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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**SUIT NO. 197 OF 2013
(ORIGINATING SUMMONS)**

Vikas Madhav Kavle & Ors. ...Plaintiffs

Vs.

Dr. Govind Ramkrishna Puranik ...Defendant

Mr. R.S. Apte, Sr. Advocate a/w. Mr. Saurabh Oka for the Plaintiffs
Ms. Swati Parag Gautam for the Defendant

**CORAM : MRS. ROSHAN DALVI, J.
DATED : 13TH AUGUST, 2015**

P.C. :

1. The plaintiffs are the purchasers of the property which belonged to one Narayan Ghanekar. The plaintiffs desire to have interpreted and corrected the schedule in the probate of the Will of Narayan Ghanekar.
2. The suit property was purchased by Narayan Ghanekar and his wife Kamlabai jointly as joint tenants under the Indenture dated 9th June 1950, copy of which is annexed as **Exhibit-A** to the Originating Summons and which fact is not denied.
3. Upon the joint purchase, the said property would devolve upon the survivor on the death of one of the joint

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purchasers as joint tenants. Kamlabai, Narayan's wife expired first. Her 50% share was survived by Narayan Ghanekar. Narayan Ghanekar became the owner of 100% of the property.

4. Narayan Ghanekar died leaving a Will dated 31st December, 1983. The Will has been probated. The probate has been issued in Testamentary Petition No. 638 of 1988 on 9th February 1994.
5. Under clause 8 of the said Will the property came to devolve upon one Ragunath Ghanekar. Ragunath Ghanekar executed the sale deed in favour of the plaintiffs.
6. The sale deed is for the entire property of Narayan Ghanekar shown in the probate petition. The purchase consideration is stated to be the market value of the entire value of the property which is paid to Ragunath Ghanekar.
7. The plaintiffs' document of title is the probate dated 9th February, 1994 itself.
8. The will of Narayan Ghanekar shows in schedule-A the said entire property which he owned – ½ share of which was purchased by him as joint tenant and the other ½ of which survived to him upon the death of his wife.

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9. However, in the petition for probate the said property is shown as $\frac{1}{2}$ share of Narayan Ghanekar. The $\frac{1}{2}$ share is incorrectly shown. The full share of Narayan Ghankar would form a part of his estate and would be required to be shown in the schedule to the Testamentary Petition.
10. The plaintiff desires to have amended the said schedule. The amendment would be in order.
11. However the valuation of the entire property would have to be shown. That valuation would be as of today. The valuation of $\frac{1}{2}$ share in 1988 is shown to be Rs.30000/-. The valuation of the full share would be to the extent of the maximum valuation to be shown in the Testamentary Petition, which is Rs. 75000/-.
12. The defendant is the sole surviving executor. The defendant objects to the amendment upon the ground that Narayan Ghanekar was only the 50% owner of the suit property, he having purchased the same with his wife. This contention is seen to be contrary to law, from reading of the initial sale deed dated 9th June 1950 showing him to be a joint owner / purchaser as joint tenant with his wife. The 50% share of his wife survived to him upon her death. It is contended on behalf of the defendant that he has ceased to

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have any concern with the suit property once the probate is granted. That contention is also contrary to law. The defendant as the executor is bound and liable as also obliged and responsible to administer the estate as per the probate which is as per the will of the deceased. Once it is shown that Narayan Ghankar owned the entire property and his estate consisted of the entire property, the entire property should have been shown in the schedule to the petition and if not shown it must be amended.

13. Hence the following order:

1. Upon the plaintiffs paying Court Fees of Rs.75000/- in Testamentary Petition No. 638 of 1988 (despite and in addition to the earlier payment of Court fees in 1988) and informing the defendant of the same, the defendant, who is the sole surviving executor, shall amend the schedule to the Testamentary Petition No. 638 of 1988 showing a full 100% share of Narayan Ghanekar in the suit property bearing Survey No. 648 (part) Plot No.4A with a building called Kamal Kutir thereon.
2. If the defendant fails and neglects to carry out the said amendment within 4 weeks of being informed of the payment of Court Fees and the request of carrying

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out the amendment, the Prothonotary and Senior Master of this Court shall carry out the said amendment.

3. Originating Summons is disposed off accordingly.

(ROSHAN DALVI, J.)