**What is a Probate**

A Probate means certification of the copy of a Will under the seal of a court having jurisdiction thereof. It is an instrument that bestows a right of administration to the estate of a testator.

As per the Section 222 of the Indian Succession Act, 1925, a probate is granted only to the executor and no other person, if such person is not named either expressly or impliedly in the Will. Such a person cannot make an application for obtaining a grant of probate of the Will.

Section 213(1) makes it a requisite for every legatee or executor to acquire a probate of the Will or Letter of Administration with the Will prior to execution of the Will for creating any right in a court of law about the subject matter of the concerned Will and any estate stated therewith.

In other words, an executor or the legatee can only complete their obligations in disposition of the deceased estate, when they duly obtain a Probate/Letter of Administration from a court of competent jurisdiction.

The Will which is required to be probated as per the provisions of the Indian Succession Act, 1925, if not probated, has no legality and cannot be enforced.

The Hon’ble Supreme Court in Chiranjilal Shrilal Goenka vs. Jasjit Singh and others held in the following words:

“… the only issue in a probate proceeding relates to the genuineness and due execution of the Will and the court itself is under a duty to determine it and preserve the original Will in its custody. The Succession Act is a self-contained code in so far as the question of making an application for probate, grant or refusal of probate or an appeal carried against the decision of the probate court. This is manifested in the fascicule of the provision of Act. The probate proceedings shall be conducted by the probate court in the manner prescribed in the Act and no other ways. The grant of probate with a copy of the Will annexed establishes conclusively as to the appointment of the executor and the valid execution of the will. Thus, it does no more than establish the factum of the will and the legal character of the executor. The Probate court does not decide any question, of title or of the existence of the property itself.”

**Limitation for filing an application for probate**

There isn’t a specified time limit for the grant of probate. In case the estate is in the possession of the administrator the question of the probate does not arise. The probate is conclusive only concerning the authenticity of the Will submitted before a Court.

However, Art 137 of the Limitations Act, 1963 states that limitation for making an application for which no specified time is prescribed in the particular act is three years.

This provision was emphasised by the Hon’ble Supreme Court in the case of Kunvarjeet Singh Khandpur v. Kirandeep Kaur & Ors., and Kerala State Electricity Board, Trivandrum v. T.P. Kunhaliumma.

**Reasons Probate Is Necessary**

A probate is necessary in case no Will is executed. Probate helps to determine the beneficiaries and to apportion the deceased’s assets and title in the property.

In cases where a valid Will exists, a probate is required for the assets of an estate (other than the smaller estates) to be appropriately disseminated to the termed beneficiaries for proper distribution of assets to be bequeath through the Will

In some cases, the authenticity of the Will may be questioned due to mistakes in drafting. To remove such errors, a probate is required.

It is not always that a person will be appointed as an executor of the Will. At times, any institution, firm, or a bank may be appointed as executor. In such a case, it may waive the requirement that a Will has to be probated before Property/ money derived from it is transferred to the beneficiary. This can be done where the beneficiary is the principal heir-at-law, and other all other probable heirs-at-law have waived their rights by signing a waiver authorizing the executor / transfer the property, as the case may be, to the beneficiary.

Probate of Will is essential when an estate’s assets are solely in the name of the deceased, who owned the property with no other names attached to it. The Will has to be probated to transfer the property in the name of the beneficiary(s).

In case there are no beneficiaries named or they have predeceased the testator, it is necessary to obtain probate of the Will. In case the beneficiaries are not named or are predeceased, the Will has to be probated to transfer funds or titles into beneficiaries’ names.

In the case that a deceased person is not the sole owner of a property, but owns it along with other persons, probate has to be obtained to remove the deceased’s name from the property jointly owned, and transfer own share of the property to the appropriate beneficiaries.

**Details required for filing a probate petition**

For filling a probate, we require the details of the deceased person, the executor, the heir, the Will and the property that has to be bequeathed through that Will as mentioned below.

(A) For the deceased-

Full name

Nationality and current country of residence.

Latest permanent residential address (where the deceased resided at the time of his/ her death)

Marital status of the deceased

Occupation of the deceased at the time of his/ her death

True copy of death certificate.

(B) For the Will-

Date of execution of the Will

Place of execution of the Will

Whether the Will was registered or not?

(C) For the Heir/s-

Personal details of the heir/s

Relation of the heir with the deceased

If any heirs have pre-deceased the deceased?

(D) For the Executor

Number of executors appointed

Name of the executor.

Nationality and current country of residence.

Age

Latest permanent residential address

(E) For the property that is to be bequeathed-

Nature of property- movable/ immovable/ tangible/ intangible.

In case of immovable property- address and description of the property

In case of intangible or intellectual property- registration details of a trademark, copyright, patent, design thereof if any

**Filling of a probate petition**

Law gives a definite procedure for filing a probate petition. According to Section 276 of the Indian Succession Act, an application for a probate petition has to be made in English or the language in ordinary use in proceedings before the respective Court. A copy of the Will has to be annexed with the application. The below mentioned details have to be provided-

the time of occurrence of the death of the testator.

