

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**MISCELLANEOUS CIVIL APPLICATION NO.301 OF 2025
WITH
INTERIM APPLICATION No.11822 OF 2025
IN
MISCELLANEOUS CIVIL APPLICATION NO.301 OF 2025**

Suresh Premchand Chainani and Anr.

.. Applicants

Versus

Sunil Chetan Thadani and Ors.

.. Respondents

.....

- Ms. R. C. Nichani a/w Mr. Baiju Vijay Pupala Advocates for Applicants.
- Mr. Sandeep Sharma, Advocate for Respondent No.1.
- Mr. Rajesh Kachare a/w. Mr. Ashish Ghadge, Advocates i/by Tamhane & Co. for Respondent Nos.2(a) and (b).
- Ms. Shoma Maitra a/w. Ms. Mihika Vakharia, Advocates i/by Wadia Ghandy & Co. for Respondent No.3.
- Mr. Aditya Chavan a/w Ms. Melvyn Fernandes a/w Ms. Alisha Sharma, Advocates i/by Vaish Associates Advocates for Defendant No.4.
- Mr. Samir Kunkerkar, Section Officer, Court Receiver, High Court.

CORAM : MILIND N. JADHAV, J.

DATE : JUNE 08, 2026

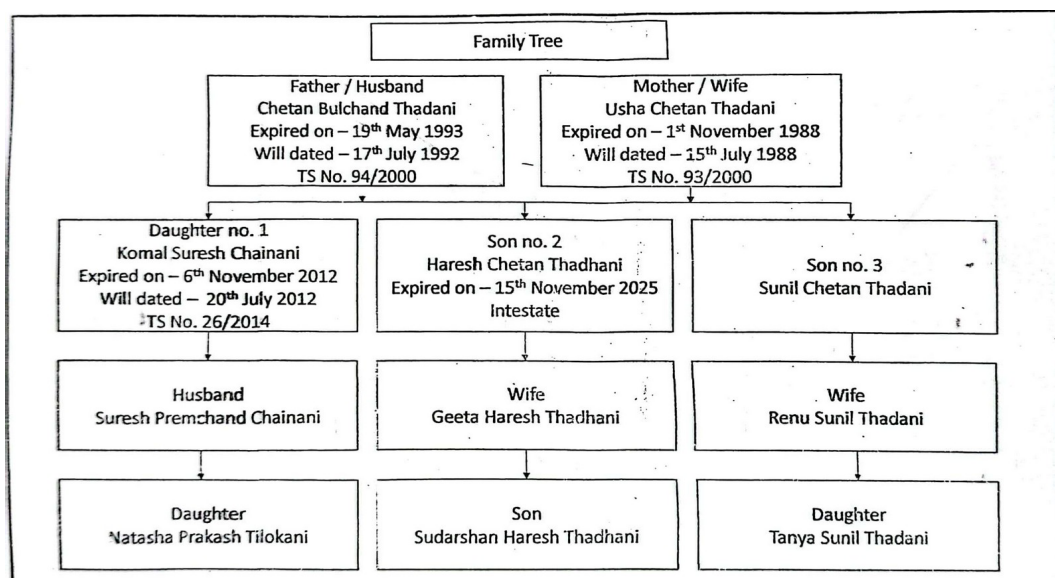
P.C.:

1. Heard Ms. Nichani, Advocate for Applicants and Mr. Sharma, Advocate for Respondent No.1, Mr. Kachare, Advocate for Respondent Nos.2(a) and (b), Ms. Maitra, Advocate for Respondent No.3 and Ms. Fernandes, Advocate for Defendant No.4.

2. This Miscellaneous Civil Application is filed under Section 24 readwith Section 151 of Code of Civil Procedure, 1908 (for short

"CPC") seeking transfer and consolidation of trial of 2 (two) Suit proceedings and 3 (three) Testamentary Suit proceedings pending in this Court in its original Testamentary jurisdiction together, primary between the same set of parties. Disputes have arisen between the parties leading to filing of the following 5 (five) proceedings :-

2.1. First Proceeding – Suit No. 9812 of 1989 is filed for dissolution of Partnership firm and distribution of shares/assets of the firm called "Evergreen Trades & Agencies" and disclosure and accounts. This Suit is filed in 1989 and the assets of the partnership firm are shares in the firm, Flat No.5 and Flat No.6 in Meenakshi Apartments CHS, Bandra and immovable land property being plot No.36A and plot No.36B situated in Andheri, Mumbai. Receiver has been appointed by this Court on 13.02.1990. Thus the properties of the firm are *custodia legis*. The *lis* is between family members of one singular family namely the Thadani family. For ease of convenience the family tree of Thadani family is reproduced below:-



