

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

**TESTAMENTARY SUIT NO. 194 OF 2016
IN
TESTAMENTARY PETITION NO. 933 OF 2011**

Oscar George Tixeira ... Petitioner/Plaintiff

Versus

Olive Austine D'Mello Alias Olive Tixeira ... Defendant/Caveator

**WITH
CHAMBER SUMMONS NO. 286 OF 2019
IN
TESTAMENTARY SUIT NO. 194 OF 2016**

Orrick Oscar Tixeria & Anr. ... Applicants

In the matter between

Oscar George Tixeira ... Petitioner/Plaintiff

Versus

Olive Austine D'Mello Alias Olive Tixeira ... Defendant

Mr. V.T. Dubey for the Petitioner.
Mr. R. D'souza for Caveator.

CORAM : R.I. CHAGLA, J.

DATED : 11th MARCH, 2022

ORDER :

1 The parties have settled their disputes. The consent terms are tendered. The consent terms are taken on record and marked 'X' for identification with today's date. These are signed by the legal heirs of the Original Petitioner/Plaintiff as well as by the Caveator and the Advocates for the Original Petitioner/Plaintiff and Advocate for the Caveator. Parties are present in Court. I am satisfied that the consent terms are in order, not contrary to law and have been drawn by the parties of their own volition in reflection of their true intentions.

2 The undertakings, if any, in the Consent Terms being accepted as undertakings to the Court.

3 The Caveator/Defendant has agreed and undertaken to withdraw the caveat filed by her in the Testamentary Petition unconditionally and this is recorded in Clause 3 of the consent terms. This order is passed in accordance with the consent terms.

4 The caveat filed by the Caveator/Defendant is discharged.

5 The Testamentary Suit is converted into Testamentary Petition.

6 It is recorded in Clause 10 of the Consent Terms that in view of the settlement of disputes, parties have withdrawn all allegations made against each other in their respective pleadings and signed these Consent Terms. The Caveator/Defendant has no objection in grant of probate in favour of the Original Petitioner through his legal heirs as prayed for in the Testamentary Petition No.933 of 2011 and further the Caveator/Defendant shall not be entitled and shall not claim and hereby release, relinquish and surrender all his rights or any right, title and interest in the immovable/movable properties, which have been mentioned in clause 7 of the consent terms in favour of the Original Petitioner/Plaintiff.

7 The Testamentary Department is directed to process the grant of probate in favour of the legal heirs of the Original Petitioner/Plaintiff.

8 Drawn up decree/ order is dispensed with unless the parties seek drawn up decree/ order, in which case they are entitled to apply.

9 A soft copy of the Consent Terms will be uploaded as the second order in the matter.

10 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.

11 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.

12 All concerned will act on production of a digitally signed copy of this order.

(R.I. CHAGLA, J.)

Digitally
signed by
WAISHALI
SUSHIL
WAGHMARE
Date:
2022.03.17
14:36:23
+0530