Copy of the latest Will made by the testator.

proof that the Will has been duly executed.

the list of the assets to be bequeathed through the Will.

proof that the petitioner or the executor has been named in the Will at the time of filling an application for probate.

proof that the deceased at the time of his demise had a secure place of residence, or had some property, situate within the jurisdiction of that particular Judge when the application is made to the District Judge

proof that the deceased at the time of his demise had a secure place of residence within the jurisdiction of such Delegate when the application is made to a District Delegate.

**Documents Required for obtaining a Probate**

While applying for obtaining probate the below-mentioned documents are required to be submitted. Submission of these documents is a requisite for proving the genuineness of the Will.

The Will is not only genuine, but also the latest Will made by the testator. The courts often consider the question of whether the Will that is sought to be probated is the last and final Will of the testator.

The proof of death of the testator. (Copy of death certificate of the deceased).

Proof that the Will is validly executed in clear conscience without any coercion or undue influence on the testator.

Along with the application, the petitioner has to furnish a blank stamp paper of value equivalent to the necessary court fee on which the court grants the probate.

After the petition is filed in the court, the court issues notice to the next of kin of the deceased. This notice gives the next of kin of the deceased an opportunity to file their objections and make claims on the estate of the deceased. If no objections are filed, probate is granted right away.

A General public notice is given in the newspaper as a declaration.

**BEFORE THE \_\_\_\_\_\_\_\_\_\_\_ JUDGE \_\_\_\_\_\_\_\_\_COURT**

**PETITION NO. \_\_\_\_\_\_\_\_\_\_ OF 20\_\_**

**Petition for probate of the will of (a)  
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Deceased.**

**IN THE MATTER OF:**

Mr. AAA\_\_\_\_\_\_\_\_\_                                                            **PETITIONER**  
R/O\_\_\_\_\_\_\_\_\_\_\_\_\_ OCCUPATION \_\_\_\_\_\_\_\_\_

(If deceased was a bachelor or spinster that should be stated)

**PETITION FOR PROBATE OF WILL OF XXX EXPIRED ON \_\_\_\_ IN FAVOUR OF AAA SON OF XXX BY CASTE \_\_\_\_\_ UNDER SECTION 276 OF INDIA SUCCESSION ACT, 1925**

**MOST RESPECTFULLY SHOWETH:**  
  
(1) That the above-named XXX (hereinafter after to as said deceased) who being a Hindu ruled by Hindu Succession Act and expired on the \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_ at\_\_\_\_\_\_\_ within the jurisdiction of this court which had been his fixed place of residence (or where he was temporarily resident, his fixed place of residence being at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_) within the jurisdiction of this court or leaving the property within the jurisdiction of this court as will appear from the affidavit of assets instituted herewith.  
  
(2) That the said deceased left a writing, which is his last will and testament. The said writing, hereinafter referred to as the will, is marked Exhibit "A" and is handed in separately for being filed and kept in a safe place in the office of the Prothonotary and Senior Master. A copy of the said will is hereto annexed and also marked Exhibit "A'.  
  
(3) That the said will duly executed at \_\_\_\_\_\_ on the \_\_\_\_\_\_ day of \_\_\_\_\_\_20 \_\_\_\_\_\_

(5) That the petitioner is the executor or one of the executors named in the said will or the executor according to the tenor thereof.

(6) That the petitioner has truly set forth in schedule No. I, hereto annexed and marked Exhibit "B", all the property and credits which the deceased died possessed of or entitled to at the time of his death, which have or are likely to come to his hands.  
  
(7) That the petitioner has truly set forth in schedule No. II, hereto annexed the marked Exhibit "C", all the items that by law he is allowed to deduct for the purpose of ascertaining the net estate of the deceased.  
  
(8) That the petitioner has truly set forth in Schedule No. III, hereto annexed and marked Exhibit "D", the property held by the deceased as trustee for another and nor beneficially or with general power to confer a beneficial interest.  
  
(9) That the assets of the deceased after deducting the items mentioned in Schedule No. II but including all rents, interest and dividends which have accrued since the date of the death of the deceased and increased value of the assets since the said date are of the value of Rs \_\_\_\_\_\_

(10) The value of assets which will come to petitioner's hands in case of probate of the will or letters of administration with a copy enclosed thereto being allowed does not exceed the aggregated sum of Rs. \_\_\_\_\_\_ and the net amount after deducting all items which he is legally allowed to deduct by him being under the value of Rs. \_\_\_\_\_\_  
  
(11) That the deceased was a Hindu ruled by Hindu Succession Act (Act 30 of 1956) and at the time of his expiry he left the following and none other relations who would have been his successors in case of intestacy under the said Act.  
  
Name, address, age and relationship: remarks, if any (full details)  
  
(12) That petitioner has duly paid the ad valorem duty payable relating to property of deceased.  
  
(13) That no application has been made before any other court in probate of said will/letters of administration with a copy enclosed thereto and no proceedings or suit are pending for managing of the estate.  
  