2.1.1. This Suit No.9812 of 1989 is filed by Sunil versus other family members who are Partners in the firm. It needs to be mentioned here that Usha i.e. mother of Sunil is not a Partner of the firm. This Suit was originally filed in this Court but now stands transferred to the Bombay City Civil Court. Issues are framed in the Suit proceeding but evidence is yet to begin. This Suit is pending trial for the last 37 years.

2.2. Second Proceeding – Suit No.3697 of 2010 is a declaratory Suit seeking specific performance, mesne profits in respect of plot No. 36A and plot No. 36B filed by Komal against the other family members and third parties. Receiver stands appointed and continued in this Suit also since suit properties are the same. Evidence has been recorded and completed of Plaintiff in this Suit. Defendants' evidence is yet to begin. *Prima facie* reliefs and subject matter in this Suit are in respect to the Suit properties covered by Suit No.9812 of 1989.

2.3. Third proceeding – Testamentary Suit No.93 of 2000 is filed by Natasha – granddaughter of Usha who is deceased for seeking Letters of Administration of the property and credits of Usha. Contesting parties in this Suit are the other family members. Admittedly, since Usha was not a partner in "Evergreen Trades & Agencies", she had no nexus with the firm and therefore relief in this Suit for issuance of grant (Letters of Administration) are completely different and have no nexus with the reliefs in the previous 2 (two)

Suits pending between the parties. This Suit is filed in this Court and Plaintiff's evidence is completed. Defendant's evidence is yet to be completed. This Suit is a Testamentary Suit filed for issuance of grant in this Court in its Testamentary jurisdiction which has exclusive jurisdiction to decide this Suit.

2.4. Fourth proceeding – Testamentary Suit No. 94 of 2000, is filed by Komal seeking probate of the Will of her father Chetan and is contested by all other family members. After filing of this Suit, Komal expired on 06.11.2012 and the Suit is now prosecuted by her legal heirs i.e. husband Suresh and daughter Natasha. Once again this is a Testamentary proceeding / Suit seeking grant (Probate) with regard to the last Will and Testament of deceased father Chetan. Admittedly, Chetan has a share in the Partnership firm "Evergreen Trades & Agencies". This is the only nexus of this Testamentary Suit with the 2 (two) Suits pending in the Bombay City Civil Court. Draft issues are framed in this Suit. This Court in its Testamentary jurisdiction has exclusive jurisdiction to decide this Suit. Merely because parties are the same does not *ipso facto* mean that cause of action is also the same. The last Will and testament of deceased father Chetan will determine issuance of grant i.e. probate in accordance with law and determination of devolution of the property and credits of the father to the beneficiaries under the Will. Hence the relief sought in this Suit is not the same as those in the pending Suit proceedings before the

Bombay City Civil Court. In this Suit draft issues have been submitted by parties but trial is yet to begin.

2.5. Fifth proceeding – Testamentary Suit No. 26 of 2014 is filed by Natasha and Suresh to seek Letters of Administration of the property and credits of deceased Komal. This Suit is contested by the other family members due to ongoing property disputes and dispute of shares. Once again reliefs in this Suit are independent of the reliefs in the pending Suit proceedings before the Bombay City Civil Court.

3. Ms. Nichani, learned Advocate for Applicants would submit that provisions of Section 24 be applied and all 5 (five) proceedings be heard by one Court only. She would vehemently submit that parties in all 5 (five) Suit proceedings are the same except 2 third parties impleaded as Defendants in Suit No.3697 of 2010. Next she would submit that Court Receiver is appointed in the first Suit i.e. Suit No. 9812 of 1989 on 13.07.1990 and continued in the Second Suit as well. However, because of pendency of the Suits since long, Court Receiver has now filed a Report seeking discharge. Hence she would submit that all Suits should be consolidated before this Court i.e. High Court and should be heard and decided by this Court as expeditiously as possible and determined. She would submit that parties are waiting for their shares in the immovable properties and in the Partnership firm post dissolution for a very long period of time and therefore this Court

should consider the request of consolidation before this Court itself.

