

HARSHADA H. SAWANT
(P.A.)

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

INTERIM APPLICATION NO.1671 OF 2021
IN
TESTAMENTARY PETITION NO.53 OF 2021

Devashish Mahesh Patil

Applicant

..

IN THE MATTER BETWEEN:

Pramodini P. Chury

.. Deceased

And

Shobha Mahesh Patil

.. Petitioner

And

Deepak P. Chury and Anr.

.. Respondents

.....

- Ms. Kavisha Shah, Advocate for Applicant / Petitioner in I.A. No.1671 of 2021
- Mr. Prashant G. Karande a/w. Mr. Sudam S. Patil, Advocate for Respondent.

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CORAM : MILIND N. JADHAV, J.

DATE : JULY 10, 2023

P.C.:

1. Heard Ms. Shah, learned Advocate for Applicant / Petitioner in Interim Application No.1671 of 2021 and Mr. Karande, learned Advocate for Respondents.

2. There are two interlocutory proceedings in Testamentary Petition No.53 of 2021. Some facts are required to be stated so that both the Interim Applications can be disposed of by this order. Name of the deceased is Pramodini P. Chury She propounded a Will dated

19.05.1992 and expired on 31.05.1992. Her husband Prabhakar Chury has deceased in the interregnum on 28.12.2003. Pramodini P. Chury and Prabhakar Chury have three issues namely Shobha Mahesh Patil (daughter), Deepak Prabhakar Chury (elder son) and Bipin Prabhakar Chury (younger son).

3. Testamentary Petition No.53 of 2021 was filed by Shobha Mahesh Patil propounding the Will dated 19.05.1992. In the Will Shobha Mahesh Patil and Deepak Prabhakar Chury alongwith Prabhakar Chury were appointed as Executors. Since Prabhakar Chury expired on 28.12.2003 and Deepak Prabhakar Chury having shown his disinterest to prosecute, the Petition was prosecuted by Shobha Mahesh Patil as Petitioner.

4. Ms. Shah, learned Advocate for Applicant / Petitioner in Interim Application No.1671 of 2021 would inform that Shobha Mahesh Patil expired on 07.01.2021 i.e. after filing of the Petition. She is survived by one son and one daughter. The details of her issues have been mentioned in Interim Application No.1671 of 2021.

5. Mr. Karande, learned Advocate appearing for Bipin Prabhakar Chury would submit that Interim Application (L) No.11483 of 2022 has been filed by Bipin Prabhakar Chury to seek substitution of his name as Executor in Testamentary Petition No.53 of 2021 and deletion of name of Shobha Mahesh Patil.

6. Both the learned Advocates are *ad-idem* that in Will propounded, the original Executors were Prabhakar Chury, Shobha Mahesh Patil and Deepak Prabhakar Chury and with the condition that in the event if Prabhakar Chury expires he would be substituted by Bipin Prabhakar Chury.

7. Today the scene is that Shobha Mahesh Patil has also expired. In that view of the matter, Executors would be either Bipin Prabhakar Chury or Deepak Prabhakar Chury sons of the deceased as per the Will. It is directed that name of Bipin Prabhakar Chury be therefore substituted in place of Shobha Mahesh Patil as Executor / Petitioner in Testamentary Petition No.53 of 2021.

8. Mr. Karande, learned Advocate appearing for Bipin Prabhakar Chury in Interim Application (L) No.11483 of 2022 is directed to carry out the appropriate amendment of impleadment of Bipin Prabhakar Chury as Petitioner in Testamentary Petition No.53 of 2021 and deletion of the name of Shobha Mahesh Patil as Petitioner therein. Amendment be carried out within two weeks. Re-verification is dispensed with.

9. In view of the above, it is therefore directed that Devashish Mahesh Patil (son) and Padmini Patil (daughter) be impleaded as legal heirs of Shobha Mahesh Patil and shown as her heirs in Testamentary Petition No.53 of 2021. Necessary amendment to that effect shall also

be carried out by Mr. Karande in the Petition within a period of two weeks from today. Re-verification is dispensed with.

10. With the above directions, Interim Application No.1671 of 2021 stands disposed.

11. Subject to carrying out the aforesaid amendment and service of amended copy of the Petition on the Respondents, Office is directed to proceed with Testamentary Petition in accordance with law.

12. Mr. Karande would submit that Deepak Prabhakar Chury, elder son of the deceased has orally informed his client Bipin Prabhakar Chury that he would be disinterested in prosecution of the present proceedings. In that view of the matter, he would submit that it would be in the interest of justice if he is impleaded as legal heir instead of co-Petitioner.

13. I agree with the submissions made by Mr. Karande. To ensure speedy disposal of the present Testamentary Petition, it is directed that Deepak Prabhakar Chury be impleaded as Respondent in Testamentary Petition and not as co-Petitioner in the Testamentary Petition and appropriate citation be served upon him in accordance with law. This amendment shall also be carried out by Mr. Karande within a period of two weeks from today. Re-verification is dispensed with.

14. Interim Application No.1671 of 2021 is disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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