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

INTERIM APPLICATION NO. 6414 OF 2025
IN
TESTAMENTARY PETITION NO. 3908 OF 2023

Yezdi Soli Doctor .. Applicant

IN THE MATTER OF:-

Hilla Homy Dadysett .. Deceased

Hoshang Jehangir Khan & Anr. .. Petitioners

WITH
CAVEAT (L) NO. 9320 OF 2024
WITH
APPLICATION NO. 135 OF 2025
WITH
INTERIM APPLICATION NO. 906 OF 2026
WITH
INTERIM APPLICATION (L) NO. 37385 OF 2025
WITH
INTERIM APPLICATION NO. 2080 OF 2026
WITH
INTERIM APPLICATION (L) NO. 10836 OF 2026
WITH
TESTAMENTARY PETITION NO. 3908 OF 2023

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- Mr. Rajendra V. Pai, Senior Advocate a/w Mr. Aloukik R. Pai, Mr. Omkar Kalundrekar, Mr. Suryajeet Ravrane & Ms. Bina R. Pai i/by Ms. Siddhi Bhosale, Advocates for Applicant in IA 6414/2025, IA 906/2026 & IA(L) 37385/2025
 - Mr. Dinyar Madon, Senior Advocate a/w Ms. Anandini Fernandes, Mr. Zubin Behramkamdin, Ms. Ferzana Behramkamdin, Ms. Kalyani Deshmukh & Ms. Sanskruti Hebalkar i/by FZB & Associates for Petitioners

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CORAM : MILIND N. JADHAV, J.
DATE : JUNE 08, 2026

P.C.:

- 1.** Heard Mr. Pai, learned Senior Advocate for Applicant and

Mr. Madon, learned Senior Advocate for Petitioners in Interim Application No.6414 of 2025, Applicant has filed the present Interim Application for the following reliefs:-

“25. The Applicant therefore prays that:-

(a) this Hon'ble Court be pleased to direct the office to reject and / or strike off the purported "Consent Affidavit of Mr. Yezdi Doctor" annexed at page No. 81 of the above Petition on such terms and conditions as this Hon'bl Court may deem fit;

(b) this Hon'ble Court be pleased to direct the office to issue proper Citation/s in the above matter to the Applicant and / or other persons entitled to receive special or general citation on such terms and conditions as this Hon'ble Court may deem fit;

(c) for costs

(d) such other and further reliefs as this Hon'ble Court may deem fit in the peculiar facts of the case.”

2. Brief facts leading to filing and adjudication of present Interim Application are as follows:-

2.1. One Ms. Hilla Homi Dady (for short “**deceased**”) expired on 22.05.2023. The deceased executed her Last Will and Testament dated 18.12.2015, appended at Exh. ‘B’ at page No. 13 of Petition. During her lifetime, deceased appointed (1) Hoshang Jehangir Khan and (2) Rashna Hoshang Khan as Executors of her Last Will and Testament dated 18.12.2015 and further appointed (1) Hoshang Jehangir Khan, (2) Rashna Hoshang Khan, (3) Darius Behman Moos, (4) Zareer Ratan Lalkaka and (5) Naheed Hormuzd Sorabji as Trustees of her Trust Fund, namely, "The H.N. and H.H. Dady Public Charitable Trust". Thereafter, deceased executed four codicils dated 21.10.2016,

02.10.2018, 18.09.2019, and 27.02.2023 in succession before her demise. Applicant is one of the beneficiary under the Last Will and Testament of the deceased to the extent of a bequest of Rs. 1 Crore. Deceased was the paternal aunt of Applicant. The predeceased brother of deceased is father of the Applicant.

2.2. First few days following deceased's death, Applicant made inquiries with Petitioner No.1 regarding her Last Will and Testament. On 20.06.2023, a meeting was scheduled with Applicant. However, he did not attend the same. On 21.07.2023, Applicant requested a fresh appointment and on 24.07.2023, Applicant visited the office of Petitioner No. 2 at Mulla house and collected copies of the Last Will and Testament and four Codicils after signing a receipt for the same.

2.3. On 25.07.2023, Applicant contacted Petitioner No. 1 to inquire about his bequest. An appointment was fixed for 26.07.2023, and on that date Applicant visited the office of Petitioner No. 2 where he was given a cheque for Rs. 1 Crore towards his bequest, and after accepting it he signed a receipt for the same. Applicant also signed a document described as Consent Affidavit, copy of which is annexed at page No. 81 of the Testamentary Petition. At the same time, Applicant handed over a photocopy of his father's death certificate, original death certificate of his sister, and self-attested copies of his PAN card and Aadhaar card to Petitioners to enable them to file the Petition for

Probate. Applicant encashed the cheque of Rs. 1 Crore in his Bank account.

