

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

**INTERIM APPLICATION NO.2481 OF 2020
IN
TESTAMENTARY PETITION NO.1142 OF 2007**

Keith Saures & Anr. ...Applicants/Petitioners

And

Joseph Benedict Martin ...Deceased

Mr. Yogesh Adhia a/w Mr. Laxman Jain for the
Applicants/Petitioners.

CORAM : R. I. CHAGLA, J.

DATED : 29th JULY, 2022.

P.C.

1. Heard learned counsel for the Applicants/Petitioners.
2. By this Interim Application, the Applicants/Petitioners have sought permission to amend Schedule-I to the Petition i.e. Schedule of property annexed to Probate dated 23rd July 2019 granted by this Court as per the details in the Schedule. Further, dispensation of obtaining consent of the heirs of the late sister of the deceased Ms. Olive Coelho and Ms. Cynthia Coelho is sought.
3. The Applicants/Petitioners had filed the Petition for probate of the last Will and Testament of the deceased Joseph

Benedict Martin. The probate was granted by this Court on 23rd July 2009. One of the legal heirs of the deceased namely Chrissie Mary Agnes gave her Consent to grant of probate of the Petitioner by filing the Affidavit dated 13th December 2007 in this Court. The other two legal heirs of the deceased though served with citation, did not oppose the grant of probate in favour of the Applicants/Petitioners. Thus, the probate came to be issued.

4. After grant of probate, the Applicants/Petitioners applied for transmission of shares/debentures to the various companies. During correspondence, it was revealed that the debentures of Larsen and Toubro Limited and S.R.F. Limited mentioned in the Petition did not match with the details of the debentures available with these two companies. The two companies accordingly through their share transfer agent Karvy Computershare Pvt. Ltd. addressed letters dated 29th July 2016 and 29th August 2016 setting out details debentures standing in the name of the deceased as per record. It is apparent from the aforesaid letters that the two companies have no longer debentures which have been converted into shares.

5. The Applicants/Petitioners also learnt that the deceased had certain shares of Hindustan Unilever Limited and during the Application of transmission of shares, Hindustan Unilever Limited through its transfer agent addressed letter dated 27th July 2016 wherein it is stated that the shares of Hindustan Unilever Limited were not mentioned in the Schedule of assets and therefore, the same be changed. In view thereof, an Affidavit had been initially filed by Applicant/Petitioner No.2 dated 28th March 2018 for amendment of Schedule-I i.e. Schedule of property annexed to the probate and an objection was raised by the department to obtain Consent Affidavit of other two heirs/sisters of the deceased, who were duly served citation. The two sisters of the deceased who were duly served citation have not objected to the grant. Thereafter, all three sisters/heirs have expired.

6. It is stated that thereafter, the Applicants/Petitioners learnt that share certificate of State Bank of India were not included in the schedule of assets of the deceased upon the Applicants/Petitioners having applied for transmission after grant of probate . Accordingly, these shares are also required to be included in the Schedule of property annexed to the probate and

form part of the Schedule of amendment.

7. In view of the Applicants/Petitioners having been requisitioned to file Interim Application, the present Interim Application has been taken out.

8. It is stated that the two sisters of the deceased, namely Ms. Olive Coelho and Ms. Cynthia Coelho, have expired after the issuance of grant of probate. They had not objected to grant of probate after being served with citation issued by this Court. Considering the amendment which seeks deletion of certain assets and addition of certain assets which result in a minimal change in the value of the assets, this Court be pleased to dispense with fresh consents of the heirs of the late sisters of the deceased for carrying out the proposed amendments to the probate. It is mentioned that there are nine heirs of the two deceased sisters who are scattered all over Mumbai, Pune, Bangalore and Canada and the Applicants/Petitioners are not aware of the addresses of a few of these heirs. The names of the heirs of the two deceased sisters which came to the knowledge of the Applicants/Petitioners are mentioned in para 12 of the Interim Application.

9. Having considered the averments in the Interim Application and submissions of the learned counsel for the Applicants/Petitioners, in my view, a case is made out for grant of relief sought for in the Interim Application, particularly considering that initially an Affidavit dated 28th March 2018 was filed for amendment of the Schedule of property annexed to the probate and thereafter, the order dated 18th January 2021, this Court had observed that the grant requires an amendment and the Interim Application be filed and served on the legal heirs of the deceased notwithstanding that some of the legal heirs have consented while others have not being opposed for the Probate Petition. It is further necessary to consider that in compliance with the order dated 18th January 2021, passed by this Court, the heirs of the deceased have been served with the Interim Application by email as permitted by this Court. The fact of service on the legal heirs of the deceased shall be placed by way of an Affidavit of the Advocates of the Applicants/Petitioners, which shall be filed within a period of one week from today. Hence, it is noted that inspite of being served with the Interim Application, the other heirs of the deceased have not made an appearance. In view thereof, the following order is passed:-

- (i). The Applicants/Petitioners shall submit the Schedule of amendment and the office shall amend Schedule-I of properties annexed to the probate dated 23rd July 2009, in accordance with the schedule of amendment.
- (ii). Considering that the other heirs of the deceased have been served with the Interim Application by email and which is directed to be placed on record by Affidavit to be filed by the Applicants/Petitioners within a period of one week from today, the Consent of the legal heirs of the late sisters of the deceased namely Ms. Olive Coelho and Ms. Cynthia Coelho is dispensed with.
- (iii). The Interim Application is disposed of in the above terms.

(R. I. CHAGLA, J.)