

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

INTERIM APPLICATION NO.887 OF 2024
WITH
INTERIM APPLICATION NO.3638 OF 2023
WITH
INTERIM APPLICATION NO.3637 OF 2023
IN
TESTAMENTARY SUIT NO.02 OF 1997
IN
TESTAMENTARY PETITION NO.350 OF 1994

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Ashalata H. Mhatre @ Kandivalikar

...Applicant/
Plaintiff

vs.

Chitra Ganesh Vaidya and Others

...Defendants

And

Varsha Roy and Another

...Respondents

Mr. Sandesh Kamble i/b. Ms. Shubhangi Abhyankar, for the
Applicant/ Plaintiff.

CORAM : N. J. JAMADAR, J.

DATE : NOVEMBER 21, 2024

P.C.:

IA No. 887 of 2024 :-

1. Heard the learned counsel for the applicant.
2. The learned counsel for the applicant submits that the proposed defendant Nos. 3a to 3c have been duly served and affidavit of service has been filed on the previous date.
3. Mr. S.S.Redekar had appeared before the Court and made submission that he had instruction to appear on behalf of the proposed defendant Nos. 3a to 3c and undertook to file vakalatnama

and affidavit in reply.

4. It does not appear that vakalatnama and affidavit in reply on behalf of defendant Nos. 3a to 3c has been filed. None appear for proposed defendant Nos. 3a and 3b.

5. For the reasons assigned in the application and to advance the cause of substantive justice, the delay in taking out the application to set aside the abatement and bring the legal heirs of defendant No. 3 stands allowed in terms of prayer clauses (a) and (c).

6. The applicant/plaintiff is permitted to amend the plaint and implead the proposed defendant Nos. 3a to 3c as the legal representatives of defendant No. 3 in accordance with the Schedule of Amendment (Exhibit B).

7. Necessary amendment be carried out within a period of three weeks and amended copy be served on all the defendants within a period of three weeks thereafter.

8. Application disposed.

IA No. 3638 of 2023 :-

9. Heard the learned counsel for the applicant.

10. This application is preferred to bring the legal representative of defendant No. 2b Devdas Krushnarao Kandivalikar who has

passed away on 2nd September, 2022.

11. The learned counsel for the applicant/plaintiff submits that the legal representative of the deceased defendant No. 2b have been served and seeks leave to file affidavit of service.

12. Leave granted.

13. Affidavit of service is taken on record.

14. It appears that the proposed defendant Nos. 2b(i) to 2b(iii) have been served. None appear for the proposed defendant Nos. 2b(i) to 2b(iii).

15. The application is within the stipulated period of limitation.

16. The application thus stands allowed in terms of prayer clause (a).

17. Necessary amendment so as to implead the legal representative of deceased defendant No. 2b in accordance with the Schedule of Amendment (Exhibit B) be carried out within a period of three weeks and amended copy of the plaint be served on all the defendants within a period of three weeks thereafter.

18. Application disposed.

IA No. 3637 of 2023 :-

19. Heard the learned counsel for the applicant.

20. The learned counsel for the applicant submits that the notices

were issued to defendant Nos. 1g(i) to 1g(v).

21. The notices have been duly served on the proposed defendant Nos. 1g(iv) and 1g(v). The notices to proposed defendant Nos. 1g(i) and 1g(ii) are returned unclaimed.

22. The learned counsel seeks leave to tender affidavit of service.

23. Leave granted.

24. Affidavit of service is taken on record.

25. None appears for the proposed defendants who seem to have been served.

26. To rule out the possibility of prejudice, stand over to 12th December, 2024.

(N. J. JAMADAR, J.)