

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY AND INTESTATE JURISDICTION

TESTAMENTARY SUIT NO. 20 OF 2013
IN
TESTAMENTARY PETITION NO. 1021 OF 2011
&
INTERIM APPLICATION NO. 2076 OF 2021
IN
TESTAMENTARY SUIT NO. 20 OF 2013.
IN
TESTAMENTARY PETITION NO. 1021 OF 2011

ATUL DHIRENDRA SARAIYA ...PETITIONER/PLAINTIFF

VERSUS

PARUL HEMANT KANSARA ...RESPONDENT/DEFENDANT

CONSENT TERMS

BACKGROUND

1. The Plaintiff and Defendant are the legal heirs of Late Dhirendra Vanmalidas Saraiya (**“the Deceased”**), who passed away on 28th January 1995 leaving his Last Will and Testament dated 7th November 1994 (**“the said Last Will and Testament”**). The Plaintiff and Defendant are the son and daughter of the Deceased, respectively. The Plaintiff is appointed as the Sole Executor under the said Last Will and Testament.
2. The Plaintiff filed a Testamentary Petition No.1021 of 2011 before this Hon’ble Court seeking grant of Probate of the said Last Will and Testament of the Deceased.

PENDING PROCEEDINGS

3. Pursuant to the filing of the Testamentary Petition No.1021 of 2011, a citation was served upon the Defendant. Thereafter, the Defendant filed a Caveat dated 23rd November 2011 and Affidavit in Support of the Caveat dated 16th December 2011 (**“the said Caveat”**) In view of the said Caveat, filed by the Defendant, Testamentary Petition No.1021 of 2011 was converted into Testamentary Suit No.20 of 2013.
4. During the pendency of the Testamentary Suit No.20 of 2013, the Plaintiff filed an Interim Application No.2076 of 2021 for dismissal of the said Caveat *inter alia* on the ground that the Defendant has accepted the benefits and bequests under Last Will and Testament of the Deceased and is estopped from challenging the same.

MEDIATION

5. During the pendency of the aforesaid Testamentary Suit No.20 of 2013, the Plaintiff and Defendant by a consent Order dated 26th October 2021, agreed to attempt to resolve their disputes through mediation and accordingly this Hon'ble Court was pleased to appoint Mr. Naushad Engineer, Advocate, Bombay High Court as the Mediator.
6. Pursuant to meetings in the mediation process and with the guidance of the Ld. Mediator, the Plaintiff and Defendant have amicably resolved all their disputes and have arrived at a settlement.
7. The Parties have agreed to execute and file these Consent Terms in Testamentary Petition No.1021 of 2011 converted into Testamentary

Suit No.20 of 2013 and Interim Application No. 2076 2021 filed in Testamentary Suit No.20 of 2013.

UNDERTAKINGS OF PARTIES

8. The Defendant hereby grants her unconditional, free, full and complete consent to the grant of Probate of the Last Will and Testament of Late Shri Dhirendra Vanmalidas Saraiya, dated 7th November, 1994 to the Plaintiff and prays that the Petition for Probate be granted and made absolute as prayed.
9. The Defendant confirms receipt of the bequest under the Last Will & Testament of the deceased (being the Mosalu and the IDBI Bonds) and pursuant to the full and final settlement from the mediation, the Defendant has now signed and affirmed an Affidavit of Consent for grant of Probate in favor of Plaintiff/Petitioner. The Original of this Affidavit of Consent is being filed in the Testamentary Department of this Hon'ble Court and a copy thereof is enclosed at Annexure – 1 hereto. The Defendant unconditionally withdraws the Caveat dated 23rd November 2011 and all contentions challenging the validity of Last Will and Testament of Late Shri Dhirendra Vanmalidas Saraiya or his capacity to execute the same.
10. The Defendant declares that she has no claim of any nature whatsoever in respect of the estate of the deceased or against the Plaintiff's properties or otherwise howsoever received by the Plaintiff under the said Last Will and Testament and confirms that she has no claims, objections, demands, rights of any nature to the estate (whether

movable or immovable) of her father and/or her father's HUF and/or their ancestors and/or predecessors in title.