2.4. On 30.08.2023, Petitioners filed Testamentary Petition No. 3908 of 2023 seeking Probate.

2.5. On 11.12.2023, Applicant contacted Petitioner No. 1 on WhatsApp requesting for copies of documents that he had signed on 26.07.2023. On 13.12.2023, Petitioner No. 2 sent Applicant copies of two receipts, and Consent Affidavit dated 26.07.2023 which Applicant acknowledged receipt. Some time in December 2023, Applicant procured a certified copy of the papers and proceedings of Testamentary Petition.

2.6. On 29.02.2024, Applicant wrote to Petitioners requesting inspection of the Consent Affidavit dated 26.07.2023 which is appended at page No. 81 of the Testamentary Petition. On 13.03.2024, Applicant and his advocate inspected the original Consent Affidavit at the office of Petitioners' Advocate. The inspection was video recorded. Applicant's Advocate endorsed by letter that inspection was provided in the presence of Executors and Applicant.

2.7. On 14.03.2024, one Khushroo Mogal alleging to be close to the deceased filed Caveat in Testamentary Petition No. 3908 of 2023, purporting an alleged Will dated 23.03.2023 in his favour. On 04.05.2024, Khushroo Mogal filed Testamentary Petition No. 3160 of

2024 seeking Letters of Administration with Will annexed in this Court. On 11.06.2024, Petitioners filed Interim Application No. 1808 of 2024 to set aside Caveat filed by Khushroo Mogal and Interim Application No. 1809 of 2024 under Section 340 of the Code of Criminal Procedure, 1973 (for short "**CrPC**") to initiate investigation into production of the alleged forged Will. On 15.08.2025, this Court allowed Interim Application No. 1809 of 2024 and directed investigation against Khushroo Mogal through the jurisdictional Magistrate. On 05.01.2026, this Court allowed Interim Application No. 1808 of 2024, dismissed the Caveat filed by Khushroo Mogal and initiated investigation as to how Khushroo Mogal obtained the proceedings in Testamentary Petition No. 3908 of 2023.

2.8. During pendency of Interim Application 1808 of 2024 and Interim Application No. 1809 of 2024, on 16.07.2025, Applicant filed the present Interim Application (L) No. 6414 of 2025 seeking recall and striking off of Consent Affidavit dated 26.07.2023.

3. Mr. Pai, learned Advocate for Applicant would submit that Applicant is the sole surviving paternal heir of the deceased, Hilla Homi Dady, who passed away on 22.05.2023. He would submit that Applicant has filed this Application seeking to recall and for striking off of the purported Affidavit of Consent dated 26.07.2023, and issuance of Citation upon him so that he can contest the Testamentary Petition

filed by Petitioners (Executors).

3.1. He would submit that Petitioners as Executors of the alleged Will, obtained Applicant's signature on an incomplete document by misrepresenting its nature and purpose to him. He would submit that Applicant's Consent Affidavit was obtained by fraud, misrepresentation, and deceit and therefore the same is not binding on Applicant. He would submit if the said Consent Affidavit is not struck off, the Testamentary Petition filed by Executors would proceed on the basis of a fabricated document, causing irreparable loss and prejudice to Applicant, who is a legal heir of deceased.

3.2. He would submit that the Testamentary Petition was never shown to Applicant before or at the time of obtaining his signature on the Consent Affidavit. He would submit that the document dated 26.07.2023 signed by him was incomplete as it contained only two pages and paragraph Nos. 3 and 4 were missing at the time of he signing it. He would submit that the Notary Clerk and Mr. Ajit Srikhande, Advocate whose signature appears on the Affidavit were not present at the time of its execution by him. Further, he would submit that notarial formalities were completed entirely in Applicant's absence. He would submit that the impugned Consent Affidavit was notarized by Mr. Homiar Vakil who is a partner in the same law firm as Petitioner No. 2 and therefore this raises a clear conflict of interest.

3.3. He would submit that Applicant was asked to sign on what he was made to believe was the office register of Mulla & Mulla and Petitioner No. 2 represented that the signatures were a mere office formality. He would submit that Applicant having no independent legal advice trusted Petitioner No. 2 who is an experienced advocate. He would submit that Applicant was given a cheque for Rs. 1 Crore on the same day and receipt of the same was also signed by him. He would submit that Applicant was not given copies of any of the documents that he had signed for over six months thereafter.

3.4. Mr. Pai would submit that copies of the Last Will and Testament and Codicils were given to Applicant on 24.07.2023. He would submit that Testamentary Petition No. 3908 of 2023 was affirmed the following day on 25.07.2023 and Consent Affidavit was obtained from Applicant on 26.07.2023 and that this rapid sequence was carefully orchestrated by Petitioners. He would submit that the Testamentary Petition was thereafter e-filed only on 17.10.2023 which is over two months after the last attesting witness signed on 14.08.2023 and that this lapse of time raises a strong suspicion that its content are fraudulent which were added during this period.

