

Coram :

R. I. Chagla, J.

Date : 26.02.22

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
TESTAMENTARY SUIT No.32 OF 2021**

IN

TESTAMENTARY PETITION No.1173 OF 2018

Dinyar Rustom Workingboxwalla)
Aged 69 years, of Bombay,)
Zoroastrian, Indian Inhabitant,)
Occupation - Doctor,)
Domiciled at Bombay)
Residing at Ground Floor, Bode)
Building, 18 Gilder Lane,)
Lamington Road, Mumbai-400 007,) **...Plaintiff**

Versus

Gustad Boman Irani)
of Mumbai, Zoroastrian Indian Inhabitant,)
residing at, R/10, 4th Floor, Godrej Baug,)
Nepean Sea Road, Mumbai-400 026) **...Defendant**

[Signature]

[Signature]

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CONSENT TERMS
MINUTES OF THE ORDER



The Plaintiff herein had filed the aforementioned Testamentary Petition in this Hon'ble Court for Probate of the last Will and Testament dated 11th February, 2010 (hereinafter, "**the Will**") of Mr. Noshir Boman Irani (hereinafter, "**the Deceased**").

2. The Defendant herein filed a Caveat bearing No. CTS/49 of 2021 challenging the grant of Probate of the Will of the Deceased. Consequent to the filing of the Caveat, the said Testamentary Petition was converted to the aforementioned Testamentary Suit.
3. The Defendant herein declares to this Hon'ble Court that he does not challenge the Will of the Deceased and that the Defendant had filed the Caveat on account of a misrepresentation made by the Plaintiff in the above Petition indicating that the Deceased was the absolute owner of the Land bearing Gut No.159/2, admeasuring Hectare 0-20-0 alongwith farmhouse house structure namely 'Jannat', bearing House No.910, admeasuring 1776 square feet situated at Gram Panchayat Golvad, Panchayat Samiti and Taluka Dahanu, District-Palghar (hereinafter shall be referred as "**said Jannat property**") which is



mentioned as Item No.2 in Schedule I of the aforementioned Testamentary Petition No. 1173 of 2018.

4. The Plaintiff undertakes to this Hon'ble Court to make the necessary application to the Hon'ble Court seeking an amendment to Item No.2 of Schedule I of the Petition and mentioning the share of the Deceased in the said Jannat property to be 1/3rd share.
5. With the involvement of mutual friends and associates and after lengthy correspondence and meetings and in order to respect the last wishes of Late Mr. Noshir Boman Irani and in order to restore peace and harmony, the Defendant and the Plaintiff, after great deliberations, have decided to bring about an early full and final one-time settlement and hence the Plaintiff and the Defendant have decided to settle the matter out of Court, amicably. The Defendant, out of love and affection for his brother Late Mr. Noshir Boman Irani and to end all disputes between the Defendant and the Plaintiff, without any compensation whatsoever, undertakes to this Hon'ble Court that the Defendant shall, simultaneously with the filing of these Minutes of the Order, handover quiet, vacant and peaceful possession of said Jannat property along with the set of keys and all other original documents relating to the said property as per the





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list annexed as Annexure "A" hereto. After the execution and registration of Deed of Release as herein below mentioned by the Defendant of his 1/3rd undivided share in the said Jannat Property, the Defendant and his family members, servants and agents shall have no claims or demands or interest of any nature, whatsoever in respect of the said Jannat Property. The Defendant declares that he has not entered into any lease of or given on leave and license, the said Jannat Property or parted or agreed to part with possession thereof in favour of any person or persons till date. The Defendant shall, hereafter, till the time of registration of Deed of Release, as mentioned hereunder, not transfer in any manner the said Jannat property or create any third party interest therein. The Plaintiff confirms that upon obtaining physical possession of the said Jannat property from the Defendant, he, the Plaintiff alone will pay the maintenance of the property, electricity bill, property tax and all such other statutory and other payments, thereafter, in respect of the said Jannat property alone and shall have a right to deal with and dispose of the said Jannat Property in such manner as the Plaintiff chooses, without in any way consulting or informing the Defendant. Further, if the Plaintiff desires to retain the services of the workers, employed at the said Jannat property, then Plaintiff alone will pay salary to the workers therein and maintain the said





Jannat property and the Defendant will not be responsible in anyway, post the registration of the Deed of Release.

