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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY AND INTESTATE JURISDICTION

TESTAMENTARY SUIT NO. 66 OF 2021

IN

TESTAMENTARY PETITION NO. 626 OF 2020

Molly Franco

.. Plaintiff

Vs.

Alan Chaerles D'Silva

.. Defendant

Sean Wasoodew a/w. Tanmay Karmarkar i/b. Sean Wasoodew for the Plaintiff
Vijaya Ingole for proposed Defendant Nos. 2 and 3.

Seeta Yadav h/f J. B. Lalwani & Co. for Defendant Nos. 1, 4 and 5.

Molly France, Plaintiff is present.

Colin D'Cruz, Constituted Attorney for Defendant Nos. 2 & 3 is present.

Alan D'silva, Defendant No. 1 is present.

Niharika D'silva, Defendant No.4 is present.

Krish Alan D'silva @ Krish Arman D'silva, Defendant No.5 is present.

CORAM:- ARIF S. DOCTOR, J.

DATE :- 19th DECEMBER, 2022.

P. C.:

1. Testamentary Petition No. 626 of 2020 was filed for Probate of
the last Will and Testament of the late Mrs. Rose D'silva (the deceased) dated

29th May, 2012. The deceased passed away at Vancouver, Canada on 16th December, 2017.

2. The present Petition was filed on 1st December, 2019, subsequent thereto a Caveat was filed by one Mr. Alan D'silva, who is the son of the deceased. Today, Consent Terms dated 19th December, 2022 have been tendered by which all the disputes and differences between the parties have been resolved. Since the proposed Defendants are all family members and the Consent Terms would comprehensively resolve all the disputes and differences between the parties thereto as well as the proposed Defendant qua the estate of the deceased.

3. I have perused the following Defendants are present in Court:-

1. Colin D'Cruz, Constituted Attorney for Defendant Nos. 2 & 3 is present.
2. Alan D'silva, Defendant No. 1 is present.
3. Niharika D'silva, Defendant No.4 is present.
4. Krish Alan D'silva @ Krish Arman D'silva, Defendant No.5 is present.

4. The parties are identified by their respective advocates and confirm execution of the Consent Terms. The Consent Terms have also been executed by the advocates for the parties. The Consent Terms are taken on record and marked Exhibit X for identification. A copy of the Consent Terms

are scanned and reproduced as under:-

Coram :- Arif S. Doctor, J.
Date :- 19/12/22

X
Date
19/12/22

**IN THE HIGH COURT OF JUDICATURE AT
BOMBAY
TESTAMENTARY AND INTESTATE
JURISDICTION
TESTAMENTARY SUIT NO.66 OF 2021
IN
TESTAMENTARY PETITION NO. 626 Of 2020**

Petition for Probate of the Last Will and Testament of Late Mrs. Rose D'Silva, Christian, Indian Inhabitant of Mumbai, Occ: Secretary, Widow, residing at the time of her death at 2895, 31st Ave W, Vancouver BC V6L 2A3, Canada and having her permanent address at 48, "B" Wing, Rebello House, Mangalorean Garden Home CHSL, 132, Hill Road, Bandra (West), Mumbai 400050

... Deceased

Mrs. Molly Franco)
of Mumbai, Christian, Indian)
Inhabitant, residing at Garden)
Colony, 2nd Floor, D/S-5-)
L.J.Cross Road Mahim,)
Mumbai-400016)
Being the Sole Executor named)

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under the Last Will and)
 Testament of the Deceased)
 abovenamed)


 ... Plaintiff

Versus

Mr. Alan Charles D'Silva)
 of Mumbai, Christian, Indian)
 Inhabitant, residing at 48, "B")
 wing, Rehelo House, 132, Hill)
 road, Bandra (West), Mumbai-)
 400050.)
 And)
 Flat No.807, B Wing, Hillside)
 CHS Ltd., Raheja Vihar)
 Complex, Chandivali Farm Road,)
 Chandivali, Mumbai- 400 072)


 ... Defendant

CONSENT TERMS

Coram: ARIP DOCTER

Date: 19-12-2022

1. By consent of the parties, following are added as party Respondents to the present proceedings:
 - a. Mrs Bernadette Marie D'Silva as party Respondent No. 2 residing at 2895, 31st Ave W, Vancouver, BC, V6L 2A3, Canada. (Mrs Bernadette Marie D'Silva is referred to as "Defendant No.2 herein after).