3.5. He would submit that copies of the Will and four Codicils furnished to Applicant on 24.07.2023 had redactions, scored-off content and missing portions including Docket of the Will naming the

scribe and the phone numbers of attesting witnesses of the 4th Codicil which were masked. He would further submit that copies of the signed documents were withheld for over six months and inspection of original Consent Affidavit was refused repeatedly and was granted only after Applicant issued a formal notice and filed Interim Application No. 10836 of 2026. He would submit that Petitioners produced the Notary Register instantly upon the Court's request during the hearing of present Interim Application which demonstrates that Petitioner No. 2 had complete control over over the Notary and his register.

3.6. On merits, Mr. Pai would submit that the Will and four Codicils are unnatural and suspicious. He would submit that the deceased executed these documents between the age of 92 and 100 during which period her health was declining and her eyesight was deteriorating. He would submit that contents of the Will and 3rd Codicil are directly contradictory as the Will disinherits Applicant under Clause 10(b) while the 3rd Codicil bequeaths Rs. 1 Crore to him under Clause 12(b) without any explanation for such a change.

3.7. He would submit that the deceased bequeathing all her ornaments and personal effects to Petitioner Nos. 1 and 2 in equal shares is wholly unnatural especially since the deceased had blood relatives who she was extremely close to, including Applicant's wife, children and grandchildren. He would submit that maids, servants and

Petitioners being endowed with substantial bequests under the Will and four Codicils is therefore suspicious.

3.8. He would submit that the Rampart House flat at Kala Ghoda is treated inconsistently across the Will and Codicils, first designated as Trust office, then directed to be sold, and finally bequeathed absolutely to Petitioner No. 1. He would submit that even though Petitioner No. 1 does not claim to be nephew of deceased's husband, yet he is so described in paragraph No. 3 of the 3rd Codicil. He would submit that the Will and Codicils together vest substantial benefits in the Petitioners including over Rs. 3 crore in cash, a car, the Rampart House flat, all ornaments, antiques, chinaware, furniture, and control over an estate valued above Rs. 540 Crores. He would submit that this is an unnatural disposition that strongly suggests Petitioners' influence and supervision over drafting of the Will and four Codicils.

3.9. Mr. Pai would submit that accepting a bequest under a Will does not amount to an irrevocable election if the beneficiary was not made aware of the full nature of his rights. He would place reliance on Section 187 of the Indian Succession Act, 1925 (for short "**the Act**") and submit that Applicant's case falls squarely within Illustration (ii) thereof. He would submit that Applicant was never informed by Petitioners in their capacity as Executors, of the value of the estate of deceased and of the exact nature of benefits receivable by them. He

would submit that an election made in ignorance of material facts is not binding on the elector. He would submit that under Section 188 of the Indian Succession Act 1925, a natural heir has two years to express his dissent despite he having accepted the benefit / bequest under the Will of the deceased. He would submit that Applicant is entitled to accept his bequest under the Will and simultaneously contest the Will as he would be even otherwise if he loses will be entitled to receive the bequest of Rs. 1 Crore which he has already received. He would refer to and rely upon the decision of Mr. Patel, J. in the case of *Mirzaben Darabshaw Surti v. Cedric Vaz & Anr.*¹ and would submit that the doctrine of approbation and reprobation cannot be applied against the Applicant in the present facts as he was completely unaware about his legal right and legacy under the Will of the deceased and due to fraudulent conduct of the Executors to exclude and oust the Applicant despite he being the surviving blood relation and legal heir of the deceased.

3.10. In support of his above submissions and propositions Mr. Pai has placed reliance on the following Citation / decisions of various Courts:-

- (i) *Seema Sarin & Anr. v. Sudesh Chander Talwar*²;
- (ii) *Mirzaben Darabshaw Surti v. Cedric Vaz & Anr.*³;

1 (2015) 2 Mh.L.J. 184
 2 2013 SCC Online Cal 21240
 3 2015(2) Mh.L.J. 184

- (iii) *Ramakottayya v. Viraraghavayya*⁴
- (iv) *Sadik Husain v. Hashim Ali*,⁵
- (v) *Worthington v. Wiginton*⁶;
- (vi) *Sopwith v. Maughan*⁷;
- (vii) *Padbury v. Clark*⁸;
- (viii) *Jaswant Singh & Ors. v. Prakash Kaur & Anr.*⁹;
- (ix) *Deubai Tukaram Pakhare & Ors. v. Muktabai & Ors.*¹⁰;
- (x) *Syed Akbar v. Syed Abdul Haq*¹¹;
- (xi) *Madhumati Raut v. Namdev Yadav*¹²;
- (xii) *Ramji Sao v. Jageshwari & Anr.*¹³

3.11. Mr. Pai would submit that the contentions raised by Applicant through the present Interim Applications are such disputed questions of facts, which ought not to be decided summarily by Court on the basis of affidavits alone and Applicant is entitled to cross-examine the Petitioners and their witnesses. He would rely upon Order XIX, Rule 2 read with Section 141 of CPC in this regard and submit that Applicant has filed Interim Application No. 906 of 2026 for this purpose. He would submit that the impugned Consent Affidavit dated 26.07.2023 ought to be struck off or rejected. In the alternative, he would submit that Applicant be permitted to withdraw the impugned Consent Affidavit and Citation be directed to be served on Applicant and all other persons entitled thereto in the present Testamentary

4 ILR 52 (1929) Mad 556 (FB)

5 (1916) 43 IA 212

6 (1885) 20 Beav 67

7 (1861) 30 Beav 235

8 (1850) 2 Mac & G 298

9 (2018) 12 SCC 249

10 1999 SCC OnLine Bom 13

11 (2007) 6 Mh.L.J. 815

12 2006(1) Mh.L.J.

