

Ajay

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

TESTAMENTARY PETITION NO. 3384 OF 2024

Shri Vinayak Tukaram Mete alias Vinayak T.

Mete alias V.T. Mete

.. Deceased

Jyoti Vinayak Mete

.. Petitioner

-
- Mr. Kirit J. Hakani a/w Ms. Pratishtha Shukla and Ms. Priyanka Singh, Advocates for Petitioner.

.....
CORAM : MILIND N. JADHAV, J.

DATE : NOVEMBER 28, 2025.

P.C.:

- 1.** Heard Mr. Hakani, learned Advocate for Petitioner.
- 2.** Department has raised objection on 08.10.2025 before issuance of grant i.e. Letters of Administration with Will annexed and called upon Petitioner to delete the properties which are not the subject matter of the Will but are reflected in the Schedule seeking grant.
- 3.** Mr. Hakani has persuaded me to consider the request of Petitioner to include those properties which are not mentioned in the Will for which Grant is desired to be included in the Grant by arguing that the present case be treated as an exception in terms of Sections 255 and 256 of the Indian Succession Act, 1925, in the facts and circumstances of the present case.

4. He would submit that Rule 375 of the Bombay Original Side Rules, 1980 require that "there shall be annexed to the Petition a Schedule of all properties of the deceased" and if so interpreted it would include even those properties which are not referred to in the Will. Hence, he would submit that properties not reflected in the Will of the deceased be also included in the Grant.

5. He would vehemently argue that present Petition is for seeking a general grant for Administration of the entire estate of the deceased and most importantly all Class I legal heirs of deceased have given their consent in favour of Petitioner. He would submit that Petitioner is wife of deceased. He would submit that she is not seeking issuance of limited Grant under Rule 417 and 418 of the Bombay Original Side Rules, 1980 but a general grant.

6. He would argue that what nature of Grant is to be allowed is judicial determination and issuance of general Grant is a rule as opposed to limited grant being an exception. He admits that limited properties are stated in the Will but states that Petitioner be allowed to include even those properties belonging to deceased which are not stated in the Will in the grant. He would submit that in the present case there are five (5) immovable properties belonging to deceased whereas the sixth property is movable property in respect of three (3) LIC policies which are not reflected in the Will. He seeks inclusion of

these 5 residual properties and the LIC policies in the Grant as been forming part of Testator's residuary estate by necessary implication.

7. He would fairly submit that in the Will there is no Executor named nor there is any express residual provision made for aforementioned residuary properties belonging to the deceased. Hence, solely on humanitarian ground he would persuade the Court not to be hyper-technical and dispense with the office objection and permit Petitioner to include all residual properties not reflected in the Will of the deceased in the Grant prayed for.

8. In support of his above submissions, Mr. Hakani has referred to and relied upon three (3) judgements of various High Courts in the case of *(1) Girish Chunder Mitter*¹; *(2) Thaker Madhavji Dharamsi and Gokaldas Madhavji*² and *(3) T.K. Parthasarathi Naidu, In Re.*³ In the case of *Girish Chunder Mitter (1st supra)* he has specifically referred to paragraph No.9 wherein it is observed that limited administration can only be granted under special circumstances but as a rule in all cases general Letters of Administration of a Hindu's estate must be taken out for both immovable and movable properties and duty must be paid upon the value of the entire estate.

9. In the case of *Thaker Madhavji Dharamsi and Gokaldas Madhavji (2nd supra)* he has specifically referred to an unnumbered

¹ 1880 I.L.R. 6 Cal. 484

² 1881 I.L.R. 6 Bom. 460

³ AIR 1955 Mad. 411

paragraph wherein it is held that if the whole estate of deceased is vested in the Executor then probate limited to part of the estate cannot be granted and this Court should therefore follow that principle.

10. In case of *T.K. Parthasarathi Naidu, In Re. (3rd supra)* he would refer to an unnumbered paragraph wherein interpretation of Section 218 (1) of the Indian Succession Act, 1925 has been given by the Division Bench of the Madras High Court and would contend that in the absence of Executor if any other person entitled to apply applies, then he should apply for Letters of Administration for the whole of the estate and not for the fraction of it. He would submit that Sections 254 to 267 provide for specific exemptions to the general rule and it may be permissible for the Court to grant Letters of Administration to any part of the estate of the deceased.

11. I have heard, Mr. Hakani, learned Advocate for Petitioner. Submissions made by him have received due consideration of the Court and also perused the three (3) decisions referred to relied upon by him seeking dispensation of office objections.

12. At the outset, it is clarified that none of the three (3) decisions which are referred to and relied upon by Mr. Hakani come to the aid of Petitioner seeking to include those properties which are not reflected in the Will of the deceased in the Grant as all three (3) decisions are on entirely different facts and circumstances. The general

proposition that the legal heir of deceased should apply for Letters of Administration for the whole of the estate of the deceased and not a fraction of it in which he / she is interested in cannot *ipso facto* apply to the facts of the present case.

13. In the present case, Grant is sought by the wife of deceased duly consented by Class I legal heirs in respect of Will of the deceased. The intention of Testator is contained in his Will. Petitioner is one of the legal heir and beneficiary. She cannot insist that properties which are not part of the Will be included in the Schedule of Grant as nothing prevented the Testator from including his entire estate in his Will. He has not done so. His Will and intent has not been expressed regarding his other properties. It is seen that his intention as per his Will is clear that whatever is bequeathed under the Will will be acted upon in accordance with law after the Grant is issued. However, whatever is not included in the Will will have to then follow due process of law. It is argued that there it will lead to multiple proceedings which should be avoided.

14. This is not a case of issuance of a general Grant but it is in accordance with the Will of the deceased. If any property is not included in the Grant but which is reflected in the Will, only then it will qualify as a limited Grant and not otherwise.

15. The submission advanced by Mr. Hakani, learned Advocate for Petitioner is completely misplaced on the premise of Petitioner seeking a general Grant. Petition is filed for Letters of Administration with Will annexed. There is no hyper-technical approach taken by the Department nor this Court. Petitioner will have to delete the properties which are not the subject matter of the Will. No exception can be made for Petitioner in law for including those properties in the Schedule to be included in the Grant which are not reflected in the Will of the deceased. Hence, request made by Petitioner is rejected. The objection raised by the Department is upheld.

16. Department shall proceed further strictly in accordance with law.

[MILIND N. JADHAV, J.]

Ajay

RAVINDRA
MOHAN
AMBERKAR
Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2025.12.01
11:03:28
+0530