

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5549 OF 2019

Jack Rosario Fernandes ... Petitioner
V/s.
Anthony Fernandes & Ors. ... Respondents

**WITH
WRIT PETITION NO.5076 OF 2024**

Jack Rosario Fernandes ... Petitioner
V/s.
West Avenue Realtors Pvt. Ltd. & Ors. ... Respondents

Mr. Harish R. Pawar with Shivam S. Gawde for the petitioner.

Mr. Rubin Vakil with Sana Khan, Pratiksha Udeshi and Dhanashree H. i/by Anupama Gawade for respondent No.1.

Mr. Rohan Sawant with Viraj Jadhav i/by Chinmaya A. for respondent No.2.

Lipika Biswas for respondent No.3.

CORAM : AMIT BORKAR, J.

DATED : APRIL 25, 2025

P.C.:

1. It appears from the record that during the pendency of the present proceedings, the original disputant expired. It has been submitted by the petitioners that the original disputant had executed a testamentary disposition in the form of a Will, bequeathing the rights in dispute in favour of certain legal heirs,

who now seek to prosecute the present proceedings in continuation thereof.

2. The right to sue being a heritable right, does not stand extinguished by the death of the original disputant, but necessarily devolves upon those heirs and legal representatives who, in law, have succeeded to the estate or interest of the deceased in relation to the subject matter of the dispute. However, the question as to who constitutes such heirs and legal representatives, particularly in the light of the claimed testamentary succession, necessitates judicial scrutiny and determination.

3. Having regard to the above circumstances, this Court finds it appropriate to afford an opportunity to the petitioners to bring on record the relevant material in support of their claim. Accordingly, liberty is granted to the petitioners to file an appropriate application, along with a copy of the purported Will and such other supporting documents as may be necessary to establish that they are the lawful heirs and legal representatives of the original disputant and that the right to sue survives in their favour.

4. Needless to state, the contesting respondent, who is also stated to be a co-heir, shall be at liberty to file his reply to the said application, and raise all such contentions as may be permissible in law, including the validity, genuineness, and enforceability of the Will and the locus of the petitioners to continue prosecuting the proceedings.

5. The learned authority below shall thereafter consider the application and pass an appropriate order, upon due adjudication

of the rival claims, in accordance with law.

(AMIT BORKAR, J.)