(14) petitioner hereby undertakes to manage the estate with credits of the said A deceased and to make and file a full and true inventory thereof for exhibiting the same in this court by six months from date of granting probate of will (or letters of administration) to him, and also give this court a true account of said estate with credits by one year from said date.  
  
15. That this application is made bona fide.

16. In the facts and circumstances of case mentioned herein above this Hon'ble Court may graciously be pleased to:

**P R A Y E R**

That the Plaintiff, therefore, prays:

a) to pass order to probate will dated \_\_\_\_\_\_\_\_ in favour of the Petitioner effecting throughout the State of \_\_\_\_\_\_\_.

b) to grant any other relief, which the Hon'ble court deems fit, may please be granted to the plaintiff in the interest of justice.

**VERIFICATION BY THE APPLICANT**

I, \_\_\_\_\_\_ \_\_\_\_\_\_ \_\_\_\_\_\_ the above-named petitioner, do hereby declare and say that the statements contained in paragraphs \_\_ to \_\_ and \_\_ of the above petition are true to my best knowledge and those bearing in paragraphs \_\_ and \_\_ thereof are my presentations.  
  
Verified at \_\_\_\_ on this \_\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

**PETITIONER**

**DECLARATION OF WITNESS**

I,\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ one of the witnesses to the last will and testament of \_\_\_\_\_\_\_\_\_\_ the testator stated in the above petition, do say and declare that I was present on the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ day of\_\_\_\_\_ at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and saw the testator affix his hand/signature or mark to said will, marked A per Affidavit of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ instituted herewith (or that the said testator admits the writing enclosed to above petition and marked A, to be his last will/testament in my presence).  
  
Solemnly affirmed by the said \_\_\_\_\_\_ witness this \_\_\_\_\_\_day of \_\_\_\_\_\_ at \_\_\_\_\_\_Court House at Bombay

Sign  
  
Before me  
  
Commissioner/Magistrate/Oath Office

**Conclusion**

A probate elucidates a Will and shields an estate from any objection or claims to the definite beneficiaries of inheritance. Although having Probate for a Will is an effective method, and sometimes indispensable, it is not obligatory in each matter related to a Will. The strategies available depend on nature and shared ownership of the property in the estate.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**TESTAMENTARY AND INTESTATE JURISDICTION**

**PETITION NO.                OF 2013**

Petition for probate of the Will of \_\_\_\_\_\_\_\_\_\_\_\_ alias \_\_\_\_\_\_\_\_\_\_ alias \_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_, Hindu, Indian Inhabitant, Occupation: \_\_\_\_\_\_\_\_, residing at the time of his death at \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_ , India

         .                             …The Deceased

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

of Mumbai, Hindu, Indian Inhabitant

aged about \_\_\_\_ years,

Occupation: \_\_\_\_\_\_\_\_\_\_\_\_\_,

Presently residing at \_\_\_\_\_\_\_\_,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_, being the sole / one

of the Executor of the Will

 … Petitioner

To

THE HON’BLE CHIEF JUSTICE AND

OTHER PUISNE JUDGES OF THE

HON’BLE HIGH COURT

**THE PETITION OF THE PETITIONER ABOVENAMED**

MOST RESPECTFULLY SHEWETH:

 (1)      That the abovenamed \_\_\_\_\_\_\_\_\_ alias**\_\_\_\_\_\_\_\_\_\_** alias \_\_\_\_\_\_ died at \_\_\_\_\_\_\_  on \_\_\_\_\_\_\_\_\_\_\_\_\_\_. Hereto annexed and marked **Exhibit “A”** is the copy of the death certificate.

(2)       That the said deceased at the time of his death had a fixed place of abode at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, India and has / has not left any immovable property within Greater Bombay and in State of Maharashtra and elsewhere in India.

(3)       That the said deceased left writing, which is his last will and testament. The said writing, hereinafter referred to as the will, is marked **Exhibit “B”** and is handed in separately for being filed and kept in a safe place in the office of the Prothonotary and Senior Master. A copy of the said Will is hereto annexed and also marked as **Exhibit “B”**

(4)       The said Will was duly executed and registered with the Sub-Registrar of Assurance \_\_\_\_\_\_\_\_\_\_, bearing registration No. \_\_\_\_\_\_\_\_\_\_, at \_\_\_\_\_\_ on \_\_\_\_\_\_\_\_\_\_\_\_. That the Petitioner is the Sole / one of the Executor named in the said Will and in that capacity has filed this Petition for Probate.

(5)       That the Petitioner has truly set forth in Schedule No. I hereto annexed and marked **Exhibit “C”**, all the property and credits which the deceased died possessed of or entitled to at the time of his death, which have or are likely to come to Petitioner’s hands.

(6)       That the Petitioner has truly set forth in Schedule No. II, hereto annexed and marked **Exhibit “D”**, all the items that by law he is allowed to deduct for the purpose of ascertaining the net estate of the deceased.

(7)       That the assets of the deceased after deducting the items mentioned in Schedule No. II but including all rents, interest and dividends which have accrued since the date of the death of the deceased and increased value of the assets since the said date are of the value of about Rs.\_\_\_\_\_\_\_\_\_\_ (Rupees \_\_\_\_\_\_\_\_\_\_\_\_ Only).

