

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

CHAMBER SUMMONS NO.680 OF 2017

IN

SUIT NO.470 OF 2013

Chetan Surendra Dalal	...Applicant
In the matter between:	
Girdharlal Nathubai Dalal	...Plaintiff
Versus	
Bharat Kantilal Dalal and Ors	...Defendants

.....

Mr. Haresh Jagtiani, senior Advocate with Mr. Yashpal Jain, Ms Vandana Mehta, Mr. Ryan Mendes, Dhruvita Chheda i/b. Mr. Yashpal Jain for the Applicant.

Mr. Firoz Bharuch with Mr. Ahson Allana i/b. M/s. J. Sagar Associates for the Respondent No.1.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED: 12th MARCH, 2019.**

P.C.:-

By this chamber summons the Applicant has sought the following relief :-

“a) that this Hon'ble Court be pleased to allow the Applicant to be brought on record in place of the Original Plaintiff and to amend the suit as per Schedule I attached hereto and to further carry out all consequential amendments in the suit and related proceedings in the suit as may be required and necessary;”

2. The original plaintiff-Girdharlal Dalal expired on 19/1/2017. It is stated that said Girdharlal has executed a will dated 21/05/2012 and that the Applicant herein is appointed as one of the executors of

his last will and Testament. By codicil dated 08th December 2016, the applicant has been authorized to represent the estate of the deceased in all pending proceedings including the present proceedings.

3. Mr. Firoz Bharuch, the learned counsel for the Defendant No.1 submits that the will is forged and that the Defendant has already filed a suit for administering the estate of the deceased. He further contends that till the conclusion of the probate proceedings, the Applicant cannot be permitted to proceed with the suit.

4. In *FGP Limited v/s. Saleh Hooseini Doctor and Anr. (2009) 10 SCC 223* the Apex Court has observed as under:-

“46.In this connection, we must see the distinction between Sections 211 and 213 of the Succession Act. Under Section 211 of the said Act, the executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in him as such. Here the legal representatives will have the same meaning as has been given in Section 2(11) of the Code of Civil Procedure. Section 2(11) of the Code of Civil Procedure provides as under:

“2(11) 'legal representative' means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.”

47. Therefore, it is Section 211 and not Section 213 that deals with the vesting of property. This vesting does not take place as a result of probate. On the executor's accepting his office, the property vests on him and the executor derives his title from the will and becomes the representative of the deceased even without obtaining probate. The grant of probate does not give title to the executor. It just makes his title certain.

48. Under Section 213, the grant of probate is not a condition precedent to the filing of a suit in order to claim a right as an executor under the will. This vesting of right is enough for the executor or administrator to represent the estate in a legal proceeding.”

5. It is not in dispute that based on the will and codicil, the Applicant has been permitted to represent the estate of the deceased Girdharilal in the other proceedings viz. Arbitration Proceeding, Criminal Proceeding as well as in the appeal before the Division Bench arising from the execution proceedings. Mr. Haresh Jagtiani, the learned senior counsel also states that the objections if any, as regards genuineness of the will can be raised in the written statement.

6. In the light of above, chamber summons is allowed in terms of prayer clause (a), keeping open all points and contentions raised by the Defendants. Amendment to be carried out within a period of one week.

(SMT. ANUJA PRABHUDESSAI, J.)