13 1963 SCC OnLine Pat 91

Petition filed by Petitioner.

4. *PER CONTRA*, Mr. Madon, learned Senior Advocate for Petitioners – Executors would submit that the present Interim Application is completely misconceived and devoid of merit. He would submit that Interim Application has been filed solely to harass the Petitioners for extraneous reasons despite receiving / accepting the benefit under the last Will of the deceased and to delay grant of Probate. He would submit that Interim Application suffers from gross delay and Applicant has approached this Court seeking recall of Consent Affidavit dated 26.07.2023 almost two years after executing it and receiving his bequest of Rs. 1 Crore from the estate of deceased. He would submit that such delay alone disentitles the Applicant to any discretionary relief. He would submit that the timing of pressing the Application is suspicious as it was filed only after Petitioners successfully obtained orders against Khushroo Mogal in Interim Application Nos. 1808 and 1809 of 2024, wherein this Court directed investigation into the forged Will produced by the said Mr. Mogal. He would submit that the Application is therefore clearly an afterthought.

4.1. Mr. Madon would submit that Applicant was never rushed or pressurized into signing any document by the Petitioners which is now alleged by him. He would submit that the testamentary documents were handed to Applicant on 24.07.2023, giving him over 48 hours to

study them before he visited the office of Petitioner No. 2 on 26.07.2023. He would submit that it was the Applicant himself who hurried and was eager to receive his bequest of Rs. 1 Crore at the earliest as he was in debt at the then time which is *prima facie* evident from his own WhatsApp messages addressed to Petitioner No. 1 which are annexed as Exh. 'C' to the affidavit-in-reply. He would submit that allegation that the Will of the deceased being too complex to understand is a complete afterthought and wholly false. He would submit that Applicant himself voluntarily handed over the death certificates of his father and sister (both related to the deceased) to Petitioners for use in the Testamentary Petition. He would submit that this clearly shows that Applicant was fully aware of the process of procuring probate being followed by the Petitioners.

4.2. He would submit that as beneficiary under the Will of the deceased Applicant was only concerned with three clauses i.e. Clause 10(b) of the Will dated 18.12.2015 which ousted him, Clause 12(b) of the third Codicil dated 18.09.2019 which bequeathed Rs. 1 Crore to him and Clause 9 thereof which forfeits the bequest if he contests the Will. He would submit that his complaint about the Will being bulky is entirely irrelevant and vague.

4.3. Mr. Madon would submit that allegation of page No. 1 and paragraph Nos. 3 and 4 of the Consent Affidavit being missing when

Applicant appended his signature thereon is blatantly false. He would submit that this contention was never raised by Applicant on any of the eight prior occasions when he had access to the documents, including when he received a copy thereof in December 2023 itself, when he procured certified copies and personally inspected the Original Consent Affidavit in March 2024. He would submit that bare perusal of the Consent Affidavit shows that the line spacing and paragraph spacing of paragraph Nos. 3 and 4 are identical to the rest of the document. He would submit that there is not even a slight change in the angle of print and therefore the allegation of subsequent insertion is demonstrably false. He would submit that page No. 2 of Consent Affidavit begins with the words "Serial No. 2 Rashna Hoshang Khan." He would submit that any prudent person reading a document starting with "Serial No. 2" would immediately question about Serial No. 1. He would therefore submit that the claim that page No. 1 was missing is wholly unbelievable.

4.4. Mr. Madon would submit that on a bare perusal of the page of the Notary Register signed by Applicant, the words "Notarial Register" are clearly visible at the top. He would submit that Applicant signed on the first line of that page, just below those very words and therefore it is obvious that he signed with full knowledge on the Notary Register and not an office register. He would submit that the original Notary Register is produced before this Court at hearing on

10.03.2026 and was inspected by Court and Applicant's Advocate also. He would submit that a copy of the relevant page is provided to Applicant.

4.5. On merits of the matter and law, Mr. Madon would submit that Attesting witnesses are not strangers to the deceased. He would submit that Will dated 18.12.2015 was attested by Advocates working with the office of Maneksha & Sethna, Advocates and Solicitors. He would submit that the 2nd and 3rd Codicils were attested by Naheed Hormazd Sorabjee and Zareer R. Lalkaka, who are family friends of the deceased and had also been appointed as Executors by the deceased's husband in his own Will dated 28.02.2008. He would submit that the 4th Codicil was attested by Dr. Delna Goghavalla who was the deceased's physiotherapist and Sarosh D. Tukina who is a clerk at Mulla & Mulla, Advocates and Solicitors. He would submit that these are persons with direct connections to the deceased.

