

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 55 OF 2015
IN
TESTAMENTARY SUIT NO. 58 OF 1987
IN
TESTAMENTARY PETITION NO. 546 OF 1987**

M.M. Shroff	...Plaintiff
<i>Versus</i>	
K.S. Bhagwat & Ors.	...Defendants

**Mr. Piyush Raheja, with Mr. Jayesh Mistry, i/b M/s. RMG Law
Associates, for the Applicants.**

**CORAM: G.S. PATEL, J
DATED: 24th July 2015**

PC:-

1. The Will in dispute, dated 21st February 1981 of Ramniklal Bhogilal Kapadia, appointed two persons as Executors, namely, Hansraj Jamnadas Negandhi and Madhusoodan Mulchand Shroff. A Testamentary Petition No. 546 of 1987 was filed by Mr. Madhusoodan Mulchand Shroff for probate to the Will. Paragraph 6 of the Petition stated that Mr. Negandhi did not desire to join in the Petition. The Petitioner reserved Mr. Negandhi's right to come

in and apply for probate at a later stage. The Testamentary Petition itself was initially contested. Ultimately, by an order dated 19th July 2012, this Court directed the Petition to proceed as an uncontested Petition since the Defendants were neither defending the Petition nor giving instructions. Probate was, therefore, ordered to be issued. After the grant of probate but before the formal probate was actually drawn up and before any steps were taken in administration of the estate in terms of the Will, the Petitioning executor Madhusudan Shroff himself passed away.

2. The application today is on behalf of some of the heirs and next-of-kin of the deceased. They dispute the Will. Mr. Raheja, learned Advocate on behalf of the Plaintiff, points out that the order of 19th July 2012 does not reserve liberty to and the right of the other named executor, Hansraj Negandhi, to apply for probate. He has not come forward in all this time. His whereabouts are said to be unknown.

3. The Will named certain other beneficiaries and legatees. However, in these circumstances the order directing issuance of probate cannot, in my view, be allowed to stand. The grant of probate will require to be recalled for a simple reason that there is nobody to implement that grant today.

4. In these circumstances, the order dated 19th July 2012 is recalled to the extent that it directed issuance of probate.

5. The present Notice of Motion is made absolute in terms of prayer clauses (a), (b) and (c).

6. It is clarified that it is always open to the beneficiaries named in the Will to make a suitable application for Letters of Administration with Will annexed.
7. All concerned to act on an ordinary copy of this order.

(G. S. PATEL, J.)