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- b. Mr. Hormus John Karat residing at 2895, 31st Ave W, Vancouver, BC, V6L 2A3, Canada as party Respondent No.3 (Mr. Hormus John Karat is referred to as "Defendant No.3 herein after) B
- c. Ms. Niharika D'Silva Athalye residing at Flat No.807, B Wing, Hillside CHS Ltd., Raheja Vihar Complex, Chandivali Farm Road, Chandivali, Mumbai- 400 072 as party Respondent No. 4 (Ms. Niharika D'Silva Athalye is referred to as "Defendant No.4 herein after). B
- d. Mr. Krish Alan D'Silva alias Krish Arman D'silva residing at Flat No.807, B Wing, Hillside CHS Ltd., Raheja Vihar Complex, Chandivali Farm Road, Chandivali, Mumbai- 400 072 as party Respondent No. 5 (Mr. Krish Arman D'Silva alias Krish Alan D'Silva is referred to as "Defendant No.5 herein after). B
- e. The Petitioner be permitted to amend the schedule I of the aforementioned Petition.
2. The following will be added to the Schedule I of the Petition:

Sr. No.	Name of the bank	Account number	Balance (IN INR)
1.	Vancity Credit	11531749	1,30,75,240/-

	Union, Canada		
2.	Bank of India, Hill Road, Bandra Branch	Safety Deposit Locker	Contents not known

3. The following table is a summary of the properties (immovable and movable) left behind by the deceased testator which formed part of her estate and the Defendants in whose favour it will stand transferred:

Sr. No.	Name of the bank or property	A/c No.	Net worth of property or Amount in Bank Account at the time of death of the deceased INR	In Favour of:
1.	Flat # 48B - Rebello House Mangalore can Garden		3,28,9,081 (Approx)	Caveator

	Home CHSL ("said Society"), situated at 132, Hill Road, Bandra (West), Mumbai 400050, along with shares of Society			
2.	50% share in Flat Nos.807 and 807- A, B Wing, Hillside CHS Ltd., Raheja Vihar Complex, Chandival i Farm Road,		1,64,90,28 2 (Approx)	Caveator, Defendant 4 and 5






	Chandivali, Mumbai-400 072, along with shares of Society.			
3.	HSBC, Mumbai Main Branch	002735 249	44,02,538. 02.00	Caveator
4.	Union Bank, Bandra Branch	315602 057414 9	10,963,000	Caveator,
5.	Vancity Bank Account, Canada	1153174 9	1,30,75,24 0/-	Defendant No.2 
6.	Bank of India, Hill Road, Bandra Branch	Not known	Contents not known	Caveator

4. The parties declare that save and except the properties mentioned herein above, the deceased did not have any other assets (including both movable

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and immoveable) as per the information available with them. Therefore, the parties hereto expressly agree that save and except the properties mentioned herein above, any other assets including but not limited to the bank accounts/PPF accounts of the deceased held in State Bank of Patiala or State bank of India (if any), both movable and immoveable, discovered/recovered after signing of these consent terms, would belong to and be transferred in favour of the ~~Defendant~~ No.2. solely without further reference to any court of law, however the ~~Defendant~~ no.2 will inform the Caveator of the same, prior to the transfer. Parties undertake to execute and register any further deeds and documents required for this purpose.

5. On the filing of the Consent terms and subject to terms as mentioned herein, the Caveator shall not proceed further and will withdraw the Caveat. The Caveator therefore subject to above, agrees to withdraw the Caveat filed by him and confirms that he is not challenging the genuineness of the Will. It is agreed that these Consent terms shall be part of the Probate. Further the ~~Defendant~~ No.2 to 5 give their consent for issuance of the Probate as per these Consent Terms.

