

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

**INTERIM APPLICATION NO.1657 OF 2022
IN
TESTAMENTARY SUIT NO.20 OF 2004**

Mahesh Kishandas Shroff ...Applicant

In the matter between:-

Mahesh Kishandas Shroff & Ors. ...Plaintiffs

V/S

Jaisukh Bhuta & Ors. ...Defendants

AND

Himanshu A. Mehta & Anr. ...Prop. Petitioners

Mr. Nilesh Modi a/w Mr. R. Desai i/by Rustamji & Ginwala for the Applicants in IA/1657/2022 and Plaintiff/Petitioner in TS/20/2004.

Mr. Sheesha Seth i/by FZB & Associates for Defendants in TS/20/2004.

CORAM : R. I. CHAGLA, J.

DATED : 1st JULY, 2022.

P.C.

1. The matter is mentioned. Not on board, taken on board.
2. Heard learned counsel for the parties.
3. By this Interim Application, the Applicant has sought permission to amend the Petition in terms of the schedule at Exhibit-

J to the Interim Application. Further relief has been sought for the Caveat of the Caveators, who have died, be dismissed/discharged/set aside.

4. It is stated by the learned counsel for the Applicant that the Applicant/Plaintiff/Petitioner No.1 is an executor named in the last Will and testament dated 12th December 1996 of the deceased Yashwantilika Narottamdas Dalal, who expired on 16th April 2002. He has stated that the Applicant together with Petitioner Nos.2 to 4 had filed Testamentary Petition for grant of probate in respect of the said Will dated 12th December 1996 of the deceased. There were three other executors of the deceased namely (1). Jaisukh Nagardas Bhuta (Caveator/Defendant No.1), (2). Prabhudas Manikchand Kothari (since Deceased) and (3). Smt. Jayaben Ishwardas Vora. He has further stated that Prabhudas Maneckchand Kothari, who was added as a party Petition No.5 on 16th January 2004, on account of his demise, his name was deleted on 19th April 2004. Even, the Petitioner No.4 subsequently died and his name was deleted from the cause title on 16th September 2005. The said Jaisukh Nagardas Bhuta and Smt. Jayaben Ishwardas Vora had filed Caveats whereupon, the Testamentary Petition No.749 of 2003 got converted into Testamentary Suit No.20 of 2004.

5. The learned counsel for the Applicant has further stated that the deceased had left behind Manohar Garodia (since deceased), the daughter of the predeceased brother of the predeceased father of the deceased as her only heir according to the Hindu Succession Act by which she was governed. The two sons of Smt. Gunvanti Manohar Garodia, namely Kamlesh and Ketan Garodia have filed Caveat on 8th March 2007, whereupon their names have been added as party Caveator/Defendant Nos.4 and 5. Further, Shri. Sushila H. Mehta, grand-daughter of Maganlal the brother of the deceased had filed Caveat on 21st May 2004, whereupon, her name was also added as Caveator/Defendant No.3. The Notice of Motion No.2298 of 2004 was filed by the Petitioner/Plaintiff for dismissing and setting aside the caveat filed by Smt. Sushila H. Mehta. By an order dated 14th September 2006, passed in the said Notice of Motion No.2298 of 2004, the Caveat of Caveator/Defendant No.3 was dismissed and/or set aside on the ground that she had no caveatable interest in the estate of the deceased.

6. The learned counsel for the Applicant has further stated that thereafter Petitioner No.3 expired on 17th November 2020, the Petition No.2 expired on 6th January 2022, Caveator/Defendant No.1

expired on 14th May 2021 and Caveator/Defendant No.2 expired on 2nd October 2011. Copies of the death certificates have been annexed at Exhibit-B, C, D and E of the Interim Application.

7. The learned counsel appearing for the Applicant has further submitted that the Applicant is the only surviving Petitioner. He has relied upon the said Will dated 12th December 1996 of the deceased and in particular clause 5 of the said Will wherein the executors have been named to carry out of the property of the deceased. It is further provided that after the death of the deceased, the executors shall appoint any one member of the “Satharawala Mathuriya” family as Additional Executor so that two members of the “Satharawala Mathuriya” family may remain as executors always. In addition to the same, the deceased empowered the executors to appoint additional executors, new executors and accept their resignation. There are six persons named as executors in clause 5 of the said Will. Upon the demise of Petition Nos.2 and 3 as well as the Caveators/Defendant Nos.1 and 2, their names are required to be deleted. It is further stated that both the Caveators/Defendant Nos.1 and 2 filed Caveat and were parties to the above proceedings in their capacity as Executors named in the Will of the deceased and on their demise, the cause of action or lis

and the right to sue does not survive in respect of their heirs.

8. The Applicant has stated that he is aged 83 years and is not keeping good health and is not in a position to take care of the litigations as well as administer the estate of the deceased. The Applicant desires before his demise to administer the estate of the deceased and carry out her wishes in accordance with the said Will dated 12th December 1996 and transfer properties of the deceased to the beneficiary named in the said Will. However, life is uncertain and therefore, in pursuance of the power of appointment granted by the deceased in clause 5 of the last Will and testament dated 12th December 1996, the Applicant/Petitioner No.1 has appointed proposed Petitioners herein as Additional Executors, who have accepted their appointments as Additional Executors. The acceptance letters dated 14th February 2022 and 12th February 2022 addressed by the proposed Petitioner Nos.2 and 3 respectively, is at Exhibit-H and I of the Interim Application.

9. In view thereof, the present Interim Application is taken out for amendment of the Testamentary Petition in terms of schedule-J of the Interim Application. I have considered the submissions of the learned counsel for the Applicant/Petitioner and

further considered the fact of the demise of Petitioner Nos.2 and 3 as well as the demise of the Caveator/Defendant Nos.1 and 2 and the fact that the Caveat of Caveator/Defendant No.3 has been set aside on the ground that she had no caveatable interest in the estate of the deceased vide order dated 14th September 2006 in Notice of Motion No.2298 of 2004. However, their names have not been deleted in the Petition. Accordingly, the relief sought for in the Interim Application is required to be granted.

10. I further consider that the proposed Petitioners are appointed by the Petitioner as additional executors and they have accepted their appointment and thus are required to be joined as Petitioner Nos.2 and 3 in the Petition. Further, consequential amendments are also required to be granted. Hence, the following order is passed:-

- (i). The Applicant/Petitioner is permitted to amend the Petition and proceedings in terms of schedule of amendment at Exhibit-J to the Interim Application.
- (ii). The amendment shall be carried out within a period of two weeks from the date of this order.

- (iii). The delay in taking out the Interim Application is condoned.
- (iv). The Caveats of the Caveators/Defendant Nos.1 and 2, who have expired are discharged.
- (v). The Interim Application is disposed of in the above terms.

(R. I. CHAGLA, J.)