

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY & INTESTATE JURISDICTION

TESTAMENTARY SUIT NO.42 OF 2003

IN

TESTAMENTARY PETITION NO.384 OF 2003

Mr. Gopal Ramourti

...Plaintiff

V/s.

Shabnam Merchant & Ors.

...Defendants

.....

Mr. Shekhar Jagtap, Advocate for the Plaintiff.

Mr. S.K.Srivastava with Ms. Jyoti Mistry i/by M/s. S.K.Srivastav & Co.,
Advocate for the Defendant No.1.

Mr. Akshay Kapadia, Advocate for Defendant Nos.2A to 2D (ii).

Mr. K.D.Raorane, Master (Adm.) Court Receiver, High Court, Bombay.

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CORAM : A. K. MENON, J.

DATE : 10TH FEBRUARY, 2016.

PC.:

The parties have arrived at resolution of all the disputes in the Suit. The learned counsel for the parties agree that the Defendant No.2 has passed away on 14.12.2015 and accordingly the, Defendant Nos.2A to 2C and 2D(i) to 2D(ii) have to be added as parties to the Suit. Amendment allowed. Amendment to be carried out forthwith. Re-verification dispensed with.

2 Mr. Jagtap, the learned counsel for the Plaintiff, undertakes to file certified copy of the death certificate of the Defendant No.2 within a period of one week from today. The Defendant Nos.2A to 2D are the legal heirs of the late Defendant No.2. The Defendant Nos.2D(i) and 2D(ii) are the heirs of the Defendant No.2D, deceased Nikita D'Costa, daughter of the Defendant No.2 who pre-deceased her. Parties before me have arrived at Consent Terms, which are signed by the Plaintiff, Defendant No.1, Defendant Nos.2A to 2D and 2D(i) to 2D(ii) and their respective Advocates.

3 It is common ground that the estate consists of two shops described in paragraph 4 of which the Court Receiver currently stands appointed pursuant to the order dated 8.7.2005 and as modified by the order dated 24.4.2007. The Court Receiver is present on the notice. He states that an amount of about 75 Lakhs is lying deposited with him, which is invested in various nationalised banks.

4 In view of the settlement now arrived at, there will be order in terms of the Consent Terms in the Suit. This order will be effective only upon the amendment sought as above being carried out. As far as the Court Receiver is concerned, money is to be distributed by him pursuant

to the Consent Terms in the ratio specified in Clause 6 of the Consent terms only after deduction of costs and charges of the Court Receiver. The Defendant No.1 has undertaken to withdraw the Suit No.3305 of 2002 presently pending on the file of City Civil Court, Greater Bombay within two weeks of the filing of these terms. The Defendant No.1 has also filed Criminal Complaint No.6601756/PW of 2013 against the Defendant Nos.2A to 2C, which is pending in the Metropolitan Magistrate's Court at Andheri and in view of the settlement, the first Defendant has consented to quashing of the said Criminal Complaint. All signatories are present. All parties are present who are identified by their respective Advocates. Undertakings contained in the Consent Terms are accepted.

3 In the circumstances, the Court Receiver shall stand discharged as provided in Clauses 6 and 7 of the Consent Terms. It is common ground that the Court Receiver is not currently paying dues of the society and that will be borne by the parties as set out in the Consent Terms. Clauses 6 and 7 will come in operation only upon withdrawal of the Suit pending in the City Civil Court, Greater Bombay and upon the Court Receiver being provided evidence of the Suit having been withdrawn. As regards the Clause 12 and consent to the quashing of the Criminal Case is concerned, parties state that the Petition under Section

482 of the Code of Criminal Procedure, 1973 has already been filed for quashing of the criminal complaint in view of the consent recorded in these minutes.

4 The Suit is decreed and disposed of in terms of the Consent Terms.

(A. K. MENON, J.)