

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY AND INTESTATE JURISDICTION

CHAMBER ORDER NO. 26 OF 2024

IN

APPEAL (L) NO. 8047 OF 2023

IN

SUIT NO. 4347 OF 1996

Jugnu Devram Patil ... Applicant/Appellant No. 18.

In the matter between :

Pandurang Kamlakar Patil

(since deceased) & Ors. ...Appellants

v/s

M/s. Soham Builders & Ors. ...Respondents

Before: Shri S. S. Agate

Addl. Registrar (O.S.) /

Addl. Prothonotary and

Senior Master

Date : 10th April 2024.

Ms. Sneha Panchmukh i/b Elixir Legal Services, Advocate for the Applicant, Jugnu D. Patil.

Mr. Murtimant Balkrishna Tandel, Constituted Attorney of all Appellants/ Org. Plaintiffs present in person.

Mrs. Malti Murtimant Tandel, one of the Appellants/Plaintiff No.18 present in person.

Mr. Vishnu L. Chaudhari, Advocate present.

Mr. Jugnu Patil, Applicant-in-person/Appellant No.18 present in person.

Mr. Pravin Patil, Manda H. Patil, Mangesh Patil, Vaishali Patil, Amol Patil, Subhangi Patil and Ashish Patil, Other Appellants present in person.

P C.:

1. The present Chamber Order is taken out by the Appellant No. 18, Jugnu Devram Patil for discharge of Advocates, Suresh K. Mali and

Vishnu L. Chaudhari as Advocates for Appellants in Appeal Lodging No. 8047 of 2023.

2. The Ld. Advocate for the Applicant has filed Affidavit in support. It is stated in the said Affidavit in support that the applicant alongwith the other Appellants have filed the present Appeal in the year 2023, challenging the Judgement dated 2nd June 2020 in Suit No. 4347 of 1996 filed by them i.e. Appellants/Orig. Plaintiffs against the Respondents/Org. Defendants before this Hon'ble Court seeking injunction, possession and for recovery of damages in respect of the Suit Lands more particularly described in the Appeal. It is further stated that the applicant with some of the other Co-appellants had approached their erstwhile Advocates Mr. Suresh K. Mali and Mr. Vishnu L. Chaudhari on record to get no objection as they wanted to appointed another Advocate but they had refused to give their No Objection. It is stated that the applicant addressed a letter dated 24th July 2023 to the Advocates on record requesting them to provide their No Objection to him so that he can engage another Advocate which was received by him. Exhibit – A is a letter dated 24.07.2023. It is further stated that Advocate on record sent his reply to the letter dated 24.07.2023 refusing to give his no objection and demanding to make payment of Rs. 25,00,000/- towards the professional fees. However, the Appellants have time and again made the necessary payment towards the professional fees as and when demanded by the Advocates on record but the Advocates are now demanding a huge sum of Rs. 25,00,000/- just to hold the proceedings in the above mentioned matter which is beyond the financial position of the Appellant. Exhibit – B is a copy of letter dated 27.07.2023. It is further stated that since, the matter is at pre-admission stage and urgent reliefs have to be sought by the appellants for declaration with respect to the subject property and since the earlier advocates Mr. Suresh K. Mali and Mr. Vishnu L. Chaudhari who are on record are not acting to take

steps in the matter and refusing to provide their No Objection, it is necessary to appoint another Advocate/Firm.

3. Thereafter, Advocates, Suresh K. Mali and Vishnu L. Chaudhari have filed their no objection for allowing Chamber Order. It is stated that the affidavit filed by Jugnu Devram Patil is absolutely false, baseless and unjust and with oblique motive to discharge them from the above Appeal proceeding without paying the professional fees and legal expenses incurred by them since the trial of the Suit till filing of Appeal at their own cost and expenses and have denied the contents and allegations made by the applicant against them just to prejudice the judicial authority. The main ground objected by the Ld. Advocates, Suresh K. Mali and Vishnu L. Chaudhari is regarding professional fees.

4. Thereafter, Mrs. Malti Murtimant Tandel, one of the Appellants/Plaintiff No. 18 has filed objection dated 26.02.2024 for grant of this Chamber Order. It is stated that her husband, Murtimant Balkrishna Tandel (PW-1) who was appointed by all the Orig. Plaintiffs/Appellants as their Constituted Attorney by executing irrevocable General Power of Attorney dated 12.11.2014 and therefore, the Chamber Order is not maintainable and liable to be rejected.

