

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO. 132 OF 2024
IN
MISCELLANEOUS PETITION NO. 409 OF 2023
IN
TESTAMENTARY PETITION NO. 2895 OF 2019

Mansukhlal Nandlal Sheth

.. Appellant
(Orig. Petitioner)

Versus

Ankit Anil Agarwal & Ors.

.. Respondents
(Orig. Respondent)

WITH
INTERIM APPLICATION NO. 4251 OF 2025
IN
APPEAL NO. 132 OF 2024

Ankit Anil Agarwal

.. Applicant
(Orig. Respondent no. 1)

In the matter between

Mansukhlal Nandlal Sheth

.. Appellant
(Orig. Petitioner)

Versus

Ankit Anil Agarwal & Ors.

.. Respondents
(Orig. Respondent)

**Mr. Ram S. Apte, Senior Advoate a/w Mr. Harshal P. Nahata
i/b.Suman Jain, Advocates for Appellant.**

Mr. Anil Agarwal, Advocate for the Respondent No. 1.

**Ms. Sonal a/w Mr. Abbas Zaidy, Mr. Aditya A. Kavale i/b Zohair and
Co., Advocate for the Respondent No. 2.**

**CORAM: B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.**
DATE: DECEMBER 16, 2025

P. C.

1. The above Appeal is filed challenging the order passed by the Learned Single Judge dated 1st April, 2024, passed in Misc. Petition No. 409 of 2023 in Testamentary Petition No. 2895 of 2019.

2. By the said Misc. Petition, the executor of the subject will, in respect of which probate was granted by this Court on 13th June 2023, sought the authority to sell immovable property i.e. Flat No. 35, Ameeta Building, 7th Floor, General Jagannath Bhosle Marg, Opposite Sachivalaya, Mumbai 400021, along with the car parking space. Ancillary directions in that behalf were also sought by the executor who was the petitioner in the Misc. Petition.

3. The Learned Single Judge was of the view that since the said flat is bequeathed to all the three beneficiaries, the executor cannot be allowed to sell the said flat. It is this order that is impugned in the present Appeal.

4. After the above Appeal was argued for some time, and since there were arguments raised by both sides which were not canvassed before

the Learned Single Judge, both parties agreed that the impugned order dated 1st April 2024, be set aside by consent, and the matter be remanded back to the Learned Single Judge for a fresh hearing.

5. In light of the aforesaid consensus, the order dated 1st April 2024 is hereby quashed and set aside. The matter is now remanded back to the Learned Single Judge to give a fresh hearing to the parties on Misc. Petition No. 409 of 2023.

6. It is needless to clarify that all rights and contentions of all parties are expressly kept open to be agitated before the Learned Single Judge. We have not opined on the merits of the Misc. Petition, one way or the other.

7. The Appeal is accordingly disposed of in the aforesaid terms. However, there shall be no order as to costs.

8. In light of the disposal of the Appeal, nothing survives in the Interim Application filed in the above Appeal, and the same is disposed of accordingly.

9. This order will be digitally signed by the Private Secretary/
Personal Assistant of this Court. All concerned will act on production by fax
or email of a digitally signed copy of this order.

[AMIT S. JAMSANDEKAR , J.]

[B. P. COLABAWALLA, J.]