

Dhanappa
I. Koshti

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High Court, Original Side, Suit No.2100 of 1982 for grant of probate to the present plaintiff/petitioner. This no objection is dated 21st January, 1999.

3 As far as defendant No.3 is concerned, he was joined to the above suit pursuant to an order passed on 26th August, 2004 in Chamber Summons No. 338 of 2004.

4 I had enquired with the parties as to why defendant No.3 had not signed these Consent Terms. In response thereto, the parties brought to my attention an order passed by this Court on 17th March, 2015 whereby the Registry was directed to issue a final notice to defendant No.3 to remain present before this Court on 23rd April, 2015. The order further stated that if defendant No.3 was not present on that date the caveat will be discharged and the matter will be directed to continue as an uncontested petition.

5 On going through the record, I could not find that defendant No.3 was issued a notice as directed in the order dated 17th March, 2015. It is, in these circumstances, that on 26th October, 2020 I passed an order allowing the plaintiff to serve defendant No.3 through substituted service as contemplated under Order V Rule 20

of the Code of Civil Procedure, 1908. This has now been done as evidenced by the affidavit of service dated 21st November, 2020 filed by Pankaj Jagannath Tejam, the constituted attorney and son of the plaintiff/petitioner abovenamed. Despite service, none have appeared today on behalf of defendant No.3. In fact on going through the record I find that defendant No.3 has never appeared in this matter after being joined in the proceedings. Considering these facts, I am inclined to take the Consent Terms dated 30th September, 2020 on record. Accordingly, the said Consent Terms are taken on record and marked “X” for identification. The above suit as well as Interim Application (L) No. 4850 of 2020 are disposed of in terms of the Consent Terms. However, there shall be no order as to costs.

6 Considering that the plaintiff/petitioner is 83 years old, the office is directed to process the grant of probate as expeditiously as possible and grant the same if it is otherwise found in order.

7 This order shall be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned shall act on production by fax or e-mail of a digitally signed copy of this order.

(B. P. COLABAWALLA ,J.)