(8)              That the said deceased left him surviving as his only heirs and next-of-kin according to Indian Succession Act, 1925, the following persons who are residing at the addresses set out against their respective names :-

|  |  |  |  |
| --- | --- | --- | --- |
| Sr. No. | Name | Relationship with the Deceased | Address |
| 1 | \_\_\_\_\_\_\_\_\_\_,  Age: \_\_\_ |  |  |
| 2 | \_\_\_\_\_\_\_\_\_\_,  Age: \_\_\_ |  |  |

The Petitioner states that all the above next of kin have given their full and free consent in favour of the Petitioner. The consent given by the above named next of kin of deceased are annexed hereto.

(9)       That save and except the heirs mentioned herein above, there are no other heirs left by the deceased.

(10)     That no application has been made to any District Court or District Delegate or to any other High Court for probate of any will of the said deceased or for Letters of administration with or without the will annexed, to his property and credits.

(11)     The Petitioner states that the deceased having bequeathed the said Immovable / movable property by virtue of the present Will, Probate having effect through out India has been prayed for.

(12)     The Petitioner therefore prays:-

That Probate may be granted to the Petitioner having effect throughout the State of Maharashtra and the Union of India.

Advocate for the Petitioner                                                  Petitioner

**VERIFICATION**

I, \_\_\_\_\_\_\_\_\_\_\_\_\_, the Petitioner abovenamed, do hereby solemnly declare that whatever is stated in the paragraphs \_\_\_ to \_\_\_\_\_\_ are true to my own knowledge and what is stated in remaining paragraphs \_\_\_\_\_\_\_ is stated on information and belief, and I believe the same to be true.

Solemnly Affirmed at Bombay        )

This           day of June 2011             )                       Petitioner

                                                                                    Before Me

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**TESTAMENTARY AND INTESTATE JURISDICTION**

**PETITION NO.                OF 2013**

Petition for probate of the Will of \_\_\_\_\_\_\_\_\_\_\_\_ alias \_\_\_\_\_\_\_\_\_\_ alias \_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_, Hindu, Indian Inhabitant, Occupation: \_\_\_\_\_\_\_\_, residing at the time of his death at \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_ , India

         .                             …The Deceased

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

of Mumbai, Hindu, Indian Inhabitant

aged about \_\_\_\_ years,

Occupation: \_\_\_\_\_\_\_\_\_\_\_\_\_,

Presently residing at \_\_\_\_\_\_\_\_,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_, being the sole

Executor of the Will

 … Petitioner

**SCHEDULE NO. I**

Schedule of property

Valuation of the movable properties of the deceased

|  |  |
| --- | --- |
| **Bank Balance -** | Rs.                       Ps. |
|  |  |
|  |  |
|  |  |
| **Fixed Deposits** |  |
|  |  |
|  |  |
| **Mutual Funds** |  |
|  |  |
|  |  |
|  |  |
|  |  |
| Less Debts payable as per Schedule II |  |
| Net Total |  |

Advocates for Petitioner                                          Petitioner

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**TESTAMENTARY AND INTESTATE JURISDICTION**

**PETITION NO.                OF 2013**

Petition for probate of the Will of \_\_\_\_\_\_\_\_\_\_\_\_ alias \_\_\_\_\_\_\_\_\_\_ alias \_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_, Hindu, Indian Inhabitant, Occupation: \_\_\_\_\_\_\_\_, residing at the time of his death at \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_ , India

         .                             …The Deceased

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

of Mumbai, Hindu, Indian Inhabitant

aged about \_\_\_\_ years,

Occupation: \_\_\_\_\_\_\_\_\_\_\_\_\_,

Presently residing at \_\_\_\_\_\_\_\_,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_, being the sole

Executor of the Will

 … Petitioner

**SCHEDULE NO. II**

Schedule of Debts, etc**.**

|  |  |
| --- | --- |
| **Funeral Expenses** |  |
| **Total** |  |

Advocates for Petitioner                                          Petitioner

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**TESTAMENTARY AND INTESTATE JURISDICTION**

**PETITION NO.                OF 2013**

Petition for probate of the Will of \_\_\_\_\_\_\_\_\_\_\_\_ alias \_\_\_\_\_\_\_\_\_\_ alias \_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_, Hindu, Indian Inhabitant, Occupation: \_\_\_\_\_\_\_\_, residing at the time of his death at \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_ , India

         .                             …The Deceased

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

of Mumbai, Hindu, Indian Inhabitant

aged about \_\_\_\_ years,

Occupation: \_\_\_\_\_\_\_\_\_\_\_\_\_,

Presently residing at \_\_\_\_\_\_\_\_,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_, being the sole

