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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
TESTAMENTARY AND INTESTATE JURISDICTION  
MISCELLANEOUS PETITION NO. 111 OF 2016  
IN  
TESTAMENTARY PETITION NO. 1349 OF 2012**

|                                  |                |
|----------------------------------|----------------|
| Prakash Mulraj Kabali & Another  | ...Petitioners |
| <i>Versus</i>                    |                |
| Bhanumati Mulraj Kabali & Others | ...Respondents |

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**Mr. Sharan Jagtiani**, *i/b Ms. Preeti Gada, for the Petitioners.*  
**Mr. Rajesh Jain**, *i/b Legal Juris, for Respondents Nos. 1 to 3.*

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**CORAM: G.S. PATEL, J**  
**DATED: 19th December 2016**

**PC:-**

1. Not on board. Mentioned. Taken on board.
  
2. This Miscellaneous Petition was before me on Friday, 16th December 2016. I heard counsel on both sides for some time. I then dictated the order in open Court, in which I made certain observations about my views on the approach of the Petitioner given that the 1st Respondent is his mother. I also examined one particular clause of the Will in question. This creates a life interest in favour of the 1st Respondent in respect of movable and immovable properties left by her husband, Mulraj. I observed that on any reasonable

reading on that clause, the only possible interpretation was that the 1st Respondent would be entitled to use the whole of that estate in any manner she deems fit for her own purposes during her lifetime.

3. After some further discussion, Mr. Jagtiani appearing for the Petitioner sought to withdraw the Petition with liberty to file an appropriate proceeding but without seeking relief against the 1st Respondent; and, in particular, without seeking her removal as an executor of her husband's Will and estate.

4. That order was pronounced in open Court. It has not been fully transcribed or corrected as yet, nor have I signed it.

5. Mr. Jagtiani today mentions the matter after notice. He says that on reflection over the weekend, the Petitioners have reconsidered their position and now seek only to bring a quietus to the dispute with the 1st Respondent, the mother of the 1st Petitioner and the grandmother of the 2nd Petitioner, as regards Mulraj's Will and estate.

6. Some immovable properties are claimed by certain public charitable trusts. There are other proceedings pending in regard to those. The disputes between the Trusts and the 1st Respondent cannot be resolved in the present matter. Those proceedings must remain unaffected by any order in the present petition.

7. What Mr. Jagtiani says today is that his client does not seek the 1st Respondent's removal as an executor. He also does not seek

a formal “rendering of accounts”. He also does not oppose any utilization of either the principal amount in the estate or the interest or income earned thereon (from both movable and immovable properties comprised in the estate) by the 1st Respondent for her own use and purposes during her lifetime. He suggests that the 1st Respondent should only file with some periodicity, to be decided by the Court, bank and investment statements so that there is clarity and no further dispute. He suggests that while the 1st Respondent is at liberty to use all those funds in any manner she wish for herself without restraint or restriction, given the dispositions in the Will, it is not unreasonable that she should agree not to make any *inter vivos* transfers by way of gifts or other alienations of this capital (movable or immovable), or the interest or income to any party. In my view, this is an eminently reasonable proposal given the relationship between the parties and the age of the 1st Respondent.

8. For his part, having taken instructions from the 1st Respondent who is personally present in Court, Mr Jain for Respondents Nos. 1 to 3 accepts the suggestions in the spirit and manner in which they are placed.

9. One observation is necessary to provide context. In his Will, Mulraj made a final disposition of his estate to his son Prakash (the 1st Petitioner) of 30%, his grandson, Prakash’s son, Pratik (the 2nd Petitioner) of 40% and to his daughter, the 3rd Respondent, Kiran, of 30%. The 1st Respondent, Mulraj’s widow, was entitled to use the entirety of the estate in her lifetime. The only possible interpretation of the clause is that there is no restraint on the 1st Respondent’s use of the estate, both movable and immovable, and the income or

interest thereon. But this cannot extend to the 1st Respondent denuding or depleting that estate by gifting away large portions or the entirety of it to anyone else, including the 3rd Respondent. After all, the 1st Respondent has obtained probate to her husband's Will and she must honour its terms in both letter and spirit. His testamentary intentions are clear, and these must be carried out. On Mr. Jain's statements and given his cooperation in the present application, and on account of the fact that he was able to obtain instructions from the 1st Respondent swiftly and readily in Court, I have every confidence that the 1st Respondent fully understands and accepts this; and that she has not the slightest intention of undermining her late husband's testamentary wishes. This is, indeed, the rationale of this order, and of Mr. Jain's ready acceptance of the suggestion, *viz.*, that at no point for the rest of her life should the 1st Respondent, the mother, have to look to anyone else or be dependent on anyone else in any manner for her needs, whether these be in relation to her day-to-day requirements, health, medical and hospitalization costs or otherwise.

**10.** In view of this, the following order:

- (a)** The order dictated on Friday, 16th December 2016 is recalled;
- (b)** The Miscellaneous Petition stands dismissed as withdrawn.
- (c)** The Petitioners' statement that they do not seek removal of the 1st Respondent as an executor of the Will and estate of Mr. Mulraj Kabali is accepted;

- (d) The Petitioners' further statement that they do not seek the formal rendering of accounts from the 1st Respondent is also accepted.
- (e) The 1st Respondent agrees to complete the other necessary requirements for the administration of the estate, if any be pending and to do so as expeditiously as possible.
- (f) In addition to any other statutory obligations, the 1st Respondent will once in every six months file in this court copies of all bank statements and investment account statements as obtained from various banks and investment entities. The first deposit of bank statements will be made before 31st March 2017. Copies will be forwarded to the Advocates for the Petitioners.
- (g) The 1st Respondent will be entitled, without any objection or hindrance from the Petitioners, to use all the property in the estate in any manner that she wishes without any restraint or restriction, including the capital and all interest and income therefrom (including income from any immovable property).
- (h) The 1st Respondent however agrees and undertakes that she will not during her lifetime by way of gift, transfer or otherwise make any alienation of the immovable property in the estate, nor will she make any gifts, donations or dispositions *inter vivos* of the movables, cash, monies, funds or capitals comprised in the estate. In short, she may use all of these without

restraint or restriction for herself, but she may give away no part of it.

- (i) Those immovable properties that are the subject matter of any other proceedings including claims by Trusts will be dealt with separately in those proceedings unaffected by the present order.

11. The undertakings on both sides are accepted as undertakings to the Court.

12. The Miscellaneous Petition is disposed of in these terms. No costs.

13. The 1st Petitioner, the 1st Respondent and the 3rd Respondent are all present in Court. The 1st Petitioner steps into the witness box to personally apologize for his outburst on Friday, which he says was in the heat of the moment. These things happen. No apology was expected or necessary.

**(G. S. PATEL, J.)**