

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
TESTAMENTARY SUIT NO. 108 OF 1999
IN
TESTAMENTARY PETITION NO. 306 OF 1999
WITH
INTERIM APPLICATION NO. 98 OF 2023
IN
TESTAMENTARY SUIT NO. 108 OF 1999

Nilkanth Pandurang Samant @ Nilkant P. Samant
 @ N. P. Samant

... Deceased

Dr. Asha Sharad Shenoy

... Plaintiff/Applicant

vs.

Anand Nilkanth Samant (since deceased)

Through legal heirs Malati Anand Samant & anr. ... Defendants/Caveators

WITH
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 4676 OF 1996

Mr. Rajesh Shah a/w. Mr. Nilesh Modi and B. N. Jadhav, i/b. Rustomji & Ginwala for plaintiff in TS/108/99 and for defendants in S/4676/96.

CORAM : MANISH PITALE, J.
DATE : 13th DECEMBER, 2023

P.C. :

Testamentary Suit No. 108 of 1999:

. The present suit arises out of a probate petition filed by the plaintiff (original petitioner), seeking probate of will dated 27.07.1988 executed by the deceased, who was the grandfather of the plaintiff. In the original probate petition, the son of the deceased had filed a caveat.

2. By the said will, the petitioner, her brother and her aunt were appointed as executors. It is brought to the notice of this Court that the aunt of the plaintiff expired on 26.04.2020. It is further brought to the notice of this Court that the caveator/defendant expired on 15.07.2020. On an application moved in the present proceeding, the legal representatives of the deceased caveator/defendant i.e. the mother and brother of the plaintiff were brought on record.

3. The learned counsel for the plaintiff has tendered affidavits sworn by the said legal representatives of the caveator/defendant brought on record. In the said affidavits, they have supported the case of the plaintiff/petitioner and they state that they have no objection to the prayer made on behalf of the plaintiff/petitioner, being granted. The affidavits are taken on record. As a consequence of the aforesaid affidavits being taken on record, the caveats deserve to be dismissed.

4. Accordingly, the caveat is dismissed.

5. Suit is converted back into the probate petition of the said will. In the absence of any contest in the aforesaid circumstances, the probate petition is granted in terms of the prayer made therein.

6. Department shall now proceed to issue the grant in accordance with the law and take appropriate steps expeditiously.

7. Pending applications, if any, also stand disposed of.

Suit No. 4676 of 1996:

8. In view of the order passed hereinabove, nothing survives in this suit. Even otherwise, the plaintiff in the suit i.e. Anand Nilkanth Samant expired on 15.07.2020. Since no steps have been taken in that regard, the suit has abated and it is disposed of as such.

9. Pending applications in the suit, if any, also stand disposed of.

(MANISH PITALE, J.)

Digital
Signature
PRIYA KAMBLI
2023.12.18
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1028 **Priya Kambli**