Executor of the Will

 … Petitioner

I, \_\_\_\_\_\_\_\_\_\_\_\_, a  \_\_\_\_\_\_\_\_\_\_  (relationship with the deceased) of the Deceased, the Petitioner, do hereby swear and state that I  believe that the WILL referred to in the Petition herein and marked **Exhibit**“**B**” is the last Will and testament of deceased Late \_\_\_\_\_\_\_\_\_\_\_\_ alias \_\_\_\_\_\_\_\_\_\_\_\_\_ alias \_\_\_\_\_\_\_\_\_\_\_ and that I am the Sole / one of the Executor therein named  and that I will faithfully administer the property and credits of the said deceased and in any way concerning his will by paying his debts and then the legacies therein bequeathed so far as the said assets will extend, and that I will make and exhibit a full and true inventory of the said property and credits in this Hon’ble Court within six months from the date of the grant to be made to me or within such further time as the administrator to this Hon’ble Court within one year from the same date or within such further time as the said Court may from time to time appoint and also render true account of my administration to this Hon’ble Court may from time to time appoint.

Solemnly affirmed at Mumbai,           )

                        This …… Day of ……………2013 )

                                                                                                       Petitioner

Before me,

Advocates for Petitioner

\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**TESTAMENTARY AND INTESTATE JURISDICTION**

**PETITION NO.                OF 2013**

Petition for probate of the Will of \_\_\_\_\_\_\_\_\_\_\_\_ alias \_\_\_\_\_\_\_\_\_\_ alias \_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_, Hindu, Indian Inhabitant, Occupation: \_\_\_\_\_\_\_\_, residing at the time of his death at \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_ , India

         .                             …The Deceased

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

of Mumbai, Hindu, Indian Inhabitant

aged about \_\_\_\_ years,

Occupation: \_\_\_\_\_\_\_\_\_\_\_\_\_,

Presently residing at \_\_\_\_\_\_\_\_,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_, being the sole

Executor of the Will

 … Petitioner

I, \_\_\_\_\_\_\_\_\_ , aged about \_\_\_\_\_\_ years, residing at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, do hereby solemnly affirm and say as follows:

(1)       That I knew and was well acquainted with the deceased \_\_\_\_\_\_\_\_ alias \_\_\_\_\_\_\_\_\_\_\_ alias \_\_\_\_\_\_\_\_\_\_\_\_\_ abovenamed.

(2)       That on \_\_\_\_\_\_\_\_\_\_\_\_\_, I was present together with \_\_\_\_\_\_\_\_ (the other attesting witness) at the house of \_\_\_\_\_\_\_\_\_\_\_ (the deceased) and we did then and there see the deceased set and subscribe his name at the foot of the testamentary paper in the English language and character, which is referred to in the petition herein and marked **Exhibit “B”**, and declare and publish the same as his last will and testament.

(3)       That thereupon I, this deponent and the said \_\_\_\_\_\_\_\_ (the other attesting witness), did at the request of the said deceased, and in his presence and in the presence of each other all being present at the same time, set and subscribe our respective names and signatures at foot of the said testamentary paper as witnesses thereto.

(4)       That the name \_\_\_\_\_\_\_\_ and signature \_\_\_\_\_\_\_\_ subscribed at the foot of the testamentary paper, as of the party executing the same, is in the proper handwriting of the said deceased and the name, signature and additions, viz. (1) “ Sd/- \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_ \_\_\_ \_\_\_\_\_\_\_ (2) “ Sd/- \_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_”  also subscribed and written at foot of the said testamentary paper as of the parties attesting execution of the same are in the proper respective handwritings of the said \_\_\_\_\_\_\_\_\_\_ and of me this deponent respectively.

(5)      That at the time the deceased so subscribed his name, signature his right hand thumb impression and the photograph to the WILL as aforesaid dated this \_\_\_\_\_\_\_\_\_\_\_\_\_, he was of sound and disposing mind, memory and understanding and to the best of my belief made and published the same as of his free will and pleasure.

Solemnly Affirmed at Mumbai,       )

            This …… Day of June 2013            )

                                                                                    \_\_\_\_\_\_\_\_\_\_\_\_\_

                                                                                            Deponent

            Advocates for Petitioner

**VERIFICATION**

I, \_\_\_\_\_\_\_\_\_\_\_\_ the attesting witness of the said Will, solemnly declare that what is stated in the foregoing paragraphs is true to my own knowledge, and I believe the same to be true.

Solemely Affirmed at Mumbai,       )

            This …… Day of June 2011            )

   \_\_\_\_\_\_\_\_\_\_\_

                                                                                               Deponent

BEFORE ME

            Advocates for Petitioner

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**TESTAMENTARY AND INTESTATE JURISDICTION**

**PETITION NO.                OF 2013**

Petition for probate of the Will of \_\_\_\_\_\_\_\_\_\_\_\_ alias \_\_\_\_\_\_\_\_\_\_ alias \_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_, Hindu, Indian Inhabitant, Occupation: \_\_\_\_\_\_\_\_, residing at the time of his death at \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_ , India

         .                             …The Deceased

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

of Mumbai, Hindu, Indian Inhabitant

aged about \_\_\_\_ years,

Occupation: \_\_\_\_\_\_\_\_\_\_\_\_\_,

Presently residing at \_\_\_\_\_\_\_\_,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_, being the sole

Executor of the Will

 … Petitioner

I, \_\_\_\_\_\_\_\_\_\_\_\_\_, aged about \_\_\_\_\_\_\_ years, residing at \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_, do hereby state on solemn affirmation as under –

(1)       That I knew that the above named \_\_\_\_\_\_\_\_\_ alias \_\_\_\_\_\_\_\_\_\_\_ alias \_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_, the deceased, who died in at \_\_\_\_\_\_\_\_\_ on \_\_\_\_\_\_\_\_\_\_.