6. The Defendant undertakes to this Hon'ble Court that he shall, within a period of two weeks from the date hereof, execute in favour of the Plaintiff, a Deed of Release relinquishing his $1/3^{\text{rd}}$ share in the said Jannat property and shall get the Deed of Release registered with the Sub-Registrar of Assurances, Dahanu. The costs, charges and expenses for preparing and registering the aforesaid Deed of Release, including stamp duty, registration charges and other expenses, shall be borne and paid by the Plaintiff alone. The fees of the respective Advocates for the purposes of drafting shall be borne and paid by the Plaintiff and the Defendant respectively. It is further agreed between the Plaintiff and the Defendant that any kind of taxes by way of Capital Gains tax, Gift tax, Income tax or any other tax, stamp duty charges or levy, arising as a result of the Defendant transferring his $1/3^{\text{rd}}$ undivided share in the said Jannat property to the Plaintiff by virtue of the registered Deed of Release to be made and registered, shall be borne and paid by the Plaintiff alone. If, at any time in future, any of the amounts out of the aforesaid taxes/stamp duty are required to be paid by the Defendant and on account thereof, any loss or damage is occasioned to the Defendant herein,

Dr. Waheedullah

[Signature]

the Plaintiff herein shall indemnify and keep indemnified the Defendant in respect of all such claims. Also, the cost, charges and expenses for mutating/deleting the name of the Defendant from the Revenue Records and the Gram Panchayat Records, in respect of the said Jannat Property and all the public records and all incidental expenses shall be borne and paid by the Plaintiff alone.

7. The parties hereto, along with the other consenting legal heirs of the Deceased, have entered into a Memorandum of Understanding recording the terms of settlement between the parties. A copy of the Memorandum of Understanding entered into between the parties is annexed as **Annexure "B"** hereto. The parties hereto undertake, covenant and declare to this Hon'ble Court that the contents of the said Memorandum are accepted by them unconditionally and that they shall abide by the same. The Defendant agrees and confirms that he shall have no claims whatsoever against any of the properties set out in Schedule I to the said Testamentary Petition at item Nos. 1, 3 and 4 and 1/3rd share in item No. 2 i.e. said Jannat property or any of the properties belonging to the Late Noshir Boman Irani and which are hereby expressly relinquished, surrendered and given up and forego any claims that the parties herein may have in regard thereto, now or at any time in the future.





8. As per the mutual understanding and out of love and affection for the family of the deceased Noshir Boman Irani and as a gesture of goodwill and with a view to end all conflicts, the Plaintiff has agreed to pay Mr. Tirandaz Boman Irani and Mr. Mehernosh Boman Irani, brothers of the said Deceased, respectively a sum of Rs.5,00,000/- each. The aforesaid amount of Rs.5,00,000/- shall be paid by the Plaintiff to them vide DD/Pay Order, simultaneously at the time of registration of the aforesaid Deed of Release of the one-third share of the Defendant in favour of the Plaintiff in the said Jannat property.
9. Plaintiff further agrees and confirms that the Defendant is the sole owner and in possession of all properties which are described as under:
- Non-agricultural land situated at Village Gholwad, Taluka Dahanu bearing Bhumapan Kramank and Upvibhag 303/3/3, admeasuring Arre 120.50.00 Sq. meters assessed at Rs. 1250 along with structure thereon bearing Rampur Gram Panchayat House No. 1342, (hereinafter referred to as "**property A**").



ii. Horticultural land situated at Village Gholwad Taluka Dahanu bearing Bhumapan Kramank and Upvibhag 253/4/1 admeasuring Hectare 0.47.00 Arre assessed at Rs. 0.47 (hereinafter referred to as **"property B"**).

iii. Non-agricultural land situated at Village Gholwad Taluka Dahanu bearing Bhumapan Kramank and Upvibhag 226/1/2/3 admeasuring Arre 12.00.00 Sq. meters assessed at Rs. 120.00 and Gaothan lands admeasuring about 1 Guntha along with house structure thereon bearing Gholwad Gram Panchayat House No. 1135, (hereinafter referred to as **"property C"**).

iv. Shop No.B-9/A, Ground Floor, Plot-130/134, B wing, Ratan Heights, Dr. Dadasaheb Bhadkamkar Marg, Opposite Navjivan Society, Mumbai Central, Mumbai - 400008 (hereinafter referred to as **"property D"**). The properties A, B, C and D respectively and together, are hereinafter collectively referred to as **"the said Gustad's properties"**.

