted by a registered gift

deed an apartment at 96, Mount Unique, Dr.G.Deshmukh Marg, Mumbai-400 026 (the said flat) to defendant no.1. Plaintiff filed this suit to challenge the gift deed and the prayers sought are as under :-

“(a) This Hon'ble Court be pleased to hold and declare that the impugned Gift Deed dated 11th July 2014 (Exhibit A) is illegal, void and non-est in the eyes of law and deserves to be cancelled forthwith ;

(b) The Hon'ble Court be pleased to order and direct the Registrar of Assurances Mumbai to cancel the impugned Gift Deed dated 11th July 2014 bearing registration No.Mumbai-1/6120/2014 and amend the records accordingly ;

(c) This Hon'ble Court be pleased to declare that Plaintiff has one-half ($\frac{1}{2}$) ownership right, title, share and interest in the suit flat ;

(d) Pending the hearing and final disposal of the suit :-

(a) Defendant No.1 her agents, servants and representatives claiming through her, be restrained by an order of injunction of this Hon'ble Court from disturbing the Plaintiff's peaceful and settled possession and use of his two rooms in suit flat and that of the use of kitchen and other domestic appliances and facilities including the dining area, cooking gas, laundry, refrigerator etc. as have been available to the plaintiff ;

(b) Defendant No.1 and her agents, servants and representatives claiming through her, be restrained by an order of injunction of this Hon'ble Court from creating any third party rights in the suit flat by way of sale, Gift, mortgage or any other instrument.

3. Defendant no.2 is the aunt of defendant no.1 and of the deceased plaintiff and is currently residing in the said flat.

4. During the pendency of the suit, on 17.10.2018, plaintiff died. Notice was given to legal heirs of plaintiff who were Ms.Vandana Roy (estranged wife), Ms.Monali Roy and Ms.Rishita Roy (both daughters).

5. Mr.Sean Wassoodew counsel had appeared for the wife and the daughters and informed the Court that they were not interested in pursuing the suit. On 4.1.2019 Ms.Ingale appearing for the legal heirs of the deceased stated that there appears to have been a Will left behind by the deceased plaintiff and one Dr.R.K.Sen seems to be an executor of the Will of the deceased plaintiff. Therefore, notice was issued to Dr.R.K.Sen who was represented by an Advocate on 1.2.2019. Dr.R.K.Sen had also lodged this current Chamber summons to be added as plaintiff in place of deceased plaintiff.

6. To the Chamber summons, the wife and two daughters of the deceased plaintiff, viz. Ms.Vandana Roy, Ms.Monali Roy and Ms.Rishita Roy have filed a joint affidavit affirmed on 2.3.2019 in

which, paragraph-2 reads as under :-

“We say that the best of our knowledge, the deceased plaintiff did not have any right title or interest in the suit flat viz. Flat No.96, Mount Unique, Pedder Road, Mumbai. We say that accordingly, we have no right and are not claiming any right in respect of the suit flat. We say that we are therefore, not interested in pursuing the present suit on behalf of the estate of the deceased plaintiff either as his legal heirs or otherwise. We have therefore not taken out any application for substituting ourselves in place of the deceased plaintiff in the present suit, nor are we interested in doing so.”

7. Mr.Ghawte for the applicant relies on the photo copy of the Will annexed at Exh.E to the affidavit in support. Mr.Ghawte states that Dr.R.K.Sen has applied for grant of probate of this Will. Relying on this Will, Mr.Ghawte states that the executor-R.K.Sen should be made plaintiff in this suit. It is settled law that a Will has to be considered in its entirety. Assuming for the sake of argument, Dr.R.K.Sen succeeds in getting a probate issued for the Will of the deceased plaintiff purportedly made on 23.3.2016, still this suit will be infructuous. This suit, in my view, need not be carried forward and can be dismissed. The reason why I am saying is, in paragraph-7 of the purported Will, plaintiff deceased has bequeathed the said flat to his two daughters Ms.Rishita and Ms.Monali Roy. Paragraph-7 of the purported Will reads as under :-

“I give devise and bequeath my share, right, title and interest in flat No.96, situated at Mount Unique, Dr.G.Deshmukh Marg, Mumbai 400 026, mentioned in para 2(i) to my daughters Ms.Rishita and Ms.MONALI Roy, absolutely and equally”.

8. Therefore, even if the applicant as newly added plaintiff succeeds in the suit, still the said flat will go to his two daughters Ms.Monali Roy and Ms.Rishita Roy. Both these daughters in their affidavit-in-reply, have stated that the deceased plaintiff did not have any right, title or interest in the said flat and in any event, they are not claiming any right, title or interest in the said flat. Ms.Ingule reiterate that stand even today saying that two daughters are not interested in the said flat.

9. In the circumstances, allowing the Chamber summons and thereafter allowing the applicant to prosecute the suit, framing issues, going through full trial later, will be an exercise in futility. It would only amount to unnecessary waste of judicial time. The applicant has nothing to gain from prosecuting the suit and nothing to lose if suit is dismissed.

10. In the circumstances, Chamber summons stands dismissed with no order as to costs. The suit accordingly abates. It is clarified

that this Court has not made any observation on the genuineness of the Will or whether probate has to be granted.

11. Accordingly, all interim applications stand disposed. All interim orders stand vacated.

(K.R.SHRIRAM,J)