



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

INTERIM APPLICATION NO. 2647 OF 2024
IN
TESTAMENTARY PETITION NO. 611 OF 2020

Linky Hotels And Shopping Spot Private Limited ...Plaintiff

Versus

Dorab Furdoonji Seervai ...Defendant

WITH
INTERIM APPLICATION (L) NO. 36250 OF 2025

Mr. Mahernosh Humrawala, Ms. Kirtika and Mr. Naozad Golwalla i/b Mahernosh Hunarwala for the Applicants in IA(L) No. 36250 of 2025.

Mr. Narrula, Mr. Sayeed Mulani i/b Mulani and Co. for Ms. Dimple Mehta, Executrix of Mr. Girish Tani.

Ms. Sonal, Ms. Ronak Shah, Ms. Charu Budhadev i/b Dhruv and Co. for Applicant in IA No. 2647 of 2024 and for Respondent in IA(L) No. 36250 of 2025.

Coram : Sharmila U. Deshmukh, J.

Date : 23rd December, 2025.

P. C. :

1. Interim Application has been preferred by the Applicant seeking appointment of fit and proper person for administering the estate of late Rustom Seervai.
2. An Intervention Application (L) No. 36250 of 2025 has been preferred by the Executrix of Will of one Dorab Seervai seeking to intervene in Interim Application No 2647 of 2024. Considering the

order which this Court proposes to pass in Interim Application No. 2647 of 2024, the intervention stands allowed.

3. Heard learned counsel appearing for Applicant as well as learned counsel appearing for the Intervenor.

4. The facts of the case are that one Nusserwanji Dorabji Seervai was the absolute owner of the property known as Meherabad property situated at Santacruz TPS-II scheme. Under the Will dated 14th November, 1984, Meherabad's property was bequeathed to Nusserwanji Seervai's nephew Rustom Seervai. Under the Will, Rustom could not sell the Meherabad property without the satisfaction, guidance and written approval of three executors under the Will. Upon the death of Nusserwanji on 31st January, 1985, the executors filed Testamentary Petition for probate, which was converted into Testamentary Suit No. 57 of 1994. On 9th September, 1995, an agreement for sale was executed between Rustom and the Applicant, pursuant to which it is claimed that the Applicant is put in possession of Meherabad property since 1995 which is claimed to have been confirmed in several litigation by Rustom Seervai. As all executors under Nusserwanji's Will had expired, Advocate Ms. Adeline Rodrigues was appointed as Administrator of Nusserwanji's estate by this Court. On 18th February, 2018, Rustom Seervai, who was unmarried passed away. On 8th November, 2019, this Court granted Letters of

Administration with Will in respect of estate of Nusserwanji to Ms. Adeline Rodrigues. In the year 2020, Dorab Seervai claiming to be the sole legal heir of Rustom Seervai filed the captioned grant of Testamentary Petition seeking letters of administration to Rustom's estate. In 2020, the Applicant called upon Dorab as legal representative of Rustom and Ms. Rodrigues as holder of letters of administration to execute conveyance of the Meherabad property in favor of the Applicant. On 31st October, 2020, Dorab was granted letters of administration in respect of estate of Rustom. In the year 2021, the Applicant filed a suit for specific performance of the Agreement for Sale in respect of Meherabad property in this Court impleadings Ms. Rodrigues as legal representative of Nusserwanji and Dorab as administrator of Rustom's estate and as legal heir of the Rustom.

5. On 25th July, 2022, Ms. Rodrigues filed a Report in Testamentary Petition No. 127 of 1994 seeking permission to execute the Deed of transfer in favor of Dorab who had been granted Letters of Administration to the estate of Rustom. On 14th October, 2023, Dorab expired without administering the estate of Rustom.

6. The present Application has been filed as Dorab expired without administering the estate of Rustom and it is necessary for administrator to be appointed in respect of Rustom's estate who can

be impleaded as Defendant in the Applicant's suit in place of Dorab.

7. Ms. Sonal, learned counsel appearing for the Plaintiff submits that Ms. Rodrigues and Mr. Dorab were impleaded as legal representative of Nusserwanji and legal representative of the Rustom respectively. She submits that with death of Dorab, it is necessary for an administrator to be appointed in respect of the estate of the Rustom who can be impleaded in the specific performance suit pending against the estate of Rustom. She submits that an administrator or executor of a Parsi is his legal representative and not an heir of a Parsi. She submits that Ms. Rodrigues is appointed as administrator of Nusserwanji's estate and that Ms. Rodrigues has given her consent to the legacy of Rustom and Meherabad's property vested in Dorab as Rustom's legal representative. She would further submit that the executors under Dorab's Will have filed for issuance of probate of Dorab's Will, which is pending. She submits that she has no objection if the executors of Dorab's Will or Ms. Rodrigues are appointed as administrator of Rustom's estate.

8. *Per contra*, Mr. Humrawalla, learned counsel appearing for Intervenor would question the locus of Applicant to maintain the present applications. He submits that that the specific performance suit is pending adjudication and it is disputed that the Applicant is in possession of the property. He would submit that an injunction suit

was filed by the Director of the Applicant which came to be dismissed and was confirmed right up to Hon'ble Supreme Court.

9. The facts of the present case are peculiar in as much as though the Letters of Administration was granted to Dorab Seervai in the year 2020 in respect of estate of Rustom, Dorab has expired without administering the estate of Rustom. The estate of Rustom has remained unadministered. The Will of Dorab is yet to be probated and the Testamentary Petition is pending. In the meantime, there is specific performance suit filed by the Applicant in which Dorab was impleaded in the capacity of administrator of Rustom's estate and as legal heir of Rustom. Ms. Rodrigues is appointed as administrator of Nusserwanji's estate and there is no administrator of Rustom's estate after death of Dorab. There is no dispute that under the Will of Nusserwanji, the Meherabad property was bequeathed to Rustom. The specific performance suit seeks decree against the estate of Rustom, which remains unrepresented upon death of Dorab Seervai.

10. In the intervention application, it is pleaded that the estate of Dorab includes the Meherabad property which is represented by the Intervenors in their capacity as executrixes of Dorab's Will. In that event, the executrix of Dorab's Will ought to have taken steps for protecting the estate of Rustom in the specific performance suit. In the absence of any party representing the estate of Rustom, the specific

performance suit cannot be defended effectively. The absence of any representation from estate of Rustom might lead to decree adverse to the interest of estate of Rustom. Though the locus of the Applicant to maintain the present application is questioned, what is of significance is the protection of estate of Rustom. There is no question of any objection as the appointment of administrator would result in preventing the estate of Rustom from being dissipated by reason of an adverse decree.

11. It is not demonstrated to this Court that the estate of Rustom is being represented by any party in which case, the said party could have been appointed as administrator. Ms. Sonal, learned counsel for Applicant has no objection to the executors of Dorab's Will or Ms. Rodrigues be appointed as administrator of Rustom's estate. However, Mr. Humrawala, learned counsel for the Intervenors do not have any instructions to concede to the appointment of executors under Dorab's Will as administrators of Rustom's estate.

12. In light of the discussion above, considering that Ms. Rodrigues has been appointed as Administrator of Nusserwanji's estate and has administered the estate of Nusserwanji and is conversant with the facts and circumstances, in my view, Ms. Rodrigues is fit and proper person to be appointed as an administrator to administer the estate of Rustom Seervai.

13. Interim Application No. 2647 of 2024 is allowed in the above terms. Interim Application (L) No. 36250 of 2025 for intervention stands allowed.

[Sharmila U. Deshmukh, J.]