

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
TESTAMENTARY SUIT NO. 78 OF 2017
IN
TESTAMENTARY PETITION NO. 2304 OF 2016**

Jagjivan N Davda & Ors	...Plaintiffs
<i>Versus</i>	
Sonal S Lohana Alias Sonal G Davda	...Defendant

Mr Kamal Khata, *with Mr Akshay Vani, i/b MLS Vani & Associates,*
for the Plaintiff.
Nityoah Mehta, *with Ashish Anand & Siddhi Vora, i/b Nityoah*
Suneel & Associates, for the Defendant.
Mrs Sonal S Lohana, *Defendant present.*

CORAM: G.S. PATEL, J
DATED: 13th April 2018

PC:-

1. Pursuant to the previous order the Court Associate, Mr Mayank Rawal went to the residence of 3rd Petitioner, Mrs Mrudula Davda, at Kandivali (West), Mumbai, on 11th April 2018 at about 7.30 pm. She is bedridden. She was identified by Mr Rawal. He explained to her the Consent Terms. He found that she was alert and aware of the Consent Terms. He then obtained her signature on both copies of the Consent Terms and by way of abundant caution,

since her hand is unsteady, also took her thumb impression on those copies.

2. The Consent Terms are tendered. A word of explanation is required is necessary about these Consent Terms. The parties have agreed that the sole Caveat filed by the Defendant will be withdrawn and that Probate will be issued as requested in the Petition and the Suit. To avoid further disputes and litigation, parties have arrived at an agreement or understanding which is in the nature of a family arrangement. This family arrangement thus necessarily follows the anticipated grant of Probate and the expected devolution of the estate in terms of the Will. The Consent Terms record that the family arrangement has already been effected, but this was in anticipation of the withdrawal of the Caveat and the consequent issuance of the Probate. Such a settlement is always possible even in a Testamentary Suit despite its limited remit in view of the provisions of Order XXIII of the Code of Civil Procedure 1908 (“CPC”). Accordingly in my view the Consent Terms are not contrary to law. The signature of the 3rd Plaintiff and her thumb impression has been obtained in the circumstances mentioned above. The other parties, viz., the 1st and 2nd Plaintiffs and the Defendants have signed the Consent Terms, and these two Plaintiffs and the Defendant are personally present in Court before me. I am satisfied that they have arrived at this understanding and have drawn these Consent Terms of their volition in reflection of their true understanding.

3. Accordingly the Consent Terms are taken on record and marked ‘X’ for identification with today’s date.

4. The Suit is disposed of in accordance with the Consent Terms. The Registry will proceed to issue the grant expeditiously. It will act on an authenticated copy of this order. It will not raise any requisition or objections including as to citations or administration bonds. The filing of accounts is dispensed with. Refund of Court fee, if any, in accordance with the Rules.

5. A soft copy of the Consent Terms will be uploaded as the second order in the matter.

(G. S. PATEL, J)