

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9690 OF 2014**

Hormuz Diyar Jamshed Jamshedian

...Petitioner

vs.

Sharukh Kodadad Irani & ors.

...Respondents

Mr. S. P. Bharati for the Petitioner.

Mr. Aderbad K. Irani, Respondent No.3, present in person.

CORAM : R. M. SAVANT, J.

DATE : 3rd MARCH, 2015.

PC. :-

The writ jurisdiction of this Court is invoked against the order dated 19th July, 2014 passed by the learned Judge of the City Civil and the Sessions Court, Greater Bombay, by which order the Chamber Summons No.2193/2013 has been made partly absolute in terms of prayer clause (a) and (b) to the extent of amendment in the title clause and in respect of the second and third part of Schedule below Annexure A came to be rejected. The reasons why the said Chamber Summons was partly made absolute was the fact that the proposed Defendants are the heirs of one Morvarid Irani who was the wife of the one of the partners Mr. Khodadad Khodabux Irani of the earstwhile firm. The said Morvarid has executed a Will and the Petitioner herein as also the proposed Defendants are the beneficiaries under the said Will. The suit in question has been filed for dissolution of the partnership firm in

question wherein the Plaintiff and the said Khodadat Khodabux Irani were the partners. It seems that the said Khodadat Khodabux Irani had 50% share in the said partnership. The executor of the Will one Dilruba F. Kermanian had filed an application for probate of the Will of the said Morvarid K.Irani in this Court which was converted into Testamentary Petition No.1187/2012. It is in the context of the said fact that the Trial Court in paragraph 17 has observed that though in the absence of the probate the rights of the Respondents cannot be considered at the said stage, it cannot be said that they are not necessary parties to the suit. The Trial Court, therefore, has allowed the impleadment of the said proposed Defendants who are the Respondents in the Chamber Summons, however, has disallowed the consequential amendment which contain the averments as regards their right. In the absence of the probate being obtained the order passed by the Trial Court permitting only the impleadment of the said Respondents cannot be taken exception to. However, in so far as the consequential amendments are concerned, the Trial Court was right in refusing to allow the same. It appears that the Petitioner in the said Testamentary Petition No.1187/2012 has withdrawn the said Testamentary Petition on 2nd February, 2015 in respect of which an order has been passed by the learned Single Judge of this Court on the said day. A copy of the said order tendered across the bar by the Respondent No.3 herein

Mr. Aderbad Kodadad Irani. In the light of the withdrawal of the Petition also the impugned order does not merit any interdiction at the hands of this Court, the Writ Petition is, accordingly, dismissed.

2] Needless to state that on the Petitioner obtaining the probate or the letters of administration, he would be entitled to file an appropriate application in the suit in question.

(R. M. SAVANT, J.)