

1 Ord.on ch.sum. no. 2511 of 15 in S.C. 4682 of 09 Dt. 09/01/2017

**IN THE BOMBAY CITY CIVIL COURT AT GREATER BOMBAY  
ORDER ON CHAMBER SUMMONS NO. 2511 OF 2015**

**IN  
S.C.SUIT NO. 4682 OF 2009  
IN  
H.C.SUIT NO. 3128 OF 2009**

Vanita Jaikishan Thawani ...Plaintiff

V/s

1. Shobha Ramchandra Lalwani & Ors. ...Defendants

A N D

Shanti Ramchandra Lalwani ...Respondent

Adv. Smt. Swati P. Gautam for plaintiff.  
Advocate for defendants absent.

**CORAM: HER HONOUR JUDGE  
SMT. ULKA L. JOSHI  
(COURT ROOM NO.31)**

**DATE : 16<sup>th</sup> December, 2016  
(ORDER)**

1. This chamber summons is taken out by plaintiff for amendment of pleading .

2. **Story put-forth by plaintiff in short is that,**

Her father died on 8/12/2003. She is the only legal heir of her father namely Ramchandra Lalwani . She is born out of wedlock between Ramchandra Lalwani and proposed defendant Shanti Ramchandra Lalwani. Defendant no.1 Shobha Lalwani died on 6/12/14. After death of Shobha, plaintiff and her mother Shanti are the only heirs of late Shobha. This constrained her to take out this chamber

summons for impleadment of respondent no.1 as well as for inserting para no. 10(a), 9(b) and prayer clause no. (a-1 and (c-1).

3. In spite of service defendant no.2 to 5 failed to file any reply to the chamber summons. Proposed defendant no.1 appeared and showed her no objection for amendment of pleading.

4. On aforesaid facts and circumstances following points arise for my consideration. I have recorded my findings to them together with reasons as under :

**Points for determination**

**Findings**

- |  |  |
|--|--|
| 1. Whether proposed amendment is necessary ?               | In the affirmative                     |
| 2. Whether proposed amendment will change nature of suit ? | In the affirmative                     |
| 3. What order ?  | Ch/summ.is allowed as per final order. |

**REASONS**

**POINT NOS.1 TO 3 :**

5. In support of her contention plaintiff has filed her affidavit. It is contention of plaintiff that during pendency of present suit, defendant no.1 died . She is succeeded by plaintiff and proposed defendant no.1 namely Shanti Ramchandra Lalwani. Right to be sued survives with Proposed defendant no.1. Therefore she is nothing but necessary party to present suit.

6. This contention itself shows that death of defendant no.1 is occurred during pendency of present suit. This is nothing but

subsequent events occurred during the pendency of present suit. As per trite law subsequent event are required to be brought on record by taking shelter to provision of Order 6 Rule 17 of Civil Procedure Code. On that ground plaintiff is entitled for amendment of pleading.

7. It is contention of plaintiff that due to death of defendant no.1 plaintiff's share is enlarge and this constrained her to add prayer clause no. a-1 and c-1 as well as para no.10(a) and 9(b). Admittedly, suit is for partition. As per plaintiff after death of defendant no.1, plaintiff and proposed defendant are the surviving heirs of Ramchandra. Whether proposed defendant no.1 is entitled for any share or whether she is having right to share or not is a matter of final consideration. While deciding amendment application merit of contentions raised in amendment application cannot be decided. Therefore also permission is required to be granted to insert para 10(a) and 9(b) as well as prayer clause for a-1 and c-1 for consequential relief.

8. From above just a position clear that by proposed amendment nature of suit is not change and proposed amendment is necessary for effective adjudication of issue involved in present suit. Resultantly, by answering both points accordingly I pass the following order.

**ORDER**

1. Chamber summons is made absolute in terms of prayer clause no.(a) and (b).
2. Plaintiff is permitted to insert para no. 10(a) and 9(b), as well as prayer clause no. a-1 and c-1 as per schedule.
3. Plaintiff is also permitted to implead proposed defendant in array of defendant.

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4. Plaintiff to comply order on or before next date and serve copy of amended plaint on all defendants.
5. After compliance issue writ of summons to newly added defendant upon payment of process fee as per rule.  
(Pronounced in open court)

(Smt.U.L.Joshi)  
Ad-hoc District Judge,  
& Asstt.Sessions Judge,  
City Civil & Sessions Court,  
Gr.Bombay.

DT.09/01/2017

Dictated on: 09/01/2017

Transcribed on: 10/01/2017

Signed by H.H.J on:11/01/2017

"Certified to be True And Correct copy of the Original. Signed Judgment/Order."	
Upload Date And Time 11/01/2017 at 1.55 noon	Name of Stenographer Mrs. V.V.Mhatre (H.G.)
Name of the Judge (With Court room No.)	H.H.J Smt. U.L.Joshi (C.R. No.31)
Date of Pronouncement of JUDGMENT / ORDER	10/01/2017
JUDGMENT / ORDER signed by P.O.on	11/01/2017
JUDGMENT / ORDER uploaded on	11/01/2017