(3)       That I am also aware that the abovenamed Petitioner has filed a Petition for Probate before the Hon’ble Courtat Bombay in his capacity as an Executor named therein.

(4)       That I am the \_\_\_\_\_\_\_\_\_ (relationship with the deceased) of the deceased. I say that I have not intermeddled with the estate, property and credit of the deceased and I will not intermeddle thereon in future.

(5)       I say that I do hereby waive Service of Citation / Notice upon me, if any.

(6)       I say that that I have No-Objection and hereby give my full and free consent to the Probate being granted to the Petitioner abovenamed without service of Citation upon me and without any surety.

Whatever I have stated herein above is true and correct to the best of my knowledge.

Solemnly affirmed at Mumbai,        )

                        This …… Day of June 2011            )

                                                                                                \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Advocates for Petitioner                                          Before me,

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**TESTAMENTARY AND INTESTATE JURISDICTION**

**PETITION NO.                OF 2013**

Petition for probate of the Will of \_\_\_\_\_\_\_\_\_\_\_\_ alias \_\_\_\_\_\_\_\_\_\_ alias \_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_, Hindu, Indian Inhabitant, Occupation: \_\_\_\_\_\_\_\_, residing at the time of his death at \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_ , India

         .                             …The Deceased

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

of Mumbai, Hindu, Indian Inhabitant

aged about \_\_\_\_ years,

Occupation: \_\_\_\_\_\_\_\_\_\_\_\_\_,

Presently residing at \_\_\_\_\_\_\_\_,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_, being the sole

Executor of the Will

 … Petitioner

I, \_\_\_\_\_\_\_\_\_\_, aged about \_\_\_\_\_ years, residing at \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_, do hereby state on solemn affirmation as under –

(1)       That I knew that the above named \_\_\_\_\_\_\_\_ alias \_\_\_\_\_ alias \_\_\_\_\_\_\_ of \_\_\_\_\_\_\_, the deceased, who died in at \_\_\_\_\_\_ on \_\_\_\_\_\_\_\_.

(3)       That I am also aware that the abovenamed Petitioner has filed a Petition for Probate before the Hon’ble Courtat Bombay in his capacity as a Executor named therein.

(4)       That I am the \_\_\_\_\_\_\_\_\_ (relationship with the deceased). I say that I have not intermeddled with the estate, property and credit of the deceased and I will not intermeddle thereon in future.

(5)       I say that I do hereby waive Service of Citation / Notice upon me, if any.

(6)       I say that that I have No-Objection and hereby give my full and free consent to the Probate being granted to the Petitioner abovenamed without service of Citation upon me and without any surety.

Whatever I have stated herein above is true and correct to the best of my knowledge.

Solemnly affirmed at Mumbai,        )

                        This …… Day of June 2011            )           \_\_\_\_\_\_\_\_\_\_\_

Advocates for Petitioner                                          Before me,

**IN THE HIGH COURT OF JUDICATURE  AT BOMBAY**

**TESTAMENTARY AND INTESTATE JURISDICTION**

**PETITION NO.                OF 2013**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_                                                            … Deceased

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_                                    … Petitioner

**MEMORANDUM OF REGISTERED**

**ADDRESS OF THE PETITIONER**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Advocates for Petitioner

\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Advocates for the Petitioner

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**TESTAMENTARY AND INTESTATE JURISDICTION**

**PETITION NO.                OF 2013**

Petition for probate of the Will of \_\_\_\_\_\_\_\_\_\_\_\_ alias \_\_\_\_\_\_\_\_\_\_ alias \_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_, Hindu, Indian Inhabitant, Occupation: \_\_\_\_\_\_\_\_, residing at the time of his death at \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_ , India

         .                             …The Deceased

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

of Mumbai, Hindu, Indian Inhabitant

aged about \_\_\_\_ years,

Occupation: \_\_\_\_\_\_\_\_\_\_\_\_\_,

Presently residing at \_\_\_\_\_\_\_\_,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_, being the sole

Executor of the Will

 … Petitioner

**VAKALATNAMA**

To,

The Prothonotary & Senior Master

High Court

Bombay

Sir,

I, \_\_\_\_\_\_\_\_\_\_\_\_, the Petitioner abovenamed do hereby appoint \_\_\_\_\_\_\_\_\_\_\_, Advocates, to act, appear, plead for me and on my behalf in the above matter.

In witness whereof, I have set and subscribed my hands to this writing at Mumbai.

