

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL (L) NO. 25634 OF 2022**

IN

INTERIM APPLICATION NO. 1940 OF 2019

IN

TESTAMENTARY SUIT NO. 164 OF 2019

IN

TESTAMENTARY PETITION NO. 936 OF 2019

WITH

INTERIM APPLICATION (L) NO. 25636 OF 2022

IN

APPEAL (L) NO. 25634 OF 2022

IN

INTERIM APPLICATION NO. 1940 OF 2019

IN

TESTAMENTARY SUIT NO. 164 OF 2019

IN

TESTAMENTARY PETITION NO. 936 OF 2019

Uma Mahesh Bhalinge

...Appellant

Versus

Kushal Mahesh Bhalinge

...Respondent

WITH

TESTAMENTARY PETITION NO. 2827 OF 2022

ARUN
RAMCHNDRA
SANKPAL

Digitally signed
by ARUN
RAMCHNDRA
SANKPAL
Date: 2022.10.19
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(NOT ON BOARD)

Kunal Mahesh Bhalinge ...Petitioner

Manik Namdev Bhalinge ...Deceased

WITH

TESTAMENTARY PETITION NO. 2461 OF 2022

(NOT ON BOARD)

Kunal Mahesh Bhalinge ...Petitioner

Mahesh Bhalinge S/o Manik Bhalinge ...Deceased

Mr JS Kini, *with Arun J Kini, i/b Sapna Krishnappa, for the Appellant/Applicant.*

Ms Akansha Agrawal, *with Manish Bohra, i/b AS Khan & Associates, for the Respondent.*

CORAM G.S. Patel &
Gauri Godse, JJ.

DATED: 18th October 2022

PC:-

1. This is a dispute between mother and son. It arises in a testamentary proceeding on the Original Side of this Court. Both sides had sought our assistance in settling the dispute. After several rounds of negotiations and discussion, we are glad to note that both parties have finally arrived at Consent Terms. Both parties are present in Court. The Consent Terms with the Annexures signed by

the parties and their Advocates are tendered. These are taken on record and marked “X” for identification with today’s date.

2. A few observations and directions will be necessary to ensure that the Consent Terms receive their full purport and to ensure compliance. Between the two sides, it has broadly been agreed that some properties will belong exclusively to the Respondent. Other properties will belong exclusively to the Appellant, the Respondent’s mother. In addition, the Appellant has agreed to pay an amount of Rs.2.50 crores to the Respondent. This portion is set out in Clauses 5 to 7 of the Consent Terms.

3. The properties that are to be separated are also mentioned in the Consent Terms. Annexure “A” is a list of the properties to be retained by the Appellant with the temporary exception carved out in Clause 5 in respect of Item 4 of Annexure “A”. Annexure “B” is a format or proforma of an Affidavit required from the Respondent.

4. Clause 6 provides that the Respondent will be entitled to withdraw the entire amount deposited by the Deccan Merchants’ Cooperative Bank Limited with the Prothonotary and Senior Master of this Court with accrued interest. That exact amount is not yet ascertained. It is, however, agreed that the amount of Rs.2.50 crores payable by the Appellant to the Respondent will be reduced by the entire amount withdrawn (inclusive of interest) by the Respondent from this Court. The withdrawal is therefore to be treated as an adjustment or a credit against the Appellant’s liability to the Respondent.

5. Clause 7 says that the Appellant will pay interest at 12% per annum upon delay in payment beyond the 'stipulated period.' Clause 5 says that the payment of Rs.2.5 crores (obviously the balance after the withdrawal adjustment) is to be paid by the Appellant within six months. Mr Kini for the Appellant seeks a grace period beyond six months, and he and Ms Agrawal leave this to the discretion of the court. We extend the period for payment by another 45 days, i.e., to seven and a half months. Beyond this, interest will be payable at 12% per annum on the balance due.

