

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
TESTAMENTARY PETITION NO. 4362 OF 2024

Haresh Vithal Parmar

...Petitioner

Vithal Trikambhai Parmar

...Deceased

WITH
WILL NO.1737 OF 2024

Mr. Mehul Shah for Petitioner.

CORAM : ARIF S. DOCTOR, J.
DATED : 3rd APRIL 2025

P.C. :

1 The matter is on board today in view of the following requisition raised by the Testamentary Registrar on 27th March 2025.

"1. Perused Petition. Heard Ld. Advocate for petitioner. Upon perusal of the petition, it is noticed that one of the legal heirs of deceased namely Jagdish Parmar (son of deceased) aged 41 years old, is of unsound mind, as the same is mentioned in the Will.

2. Ld. Advocate for petitioner submits that mother has filed an Affidavit dated 25.09.2024 on behalf of son and stated specifically in para Nos. 4 and 5 of the said Affidavit with respect to the mental state of Jagdish Parmar. Hence, As per Rule 422 of the Bombay High Court (Original Side) Rules, 1980 only the guardian of the property of the said unsound mind person or lunatic appointed by the Court can give security OR to get the surety to be dispensed with as per clause (c) of the said Rule. The said rules which reads as under:

"Rule 422. Surety to be justified in certain cases – (a) In the following cases the surety to the bond shall justify for the whole amount of the estate –

(i) When the person to whom the grant is made has taken out letters of administration or succession certificate for the use and benefit of a lunatic or person of unsound mind, unless he be a committee of the estate of such lunatic appointed by the Court and has given security.

(ii) When the person to whom the grant is made has taken out letters of administration or succession certificate for the use and benefit of a minor, unless he be a guardian of the property of such minor appointed by the Court and has given security.

(iii) When the person to whom the grant of letters of administration or succession certificate is made is entitled to a life interest.

(b) When the person to whom the grant of letters of administration or succession certificate is made is entitled to a portion only of the estate, the surety to the bond shall justify for the whole estate less the share of the grantee and of such sharers as shall consent in writing thereto.

(c) In all other case the surety may be a common surety. The Judge in Chambers may, however, in a proper case and for reasons to be recorded in writing dispense with the justification of surety."

2. In view of the aforesaid circumstances, Advocate for petitioner take steps. Ld. Advocate for petitioner move praecipe as and when the compliance done in the matter. Remove from board."

2 The learned counsel points out that the captioned Testamentary Petition has been filed for probate in respect of what is stated to be last will and testament of one Vithal Parmar (the deceased). He submits that one of the legal heirs of the deceased namely Jagdish Parmar is suffering from mental retardation. He has invited my attention to the affidavit filed by Muktaben Parmar, who is the mother of the said Jagdish Parmar, which sets out the same with supporting medical certificate issued by the Superintendent of the J. J. Hospital. It is on this basis he submits that the mother is the only guardian of the said Jagdish Parmar and the department shall accept the consent affidavit of Muktaben Parmar, the mother on behalf of the said Jagdish Parmar. He further points out that all other legal heirs of the deceased have also consented to the grant of probate by filing their respective consent affidavits.

3 Having due regard to the submissions made, I am of the view that sufficient cause has been shown to permit Muktaben Parmar, the mother to file her consent

affidavit on behalf of Jagdish Parmar.

4 Registry to proceed accordingly.

(ARIF S. DOCTOR, J.)