

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL JURISDICTION
INTERIM APPLICATION NO.3698 OF 2025
IN
APPEAL (L) NO.18077 OF 2025
WITH
APPEAL (L) NO.18077 OF 2025

Harsshil Shailesh Shah and Ors.

.. Appellants

Versus

Kunjalata Rajendra Shah and Ors.

.. Respondents

Mr. Cyrus Ardeshir (Senior Advocate) a/w R.D. Suryawanshi and Mr. Suraj N. Naik, Advocates for the Applicant/Appellant.

E.A. Sasi a/w. Bijoy Chacko and Mr. Tejas Shinde, Advocates for the Respondent Nos.1 & 2.

**CORAM: B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.**

DATE: OCTOBER 10, 2025

P. C.

1. The above Application has been filed by the Applicants seeking leave to file this Appeal challenging the order dated 05.08.2019 passed by the learned Single Judge of this Court in Interim Application No.1/2019 in Testamentary Suit No.34/2011 in Testamentary Petition No.890/2010. The

ground for filing the present Application seeking leave is that the Applicants were not parties to the testamentary Proceedings.

2. According to the Applicant, the facts narrated in this Application and the grounds raised in the appeal memo establish that the Applicants have rights and interest in two of the properties which form part of the testamentary proceedings. Because two of the properties, in which the Applicant claims a right, have been allowed to be included in the testamentary proceedings [by way of an amendment], the same is causing great prejudice to the Applicants and hence, the present Application seeking leave to Appeal challenging the order dated 05.08.2019.

3. After having heard Mr. Ardeshir, the learned Senior Counsel appearing on behalf of the Applicant, as well as the learned Advocate appearing on behalf of the Respondent Nos.1 and 2 (the grand Niece and Nephew of the deceased), we are of the opinion that the above Appeal itself is wholly misconceived. Merely because the properties in which the Applicant claims a right and/or interest is included in the testamentary proceedings, and which they claim were transferred to the Applicant by the deceased during her life time, will not affect their rights, if any, merely because those properties are included in the testamentary proceedings. The Applicant, in

appropriate proceedings, can always establish their right, title and interest in the said properties. Once this is the case, we find that there is no requirement for granting any leave to file the present Appeal.

4. The Application for leave to Appeal is therefore, accordingly dismissed. However, there shall be no order as to costs.

5. 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.]

Digitally signed
by
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PARAB
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