

HARSHADA H. SAWANT
(P.A.)

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

INTERIM APPLICATION NO.7456 OF 2025
IN
TESTAMENTARY PETITION NO.4726 OF 2025

Hiten Mavji Pasad .. Applicant

IN THE MATTER BETWEEN:

Mavji Kanji Pasad alias Mavji K. Shah .. Deceased

Versus

Kesarben Mavji Pasad .. Petitioner

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- Mr. Ankit Gala, Advocate for Applicant appearing through Video Conferencing.
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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 12, 2025

P.C.:

- 1.** Heard Mr. Gala, learned Advocate for Applicant appearing through Video Conferencing.
- 2.** Interim Application is filed seeking amendment to Petition (Lodging) No.23650 of 2025.
- 3.** The original Petition is filed by Kesarben Mavji Pasad being Petitioner therein seeking the Letters of Administration with last Will annexed of deceased Mavji Kanji Pasad alias Mavji K. Shah. The original Petition was filed on 28.07.2025.
- 4.** In the original Petition it was stated that the deceased Mavji Kanji Pasad alias Mavji K. Shah has left behind a Will and all legal heirs of the deceased had given their consents for issuance of Grant. It

is also stated therein that two Executors appointed by the deceased had renounced their Executorship and filed the necessary Renunciation Affidavits. Since the original Petition was filed by wife of the deceased, the Court fee paid was Rs.10,000/- only.

5. During pendency of the original Petition on 20.10.2025, Petitioner namely Kesarben Mavji Pasad has expired. It is seen that both Mavji Kanji Pasad alias Mavji K. Shah and Kesarben Mavji Pasad are survived by three married daughters, three sons and legal heirs of a predeceased fourth son.

6. By virtue of the Interim Application, one of the three sons seeks to implead himself as Petitioner in place of Kesarben Mavji Pasad and prosecute the original Petition filed by his mother.

7. The aforesaid impleadment cannot be allowed and is impermissible in law. Simplicitor impleadment *sans* any reasons is not permissible to replace the original Petitioner. The rights of the legal heirs of the two deceased persons namely Mavji Kanji Pasad alias Mavji K. Shah and Kesarben Mavji Pasad flow to the legal heirs under the Will of Mavji Kanji Pasad alias Mavji K. Shah and intestate succession through Kesarben Mavji Pasad as available to them in law.

8. That apart, the legal heirs of deceased will have to pay *ad-valorem* Court fees since it is seen that reduced Court fees of Rs.10,000/- as applicable under Section 46 of the Court Fees Act, 1976

was paid at the time by filing of the original Petition by the wife of deceased. However whether Applicant namely Hiten Mavji Pasad who is one of the three sons is beneficiary under the Will of his father is not clear. Neither it is so stated in the Application.

9. That apart, the amendment which is proposed for being simplicitory impleaded in place of the original Petitioner is also not a correct amendment. Merely by giving Consent Affidavits, the Grant cannot be issued as desired. The consequential amendments which are required to be carried out are not stated in the Application and simplicitor omnibus prayer for allowing consequential amendments is sought.

10. Such an omnibus Application cannot be allowed by the Court. Applicant and / or other legal heirs will have to file an appropriate Application for seeking the desired amendment *qua* the deceased original Petitioner or in the alternate they can seek withdrawal of the Petition and file an appropriate Petition seeking issuance of Grant *qua* the properties and credits of both the deceased Mavji Kanji Pasad alias Mavji K. Shah and Kesarben Mavji Pasad as available to them in law who are their parents.

11. Leaving that liberty open to the Applicant as also other legal heirs of the deceased, the Interim Application is rejected. If Applicant or any other legal heirs of the deceased file an appropriate Application

as available to them in law, the same shall be duly considered by Court in accordance with law.

12. With the above directions, Interim Application No.7456 of 2025 is dismissed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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