10. The Plaintiff confirms and declares that he has no past, present and/or future claims in respect of the said Gustad's





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properties. The Plaintiff confirms and declares that the property A, property B, property C and the property D i.e. **"the said Gustad's Properties"** belong to the Defendant respectively and that they were purchased by the Defendant alone, out of his own funds and that the same exclusively belong to the Defendant, as absolute and exclusive owner and that the Plaintiff has no right, title, interest, claim or possession of whatsoever nature therein.

11. The Plaintiff also confirms that he has done a complete due diligence of all the Properties belonging to the Deceased and to the best of his knowledge, there are no other properties which are jointly owned by the Defendant with the Deceased, except the Defendants 1/3rd share in the said Jannat property described in item No.2 in Schedule 1 in the said Testamentary Petition No.1173 of 2018.
12. The Plaintiff herein with his legal heir/s, family members, friends, associates, assigns, servants, labourers, agents or any person/s, claiming through him, may have in regard thereto in past, present or at any time in future, shall not enter any of the said Gustad's Properties and shall not cause any obstruction to the Defendant in exercising his rights, as absolute and exclusive owner thereof and accordingly there shall be a perpetual injunction against the Plaintiff, his legal





heir/s, associates, assigns, family members, friends, agents, servants, labourers etc. or any person/s, claiming through him, in the above terms so far as the Gustad's properties are concerned.

13. The Plaintiff shall not, now or at any time in the future, raise any claim or any rights of any nature whatsoever in any of the above said Gustad's properties belonging to the Defendant absolutely, either in his individual capacity or as the principal legatee under the said Will of Late Noshir Boman Irani or as forming part of the estate of Late Noshir Boman Irani. The said Gustad's properties belonging to the Defendant have belonged to and shall continue to belong to the Defendant only, absolutely. It is agreed by and between the Plaintiff and Defendant that going forward, both of them, will be on their own and shall not interfere and/or intermeddle in the affairs of each other.
14. In view of the above settlement arrived at between the parties hereto, the Defendant prays for withdrawal of the Caveat filed by him along with the Affidavit in Support.
15. The said Suit shall now be converted into the above Testamentary Petition No.1173 of 2018 and shall be proceeded with in accordance with law.



16. The Defendant undertakes to file, within a period of one week of the execution and registration of the Deed of Release as mentioned in aforesaid para hereinabove, with the Prothonotary & Senior Master/Testamentary Registrar of this Hon'ble High Court, the original consent Affidavits of (a) Mr. Rustom Boman Irani, (b) Tirandaz Boman Irani, (c) Mehernosh Boman Irani, (d) Zarin Cawas Irani and (e) Roshan Viraf Maloo whereby they have, whilst accepting the Will of the deceased and the contents thereof being the bequests made thereunder, have given their No Objection and consent to the Probate being granted by this Hon'ble Court to the Plaintiff. The Prothonotary & Senior Master/Testamentary Registrar of this Hon'ble Court shall accept the said Affidavits without any objection and take the same on record.
17. The Parties herein are present and have executed these Minutes of the Order out of their free will, without any misrepresentation, undue influence or coercion and are of sound health and mind.
18. There shall be no order as to costs.

DATED THIS 26th DAY OF FEBRUARY, 2022

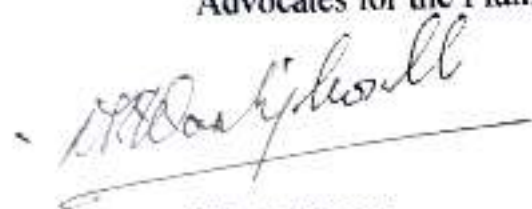




M/s. JAYAKAR & PARTNERS


PARTNER

Advocates for the Plaintiff


PLAINTIFF



Advocate for the Defendant


DEFENDANT