4.6. He would further submit that Petitioners are not strangers to the deceased. He would submit that Petitioner No. 1 was even then a joint account holder in the deceased and her husband's HSBC account, as is apparent from contents of Testamentary Petition No. 110 of 2010 which Applicant himself relies upon. He would submit that deceased had included Petitioners as joint holders or nominees in all her assets which demonstrates their deep longstanding relationship and trust.

4.7. Mr. Madon would submit that Applicant's invocation of the

Doctrine of Election under Section 187 of the Act, 1925 in the facts of the present case is entirely misplaced and inapplicable altogether. He would submit that Doctrine of Election applies only where a Testator/Testatrix bequeaths property to the beneficiary which belongs to the beneficiary and does not belong to him or her. He would submit that this is not the case here as the deceased Testatrix has not bequeathed any property not belonging to her and belonging to the Applicant. He would submit that Sections 187 and 188 cannot be read in isolation and *dehors* Section 180 of the said Act. He would submit that since the conditions precedent under Section 180 are not fulfilled, Doctrine of Election cannot be invoked at all.

4.8. He would submit that Section 35 of the Transfer of Property Act likewise does not apply to the facts of the present case. He would submit that the case of *Mirzban Darabshaw Surti (supra)* relied upon by Applicant is clearly distinguishable. He would submit that in *Mirzban*, there was no clause in the Will ousting the elector from his benefits. He would submit that the said decision does not consider Sections 180 to 186 of the Act of 1925 and it is therefore per incuriam. He would submit that any observations in paragraph No. 17 of that judgment are *obiter* as the same do not arise for consideration herein.

4.9. Mr. Madon would submit that the well-settled principle that a person who accepts a benefit under a Will must accept it in its

entirety applies to the facts in the present case. He would submit that a beneficiary who accepts a bequest cannot approbate and reprobate. In support of this submission, he has referred to and relied upon the decision of this Court in *Ashwin Khater v. Urvashi Khater*¹⁴. In this decision, Court held that a party cannot accept the benefits of a Will and simultaneously challenge its validity after enjoying the benefits. He would submit that Clause 9 of the Will expressly provides that if any legatee disputes the validity of the will, his bequest shall cease and form part of the Trust Fund. He would submit that Applicant having accepted his bequest of Rs. 1 Crore and having signed the Consent Affidavit, cannot now challenge the Will after two years since he has chosen to accept his bequest. He would submit that Applicant filed this Interim Application just nine days short of two years from the date of accepting the bequest and has invoked the provisions of Section 187 which *prima facie* do not apply to the present case. He would submit that three years have now passed and Applicant has not returned or deposited the sum of Rs. 1 Crore received by him. He would submit that this conduct betrays Applicant's lack of bonafides.

4.10. He would submit that the conduct of Applicant shows that he is hand in glove with Khushroo Mogal. He would submit that Mr. Mogal filed a forged Will before this Court and a Caveat in the present Testamentary Petition, both of which were comprehensively dismissed.

¹⁴ 2026:BHC-OS:1021

He would submit that despite knowing about Mr. Mogal's Testamentary Petition which was listed alongside this very Interim Application on multiple occasions, Applicant did not file a caveat therein.

4.11. Mr. Madon would submit that under the Will and four Codicils propounded by Petitioners, over 95% of the estate goes to charity. He would submit that it is inconceivable and unfathomable that Petitioners would fabricate so many testamentary documents involving multiple different attesting witnesses, only to give the estate away to charity. He would submit that the allegations of fabrication are therefore baseless.

4.12. He would therefore submit that present Interim Application deserves to be dismissed with exemplary costs as Applicant has approached this Court with unclean hands and is not entitled to any equitable or legal relief.

5. I have heard the submissions advanced by both the learned Senior Advocates appearing for the respective parties in the Interim Application and with their able assistance perused the record of the case. Submissions made by the learned Senior Advocates have received due consideration of the Court.

6. Principal facts in question are undisputed. Save and except, interpretation of the legal provisions entitling the Applicant to maintain and sustain the Interim Application. Mr. Pai has referred to

and relied upon several citations however there is one judgment of a Single Judge of this Court which he has referred to and relied upon for the purpose of arguing entitlement of the Applicant to maintain the Interim Application.

