

Arun Sankpal

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
INTERIM APPLICATION NO. 2004 OF 2024
IN
TESTAMENTARY SUIT NO. 34 OF 2024**

Pradeep Kishan Hirani	...Applicant
In the matter between	
Pradeep Kishan Hirani	...Plaintiff
Versus	
Pushpa Kishan Hirani & Anr	...Defendants

Ms. Priyanka Kothari, i/b Ms. Vinali Bhaidkar, for the
Applicant in IA/2004/2024.
Mr. Pradeep J. Thorat, with Mr. Dev S. Tejnani, i/b Manoj K.
Bhatia, for the Defendant/Caveator.

CORAM: N. J. JAMADAR, J.

DATED : 19 NOVEMBER 2024

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RAMCHANDRA
SANKPAL

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P.C.:

- 1.** Heard Learned Counsel for the parties.
- 2.** This Application is for an amendment in the schedule of properties appended to the Testamentary Petition which has since converted into Testamentary Suit No. 34 of 2024.
- 3.** The Applicant/Petitioner is propounding the last Will and Testament of the Mr. Kishan Gangaram Hirani, father of the Petitioner and Defendant No.2, Anil Kishan Hirani and husband of the Defendant No.1, Pushpa Kishan Hirani.
- 4.** Defendant Nos. 1 and 2 have, in turn, instituted a Suit for administration of the estate of deceased, Mr. Kishan Gangaram Hirani. In the said Suit, Defendant Nos. 1 and 2 have included

in the schedule of the assets of the deceased (Exhibit "A"), the property which is now sought to be included in the schedule of the properties by way of an amendment. It is, therefore, necessary to amend the Petition. The Petitioner also proposes to alter the valuation of the properties which form part of the original schedule.

5. An Affidavit in Reply is filed on behalf of the Defendants. The tenability of the Application is assailed on the ground of delay. It is contended that the Petitioner has included two properties, i.e., Items 14 and 15, which never belonged to the deceased, as the assets left behind by the deceased. In fact, those properties belong to Defendant No.2 exclusively.

6. The Learned Counsel for the Applicant/Petitioner submits that inadvertently those two properties, i.e., Items 14 and 15 are included in the Schedule as the properties of the deceased. The Petitioner is ready to delete those two properties from the Schedule of the properties.

7. The proposed amendment is essentially consequential in nature. There is no qualm over the character of the properties now sought to be added in the Schedule of properties. In fact, the Defendants have shown the properties, now sought to be included by way of an amendment, as the properties of the deceased. Thus, to determine the real question in controversy between the parties, the proposed amendment is absolutely necessary. No prejudice will be caused to Defendant Nos. 1 and 2.

8. I am, therefore, inclined to allow the Application and also direct the Petitioner/Applicant to delete the properties at Items 14 and 15 of the Schedule-I of the Testamentary Petition from the said schedule.

9. Hence the following order :

O R D E R

(i) The Application stands allowed in terms of prayer clause (a).

(ii) Necessary amendment in accordance with the Schedule of amendment (Exhibit "A") be carried out and copy of amended Petition be served on the Defendants within a period of four weeks.

(iii) While carrying out the amendment, the Petitioner is permitted to delete Items 14 and 15 from the schedule of properties and re-number the succeeding Items in the schedule of properties.

(iv) The Defendants are at liberty to file an Additional Affidavit in Support of the Caveat within a period of two weeks thereafter.

(v) Application disposed.

TESTAMENTARY SUIT NO. 34 OF 2024:

10. List Testamentary Suit No. 34 of 2024 along with Interim Application No. 2538 of 2024, Interim Application (L) No. 26741

of 2024, Interim Application (L) No. 28253 of 2024 and Interim Application (L) No. 13857 of 2024, on 14th January 2025.

[N. J. JAMADAR, J.]