

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 372 OF 2018
IN
SUIT NO. 472 OF 2013

T.S.Ahluwalia

**..... Applicant/
Org.Plaintiff**

IN THE MATTER BETWEEN

T.S.Ahluwalia

..... Plaintiff

VERSUS

Kulwant Kaur Ahluwalia & Ors.

..... Defendants

Ms.Armin Wandrewala, a/w. Ms.S.Samant, i/b. S.K.Legal Associates
for the Plaintiff.

Mr.Deepak Chitnis, i/b. M/s.Deepak Chitnis-Chiparikar & Co. for the
Defendant no.3.

Mr.Cyrus Bharucha, i/b. Mr.Sameer Khedekar for the Defendant nos.
4, 6 and 7.

Mr.Arnab Ghosh, i/b. Mr.Manoj Khatri for the Defendant no.10.

CORAM : R.D. DHANUKA, J.

DATE : 22nd FEBRUARY, 2019

P.C.

By this chamber summons, the applicant seeks amendment to
the plaint in terms of the schedule appended to the chamber summons.
It is the case of the applicant that the amendment is required in view of
the death of the defendant no.1 who expired on 17th November,2017.

2. It is also the case of the applicant that the defendant no.1 expired intestate and thus the applicant becomes entitled to 1/3rd share in the estate of the deceased father of the applicant.

3. Chamber summons is opposed by Mr.Chitnis, learned counsel appearing for the defendant no.3 on the ground that the defendant no.1 did not expire intestate but has left a Will dated 20th April, 2013 in respect of which his client has already filed a Testamentary Petition bearing no. 799 of 2018 *inter alia* praying for grant of Letters of Administration with Will annexed and the said petition is pending. Statement is accepted.

4. Insofar as contention raised by the defendant no.3 that the said deceased died leaving a Will and in respect of which the defendant no.3 has already filed a testamentary petition is concerned, the additional share claimed by the applicant in this chamber summons can be made subject to the outcome of the said Testamentary Petition No. 799 of 2018.

5. Since all the legal heirs of the defendant no.1 are already on record, they are not required to be brought on record again. I, therefore, pass the following order :-

(a) Chamber summons is made absolute in terms of prayer clause (a).

(b) Amendment to be carried out within two weeks

from today.

(c) Amended copy of the plaint shall be served upon the defendants within two weeks from the date of carrying out amendment.

(d) It is made clear that merely because the amendment is permitted by this court in this order, none of the defendants have deemed to have accepted the contents of the amendment.

(e) All contentions of the parties on merits are kept open.

(f) It is made clear that insofar as prayer clause (h) setout in the paragraph (7) of the schedule to the chamber summons sought to be added is concerned, the said prayer is in substitution of the original prayer clause (h) setout in paragraph (38) of the plaint.

(g) No order as to costs.

[R.D. DHANUKA, J.]