

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

JUDGES ORDER NO.125 OF 2024
IN
TESTAMENTARY PETITION NO.2973 OF 2022

VISHAL
SUBHASH
PAREKAR

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Ashish Madhukar Diwane ...Petitioner
vs.
Trimbak Vishwanath Diwane @ Divane ...Respondent
Ms. Sujata Babar, for the Petitioner.

CORAM : N. J. JAMADAR, J.
DATE : SEPTEMBER 09, 2024

P.C.:

1. Heard the learned counsel for the petitioner.
2. This Judge's Order is taken out seeking permission of the Court to execute a Gift Deed in respect of Room No. 1163, First Floor Building No. 41, Prabhadevi Indraprastha Co.Op. Hsg. Society Ltd., Prabhadevi Worli (the subject property) which belonged to Trimbak Vishwanath Diwane (the deceased) in favour of Chandrakant Bapur Mestry. The Letters of Administration to the property and credits of the deceased were granted to the petitioner pursuant to an order dated 1st April, 2023.
3. Hemlata Diwane, Ashish Diwane, the petitioner herein, and Dilip Diwane, are the surviving Class I heirs of the deceased. In view of the consent given by Hemlata Diwane and Dilip Diwane, the Letters of Administration were granted to the petitioner.

4. In the affidavit in support of the Judge's Order, it is affirmed that the deceased, in his life time, had handed over the subject premises to Chandrakant Bapu Mestry and the said person had been in occupation of subject premises for more than 25 years. The deceased had desired to gift the subject property to Chandrakant Bapur Mestry. Therefore, the petitioner and the other heirs of the deceased decided to gift the said property in favour of Chandrakant Bapu Mestry. Copy of the draft Gift Deed is annexed to the affidavit in support of the Judge's Order. Hemlata Diwane and Dilip Diwane, the other heirs of the deceased, have filed affidavit giving their consent to the gift.

5. An additional affidavit in support of the Judge's Order is filed by the petitioner. The petitioner avers that the proposed donee Chandrakant Bapu Mestry has been in the occupation of the subject premises since more than 20 years. Copies of documents evidencing the occupation of the subject premises by the proposed Donee are annexed to the application.

6. Paragraph 3 of the additional affidavit reads as under.

3] I say that said Chandrakant Bapu Mestry was in exclusive use, occupation and possession of the abovesaid room and he is having his Election Identity Card, Passbook of Bank of Maharashtra, Receipt of Life Insurance Corporation, Bharat Gas Consumer Card, Ration Card of 1984 and 2000 and Aadhar Card at the abovesaid address, Index II of Development Agreement wherein name of Donce is mentioned at Sr. No.58, to prove that he is

occupying the said Room No.1163 since last more than 25 years. Hereto annexed and marked as Exhibit "A-1 TOA8" are the copies Election Identity Card, Passbook of Bank of Maharashtra, Receipt of Life Insurance Corporation, Bharat Gas Consumer Card, Ration Card of 1984 and 2000 and Aadhar Card, Index II of Development Agreement.

7. In view of the aforesaid overwhelming material, which indicates that the proposed Donee has been in the occupation of the subject premises since more than 20 years and the assertion of the petitioner that the deceased desired that the subject premises be gifted to the proposed Donee and the consent given by the other heirs of the deceased, I am inclined to grant permission to gift the subject premises to Chandrakant Bapu Mestry.

8. Judge's Order is accepted and signed separately.

(N. J. JAMADAR, J.)