7. Equally, Mr. Madon has also referred to and relied upon the same judgment. According to Mr. Pai even if a party accepts a legacy under the Will he can still maintain a challenge to the said Will by which he receives the legacy and the general law expounded by the Supreme Court under the "doctrine of election" would not affect the right to maintain such a challenge. He would submit that if the amount received as legacy by Applicant would come to Applicant even on intestacy or is less than what he might receive if the challenge to the Will succeeds then the Interim Application is maintainable. He has drawn my attention specifically to paragraph No.17 of the judgment passed by this Court in the case of *Mirzban Darabshaw Surti* (*supra*) to buttress his argument on maintainability. The said paragraph No.17 is reproduced below for immediate reference:-

*"17. Faced with legacies and bequests, the defendants have a choice. They may elect to receive those legacies and bequests, in which case they cannot assail the document under which they do so. In other words, on their acceptance of those legacies, they make an election and renounce all rights inconsistent with those legacies. On the other hand, it is, and was, always open to them to renounce the legacies and continue their challenge to the Will. But what no defendant can do is to simultaneously accept a legacy that only accrues as such and challenge the testamentary instrument by which he or she receives it. **The only exception to this is where the amount or item received would come to the recipient even on intestacy, or is less than what he or she might receive if the challenge to the Will succeeds.** It is only in that situation that no question of an election would arise. Where, however, the recipient takes a specific legacy and that legacy or bequest is not one*

that would follow on intestacy, the recipient cannot, having accepted the legacy, impugn or impeach the document under which it is made."

8. Before I advert to the factual aspects it would be appropriate to understand the conspectus of law governing such a situation where a legatee receives the benefit under the Will and after accepting the same subsequently, decides to challenge the same Testamentary instrument. The Supreme Court in the case of ***C. Beepathuma and Ors. Vs. Velasari Shankarnarayana Kadambolithaya***¹⁵ as far back as in the year 1964 expounded the "doctrine of election" to the effect that one who accepts a benefit under a Deed or Will or other instrument must adopt the whole contents of the instrument, must confirm to all its provisions and renounce all rights that are inconsistent with it. The Supreme Court held that this concept if put in another form that a person cannot approbate and reprobate the same transaction. This is based on a very old principle enunciated by Lord Cairns L.C., in ***Codrington Vs. Codrington***, (1875) LR 7 HL 854 holding that where a Deed or Will professes to make a general disposition of property for the benefit of a person named in it, such person cannot accept a benefit under the instrument without at the same time confirming to all its provisions, and renouncing every right inconsistent with them. It is pertinent to note that the decision in the case of ***Mirzban Darabshaw Surti*** (*supra*) considers these principles. A Division Bench decision of this Court has also interpreted the provisions of Section 187 and 188 of

¹⁵ (1964) 5 SCR 836

the Indian Succession Act, 1925 in the case of *Lyla Darius Jehangir Vs. Bhkhtawar Lentin and Ors.*¹⁶ and held accordingly.

9. In the above legal background, let us examine the case of Applicant seeking recall of his Consent Affidavit despite he having received his bequest under the Will of the deceased. The testatrix expired on 22.05.2023, record shows that during one of the first 4 days after the death prayer of deceased, Applicant asked Petitioner No.1 for information of Will of the deceased and when he can obtain copy of the same. Thereafter on 21.07.2023, Applicant sent a WhatsApp message to Petitioner No.1 requesting for a meeting to obtain the copy of the Will of the deceased. On 24.07.2023, Applicant attended office of Petitioner No.2 and collected the Will and four (4) Codicils. Immediately, on the next day i.e. 25.07.2023, Applicant approached Petitioner No.1 on telephone seeking to receive his bequest and inquired whether he should bring any documents for filing the probate. On 26.07.2023, Applicant attends the office of Petitioner No.2 and receives his bequest of Rs. 1 crore by cheque, signs the receipt, signs Consent Affidavit, hands over photo copy of death certificate of his father, hands over original death copy of his sister and hands over self attested copies of his PAN card and Aadhar card.

10. Admittedly, Applicant en-cashes cheque of Rs.1 crore thereafter. Present Interim Application is filed on 16.07.2025 for recall

¹⁶ 2007 (1) Mh.L.J. 545

of Consent Affidavit. What is stated in the Interim Application for recall of Consent Affidavit is that when the Will and four (4) Codicils were executed the deceased was not fully fit, was losing her eye-sight and was living by herself, therefore the Will and four (4) Codicils are shrouded with suspicious circumstances. Applicant has expressed belief in the Application that Will would contain substantial provisions for him. Applicant has categorically stated that he decided to cooperate with the Petitioners as he would receive his share in the estate and he was made to believe that he would receive more money from the estate of the deceased.

11. With regard to the Consent Affidavit signed by him, Applicant has stated that it was incomplete and only paragraph Nos.1 and 2 were typed whereas paragraph Nos. 3 and 4 were subsequently added. However, when the matter is argued before me, Applicant has relied upon his Rejoinder dated 06.11.2025 wherein in paragraph Nos.5 and 6 the Applicant stated that for the first time there were redaction in the Will and four (4) Codicils and names were masked.

