

Before : Shri. P. A. Jagdale,
Officer on Special Duty,
With Testamentary Department
Date :- 04th April, 2025

FOR HEARING :

76. TP/5977/2024 P C. : Shri. Dinesh P. Guchiya Ld. Advocate for the Petitioner
[Original]
(ECHCBM0206789
2024)

1. The petitioner, namely Alpesh Mohanlal Dave, has filed the petition for the grant of Letters of Administration for the properties left by the deceased No.1, namely Mohanlal Chaturbhuj Dave, and the deceased no.2, namely Shardaben Mohanlal Dave. The deceased No. 1 was the husband of the deceased No.2.

2. In present petition, the petitioner has not given the details of the properties held by the deceased No.1 and 2, independently. However, the Ld. advocate for the petitioner has made a statement that no property is held by the deceased No. 1 and 2, jointly.

3. Ld. Advocate for the Petitioner has relied upon the Order passed by the Hon'ble Court in TP/2881/2019 by which petition was allowed to proceed even deceased no. 1 and 2(wife and husband) had **not** held property jointly.

4. I have called the record and proceeding of the Testamentary Petition No. 2881 of 2019. Upon perusal of the schedule-I of the petition, it appeared that the immovable property mentioned at Serial No.1, in the said petition (TP No.2884 of 2019), was held by the deceased No. 1 and 2, jointly. Hence, in the cited case, the Letters of administration of the both the deceased was maintainable.

4. However, circumstances and fact of the said case, does not similar to the present case. Furthermore, in present case, valuation of the petition and payment of the Court fee will another subject, which needs to be considered, as both deceased had independent properties, Sec. 23 of the Maharashtra Court Fee Act, 1959 (for short 'said Act') will not be applicable. Hence, both valuation of the properties of the deceased are required to be considered independently. Sec. 23 of the said Act is reproduced as under, -

***"23. Relief in case of several grants.—** Whenever a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an estate, and the full fee chargeable under this Act has been or is paid*

thereon, no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate.

Whenever such a grant has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under this Act shall be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates.”

5. Even otherwise, in the other case, having TP No. (L)6752/2021 the Office has moved the submission on relying upon the cited Order. It was the subject of the said submission that the petition for joint share and debenture held by the husband and wife was filed. Though some shares and debentures were held by those deceased jointly, all share and/or securities were not held by the deceased husband and wife, jointly. Hence, department has moved a submission and sought necessary directions in this regard. It has been directed by the Hon'ble Court that in petitioners for grant of Letters of Administration or Succession Certificate, as the case may be, even some properties have been held by the deceased jointly, but all properties are not held jointly by the deceased then such petition for joint properties of the deceased husband and wife is tenable and single fee is to be charged, in such cases.

6. However, in the present petition, **no** property is held by the deceased No. 1 and 2, **jointly**. Hence, facts of cited case are different than the present petition.

7. Hence, the petitioner to properly value the Petition, independently or take steps to file the petition for the set of independent properties of the deceased or the petitioner may pay the additional Court Fee in respect of the properties left by the deceased No. 1 and 2, according to law.

8. S. O. to 17.04.2025

04.04.2025

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