11. The Defendant confirms that she has duly received her share from the estate of her late mother Smt. Ansuya Dhirendra Saraiya and further declares that she has no claim of any nature whatsoever in the Estate of her deceased mother, Smt. Ansuya Dhirendra Saraiya.
12. The Defendant undertakes to this Hon'ble Court, not to make any claim of any nature whatsoever in respect of the estate of the deceased or against the Plaintiff's properties or otherwise howsoever received by the Plaintiff under the said Last Will and Testament and/or their ancestors and/or predecessors in title.
13. Pursuant to the Mediation process, on or before the execution of these Consent Terms, and strictly in consideration of the undertakings given by the Defendant herein, the Plaintiff / Petitioner has handed over a Pay Order for a sum of Rs.1,50,00,300/- (Rupees One Crore Fifty Lakhs Three Hundred Only), by Pay Order No..... dated, 2022 Drawn on Bank, Branch. This payment being made in furtherance of these Consent Terms shall be a full and final settlement of any claims/objections/demands made by the Defendant under the said Last Will and Testament and/or or in relation to the assets or Estate of their ancestors and/or predecessors in title. The Defendant undertakes not to make any claim/ objections/ demands/ hindrances/ obstructions of any nature whatsoever on

receipt of Rs.1,50,00,300/- (Rupees One Crore Fifty Lakhs Three Hundred Only).

14. The Defendant hereby confirms that now nothing is required to be paid and/or handed over or given to the Defendant or her legal heirs by the Plaintiff in any manner whatsoever pertaining to any claims, objections, demands, rights of any nature to the estate of her father and/or mother and/or their ancestors and/or predecessors in title.
15. In accordance with the Consent given by the Defendant for issuance of Probate in the name of the Petitioner/Plaintiff, in the event, the Probate department requires any letter or consent or declaration or undertaking or indemnity or any other writing from the Defendant, the Defendant agrees and undertakes to sign and handover the same. Also, the Defendant agrees and undertakes to remain present before the Testamentary Department or before any Court or officer or authority, if necessary and to comply with any other requisitions required from her for the purposes of issuance of Probate.
16. These Consent Terms shall be binding on the nominee/s, legal heirs, executors, legal representatives, administrators, etc. of both the parties.
17. The Defendant agrees and undertakes to this Hon'ble Court that after the execution of these Consent Terms, she will execute and register a Deed of Release at the Office of the Sub-Registrar of Assurances in favour of the Plaintiff/Petitioner pertaining to the estate of her father and/or their ancestors and/or predecessors in title and shall also be a

party/witness to the Deed of Transfer at the Office of the Sub-Registrar of Assurances which is required to be executed by the Executor after issuance of Probate of the Last Will & Testament in favour of the beneficiary being the Plaintiff / Petitioner herein. The Defendant shall also execute Undertaking, Declaration, Indemnity, Consents and Withdrawals as may be necessary from time to time for updating the Revenue Records including the Property Register Cards, etc. for perfecting the title of the Plaintiff / Petitioner and the other co-owners / co-lessees deriving through the estate of Late Dhirendra Vanmalidas Saraiya and/or their ancestors and/or predecessors in title.

18. The Defendant agrees and undertakes to this Hon'ble Court that after the execution of these Consent Terms, she will immediately also execute and get registered a specific Power of Attorney at the Office of the Sub-Registrar of Assurances in favour of the Plaintiff, giving him irrevocable and unfettered powers to sign any document or paper or Affidavit or Declaration and take up such steps as may be necessary for the purpose of the estate of Late Dhirendra Vanmalidas Saraiya and/or their ancestors and/or predecessors in title and to complete the vesting of the various assets bequeathed to the Plaintiff under the said Last Will and Testament of the deceased Shri Dhirendra Vanmalidas Saraiya dated 7th November, 1994.
19. The Defendant agrees and undertakes to this Hon'ble Court to sign any other paper or documents as may be required or to remain present before such authorities as may be required to complete the vesting of

the property bequeathed to the Plaintiff under the said Last Will and Testament dated 7th November, 1994 and to complete any other formalities as may be necessary.

20. The Defendant agrees, declares and confirms, that the properties/assets of the deceased as listed in the Schedule I of the Probate Petition are both self acquired and/or ancestral properties of the deceased devolved through the predecessors in title and the Defendant confirms that the same have devolved in accordance with the Last Will and Testament Dated 7th November, 1994. The Defendant further confirms that the property, being all that piece and parcel of leasehold land bearing C.S. No.110 of Girgaon Division and bearing Cadestral Survey No.1/1264 admeasuring 855.35 square metres as per the Property Register Card which is situated Opposite Naaz Cinema Compound, Lamington Road, Grant Road (East), Mumbai - 400004 as per the Last Will and Testament dated 7th November, 1994 is reflected in the books of account of Dhirendra Vanmalidas Saraiya HUF and the Property Register Card stands in the name of Dhirendra Vanmalidas Saraiya and another. As per the said Will, the same devolves in favour of the Plaintiff in his sole name. In this regard, the Defendant has no objection and does hereby grant her unconditional consent for issuance of Probate in regard to the eventual transfer of the said HUF property and thereof in favour of the Plaintiff. The Defendant undertakes not to obstruct or interfere with the Plaintiff's right of use, possession or enjoyment or development of the said properties/assets in any manner whatsoever. The Defendant further confirms that in the

event any HUF of their father or any ancestors is required to be totally or partially partitioned, the Defendant and/or her legal heirs shall unconditionally present themselves for signing and registration of such document as and when called for by the Plaintiff or his legal heirs and the Defendant and/or her legal heirs shall not make any further claims/demands in respect thereof.