12. In the above background, it is pertinent to note that the Application for recall of Consent Affidavit is filed after 16 months alleging that in the Consent Affidavit which was signed by him paragraph Nos. 3 and 4 were absent. There is no allegation of the redaction in the Application which is taken for the first time only in the

Rejoinder. Save and except, averments rather bald averments, there is no other material evidence to substantiate the Applicant's allegations though another submissions are made by Applicant that Applicant is entitled to Rs. 1 crore in case his challenge to the Will fails and much more in case challenge to the Will succeeds, such a submission itself amounts to approbation and reprobation at the same time. The decisions of the learned Single Judge and more specifically the sentence beginning with the words "the only exception" in paragraph No.17 and ending with the words "the challenge to the will succeeds" is infact not in the context of the case decided by the learned Single Judge. The said sentence is not duly supported by any legal provision whatsoever. It is in the nature of an *obitar* and not a *ratio* which can have a binding effect on this Court to decide the present Application.

13. It is further seen that such a situation is infact not contemplated by any provision on law. It is only in the case of a fraud, if committed on the legatee that the Court can intervene however no such circumstances exists in the present case. The Applicant consciously approached the Executors after perusing the Will and four (4) Codicils and requested them to give his bequest. Hence, by no stretch of imagination the acceptance of bequest / legacy by the Applicant can be said to have been received by him under duress or undue influence or coercion. Therefore, the argument of Applicant that he was made to accept the bequest, made to sign an incomplete

Consent Affidavit, made to believe that he would receive more money in the estate of deceased, was not permitted to read the Will and four (4) Codicils, and the same were complex and he did not understand the same are nothing but a complete afterthought to extort more benefit from the Executors to which he is not entitled to. The grounds taken by the Application do not stand to reason, it is hardly likely to believe that Applicant was or could be forced by the Executors into accepting the bequest. At no time has the Applicant brought back the amount received by him under the bequest and it is argued before me that even if the Applicant does not succeed in the Interim Application, he would still be entitled to keep the amount received under the bequest for himself.

14. According to me, acceptance of bequest of Rs.1 crore by Applicant on 26.07.2023, and his act of signing the Consent Affidavit and en-cashing the said bequest cheque is an act of renunciation of every right inconsistent with the Will and four (4) Codicils. The Applicant cannot taken benefit under the instrument and affirm it to the extend of benefit received and challenge the same instrument once the Applicant has accepted the benefit under the Will which is of a specific legacy, Applicant is bound by the terms of the Will and he cannot simultaneously rather belatedly as is the present case repudiate it merely making an averment that Petitioners exercised undue influence without *prima facie* proving the same cannot be accepted.

Applicant's challenge to the Will and four (4) Codicils in facts and circumstances is clearly obliterated by his acceptance of his legacy under it.

15. Reliance on Section 187 of Indian Succession Act, 1925 by Mr. Pai to contend that Applicant has a right to accept the bequest made under the Will and simultaneously challenge the same Will cannot be accepted.

16. In the facts and circumstances of the present case the filling of the Interim Application is nothing but fraudulent and dishonest act on the part of the Applicant in view of the estate of the deceased. The Applicant has no reason to challenge and therefore has invoked a complete false reason regarding the consent Affidavit signed by him being incomplete. The Applicant waited for 16 long months to plead these reasons which any prudent person could have pleaded immediately.

17. The "doctrine of election" is based on the rule of estoppel which is the principle that one cannot approbate and reprobate and inherit in it. The doctrine of estoppel by election is one among the species of estoppels in pais (or equitable estoppel) which is a rule of equity.

18. In view of the above, attention is invited to the decision of the Supreme Court in the case of *Bhagwat Sharan (dead through*

*leagal heirs) Vs. Purushottam and Others.*¹⁷ and specifically to paragraph Nos.24 and 25 as under:-

"24. It is also not disputed that the plaintiff and defendant nos. 1-3 herein filed suit for eviction of an occupant in which he claimed that the property had been bequeathed to him by Hari Ram. According to the defendants the plaintiff having accepted the Will of Hariram and having taken benefit of the same, cannot turn around and urge that the Will is not valid and that the entire property is a joint family property. The plaintiff and defendant nos. 1-3 by accepting the bequest under the Will elected to accept the will. It is trite law that a party cannot be permitted to approbate and reprobate at the same time. This principle is based on the principle of doctrine of election. In respect of Wills, this doctrine has been held to mean that a person who takes benefit of a portion of the Will cannot challenge the remaining portion of the Will. In The Rajasthan State Industrial Development and Investment Corporation and Anr. vs . Diamond and Gem Development Corporation Ltd. and Anr¹¹, this Court made an observation that a party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate". Where one party knowingly accepts the benefits of a contract or conveyance or an order, it is estopped to deny the validity or binding effect on him of such contract or conveyance or order.

