

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 90 OF 2018**

IN

TESTAMENTARY SUIT NO. 189 of 2017

IN

TESTAMENTARY PETITION NO. 634 OF 2017

ALONG WITH

TESTAMENTARY SUIT NO. 189 of 2017

IN

TESTAMENTARY PETITION NO. 634 OF 2017

Fatima Gonsalves & Anr

...Applicants

In the matter between

Fatima Gonsalves & Anr

...Plaintiffs

Versus

Loyala Alphonso

...Defendant

**Mr Prabhu Velar, with Mr Mohd Naved Mulla, i/b Ibrahim Haji
Akbar Mulla, for the Plaintiffs.**

Mr HA Bhojwani, for the Defendant.

CORAM: G.S. PATEL, J

DATED: 26th September 2018

PC:-

1. Although the matter is listed for dismissal, Mr Velar for the Plaintiffs and Mr Bhojwani for the Defendant request that the Testamentary Suit itself be taken up for hearing and final disposal.
2. The sole Defendant is the brother of the deceased. The Plaintiffs are the brother and sister of the deceased. They are present in Court. There is some dispute about two flats. However, the Defendant states that if the Plaintiffs are willing to transpose the sole Defendant as 3rd Petitioner to the Testamentary Petition so that all three can jointly seek Letters of Administration, then there will be no disputes surviving, and the present Respondent will give Petitioners Nos. 1 and 2 their respective shares in the estate of the deceased brother. Mr Velar submits that this is a reasonable proposal and submission. He says that in view of this he need not press for reliefs in the Notice of Motion, which is dismissed as withdrawn but without any decision on merits.
3. By consent, the Caveat in the Testamentary Suit is dismissed as withdrawn. The Respondent is directed to be deleted and to be transposed as the 3rd Petitioner. A joint vakalatnama will be filed by the Advocates for Petitioners Nos. 1 and 2 and the Advocate for the previous sole Respondent on behalf of all three Petitioners.
4. The Petition will thus proceed as an uncontested Petition for Letters of Administration.

5. The compensation that the Respondent has received will be set out in a statement and the respective shares of Petitioners Nos. 1 and 2 will be paid to them within a period of six weeks from today.

6. The amendments and all consequential amendments are permitted without need of reverification. All amendments to be carried out within two weeks from today.

(G. S. PATEL, J)