21. Upon execution of these Consent Terms, all allegations made by the parties against one another stand withdrawn. The Suit shall stand decreed and disposed of accordingly from this date. The Defendant also undertakes to unconditionally withdraw any legal notices sent by her advocates and also withdraw the Police Complaint filed by her and/or her family members against the Plaintiff and withdraws the complaints / objections simultaneously upon execution of the present Consent Terms.
22. The Defendant has addressed the letters to Jai Hind Co-operative Housing Society and various authorities. The Defendant unconditionally withdraws all such letters/writings and also undertakes to address formal letters of withdrawal to Jai Hind Cooperative Housing Society and various other authorities, within a period of 7 days from the request being made by the Plaintiff. .
23. The Defendant hereby confirms that she has no right, title and/or any interest in the Juhu Property or Lamington Road Property or in any movable or immovable assets mentioned in the Last Will & Testament in any manner whatsoever.

24. These Consent Terms record the full and final settlement arrived at between the Parties and the same is binding on the respective heirs and all persons claiming through the signatories.
25. The son, daughter in law and wife of the Plaintiff being Mr. Devang Saraiya, Mrs. Chinmayee Devang Saraiya and Mrs. Mita Atul Saraiya, have signed these Consent Terms, in confirmation, approval and No-objection of the terms recorded herein and have also filed Affidavits cum Declarations confirming the Last Will and Testament dated 7th November, 1994 and the settlement recorded herein between the Plaintiff and the Defendant and expressing their approval, consent, and no objection to the same pertaining to the estate of Late Dharendra Vanmalidas Saraiya and/or the ancestors and/or predecessors in title. Copies of the said Affidavits are attached herewith and marked as Annexure "2" .
26. Mr. Hemant Kansara, the Husband of the Defendant, Mr. Rohan Hemant Kansara, the son of the Defendant, Mrs. Jinal Rohan Kansara, daughter in law, have signed these Consent Terms, in confirmation, approval and No-objection of the terms recorded herein and have also filed Affidavits cum Declarations confirming the Last Will and Testament dated 7th November, 1994 and the settlement recorded herein between the Plaintiff and the Defendant and expressing their approval consent, and no objection to the same pertaining to the estate of Late Dharendra Vanmalidas Saraiya and/or his ancestors and/or

predecessors in title. Copies of the said Affidavits are attached herewith and marked as Annexure "3".

27. The Defendant hereby agrees and undertakes to this Hon'ble Court that she will co-operate and provide all assistance for grant of Probate of the said Last Will and Testament of the Deceased, to the Plaintiff.

DISPOSAL OF PROCEEDINGS

28. As a result of these Consent Terms, it is agreed, Ordered and Decreed that Probate of the Last Will and Testament dated 7th November, 1994 of Late Shri Dharendra Vanmalidas Saraiya be issued to the Plaintiff/Petitioner by the department. The Testamentary Petition No.1021 of 2011 converted into Testamentary Suit No.20 of 2013 stands disposed off in accordance with these Consent Terms.
29. The Suit is accordingly decreed in terms of these Consent Terms and directions are hereby issued to the Testamentary Department of the Hon'ble High Court to expeditiously issue Probate to the Plaintiff/Petitioner.
30. Accordingly, the Interim Application No. 2076 of 2021 has been allowed and the Caveat filed by the Defendant is dismissed, without any Order as to costs.
31. The undertakings given by the Parties herein shall be treated as undertakings given to the Hon'ble Court.

32. Each party shall bear their own costs, charges and expenses to the past and present legal proceedings.

33. No Order as to costs.

Dated this day of February 2022

Place: Mumbai

ATUL DHIRENDRA SARAIYA

(Plaintiff)

PARUL HEMANT KANSARA

(Defendant)

Witnesses:	Witnesses:
_____ Mrs. Mita Atul Saraiya	_____ Mr. Hemant Hiralal Kansara
_____ Mr. Devang Atul Saraiya	_____ Mr. Rohan Hemant Kansara
_____ Mrs. Chinmayee Devang Saraiya	_____ Mrs. Jinal Rohan Kansara

Adv. For the Plaintiff

Adv. For the Defendant

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VERSUS

PARUL HEMANT KANSARA
...RESPONDENT/DEFENDANT

CONSENT TERMS

Dated this.....day of February, 2022

Anila V. Acharya
Advocate for Petitioner/Plaintiff
Unit No. 4, Sane Building,
Nanabhai Lane,
Fort Mumbai - 400-001.
Email: anilaacharya@gmail.com
Mob: 9820898899
Advocate Code: I2651