25. The doctrine of election is a facet of law of estoppel. A party cannot blow hot and blow cold at the same time. Any party which takes advantage of any instrument must accept all that is mentioned in the said document. It would be apposite to refer to the treatise 'Equity-A course of lectures' by F.W. Maitland, Cambridge University, 1947, wherein the learned author succinctly described principle of election in the following terms:- "The doctrine of Election may be thus stated: That he who accepts a benefit under a deed or will or other instrument must adopt the whole contents of that instrument, must conform to all its provisions and renounce all rights that are inconsistent with it...." This view has been accepted to be the correct view in Karam Kapahi and Ors. vs. Lal Chand Public Charitable Trust and Ors. 12. The plaintiff having elected to accept the Will of Hari Ram, by filing a suit for eviction of the tenant by claiming that the property had been bequeathed to him by Hari Ram, cannot now turn around and say that the averments made by Hari Ram that the property was his personal property, is incorrect."

19. The aforesaid applies to the facts and circumstances of the present case.

20. To approbate and reprobate simply means to approve and disapprove something which the law does not permit a person to do so.

This principle is based on the maxim "*quod approbo non reprobo*"

¹⁷ Civil Appeal No.6875 of 2008 decided on 03.04.2020.

which translates to *"that which i approve, i cannot disapprove"* in short one cannot accept and reject the same instrument based on benefit and convenience under the law as one is not allowed to accept only the part which benefits him and reject the part which takes away or does not benefit him. The only exception to this is if disposition of part belongs to him. This approbate and reprobate principle is popularly called as the doctrine of election. According to which no party can accept or reject the same instrument and that a person cannot say at one time that a transaction is valid and thereby obtain some advantage to which he could only be entitled to on the putting that it is valid and then turn around and say it is void for the purpose of serving some other advantage.

21. Mr. Pai has referred to Section 187 of the Indian Succession Act, 1925 to contend that acceptance of benefit given by a Will constitutes an election by a legatee to take under the Will, if he has knowledge of his right to elect and of those circumstances that would influence a judgement of a reasonable man in making an election as applicable to the facts in the present case.

22. He would further contend that this knowledge of right to elect the Applicant in absence of evidence to contrary be presumed if a legatee has enjoyed for 2 years the benefits provided for him in the Will without doing any act to express dissent.

23. In my opinion, the theory of doctrine of election propounded and argued by Mr. Pai in the context of Section 187 read with Section 188 of the Indian Succession Act, 1925 does not have any application to the Applicant's case herein. The right of election contemplated under Chapter XXII of Indian Succession Act begins with Section 180 and travels upto Section 190 therein. This doctrine of election as contemplated is in the circumstances which is envisaged under the said chapter right to such election will be accrued to a legatee or person in respect of property bequeathed by the Will of the Testator only where a Testator by his Will professes to dispose of something which he has no right to dispose of. It is only in this case that person / legatee to whom the thing belongs to shall elect either to confirm such disposition or to dissent from it.

24. It is only in these circumstances doctrine of election is applicable if the person / legatee descends by virtue of which he will give up any benefit which may have been provided for him by the Will.

25. The facts in the present case are plain, simple and unambiguous. Applicant has claimed his bequest under the Will once he does so it is acknowledgment of fact of acceptance of the Will unless there is an element of fraud pleaded by him in acceptance of the benefit on the basis of undue influence, coercion or suppression by keeping him in the dark, Applicant cannot take a complete U turn and

seek to challenge the instrument / Will. Applicant accepted the benefit being the legal heir of the deceased without demur. He never raised any objections whatsoever for 16 months after receiving his bequest and benefit under the Will and after enjoying the same, this is nothing but an attempt to extort something from Petitioners who are Executors / beneficiaries under the Will of the deceased.

26. The doctrine of election as contemplated under Chapter XXII of the Indian Succession Act, 1925 only applies to different provisions within the same instrument i.e. the Will. It was open for Applicant to challenge the bequest if he was asserting a right i.e. completely outside the Will such doctrine of election was available only if the Will disposed of property that actually belonged to Applicant or it was ancestral property which could not be legally willed away by Testator / Testatrix. It is only in these circumstances doctrine of election is permissible to assert the independent property rights without invalidating the rest of the Will and in no other circumstances.

27. Once the Applicant accepts the bequest under the Will of the deceased, he is deemed to have accepted the Will. Mr. Pai has referred to Section 35 of the Transfer of Property Act, 1882, plain reading clearly envisages the situation in which election is necessary. Section 35 of the Transfer of Property Act, 1882 is *pari materia* with Section 187 of the Indian Succession Act, 1925, the underlying principle of

doctrine of election is that benefit / burden must co-exists.

28. In order to create a situation of election it is important that intention of Testator / Testatrix should be clear with regard to disposing of property which he/she does not own. This situation does not apply to the facts of Applicant's case in simple words once the Applicant has received the benefit under the Will he now cannot turn around and challenge the same Will.

29. The grounds in the Application does not inspire any confidence of the Court.

30. In view of the above observations and findings, Interim Application No.6414 of 2025 is rejected in the above terms and according disposed of.

31. Considering that IA No. 906/2026, IA(L) No. 37385/2026, IA No. 2080/2026 & IA(L) No. 10836/2026 are consequential Applications, in view of rejection of principal Interim Application, these Interim Applications do not survive and are disposed of.

[MILIND N. JADHAV, J.]

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