[Handwritten signatures and initials]

6. In view of these Consent Terms and subject to terms as mentioned herein and on withdrawal of the Caveat and on consent being given by the Caveator and the ~~Defendant~~ ^{Defendant}- 2 to 5, Office of the Prothonotary & Senior Master will proceed to issue Probate as per these Consent Terms, of the Last Will and Testament dated 29th May, 2012 of late Mrs. Rose D'Silva ("the said last will and Testament") to the ~~Principals~~ ^{Principals} as expeditiously as possible.
7. Notwithstanding the grant of probate in favour of the Petitioner and notwithstanding the bequests made under the said Last Will and Testament, ~~Defendant~~ ^{Defendant} Nos. 2 and 3 agree and undertake not to claim any right, title, claim or interest in any of the properties of the deceased testator bequeathed under the aforementioned said Last Will and Testament or otherwise, save and except as provided hereinbelow.
8. The Petitioner and/or ~~Defendant~~ ^{Defendant} nos. 2 to 5, on issuance of probate, as per these Consent Terms agree to execute Deed/s of Transfer and/or any other requisite document/s in favour of the Caveator as mentioned in these Consent Terms in respect of the flat i.e. 100% share in Flat No. 48, "B" Block, Rebello House, Mangalorean Garden Home CHSL, 132, Hill Road, Bandra (West), Mumbai 400050 as well as all shares and benefits attached thereto and in respect



thereof ("Bandra Flat"). Further agreed that 50% share of the deceased in Flat Nos.807, B Wing, Hillside CHS Ltd., Raheja Vihar Complex, Chandivali Farm Road, Chandivali, Mumbai- 400 072 and 50% share of the deceased in Flat No.807-A, B Wing, Hillside CHS Ltd., Raheja Vihar Complex, Chandivali Farm Road, Chandivali, Mumbai- 400 072 along with all her rights, title and interest therein shall be equally divided between the Caveator, *Defendant* r.o.4 and *Defendant* no.5 ("Chandivali Flats"). In all Deeds, the *Defendant* no. 2 and *Defendant* no. 3 agree to join as Confirming Parties and shall execute any other or further document as may be required by the Caveator/ *Defendant* No. 1 for effectually transferring the Flats as mentioned hereinabove.

9. The deceased held various Bank accounts as mentioned herein below:

Sr. No.	Name of the bank	Account number
1.	HSBC , Mumbai Main Branch	002735249
2.	HSBC Mumbai branch	002-200483
3.	Union Bank, Bandra branch	3156020574149

	Vancity Credit	11531749
	Union, Canada	

The deceased also held safety deposit locker at Bank of India, Hill Road, Bandra Branch the contents and locker no. is not known.

10. The Defendant nos. 2 to 5 further agree to give up their claim to the bank accounts of the deceased testator with HSBC Bank, Mumbai Main Branch branch bearing account nos. 002735249 and 002-200483, Union Bank, Bandra branch, bearing account no. 315602010574149 branch in favour of the Caveator and the said Bank Locker alongwith contents therein. The Plaintiff shall immediately on issuance of the Probate as per these Consent Terms take necessary steps to transfer the funds lying in the said bank accounts to the Defendant Respondent No. 1 /Caveator in the account as per the details provided by him. The Plaintiff shall further, immediately on issuance of the Probate, take necessary steps for opening the said bank locker, at Bank of India, Hill Road, Bandra branch if any in the presence of the Caveator and shall handover contents thereof to the Caveator at the same time.

11. An amount of Rs. 2,19,58,336/- (Rupees Two crore Nineteen Lakh Fifty- eight Thousand Three Hundred

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and Thirty-six only) during the period April 2014 to November 2017 was transferred to Canadian Bank Account at Vancity Credit Union A/C 11531749 held by the deceased Testator jointly with ^{Defendant} No. 2 in Canada during the lifetime of the Deceased Testator. According to ^{Defendant} no. 2, an amount in Canadian Dollars equivalent to Rs.88,83,096 (Rupees Eighty-eight Lakh Eighty-three Thousand and Ninety-six only) was spent for the care, medicines, doctor's visits, surgeries and hospital care of the Deceased Testator. Thus, the balance remainder in the said joint account as on 27th September, 2022 is Canadian Dollars 275,000.00 equivalent to Rs.1,30,75,240 (Rupees One Crore Thirty Lakh Seventy-five Thousand Two Hundred and Forty only). The Respondent No. 1/ Caveator and Respondents 3 to 5 unequivocally give up any right, title, interest or claim in the amount of Canadian Dollars 275,000.00 equivalent to Rs.1,30,75,240 (Rupees One Crore Thirty Lakh Seventy-five Thousand Two Hundred and Forty only) which is the remainder amount left from the amount as transferred by the Deceased Testator to the joint account of the Deceased Testator and ^{Defendant} No. 2 at Canada and shall not hereafter be entitled to claim any information with regard to the manner in which the said funds were utilised. It is made clear that any liability/s pertaining to the transfer to the



abovementioned bank account mentioned in this paragraph, shall solely belong to the ^{Defendant} no.2.

