

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**CHAMBER SUMMONS NO. 608 OF 2018**  
**IN**  
**SUIT NO. 3183 OF 1983**

|                                       |               |
|---------------------------------------|---------------|
| Vijay & Haresh Corporation & Anr      | ...Plaintiffs |
| <i>Versus</i>                         |               |
| Veekaylal Investment Co Pvt Ltd & Ors | ...Defendants |
| <i>And</i>                            |               |
| Subhash Dalsukhram Pandya             | ...Applicant  |

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**Mr Salim Sayed**, *for the Plaintiffs.*

**Mr Jagdish Reddy**, *i/b Rajeev Sharma, for Defendants Nos. 1, 4, 6, 7(A) to 7(C).*

**Mr Yohan Cooper**, *with Parag Shah, i/b Bipin Joshi, for the Applicant.*

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**CORAM: G.S. PATEL, J**  
**DATED: 7th March 2019**

**PC:-**

1. The Applicant, Subhash, is the brother of the deceased 2nd Plaintiff. The suit itself is for specific performance of an Agreement for sale in respect of a piece of land. The 2nd Plaintiff, one Vipin Pandya died and his widow Ila was brought on record. Vipin and Ila had no children. Ila died leaving a Will in which she appointed one Shivan Raju Rawal as an executor of her estate. Shivan is now

Plaintiff No. 2(aa). He has applied for probate and this is being contested by Vipin's brother, Subhash.

2. I do not think there is any possibility of Subhash being added as a fellow Plaintiff. The present Plaintiffs, i.e. Vijay & Haresh Corporation and Shivan do not want Subhash as a fellow Plaintiff. Their advocate, Mr Sayed, does not want Subhash as a client. There is no possibility of separate plaintiffs having separate representations. Whether or not Subhash will succeed to any part of Ila's estate is as yet undecided and will be subject to the outcome of the probate proceedings.

3. The correct course would be to make Subhash a Defendant, i.e. Defendant No. 8. This may be necessary by way of abandon caution because ultimately the right to sue for specific performance will survive to Ila's heirs in law, i.e. either those named in her Will or those who inherit the estate on intestacy.

4. Accordingly, the present Chamber Summons is made absolute in terms of prayer clause (b). Prayer clause (a) is rejected.

5. The Plaintiffs will carry out necessary amendment without need of reverification on or before 22nd March 2019. Copies of the amended cause title in the plaint will be served on the Advocates for the Defendants.

6. The Applicant, Subhash Dalsukhram Pandya will be joined as Defendant No. 8. Mr Bipin Joshi will enter appearance for Subhash,

Defendant No. 8, and he instructs Mr Cooper to waive service of the writ of summons.

7. Since Defendant No. 8 is supporting the claim for specific performance, Mr Cooper makes a further statement on instructions that Subhash does not intend to file a written statement.

8. List the suit for framing issues on 3rd April 2019.

9. The Chamber Summons is disposed of in these terms. There will be no order as to costs.

**(G. S. PATEL, J)**