

Amrut

IN THE HIGH COURT OF BOMBAY AT GOA

**TESTAMENTARY PETITION NO.1 OF 2022
WITH
MISC. CIVIL APPLICATION NO. 162 OF 2023
IN
TESTAMENTARY PETITION NO.1 OF 2022**

ALASTAIR JAMES
FLETCHER MUTCH

... Petitioner

Versus

MARGARET KIRON
SARKAR AND ANR.

... Respondents

Mr Mark Lobo, Advocate for the Petitioner.

Mr Raunaq Rao, Advocate for Respondent No.1.

CORAM: M. S. SONAK, J.

DATED : 6th JULY 2023

P.C.:

1. On the previous occasion this Court had queried the counsel about the maintainability of such a petition before this Court.
2. Mr Lobo, learned counsel for the Petitioner submits that according to his research, this petition would appropriately lie before the District Judge, North Goa, Panaji. Accordingly, he requests for the return of the case papers in this petition so that the same could be presented before the District Court, North Goa, Panaji.

3. Mr Rao, learned counsel for Respondent No.1 agrees that such a petition would not lie before this Court. However, he submits that according to his research, such a petition would lie before the Civil Judge Senior Division and not the District Court.

4. Since the Petitioner is dominus litis, I accept Mr Lobo's request for the return of the case paper in this petition so that the same could be lodged before the appropriate Court. The issue of which would be the appropriate Court is expressly left open.

5. Accordingly, the registry is to return the case papers in this petition after making the necessary endorsement and retaining a photocopy for records to the Petitioner/learned counsel for the Petitioner. If the petition is then presented before the appropriate Court, such Court should consider that the Petitioner was bonafide in pursuing this petition before this Court. Accordingly, appropriate orders can always be made for the period spent in prosecuting this matter before this Court.

6. Once again, it is clarified that this Court has neither examined the merits nor examined the rival contentions about the appropriate forum. Therefore, all such contentions are left open.

7. The time limit for carrying out an amendment to the Testamentary Petition is however extended.

8. Mr Lobo states that such an amendment will be carried out within a week from today.

9. The Misc. Civil Application to also be returned to the Petitioner for presentation before the appropriate Court.

10. Mr Lobo states that the petition and the Misc. Civil Application will be presented before the appropriate Court within 15 days of its return by the registry.

M. S. SONAK, J.

TARI AMRUT NAGESH | Digitally signed by TARI AMRUT NAGESH
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