

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
CHAMBAER SUMMONSN O.1 OF 2018
IN
TESTAMENTARY PETITION NO. 444 OF 2015**

Pravinkumar Sitaram Banka	...Applicant
<i>In the matter between</i>	
Sitaram Ramgopal Banka	...Petitioner
<i>And</i>	
Draupadi Sitaram Banka	...Deceased

Mr Anjali Trivedi, *for the Applicant.*

CORAM: G.S. PATEL, J
DATED: 23rd January 2018

PC:-

1. The Chamber Summons is filed by the son of the deceased Draupadi Sitaram Banka, who is said to have been left a Will dated 20th May 2011. In that she appointed her husband Sitaram Banka as the sole executor in clause 5. That clause also said that should her husband pre-decease her, then her son Pravinkumar, the present Applicant, would be the executor. Pravinkumar is also a legatee and beneficiary under the Will.
2. The issue, however, is this: having regard to the provisions of clause 5, can Pravinkumar, the Applicant, be a probate Petitioner?

Clause 5 of the Will says that he would be an executor *only* if his father Sitaram Banka died before his mother Draupadi. Sitaram Banka died after Draupadi. Therefore, Pravinkumar cannot be the executor.

3. However, Pravinkumar is undoubtedly an heir at law as also a beneficiary in the Will. He is entitled to continue the Petition but as one for Letters of Administration with Will annexed. That is the application being made.

4. Accordingly, the Chamber Summons is made absolute in terms of prayer clauses (a), (b) and (c). The necessary amendments will be carried out within a period of three weeks from today.

5. The Chamber Summons is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)