12. The Respondent No. 1/ Caveator undertakes to bear all arrears, present and future income tax, wealth tax, property tax or any other tax as may be applicable under the law and any and all statutory dues included but not limited to maintenance (arrears, present and future) of the deceased Testator (which are not created by the ^{Defendant} nos. 2 to 5) in respect of the entire estate of the deceased which is coming in favor of Caveator including the said Bandra flat, and the said Chandivali flats. It being the clear, unequivocal and express intention of the parties that the ^{Plaintiff} ^{Defendants} ~~Plaintiff~~, ~~Respondents~~ 2 and 3 shall not be liable for any dues payable in respect of the Deceased or any part of her estate, unless the same is created by them and/or they have any knowledge of the same which is not disclosed herein. ^{Defendant} ~~Respondent~~ No. 1/ Caveator alone shall be liable to pay all stamp duty, registration charges and/or society or other transfer charges in respect of the transfer of the said flat at Bandra and the Chandivali flats in the manner prescribed herein. The ^{Plaintiff} ^{Defendants} ~~Plaintiff~~, ~~Respondents~~ No. 2 and ^{Defendant} ~~Respondent~~ No.3 shall not be liable to contribute anything towards the same. The Caveator, ^{Defendants} ~~Respondents~~ no. 4 and 5 agree and undertake to

[Signature]

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[Signature]

expressly indemnify and keep indemnified the Plaintiff, Defendant No. 2 and Defendant No. 3 from and against any loss, damages, demand, action, dispute, claim, costs, charges and expenses of any nature, suffered or sustained by the Plaintiff, Defendant No. 2 and Defendant No. 3 on account of any claims and/or demands made and/or disputes raised in relation to discharge of any of the statutory or other liabilities of the deceased testator and/or relating to the two flats and/or relating to any of the other properties of the deceased testator coming to the name of the Caveator as per these Consent Terms and further agrees and undertakes to reimburse the Petitioner, Defendant No. 2 and Defendant No. 3 any claim, cost, loss, demand, damage, dispute, charges and expenses of any nature suffered or sustained by the Plaintiff, Defendant No. 2 and Defendant No. 3 in respect thereof as aforesaid immediately on the same being demanded by the Plaintiff, Defendant No. 2 and Defendant No. 3.

13. It is agreed that all the liabilities of Advocates for the respective parties shall be borne by the respective party and in particular, Caveator shall not be liable to pay any fees, costs or charges of the Advocates engaged by the Plaintiff for the present Testamentary Proceedings.

 



14. Drawn up decree to be dispensed with.

15. No Order as to costs.

Dated this 19th day of December 2022

[Signature]

PLAINTIFF
(MRS MOLLY PRANIO)

[Signature] Plaintiff
Advocates for Plaintiff

[Signature]
Defendant
Respondent No. 2 (MRS. BERNADETTE D'SILVA)
(Through Constituent
Attorney) MR. COLIN DICRUZ

[Signature]
Defendant
Respondent No. 3 (HORMUS KATTA) 2 and 3
(Through Constituent
Attorney) MR. COLIN DICRUZ

[Signature] Defendant
Advocate for Respondent at No.

[Signature]
Defendant
Caveator/Respondent no. 1 (ALAN D'SILVA)

[Signature]
Defendant
Respondent No. 4 (DIHARIKA
D'SILVA
ATHALYE)

[Signature]
Defendant
Respondent No. 5
(KRISH ARMAN D'SILVA)

[Signature] Defendant
Advocates for Respondents
4 and 5

The undertakings contained in paragraphs 4, 7 and 12 are accepted as undertakings given to the Court. A copy of the Power of Attorney is taken on record and marked Exhibit **Y** and **Y-1** respectively. The amendments are sought for, needs to be carried out forthwith. The re-verification is dispensed with.

5. Learned counsel appearing on behalf Defendant Nos. 4 and 5 undertakes to file Vakalatnama within a period of one week from today.

6. The Testamentary Petition is disposed of in terms of the present Consent Terms.

(ARIF S. DOCTOR, J)