

Before : Shri. P. A. Jagdale,
Officer on Special Duty,
With Testamentary Department
Date :- 02nd July, 2025

FOR HEARING :

96. TP/4275/2024
[Original]
(ECHCBM02156702024)
with
WILL/1701/2024

P. C. : Shri. Shirish Mathkar, Ld. Advocate for the Petitioner

1. Ld. advocate for the petitioner submitted that as per the paragraph No. 5 of the petition, the subject property is bequeathed to Feroze Eruch DeVitre and his immediate family. The said Feroze Eruch DeVitre died on 23rd August, 2014, leaving behind his widow, namely Crystal Feroze DeVitre, the Petitioner herein, and his son Eruch Feroze DeVitre. Hence, the petitioner and her son are legatees under the Will.

2. Query was raised as to bequeath of this property, as there is no specific wording used in the paragraph No.7 of the Will. Ld. advocate for the petitioner submitted that Feroze and his immediate family was authorized to sell the property and distribute its proceeds among 05 legatees. He stressed on the word “enjoy”, “use”, which are used in the said Paragraph.

3. However, in the said paragraph No. 7, the testatrix directed executor, as under, -

“.... I direct my executors and trustees to hand over the said flat for the use, residence and occupation of my nephew Feroze Eruch De Vitre and his immediate family. My nephew Feroze shall be entitled to reside in, occupy and use the said flat for himself and his family on condition that (i) he and his family shall not at the same time reside in their present residence at 20, St. Martins Road, Bandra, Mumbai-400050 i.e. that they shall move into my above flat and (ii) that in the event of the said flat being sold for any reason and at any time whatsoever, the sale proceeds shall be divided equally between my nephews: (i) Soli Homi Mistry (ii) Naushir Eruch De Vitre (iii) Fredun Eruch De Vitre (iv) Farhad Hornl De Vitre and (v) Feroze Eruch De Vitre.”

4. Hence, if subject property is not bequeathed to any one, then it forms the part of the residuary property of the deceased. Accordingly, in view of provisions of Paragraph No. 8 of the Will, if this flat becomes residuary property, then it would be bequeathed to persons, whose names are mentioned in the paragraph No. 8 of the Will. In such circumstances, the petitioner is required to justify the share of non-consenting legatees, namely children of Soli Homee Mistry, vide Rule 422 of Bombay High Court (O.S.) Rules, 1980. Hence, the petitioner to take steps, accordingly.

5. S. O. to 07.07.2025

02.07.2025

**Officer on Special Duty,
with Testamentary Department**