

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

CHAMBER SUMMONS NO. 665 OF 2019

IN

SUIT NO. 302 OF 1996

WITH

SUIT NO. 302 OF 1996

Shakuntala Ashok Jain ... Applicant/

In the matter between

Manju Vedraj Grover & Anr. ... Plaintiffs

Versus

Satyawati Seth & Ors. ... Defendants

Ms. Karishma Shirke i/b Gordhandas and Fozdar for the Plaintiffs.

Ms. Brinda G. Lashkari i/b Bharat Joshi for the Applicant in CHS/665/2019.

CORAM : R.I. CHAGLA, J.

DATED : 23rd AUGUST, 2019.

P.C. :

1 This Chamber Summons has been filed by the Applicant for joining the Applicant as Defendant in place of Defendant No.1. It is stated by the learned Counsel for the Applicant that by an order dated 05.04.2011 in Chamber Summons No.1288 of 2008 filed in the above Suit, the Applicants therein who were the heirs of Defendant No.1 had sought to be brought on record in place of Defendant No.1 who expired on 23.01.2003. The Chamber Summons was allowed and made absolute.

2 Several years have transpired after this order and still Defendant No.1 has not been deleted from the array of parties and/or necessary amendment has not been carried out as granted by this Court on 05.04.2011. Considering that the Applicant along with her husband who is Defendant No.2 have become owners of 55.55% undivided share of the suit property by a registered deed of conveyance dated 22.08.2012 and deed of rectification dated 20.10.2012 executed between the legal heirs and representatives of deceased Defendant No.1 and the Applicant and Defendant No.2 and thereby have become successor in title of the legal heirs and representatives of the deceased Defendant No.1 Satyavati Seth.

3 In view thereof, it would necessary for the Applicant to be substituted in place of Defendant No.1 and the Applicant's husband, the co-purchaser of the subject property, is already on record as Defendant No.2. A serious note has to be taken of the erstwhile advocates representing the Plaintiffs, who have failed to observe the orders of this Court including the order dated 05.04.2011 by carrying out the necessary amendments. Further, the Plaintiffs have not complied with subsequent orders of this Court and the Suit had once been dismissed for want of prosecution. The Suit was thereafter, restored and by an order dated 08.04.2019, this Court had directed the Plaintiffs to file the evidence affidavit, affidavit of

documents and compilation of documents on or before 21.06.2019 and had expressly stated that there would no extension of time. Despite this, the Plaintiffs failed to comply with the directions of this Court dated 08.04.2019. The learned Counsel for the Plaintiffs states that the Advocates for the Plaintiffs had come on record only in the year 2018. However, there is no excuse for not complying with the orders including the order dated 08.04.2019. It is thus necessary to direct the Plaintiffs to carry out the appropriate amendment as well as file the evidence affidavit, affidavit of documents and compilation of documents forthwith which the learned Counsel for the Plaintiff states is ready. Accordingly, the Plaintiffs are directed to file the evidence affidavit, affidavit of documents and compilation of documents in the Registry.

4 The Chamber Summons taken out by the Applicant is allowed in terms of prayer clauses (a) and (b). Prayer clause (c) which seeks modification of order dated 05.04.2011 is not required to be granted as upon prayer clauses (a) and (b) being granted, the Applicant is permitted to be joined as Defendant in place of Defendant No.1 and hence, the heirs of Defendant No.1 who were to be joined in the place of Defendant No.1 who had expired on 23.01.2003 are no longer required to be made parties. Thus, the Plaintiffs are directed to carry out the appropriate amendment in

the plaint within a period of two weeks from the date of this order.

5 The Chamber Summons is accordingly made absolute in terms of prayer clauses (a) and (b). Chamber Summons is accordingly disposed of.

6 The Suit shall be placed for marking of the Plaintiffs documents and further directions on 19.09.2019 irrespective of the caption under which the matter appears.

7 Parties to act on an authenticated copy of this order.

(R.I. CHAGLA, J.)