4. *PER CONTRA*, Mr. Kachare and Mr. Tripathi both learned Advocates for the contesting respondents would vehemently object consolidation of all 5 (five) Suit proceedings on two specific grounds namely jurisdiction and the nature of reliefs. They would submit that considering the reliefs in the twin Suits i.e. Suit No. 9812 of 1989 and Suit No. 3697 of 2010, both Suits can be directed to be heard by the Trial Court together but in so far as the 3 (three) Testamentary Suits are concerned they stand on a completely different footing relating to the properties and credits of the concerned deceased persons out of whom two have expired intestate and one person has expired leaving behind his Will. They would also submit that cause of action in all 3 (three) Testamentary proceedings are therefore different. Thus they would persuade this Court to pass appropriate orders.

5. I have heard the learned Advocates for the respective parties at the bar and perused the record of the case. Submissions made by the learned Advocates have received due consideration of the Court.

6. Ms. Nichani learned Advocate for Applicants has placed before me a graphical analysis and chart of all 5 (five) Suit proceedings explaining the details of parties to the said Suits, cause of action in each of the said Suits, reliefs prayed for therein, stage of the Suits and Court Receiver's Report filed seeking discharge. This graphical analysis

has aided and assisted the Court to a large extent to understand the *lis* between the parties and consider their submissions.

7. Equally Mr. Kachare has filed a 216 page Compilation of Documents (COD) of principle pleadings and orders passed by the Courts which has also assisted this Court in considering the *lis* between the parties. Mr. Tripathi has filed short submissions which has also aided this Court to consider his request.

8. While describing the 5 (five) Suit proceedings, it is *prima facie* seen that in so far as Suit No. 9812 of 1989 and Suit No. 3697 of 2010 are concerned, these 2 (two) Suit proceedings can be heard and tried together by the same Court considering the overlapping reliefs prayed for in both the Suit proceedings. This is because once the respective shares of the parties to the first Suit are determined, the second Suit will be determined on that basis. The determination of the shares in the partnership assets of Evergreen Trade & Agencies which *prima facie* is the owner of various Suit properties standing in the names of Partners, will have a direct bearing on declaratory relief of conveyance, mesne profits, etc. in the second Suit. When this is expressed to the learned Advocates at the bar, they *prima facie* agree with this proposition and hence in my opinion there can be no impediment in directing the learned Bombay City Civil Court to consolidate and hear Suit No. 9812 of 1989 and Suit No. 3697 of 2010

together and to be decided by the same Court.

9. However in so far as consolidation of the 3 (three) Testamentary Suits alongwith aforesaid 2 (two) Suits is concerned, that cannot be allowed in view of completely different causes of action altogether. The 3 (three) Testamentary Suit shall be decided by this Court strictly in accordance with law independently. Parties are at liberty to make an appropriate application to the Hon'ble Principal Judge of the Bombay City Civil to tag the 3 (three) Testamentary Suits before one particular Court / Judge of this Court for convenience, in accordance with law.

10. In view of above observations and findings, Suit No. 9812 of 1989 and Suit No. 3697 of 2010 which are pending before the Bombay City Civil Court, are directed to be clubbed together and heard by the same Court / Judge in the Bombay City Civil Court. Both Suits are expedited and shall be decided as expeditiously as possible and preferably within a period of 12 months from today. Learned Principal Judge of the Bombay City Civil Court shall assign both the above Suits to one particular Court as directed. All contentions of the parties are expressly kept open. Applicants pray for continuance of Court Receiver. That shall be decided on hearing of Court Receiver's Report filed for seeking discharge in accordance with law separately when the Report is heard.

11. Interim Application No.11822 of 2025 is filed by Suresh Premchand Chainani and another versus Sunil Chetan Thadani and others for consolidation of pending Interim Applications before Bombay City Civil Court simultaneously together with Suit No.9812 of 1989 and stay the hearing of Notice of Motions in the said Suit.

12. With the above directions and orders, Miscellaneous Civil Application No.301 of 2025 is partially allowed and disposed. In view of disposal of Miscellaneous Civil Application, Interim Application No.11822 of 2025 does not survive and is therefore accordingly disposed of. Liberty to apply.

13. Miscellaneous Civil Application No.301 of 2025 is disposed and Interim Application No.11822 of 2025 is also disposed.

[MILIND N. JADHAV, J.]

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