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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 13744 OF 2025
IN
WRIT PETITION NO. 5549 OF 2019**

Jack Rosario Fernandes Since Dedc. Thr.
LRs. ... Applicant
V/s.
Anthony Fernandes and Others ... Respondents

**INTERIM APPLICATION NO. 13780 OF 2025
IN
WRIT PETITION NO. 5076 OF 2024**

Jack Rosario Fernandes Since Dedc. Thr.
LRs. ... Applicant
V/s.
West Avenue Realtor Pvt Ltd
and Others ... Respondents

Mr. Harish R. Pawar with Shivam S. Gawde, Mr.
Rudra Kanekar, for Petitioner-Applicant.

Mr. Viraj Jadhav, i/b Chinmay Acharaya, for
Respondent nos. 1 in WP 5076/2024 and
Respondent no. 2 in WP 5549/2019 .

Mr. Rahil Jhaveri i/b Kushan Rajiv Kumar for
Respondent no. 1 in WP/5549/2019 and Respondent
no. 2 in WP 5076/2024.

Ms. Lipika Biswas, for Respondent no. 3.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 09, 2026

PC.:

1. The present application is taken out by the applicants seeking leave to continue the writ petition in place of the original petitioner, Late Jack Rosario Fernandes, who has expired during the pendency of the proceedings. The right to sue, in the present matter, does not abate on the death of the petitioner. The cause of action survives. Therefore, the only question that arises is whether the applicants can be recognized, at least for the purpose of this proceeding, as the legal representatives of the deceased petitioner.

2. It is not in dispute that the applicants and the deceased belonged to the Christian community and were governed by the Indian Succession Act. It is also not in dispute that, in view of the amendment brought to the Indian Succession Act, the earlier requirement of obtaining probate in certain situations has been dispensed with. Therefore, the absence of probate, by itself, cannot be treated as fatal to the claim of the applicants to represent the estate of the deceased. The Court must examine whether there is sufficient prima facie material to permit them to step into the shoes of the deceased for the limited purpose of prosecuting this petition.

3. The record indicates that the original petitioner executed a registered Will in favour of the present applicants. The Will is a registered document. Registration does not, by itself, conclusively prove its genuineness. However, it carries evidentiary value and lends a degree of assurance regarding its execution. At this stage, the Court is conducting an inquiry under Order 22 Rule 5 of the Code of Civil Procedure. The scope of such an inquiry is limited. The Court is not required to conduct a full-fledged trial as to the validity of the testament. It must only ascertain, on a prima facie basis, who should be permitted to represent the estate for the continuation of the proceedings.

4. If the contesting respondents dispute the Will, the law provides them a remedy. They may institute appropriate substantive proceedings before a competent court seeking declaration that the Will is invalid, forged, or otherwise not binding. Such issues involve detailed evidence, examination of attesting witnesses, and findings on testamentary capacity and due execution. Those questions cannot be conclusively decided in a summary inquiry under Order 22 Rule 5. Therefore, in the present limited inquiry, the existence of a registered Will in favour of the applicants constitutes sufficient prima facie material to permit them to prosecute the petition.

5. It is necessary to clarify that this prima facie view is confined only to the purpose of substitution in the present writ petition. It does not amount to a final pronouncement on the

validity or genuineness of the Will. If the respondents choose to challenge the Will in appropriate proceedings, such challenge shall be decided independently, on its own merits, without being influenced by the present order. However, the mere possibility of such challenge cannot stall or paralyse the pending writ petition. Litigation cannot be kept in suspension merely because one party expresses an intention to question a testamentary document elsewhere.

6. In view of the above discussion, the application deserves to be allowed. The applicants are permitted to prosecute the present writ petition in their capacity as legal representatives of the deceased petitioner. Their substitution is subject to the clarification that the present adjudication under Order 22 Rule 5 is only prima facie in nature and shall not prejudice the rights of the contesting respondents to question the Will before a competent court in accordance with law.

7. The Interim Applications are disposed of.

8. List the Writ Petitions on **24th February, 2026.**

(AMIT BORKAR, J.)