

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

INTERIM APPLICATION NO. 1686 OF 2024

IN

TESTAMENTARY SUIT NO. 48 OF 2015

IN

TESTAMENTARY PETITION NO. 304 OF 2014

Rasshmin Mansukhlal Dagli ...Applicant

In the matter between.

Mansukhlal Nathubhai Dagli ...Deceased

Nagin Mansukhlal Dagli ...Plaintiff

Versus

Jitendra Mansukhlal Dagli ...Defendant

Mr. Reyden L. Gonsalves i/b Eventa A. Gonsalves for the Applicant/Org.
Petitioner No. 2.

Ms. Niharika Singh i/b Little & Co. for Defendant/Caveator.

CORAM : ARIF S. DOCTOR, J.

DATE : 18TH MARCH 2025

P.C. :

1. By way of present Interim Application, the Applicant, who is original Petitioner No. 2 and co-executor, seeks to implead as party

Respondents the legal heirs of the deceased Petitioner No. 1. On instructions, Learned Counsel for the Applicant submits that the proposed Respondents have been duly served and that they are, in fact, willing to file their respective Affidavits of consent to the grant of probate. This statement is accepted. Affidavit of Service to be filed in the Registry within a period of one week from today.

2. Ms. Singh, Learned Counsel appearing on behalf of the Caveator does not wish to file an Affidavit in Reply but opposes the Application on the ground that the original Petitioner No. 1 passed away in the year 2021 and the Application has been filed in the year 2024. In my view, the formal objection is devoid of merits. The Interim Application sufficiently explains the delay. Also, no prejudice would be caused to any party by allowing the Interim Application. Furthermore, the substantive justice would be served in bringing on record the legal heirs of the deceased Petitioner No. 1, who are also beneficiaries under the said Will.

3. Hence, the captioned Interim Application is allowed in terms of prayer clauses (a), (b) and (c) which read thus:

“ (a) The name of the Petitioner / Plaintiff No. 1 be deleted and the Petitioner / Plaintiff No. 1 be described as “since Deceased”, in accordance with the Schedule of Amendment annexed to this Interim Application;

- (b) The Petitioner be permitted to amend the Petition in terms of the Schedule annexed to this Interim Application;*
- (c) That leave be granted to the Applicant (Org. Petitioner / Plaintiff No. 2), to file his Affidavit of Evidence in lieu of the Examination-in-Chief, in the above suit and to adopt and rely upon the documents filed, with the Affidavit of Evidence in lieu of the, Examination-in-Chief of the Deceased Petitioner / Plaintiff No. 1 AND to file such other and further documentary evidence as may be necessary in the matter;"*

(ARIF S. DOCTOR, J.)