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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
TESTAMENTARY SUIT NO. 88 OF 2012
IN
TESTAMENTARY PETITION NO. 378 OF 2004
WITH
CHAMBER SUMMONS NO. 114 OF 2016
WITH
CHAMBER SUMMONS NO. 117 OF 2016**

Kalyan Dwarkadas Kulkarni ...Plaintiff
Versus
Ajay Dinanath Padgaonkar & Anr. and
Anil Padgaonkar ...Defendants

Mr. Nikhil Jaykar, *i/b Madhukar Harmar, for the Applicant in
CST/117/16.*
Mr. Chaitanya Chavan, *i/b Pratik Thakkar, for the Applicant in
CST/114/16.*
Mr. Shashank Fadia, *for the Defendant/Caveator.*
Mr. Nikhil Rajani, *i/b Mr. V. Deshpande & Co., for Respondent No. 2.*

CORAM: G.S. PATEL, J
DATED: 14th September 2016

PC:-

1. The Petition is for probate to a Will dated 5th December 1996 of one Dinanath Ganesh Padgaonkar (“**Dinanath**”). The Will

appoint one Sunanda Sadanand Chavan (“**Sunanda**”) and the present Petitioner Mr. Kalyan Dwarkanath Kulkarni (“**Kulkarni**”) as Executors of that Will. Sunanda having died after the petition was filed, it continues today in Kulkarni’s name.

2. Upon citation being served, the Petition was opposed by Ajay Dinanath Padgaonkar (“**Ajay**”) and Avinash Dinanath Padgaonkar (“**Avinash**”), both sons of the deceased. A third son, Anil Dinanath Padgaonkar (“**Anil**”), though served, did not file any Caveat. Ajay has since passed on.

3. Kulkarni has filed Chamber Summons No. 117 of 2016. In this he seeks, first, that Ajay’s name be deleted and that his only heir, his widow Aparna, be impleaded instead. Mr. Fadia for the 1st Defendant states that he has not been able to get in touch with Aparna. On behalf of the Avinash, the 2nd Defendant, who resides in England, a statement is made that he will make attempts to get in touch with her.

4. Kulkarni’s other prayer is that he be permitted to renounce his Executorship owing to his ill-health.

5. This would have presented a difficulty but for the fact that. Anil, the other son who supports the Will, has independently filed Chamber Summons No. 114 of 2016 seeking to be impleaded in place and stead of Kulkarni; and that he be permitted to amend the Petition and convert it to one for Letters of Administration with

Will Annexed. He too seeks the deletion of Ajay's name and the addition of Aparna's.

6. I will accept Kulkarni's renunciation and I will also accept Mr. Anil's application for substitution as the Plaintiff/Petitioner. Of necessity, this means that the Petition will have to be converted to one for Letters of Administration with Will annexed. It will then be for Anil to join the Aparna, Ajay's widow, to these proceedings.

7. Accordingly, the following order is passed:

- (a) Chamber Summons No. 117 of 2016 is made partly absolute in terms of prayer clause (b). The renunciation of Kalyan Dwarkanath Kulkarni as an Executor is accepted. Since the other prayers are covered by Chamber Summons No. 114 of 2016, nothing further needs to be done in Kulkarni's Chamber Summons No. 117 of 2016 and it is disposed accordingly.
- (b) Chamber Summons No. 114 of 2016 by Anil Padgaonkar is made absolute in terms of prayer clauses (a), (b) and (c). It is kept pending as regards prayer clause (d) which is for the substitution of Aparna Ajay Padgaonkar.
- (c) Amendments in accordance with Schedule "A" to the Chamber Summons No. 114 of 2016 shall be carried

out, without need of reverification, on or before 14th October 2016.

8. List the Petition for directions on the supplementary board on 19th October 2016.

9. By that time, the Advocates for the 1st and 2nd Defendants will take instructions as to the impleadment of Aparna Ajay Padgaonkar, the widow of Mr. Ajay Dinanath Padgaonkar.

(G. S. PATEL, J.)