

Ashwini

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

APPEAL NO. 462 OF 2019

IN

NOTICE OF MOTION NO. 82 OF 2017

IN

TESTAMENTARY PETITION NO. 1405 OF 2013

Ursula Thakkar

... Appellant

Versus

Urmi N Prasad

...Respondent

**Mr Karl Tamboly, with Anuj Desai & Umesh Tawari, i/b S
Ashwinikumar Co LLP, for the Appellant.**

**CORAM G.S. Patel &
 Madhav J. Jamdar, JJ.**

DATED: 8th July 2022

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1. In our view the Appeal is entirely misconceived. There is an uncontested Testamentary Petition No. 1405 of 2013. It pertains to the Will dated 21st December 2007 of one Sharayu Ramesh Thakkar. Under that Will, she appointed as many as six Executors. These names are noted at page 138. One of them was replaced because he had passed away.

2. The original Petitioner was one Urmi Prasad. Another named Executor, Ursula Thakkar, filed an application by way of Notice of Motion No. 82 of 2017 saying that she, too, should be added as a co-Petitioner. For some reason that we are wholly unable to understand, Urmi opposed this most vigorously before RD Dhanuka J on 22nd January 2019 (which resulted in the impugned order of that date). Oddly enough, although both Urmi and Ursula both sought to be Petitioners and both were Executors, they found themselves at loggerheads and even represented by separate counsel.

3. All this completely unnecessary litigation resulted in Dhanuka J passing an order saying that *all* the Executors should be joined. That was the only correct cause of action. Every executor has three options. The first is to fulfill his or her statutory duty which is to apply for Probate. He or she may optionally renounce executorship. Third, an Executor may reserve his rights to come in later for an apply for Probate where the probate petition is filed by another executor. There is really no fourth option known to law. Certainly there is no concept of each executor filing a separate petition, or one executor leaving out other executors, or of an executor being joined as a respondent to a petition.

4. As it happens all the Executors were clearly shown to be keen on administering the estate according to the Will, i.e. serving as Executors. Not one of them was willing to renounce. The Will is uncontested; and this internecine fight between the executors is self-destructive — it will only delay, and possibly imperil, the grant.

5. By the impugned order the learned single Judge did not only the right thing but the only thing that could have been done in the circumstances.

6. There is no merit to the Appeal and we will proceed to dismiss it.

7. We are told that the amendments have in fact been carried out. We can only trust that these Executors will see the sense in not engaging in an internal dispute between themselves so that the matter can proceed to a grant as expeditiously as possible.

8. The Appeal is dismissed. No costs.

(Madhav J. Jamdar, J)

(G. S. Patel, J)