6. However, we insisted that there must be an outer limit within which the full payment must be paid. For this reason, the parties have agreed that the Appellant undertakes to pay the entire amount within 12 months from today. To ensure this payment, one set of immovable properties that were to go to the Appellant are to be held in abeyance until the full amount is paid. This is reflected in the handwritten corrections in paragraph 5, which is in respect of three Galas at Sr. No.4 at page 14 (part of Annexure "A"). These properties are described as follows:

"4. Gala No.E-809, Gala No.E-810 and Gala No.E-811 Standing in the name of partnership firm NAMDEO UMAJI BHALINGE. All three Galas situated at A.P.M.C. Market, Dharmaveer Sambhaji Raje Fruit Vegetables Market Yard, Turbhe, Vashi, Navi Mumbai."

7. The handwritten portion states that the Appellant agrees and undertakes not to sell, transfer or alienate these properties until the full amount agreed in the Consent Terms is paid to the Respondent.

8. The relevant corrections have been made in handwriting to Clauses 5 and 7. These handwritten corrections are in the handwriting of Ms Sapna Krishnappa and have been initialled in the margin by the Advocates and the parties.

9. It is also clear to us that the Appellant is not required to pay the entire balance in one amount but may make partial payments over time, her objective being to complete payment on schedule. The interest will obviously be computed on the amount that is unpaid at the end of that period of seven and a half months.

10. We are satisfied, in these circumstances, that the Consent Terms are in order. They are not contrary to law and have been drawn by the parties of their own volition in reflection of their true intentions.

11. The undertakings in the Consent Terms are accepted as undertakings to the Court.

12. The Consent Terms contemplate either the transfer of interest in immovable property or the relinquishment of an interest of fractional interest in some immovable properties. Therefore, to give effect to these Consent Terms, it may be necessary to lodge a certified copy of this order and of the Consent Terms with the relevant authorities including the Superintendent/Collector of Stamps and the Sub-Registrar of Assurances either in Mumbai, Pune or elsewhere. Those authorities will act on production of a certified or authenticated copy of this order and of the Consent

Terms. No objection is to be raised on the basis that these authorities were not formally joined as party to these proceedings.

13. A soft copy of the Consent Terms is to be uploaded as the second order in the matter.

14. The Registry is to ensure that the hard copy of the signed Consent Terms is permanently retained on file as part of the record and is not sent for destruction in the ordinary course.

15. Court fees are to be refunded in accordance with the Rules. For the purposes of Section 43 of the Maharashtra Court Fees Act and the proviso to that Section, today's date is the date of making a claim for repayment. The Prothonotary & Senior Master will issue a certificate for a refund of Court Fees computed according to the Rules. He will act on production of an authenticated copy of this order without requiring a separate application.

16. The Consent Terms contemplate the Grant of Letters of Administration with Will annexed in Testamentary Petition No.936 of 2019 to the last Will and Testament dated 24th April 2017 of Manik Bhalinge. Parties have now agreed that the Grant may be issued. The Respondent has agreed to withdraw the Caveat and has specifically agreed and consented to the Grant of Letters of Administration with Will annexed. He has also agreed to withdraw the Testamentary Petition No. 2827 of 2022 and Testamentary Petition No. 2461 of 2022. Accordingly the Testamentary Department is directed to forthwith issue the Grant without raising

any further requisitions in Testamentary Petition No. 936 of 2019 to the Petitioner, Uma Mahesh Bhalinge.

17. Testamentary Petition No. 2827 of 2022 and Testamentary Petition No. 2461 of 2022 are not on board. For the purposes of the Consent Terms and by consent, both are withdrawn to this Court, taken on board and forthwith taken up for final disposal. In view of the Consent Terms, Testamentary Petition No. 2827 of 2022 and Testamentary Petition No. 2461 of 2022 are dismissed as unconditionally withdrawn.

18. It is noted that neither Testamentary Petition No. 2827 of 2022 nor Testamentary Petition No. 2461 of 2022 are for Probate.

19. The Appeal is disposed of in these terms (i.e., with an order in terms of the Consent Terms plus the additional orders and directions in this order) with no order as to costs.

20. Liberty to the parties to apply.

21. All pending Interim Applications are disposed of as infructuous.

22. We thank Mr Kini and Ms Agrawal for their assistance, and express our appreciation of the efforts of each in putting an end to this family dispute. It is gratifying to note that their respective clients have also seen the benefit of settling these disputes. The

successful conclusion of the matter without acrimony is to their credit.

(Gauri Godse, J)

(G. S. Patel, J)