

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

**INTERIM APPLICATION NO. 2303 OF 2021
IN
TESTAMENTARY PETITION NO. 769 OF 2019**

Shanta Hariharan	...	Applicant
In the matter between		
Venkatesh Ramakrishnan	...	Petitioner
Versus		
Akshay Nagarajan	...	Respondent/Caveator

Mr. M.A. Shah for the Applicant.
Mr. Shardul Singh i/b Manoj Mane for the Respondent/Caveator.

CORAM : R.I. CHAGLA, J.
DATED : 11th OCTOBER, 2021.

P.C. :

1 Heard the learned Counsel for the parties. By this Interim Application, the Applicant is seeking the deletion of the name of the Original Petitioner Venkatesh Ramakrishnan from the cause title of the Testamentary Petition No.769 of 2019 and for addition of the name of the Applicant as Petitioner/Plaintiff in the cause title. Further consequential amendments have been sought in the Testamentary Petition No.769 of 2019 as per the schedule annexed to the Interim Application.

2 The learned Counsel appearing for the Applicant has stated that the deceased Mr. Nagarajan Ramakrishnan had expired on 23.07.2017. The Original Petitioner had filed the above Testamentary Petition for grant of probate with respect to the said Will in this Court on 08.02.2019. The Testamentary Petition has been filed by the Original Petitioner in the capacity of Executor of the aforesaid Will.

3 It is stated by the Applicant that the Testamentary Petition was on board before the learned Company Registrar/Testamentary Registrar on 26.03.2019 for directions. On that date by order dated 26.03.2019 the Company Registrar/Testamentary Registrar issued citation returnable within two weeks from the date of the said order and also issued notice to the Collector. Further directions were issued as per the Bombay High Court Original Side Rules. It is stated by the Applicant that the Original Petitioner expired on 10.04.2021.

4 The death certificate evidencing the date of death as 19.04.2021 was issued on 10.04.2021 and has been annexed at Exhibit-F to the Application. It is stated by the learned Counsel appearing for the Applicant that upon the expiring of the Original Petitioner, the Applicant has preferred this Interim Application. He refers to the paragraph 1 of the Will dated 09.07.2017 which had been filed by the deceased Petitioner for

grant of probate with respect to the Will dated 09.07.2017 executed by the deceased Mr. R. Nagaraj. In paragraph 1 of the said Will which is annexed at Exhibit-B to the Testamentary Petition it has been stated as under :

“13. The Applicant states that Para. 1 of the above Will dated 9th July 2017 is as follows :-

“1. I hereby appoint my brother R. Venkatesh Executor of this my Will. I have full faith and trust that my Executor will distribute my properties in accordance with the wishes expressed by me in this Will. In the event my brother R. Venkatesh is unavailable and/or unwilling to act as Executor, then the role of the Executor will be performed by my sister Shanta Hariharan.”

5 He has submitted that it is clear from this clause in the said Will that in the event of the deceased brother Mr. R. Venkatesh being unavailable and/or unwilling to act as Executor, then the role of the Executor will be performed by the sister of the deceased Shanta Hariharan. He has submitted that in view of the demise of the Original Petitioner Mr. R. Venkatesh, as per the said clause, the role of the Executor is to be performed by the Applicant. He has accordingly submitted that the Application be allowed for deletion of the name of the Original Petitioner Mr. Venkatesh Ramakrishnan from the cause title of the

Testamentary Petition and the name of Applicant be substituted as well as consequential amendments in terms of the schedule annexed to the Interim Application.

6 Having considered the submissions, it appears that the Original Petitioner Mr. Venkatesh Ramakrishnan (also referred to as Mr. R. Venkatesh) who was the executor named in the Will of the deceased expired on 10.04.2021. Clause 13(1) of the Will of the deceased dated 09.07.2017, specifically states that in the event of Mr. R. Venkatesh is unavailable and/or unwilling to act as Executor, then the role of the Executor will be performed by the sister of the deceased Shanta Hariharan. The Application is accordingly requires to be allowed as it is in terms of the said Will. The Respondent/Caveator does not object for allowing this Interim Application. Hence, the following order is passed :

- i) The Applicant shall carry out the necessary amendment by deletion of the name of Venkatesh Ramakrishnan, the Original Petitioner in the Testamentary Petition No.769 of 2019 and addition of the name of the Applicant as Petitioner/Plaintiff in the cause title of the Testamentary Petition No.769 of 2019, as well as carry out consequential amendments as per the schedule annexed to the Interim Application.

ii) The requisite amendment shall be carried out by the Applicant within a period of two weeks from today.

iii) The Interim Application is disposed of in the above terms.

7 Learned Counsel for the Applicant requests that Vakalatnama filed in Interim Application be treated as Vakalatnama in the Testamentary Petition No.769 of 2019. Request is granted.

8 The Chamber Summons No.272 of 2019 in Testamentary Petition No.769 of 2019 shall listed on 17.11.2021.

9 The amended Testamentary Petition shall be served by the Applicant to the Respondent/Caveator within period of one week from the date of this order.

(R.I. CHAGLA, J.)

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