5. Mr. Murtimant Balkrishna Tandel, Constituted Attorney of Appellants/Orig. Plaintiffs has also filed reply dated 01.03.2024. It is stated that by an Irrevocable General Power of Attorney dated 12.11.2014, he has been appointed as a Constituted Attorney by the Original Plaintiffs/Appellants with all power to deal with the Sun property. It is stated that before filing the Appeal, he approached the Orig. Plaintiffs/Appellants to share the professional fees and legal expenses, but they showed their financial difficulties and consented him to file the

Appeal. It is further stated that to avoid to pay the professional fees and legal charges to Advocate Suresh K. Mali and Vishnu L. Chaudhari, the applicant, Jugnu Devram Patil, appellant No. 19 without his consent and consent of other Appellants/Orig. Plaintiffs filed chamber Order No. 26 of 2024. It is stated that he has filed the above Appeal as a Constituted Attorney of Appellants/Orig. Plaintiff Nos. 3, 4(a) to 4(d), 6 to 12, 15(a) to 15(d), 16 to 19, 20(a) & 20(b) and 20 to 25 who are the legal heirs of deceased Plaintiffs Nos. 1, 2, 4, 7, 13, 14, 15 and 20. Therefore, no chamber order can be passed in his favour who have not take any consent or authority of other Appellants/Orig. Plaintiffs. Therefore, he strongly object for issuance of Chamber Order.

6. Thereafter, Jugnu Devram Patil, Applicant, Appellant No. 18 has filed reply to the objection raised by Murtimant Tandel. It is stated that all the Appellants except Appellant No. 18 are of the opinion that the Advocate on record has failed to proceed with the matter with due diligence and has colluded with Murtimant Balkrishna Tandel who was the Power of attorney holder on behalf of the Appellants and husband of one of the Appellants. Further, Power of attorney holder i.e. Murtimant Balkrishna Tandel misused the Power of Attorney given to him. Hence, he sent a letter dated 18.10.2023 for cancellation/revocation of irrevocable Power of Attorney dated 12.11.2014 given to him. Exhibit – A is the copy of the said letter. It is further stated that thereafter a Power of Attorney was executed by all Appellants except Appellant No.18 in his favour to handle the abovementioned proceeding and to file appropriate proceedings to discharge the Advocate on record. Exhibit – B annexed is a copy of Power of attorney. It is further stated that no part of the present objection has been admitted by the applicant and the submissions made in response to the prayer clause of objection are frivolous and denied. It is further stated that only one of the Appellants viz. Mrs. Malti Murtimant Tandel objects to

the present Chamber Order and rest of the Appellants want to discharge the Advocate on record.

7. Thereafter, M/s. Elixer Legal Services, Advocates filed Vakalatnama on behalf of Jugnu Devram Patil to appear in the Chamber Order.

8. Thereafter, Mrs. Malti Murtimant Tandel, one of the Appellants/ Orig. Plaintiff No.18 has filed rejoinder dated 26.03.2024 to the reply dated 13.03.2024 filed by the applicant.

9. Written Submissions are filed by the applicant, Jugnu Patil, Murtimant Balkrishna Tandel, C.A. of Appellants/Orig. Plaintiffs, Malti Murtimant Tandel, one of the Appellants/Orig. Plaintiff No.18 and Advocate Suresh K. Mali.

10. I have perused Chamber Order, Affidavit in support of Chamber Order and Affidavit in reply file by the Advocate on behalf of the Petitioner. I have heard at length the Ld. Advocates and parties. I have perused Written Submissions also filed on behalf of the parties.

11. The Applicant has filed this Chamber Order under Bombay High Court (Original Side) Rules, 1980 for discharging the Vakalatnama of Advocates Suresh K. Mali and Vishnu R. Chaudhari for Appelants/Orig. Plaintiffs. However, I cannot allow one of the Appellants to act separately from and inconsistently with the others. The Appeal is filed by all the Appellants.

12. In view of the above, it is concluded that out of the 20 Appellants, only one Appellant i.e. Jugnu Patil has filed this application for discharge of Advocates Suresh K. Mali and Vishnu L. Chaudhari without obtaining consent of all other Appellants, and, Power of Attorney Holder and only one Appellant, Malti Tandel cannot be allowed to act separately. All the Appellants are not acting together and there is dispute amongst themselves for discharge of Advocate. Since, there is objection for allowing this Chamber Order by one of the Appellants, this Chamber Order cannot be granted.

13. Chamber Order is rejected and disposed of accordingly.

10.04.2024

Addl. Registrar (O.S.) /
Addl. Prothonotary and Senior Master