Dated this         Day of June , 2013

Petitioner

Accepted

Advocates for Petitioner

\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**IN THE HIGH COURT OF JUDICATURE                       AT BOMBAY**

**TESTAMENTARY AND INTESTATE**

**JURISDICTION**

**PETITION NO.                OF 2013**

\_\_\_\_\_\_\_\_\_\_\_\_\_                             … Deceased

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_     … Petitioner

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PROBATE PETITION

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Advocates for Petitioner

\_\_\_\_\_\_\_\_\_\_\_\_\_

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\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**IN THE HIGH COURT OF JUDICATURE                       AT BOMBAY**

**TESTAMENTARY AND INTESTATE**

**JURISDICTION**

**PETITION NO.                OF 2013**

\_\_\_\_\_\_\_\_\_\_\_\_\_                             … Deceased

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_     … Petitioner

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SCHEDULE  II

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Advocates for Petitioner

\_\_\_\_\_\_\_\_\_\_\_\_\_

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\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**IN THE HIGH COURT OF JUDICATURE                       AT BOMBAY**

**TESTAMENTARY AND INTESTATE**

**JURISDICTION**

**PETITION NO.                OF 2013**

\_\_\_\_\_\_\_\_\_\_\_\_\_                             … Deceased

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_     … Petitioner

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SCHEDULE   I

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Advocates for Petitioner

\_\_\_\_\_\_\_\_\_\_\_\_\_

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\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**IN THE HIGH COURT OF JUDICATURE                       AT BOMBAY**

**TESTAMENTARY AND INTESTATE**

**JURISDICTION**

**PETITION NO.                OF 2013**

\_\_\_\_\_\_\_\_\_\_\_\_\_                             … Deceased

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_     … Petitioner

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EXECUTOR’S OATH TO ADMINISTER PROPERTY

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Advocates for Petitioner

\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**IN THE HIGH COURT OF JUDICATURE                       AT BOMBAY**

**TESTAMENTARY AND INTESTATE**

**JURISDICTION**

**PETITION NO.                OF 2013**

\_\_\_\_\_\_\_\_\_\_\_\_\_                             … Deceased

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_     … Petitioner

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AFFIDAVIT OF ATTESTING WITNESS

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Advocates for Petitioner

\_\_\_\_\_\_\_\_\_\_\_\_\_

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\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**IN THE HIGH COURT OF JUDICATURE                       AT BOMBAY**

**TESTAMENTARY AND INTESTATE**

**JURISDICTION**

**PETITION NO.                OF 2013**

\_\_\_\_\_\_\_\_\_\_\_\_\_                             … Deceased

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_     … Petitioner

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CONSENT AFFIDAVITS

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Advocates for Petitioner

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**Illustration appended in Indian Evidence Act, Section 9 (a); 8 (d) -**

**9**(a) The question is, whether a given document is the Will of A. The state of A's property and of his family at the date of the alleged Will may be relevant facts.

8(d) The question is, whether a certain document is the Will of A.

The facts that, not long before the date of the alleged Will, A made inquiry into matters to which the provisions of the alleged Will relate, that he consulted vakils in reference to making the Will, and that he caused drafts or other Wills to be prepared of which he did not approve, are relevant.

**LIABILITIES WHICH MAY BE ATTACHED TO PROPERTIES SO BEQUEATHED**

Sections 167 to 170

**LEGACIES TO CREDITORS AND PORTIONER**

Section 177 – Legacies to Creditors and Potioners

**DISPOSITION OF PROPERTY NOT BELONGING TO THE TESTATOR**

Section 180 to 190

**BEQUESTS TO AN EXECUTOR**

Section 141

**INTERPRETATION OF WILL**

Section 75 – questions as to object or subject of the WILL

Section 76 – Misnomer or misdescription of object

Section 77 – supplying of words

Section 78 – Rejection of erroneous particulars

Section 79 – when part may not be rejected as erroneous

Section 80 – Entrinsic evidence to prove patent ambiguity

Section 81 – Extrinsic evidence inadmissible  to prove patent ambiguity or deficiency – where two (inconsistent) conclusion of equal force can be drawn, evidence cannot be given – for example see illustration – “aunt” “mary”

Section 82 – meaning of Clause to be gathered by reading entire WILL

Section 83 – interpretation of Words in a WILL – when construed wide when restrictive

Section 84 – where two possible construction – which clause to be preferred

Section 85 – No part of the WILL to be rejected on the ground that it is incapable of precise meaning

Section 86 – Interpretation of Words repeated in different parts of the WILL

Section 87 – Testators intention to be effectuated as far as possible

Section 88 – where there are two clauses which are patently inconsistent, the last one is to be preferred and first one is to be ignored;

Section 89 – A WILL or a particular bequest of property may be rendered nullity if it is not capable of expressing ant definite intention of the testator or if it is uncertain in its application to the object or subject with which it is dealing

Section 90 – Words describing property in a WILL, shall be deemed as describing that property, unless a different intention appears in the WILL

Section 91 – Deeming bequest of estate of the Property, to which the testator has power to appoint by WILL; deeming bequest of property in general terms / manner

