

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

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INTERIM APPLICATION NO. 1387 OF 2024
IN
TESTAMENTARY SUIT NO. 46 OF 1996

SURESH BALKRISHNA JUVEKAR ...Applicant

Versus

SMT. SHUBHADA PURSHOTTAM ...Deceased
JUVEKAR

WITH
INTERIM APPLICATION (L) NO. 1244 OF 2022
WITH
INTERIM APPLICATION (L) NO. 22513 OF 2023
IN
TESTAMENTARY SUIT NO. 46 OF 1996
IN
TESTAMENTARY PETITION NO. 120 OF 1996

Mr. Abhay Kahndeparkar, Senior Advocate, a/w Sameer
Tendulkar, for the Applicant.

Mr. P. G. Lad, for Respondent No.1.

Mr. S. B. Parbhavalkar, for proposed Respondent No.3.

CORAM: N. J. JAMADAR, J.

DATED: 26th JUNE, 2024

PC:-

1. Heard the learned Counsel for the petitioners.
2. This application is preferred seeking condonation of delay in bringing legal heirs of respondent No.2 in IA(L)/1244/2022, which has been filed to set aside the order dated 7th July, 2014 passed in TS/46/1996 in TP/234/1996 and to restore the testamentary suit to file.

3. In the application, the applicant has also averred that Ms. Nivedita Satyashraya Potdar – respondent No.4 to this is application suffering from mental illness. An order was sought to direct Chaitanya Institute of Mental Health at Pune, wherein respondent No.4 has been admitted, to submit a report about the mental health of respondent No.4.

4. By an order dated 10th April, 2024 passed in IA/1387/2024, this Court directed Chaitanya Institute of Mental Health, Pune, to submit a report about the mental health of respondent No.4. Accordingly, a report has been submitted on 22nd April, 2024. The report indicates that respondent No.4 has been suffering from mental illness since many years. She was an indoor patient at Chaitanya Institute. The patient had no symptoms of psychological disturbance.

5. Mr. Lad, the learned Counsel for respondent Nos.1 and 3 submits that Ms. Nivedita Satyashraya Potdar is still admitted as an indoor patient.

6. Evidently, the principal question that warrants consideration is whether the order dated 7th July, 2014 passed in TS/46/1996 in TP/234/1996 deserves to be set aside and the testamentary suit restored to file. Since

defendant No.2 Ketan Purshottam Juvekar and defendant No.4 Ms. Sarojini Potdar in the said Testamentary Suit – petition have passed away, the said Interim Application (L) No.1244 of 2021 cannot be proceeded with, without bringing the legal representatives of defendant No.2 Ketan and defendant No.4 Ms. Sarojini. Ms. Nivedita, the respondent No.4 herein, is the daughter of deceased defendant No.4 – Sarojini.

7. The learned Counsel inform the Court that apart from Ms. Nivedita there is no other legal representative of Sarojini Potdar, the deceased defendant No.4.

8. In these circumstances, IA/1387/2024 deserves to be allowed only to the extent of permitting the applicants to amend IA/1244/2021 so as to bring the LR's of the Petitioner, Mrs. Surekha Suresh Juvekar, who has also passed away, and the legal representatives of Ketan Juvekar and Ms. Sarojini Potdar, the deceased defendant Nos.2 and 4.

9. The delay in filing the application to bring the LR's of the applicant and Ketan and Ms. Sarojini – the defendant Nos.2 and 4, stands condoned.

10. IA/1387/2024 stands allowed to the aforesaid extent.

11. Necessary amendment in IA(L)/1244/2021 in TP/46/2016 be carried out in accordance with the schedule of amendment, within one week of uploading of this order.

12. It is hereby made clear that the amendment is permitted only in IA(L)/1244/2021.

13. Since Ms. Nivedita Potdar is stated to be suffering from mental illness, applicant and respondent Nos.1 and 3 are directed to furnish the list of persons, who can be appointed as guardian *ad litem* of Ms. Nivedita.

[N. J. JAMADAR, J.]