

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION**

**NOTICE OF MOTION NO.209 OF 2017
IN
TESTAMENTARY SUIT NO.10 OF 2017
IN
TESTAMENTARY PETITION NO.2193 OF 2015**

Pankaj Odhavji Thaker	...	Applicant/Proposed Petitioner/Plaintiff
In the matter between		
Jivraj Bhurabhai Patel And Others	...	Org. Petitioners/ Plaintiffs
Versus		
Sunil Odhavji Thaker And Another	...	Defendants/Caveators
.....		
Mr. A.L. Thakkar i/b M/s Thakkar & Co. for the Applicant.		
Mr. B.G. Saraf for the Petitioners.		

.....

CORAM : S.C.GUPTE, J.

DATE : 6 NOVEMBER 2017

P.C. :

. The present Notice of Motion is taken out by the Applicant, who claims to be a legatee under the last will and testament of the deceased Odhavji Vaghji Thaker ("Odhavji"). The application is on the footing that the original Petitioners, who have filed the present testamentary petition (since been converted into a testamentary suit) as executors of the last will and testament of Odhavji, have resigned from the executorship and addressed two letters to that effect, namely, letters dated 14 June 2015 and 28 January 2017, both of which are annexed to the affidavit in support of the Notice of Motion. In view of the renunciation by the executors, who

are the original Petitioners and the Plaintiffs in the present petition and suit, the Applicant, as legal heir and next of kin and a legatee of the deceased Odhavji, applies for conversion of the petition for probate into a petition for letters of administration with will annexed. The Applicant also prays for joinder of the Applicant as a Petitioner/Plaintiff in place and stead of the original Petitioners/Plaintiffs and consequential amendments.

2 Though the caveators originally appeared in the Notice of Motion and sought time, they are not represented today. There is no reply to the Notice of Motion on their part. In the premises, considering the resignation of the executors and the beneficial interest created by the deceased Odhavji in favour of the present Applicant under his last will and testament, which is sought to be probated by the executors, the present Notice of Motion is allowed in terms of prayer clause- **(b)**. The amendments to be carried within four weeks from today.

(S.C. GUPTE, J.)