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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

CHAMBER SUMMONS NO. 292 OF 2017
IN
COMMERCIAL SUIT NO. 36 OF 2012

Ameeta Kirtikumar Vora	...Applicant
In the matter between	
Rajmal O. Mehta	...Plaintiff
VS	
Renuka A. Vora & Ors.	...Defendants

.....
Mr Denzil D'mello for the Plaintiff.
Ms Kavita A. Shah for the Applicant.
Mr P. Ranjan I/b Halai & Co. for Defendant No.1.
.....

**CORAM : B.P.COLABAWALLA, J.
FEBRUARY 25, 2019.**

P.C. :

This Chamber Summons has been filed by the Applicant *inter alia* on the ground that the suit property, which form the subject matter of the Memorandum of Understanding (for short "MOU") dated 25th April, 2011 and of which the specific performance is sought for by the Plaintiff, the Applicant has an undivided share in the said property. According to the Applicant, therefore, no rights could have been created in favour of the Plaintiff under the MOU in relation to the suit property behind the back of the Applicant.

2 It is not in dispute that by an Indenture of Lease dated 13th March, 1968, the Municipal Corporation of Greater Mumbai, granted to the husband of Defendant No.1 a lease in perpetuity in respect of the suit property. It is also not in dispute that Anantrai Fulchand Vora (the husband of Defendant No.1) died intestate on 22nd October, 1979 leaving behind him his mother (i) Jaskur Fulchand Vora, (ii) Renuka Anantrai Vora (Defendant No.1), (iii) Sou. Chetan Anantrai Vora (Defendant No.2) and (iv) married daughter Monica Niraj Ashar nee Monica Anantrai Vora (Defendant No.3) as his only heirs and legal representatives as per the Hindu Succession Act, 1956. According to the Applicant, on the death of Anantrai, all the aforesaid four heirs were entitled to 1/4th share each in all the properties belonging to Anantrai including the suit property.

3 As far the Applicant is concerned, she is the executor and trustee of the last will and testament of Jaskur Fulchand Vora (mother-in-law of Defendant No.1 and the mother of Anantrai) executed on 2nd November, 1998 read with the Codicil dated 28th April, 1999. According to the Applicant, the share of the mother, namely, Jaskur Fulchand Vora has entirely devolved on her son Kirtikumar Vora. Even assuming for the sake of argument that the aforesaid will is not probated, the heirs of Jaskur Fulchand Vora

would have the share in the suit property. It is in these circumstances that the present Chamber Summons has been filed by the applicant seeking to join herself as a party – Defendant in the present suit.

4 The Plaintiff has objected to this Chamber Summons on the ground that the Plaintiff was given to understand by Defendant No.1 that Defendant No.1 and her two children were the only legal heirs of the said Anantrai. The Plaintiff was wholly unaware that Anantrai had a mother, who was alive at the time of his death.

5 Defendant No.1 has also opposed the aforesaid Chamber Summons. According to Defendant No.1, her mother-in-law herself did not have any share in the suit property, and therefore, joining the applicant herein as the executor and trustee of the will of Defendant No.1's mother-in-law (Jaskur Fulchand Vora) does not arise.

6 I have heard the learned counsel for parties at length and have perused the papers and proceedings in the present Chamber Summons. It is undisputed that by an indenture of lease dated 13th March, 1968, the Municipal Corporation of Greater Mumbai had granted a lease in perpetuity in respect of the suit property to one

Anantrai Fulchand Vora (husband of Defendant No.1). It is also undisputed that Anantrai Vora died intestate on 22nd October, 1979 leaving behind him, his mother Jaskur Vora as well as Defendant Nos.1,2 and 3 as the only legal heirs. Jaskur Vora passed away on 6th June, 1999 leaving her last will and testament dated 2nd November, 1998 and the Codicil dated 28th April, 1999 which is duly registered with the Sub-Registrar of Assurances, Mumbai. The applicant herein is the sole executrix thereunder. Looking to all these facts and circumstances it is clear that the applicant, as an executrix and trustee of the will of Jaskur Vora (mother of Anantrai Vora and mother-in-law of Defendant No.1) is claiming a share and interest in part of the suit property. This being the case, I find that the applicant is a necessary and proper party to the suit.

7 In these circumstances, the Chamber Summons is allowed in terms of prayer clauses (a) and (b). The Plaintiff is directed to carry out the amendment in the plaint and all pending proceedings within a period of two weeks from today.

8 It is made clear that the applicant is joined as party - Defendant No.4 in her capacity as executrix and trustee of the last will and testament of Jaskur Fulchand Vora dated 2nd November, 1998

and the Codicil dated 28th April, 1999. Needless to clarify that this order is passed without prejudice to the rights and contentions of the Plaintiff as well as Defendant Nos.1 to 3. The Chamber Summons is disposed of in the aforesaid terms. No order as to costs.

(B.P.COLABAWALLA, J.)