



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
INTERIM APPLICATION NO.1064 OF 2024
IN
TESTAMENTARY SUIT NO.72 OF 2017
IN
PETITION NO.802 OF 2014**

Manoj Shrinivas Gupta	...	Applicant
and		
Dinesh Chand Gupta	...	Petitioner/Plaintiff versus
versus		
Shashi Keshavchandra Dwivedi	...	Defendant

Mr. Shilpan Gaonkar i/by Mr. N.R.Gandhi, for Applicant/Plaintiff.
Mr. Omprakash Pandey with Ms. Suchita Pandey, for Defendant.

CORAM: N.J.JAMADAR, J.

DATE : 18 OCTOBER 2024

P.C.

1. Heard the learned Counsel for the parties.
2. This application is preferred seeking permission to transpose the applicant as the Plaintiff in the place and instead of Dinesh Chand Gupta, the original Petitioner and executor, who has filed the Petition for Probate of the last Will and Testament of Shrinivas Radheshyam Gupta (deceased).
3. In the application, it is averred that, in the Will, the deceased had named three executors. Altaf Ali, one of the Executors has expired. Mangal S. Gupta renounced the executorship by a letter dated 20 March 2014. Dinesh Chand Gupta, another executor, the original petitioner, filed the instant petition No.802 of 2014 for the grant of Probate. Upon the caveat being filed,

the Petition stood converted into instant TS No.72 of 2017. Dinesh Gupta, the original Petitioner/executor, who is a resident of Hathras, Uttar Pradesh, is of an advanced age. He is not in a position to appear before this Court and prosecute the Petition. He has filed an affidavit dated 6 March 2018 showing his inability to prosecute the Petition. It is, therefore, necessary to amend the Petition and permit the applicant to prosecute the Petition.

4. The Defendant/caveator has resisted the application.

5. Learned Counsel for the Defendant submitted that there is no justifiable ground for seeking transposition of the applicant as a Plaintiff. Under Section 222 of the Indian Succession Act, Probate can be granted only to an executor.

6. I have perused the averments in the application and the reply thereto. The applicant is stated to be one of the beneficiaries under the Will. One of the named executor has passed away. Another has renounced the executorship. Though the third executor has filed the Petition for grant of Probate, yet the original Petitioner has also expressed his inability to prosecute the Petition. The affidavit dated 6 March 2018 (Exhibit B) sworn by Dinesh Gupta, the Petitioner, is annexed to the Petition.

7. From the perusal of the said affidavit, it becomes evident that Dinesh Gupta, desires to renounce the executorship. It is trite, the office of the executor is voluntary and one cannot be compelled to prosecute the Petition. I am, therefore, inclined to allow the applicant to prosecute the Petition.

However, since the applicant is not an executor named under the Will, the Petition will be required to be converted into one for Letters of Administration with the Will annexed. Hence, the following order :

ORDER

(i) The applicant is permitted to prosecute the Petition. However, the applicant shall carry out necessary amendment in the Petition so as to convert the Petition into one for Letters of Administration with the Will annexed.

(ii) Necessary amendment be carried out within a period of three weeks.

(iii) Amended copy of the Petition be served on the Caveator/Defendant.

(iv) The Caveator/Defendant is at liberty to file additional affidavit raising appropriate grounds, post conversion of the Petition into one for Letters of Administration.

(v) Interim Application stands disposed.

(N.J.JAMADAR, J.)