Sections – 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 107, 108, 111, 112, 113, 114, 115, 116, 143, 144, 145

**SPECIFIC LEGACIES**

Sections 142, 148, 149

**WHEN LEGACY LAPSES AND WHEN NOT**

Sections 105, 106, 109\*\*\*, 110, 129, 130, 131, 132, 136, 179

**BEQUESTS WHICH DOES NOT TAKES PLACE**

Section 152 – Ademption of legacies

Section 153 – Exception to Ademption of Legacies

Sections 154 to 166

**THE TIME OF VESTING OF INTEREST IN THE LEGATEE**

Section 104 – if given in general terms, without specifying the time – immediate vesting of legacy

Section 119 – vesting of interest postponed to happening of a certain event

Section 120 – vesting of interest is postponed on the happening or non happening of an uncertain event

Sections 121, 124, 128, 137, 147

When the properties are specifically bequeathed to a legatee, the same could be attached and be sold in execution – P.P. Satyabhama versus M A John – AIR 1972 Ker 152

Section 119 – Lyla Darius Jehangir versus Bakhtawar Lentin of Mumbai – AIR 2007 (NOC) 1098 (DB); (1996) 5 SCC 201; P. Somasundaram versus K Rajammal – AIR 1976 Mad 295

The obtaining of LoA does not in anyway affect the interest which is vested by inheritance – An Assessee inherting assets as sole heir and administering the estate becomes liable to be Assessee for the purpose of Wealth Tax on Assets intended – Commr of Wealth Tax versus Keshub Mahindra – (1983) 139 ITR 22

**COMPLIANCE TO DIRECTIONS, IF ANY, MADE IN THE WILL, BY THE LEGATEE**

Sections – 138, 139, 140

**PART VII**

**PROTECTION OF THE PROPERTY OF THE DECEASED**

Section 192 to 210

Section 213 – Establishment of right as a legatee or Executor when established

 Constitutionality of Section 213 – (2001) 4 SCC 325 : AIR 2001 SC 1151; (2003) 6 SCC 611 : AIR 2003 SC 2902; Madhukar Rajanna versus – (2007) 5 All MR 339

Section 214 – Court to pass decree against the debtor of the deceased testator only when the legatee / Executor produces before the Court, the Probate / LOA / Succession Certificate / Certificate granted u/s 31 and 32 of the Administrators General Act, 1913 / Certificate granted under Succession Certificate Act, 1889 / Certificate granted under Bombay Regulation Act of 1827.

**PART IX**

**PROBATE / LETTERS OF ADMINISTRATION / ADMINISTRATION OF THE ESTATE OF THE DECEASED**

**The whole of Part IX deals with the procedure for the grant of Probate and LoA, comprising sections 217 to 369.**

Application of this part – subject to “saving clause”, to all grants of (a) Probate; (b) Letters of Administration with WILL annexed; (c) Administration of the estate of the deceased died intestate.

Section 218 – To whom administration may be granted (in case of Hindus etc.) – if died intestate – to any person who would be entitled to the estate of the deceased, either wholly or to any part of the estate; or if no such person applies, the administration may be granted to the Creditor. The Court may appoint more than one Executor.

Section 219 – Those persons not covered u/s 218.

Section 223 – To whom Probate cannot be granted.

Section 228 – Proving of a WILL, which is however proved and deposited in foreign Court, or in a Court situated beyond the Court, before whom presented for proving.

Section 232 – Universal or residual legatee may be granted Letters of Administration

Section 233 – The Legal representatives of Residual legatee may apply for Letters of Adm., where such Residual legatee has died.

Section 234 – To whom LOA may be granted – (a) any person who would be entitled to the Administration of the Estate of the deceased, presuming that the testator had died intestate; (b) any other legatee (c) Creditor;

Section 235 – Citation – to whom to be issued before grant of LOA with the WILL annexed.

**GRANT OF PROBATE ON COPY OF THE WILL OR ON DRAFT OF LOST WILL**

Section 237 to 240

**Section 332 – Assent necessary to complete legatee’s title –**

If an executor renounces probate, his assent to his own legacy would be ineffectual – Commr of Income Tax versus Estate of (deceased) T P Ramaswami – (1962) Mad 380

It is also essential for an executor to prove the Will or otherwise manifest his intention to act before he can claim the legacy – Prosono Coomar Ghose versus Adm. General of Bengal – (1888) ILR 15 Cal 83

When there is no Executor appointed, the heir at law represents the estate and he can give the consent which would be sufficient – Deshpande versus Srinivasan – (1954) Mad 1003

The legatee has an inchoate right to the legacy before such an assent and he can assign or transfer the legacy to anyone he likes – (illus. Section 336)

Hasanali Moledina versus Popatlal Prabhudas – (1912) 14 Bom LR 782

The Executor has power to give assent to a legacy even before he obtained the probate of the Will – Indu Prava Debi versus Durgacharan Mitra – AIR 1940 Pat 40; (Kadiyala) Venkata Subamma versus (Katreddi) Ramayya – AIR 1932 PC 92