

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
APPEAL NO.282 OF 2003  
IN  
CHAMBER SUMMONS NO.1589 OF 2001  
IN  
SUIT NO.6468 OF 1999

Mr Aspi Sattha ...Appellant

v/s

Sumermal M. Bafna and ors. ...Respondents

and

Mrs R.C. Patuck ...Respondent

Salim Mohammed Lakdawala and ors. ...Respondents

Mr A.Y. Sakhare i/b Mr V.V. Khemka for Appellant.

Mr V.B. Naik with Mr Vivek Kantawala i/b M/s Kantawala

and Co. for Respondents.

**CORAM : D.K. DESHMUKH AND A.A. SAYED JJ.**

**DATE : 20TH JANUARY 2009**

P.C. :-

1. This appeal is directed against the order dated 16th April 2002 passed in chamber summons No.1589 of 2001 in suit No.6468 of 1999. The facts which are relevant and material are that Mrs R.C. Patuck filed suit No.6468 of 1999 under section 6 of the Specific Relief Act 1963 obviously claiming a decree of possession. During the pendency of the suit, she died. Four persons - (1) Sumermal M. Bafna; (2) Sureshkumar S. Bafna; (3) S.A. Kaveri and (4) Smt Prakashkumari P. Bafna took out chamber summons No.1589 of 2001 praying that the applicants should be transposed as plaintiffs in the suit in place of original plaintiff. In the affidavit filed in chamber summons, they stated that they are the landlords and the original plaintiff was their tenant. She had filed suit under section 6 of the Specific Relief Act 1963, in that suit the Court had appointed her as agent of the receiver of the premises. Thereafter, after her death, the Court appointed one of the applicants - Sumermal Bafna as the agent of the Court Receiver. According to the applicants therefore, as landlords and they were acting as agents of the Court Receiver, they should be substituted in place of original plaintiff. The learned Single Judge has noted

that the chamber summons was moved under Order XXII Rule 4A of C.P.C. and the learned Single Judge on finding that there are no heirs left behind by the deceased tenant - plaintiff, has directed substitution of applicants as tenants.

2. The learned counsel appearing for applicants submitted that the chamber summons taken out by the applicants under Order XXII Rule 4A of C.P.C. was not maintainable because the chamber summons under that provision can be taken out only by persons who are parties to the suit. The applicants in the chamber summons were not parties to the suit, therefore that chamber summons was not maintainable. The learned counsel further submits that even if the Court finds that the plaintiff has died leaving behind no heirs, the Court can appoint either the Administrator General in place of the plaintiff to prosecute the suit or one of the Officers of the Court and strangers or persons who may have interest adverse to that of the original plaintiff like the applicants cannot be appointed by the Court. We have also heard the learned counsel appearing for original applicant. He submits that though he was not a party to the suit, his application should be treated as application on behalf of the Court Receiver because he is presently acting as an agent of the Court Receiver. The learned counsel also submits that the

present appellant cannot be appointed as an agent of the Court Receiver.

3. Therefore, first thing that is to be considered is whether the chamber summons was maintainable under Order XXII Rule 4A of C.P.C. Sub-rule 4A(1) of Order XXII of C.P.C. reads as under

:-

"4-A Procedure where there is no legal representative - (1) If, in any suit, it shall appear to the Court that any party who has died during the pendency of the suit has no legal representative, the Court may, on the application of any party to the suit, proceed in the absence of a person representing the estate of the deceased person, or may by order appoint the Administrator General or an officer of the Court or such other person as it thinks fit to represent the estate of the deceased person for the purpose of the suit, and any judgment or order subsequently given or made in the suit shall bind the estate of the deceased person to the same extent as he would have been bound if a personal representative of the deceased person had been a party to the suit."

. Perusal of the above provision shows that an order under Rule 4A can be made by the Court only on an application of any party to the suit. If on an application being made by a party to the suit, the Court finds that any party who has died during the pendency of the suit has no legal representative, the Court can appoint either Administrator General or Officer of the Court or any such person who is deemed fit to represent the estate of the deceased for the purpose of the suit. It is thus clear that power of the Court under Rule 4A can be invoked only by a person who is party to the suit and by none else. Admittedly, the applicants are not parties to the suit, even agent of the Court Receiver who is appointed on the property is not a party to the suit. Therefore, a person who is appointed as agent of the Court Receiver can never be treated as party to the suit. Therefore, to begin with, the chamber summons taken out by the applicants was not maintainable under Rule 4A and that is the only provision which was pointed out to us as the provision under which the application was made by the original applicants. In our opinion, once the application of the applicants was not maintainable, there is no question of the Court making any order in that application. In our opinion, the order made by the learned Single Judge granting chamber summons of the applicants is clearly an order which

could not have been made under the provisions of Rule 4A of Order XXII of C.P.C. It is not necessary for us to consider as to what does the Court do of the suit in this situation. It is for the parties to the suit and the Trial Court to consider that situation. It is also not necessary for us to consider whether the appellants can be transposed as plaintiffs because that question was never raised before us. Therefore, it is not necessary to consider that aspect of the matter. In the result, therefore, appeal succeeds and is allowed. The order impugned in the appeal is set aside. There shall be no order as to costs.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary of the Court.

. Certified copy is expedited.

( D.K. DESHMUKH J.)

( A.A. SAYED J.)