IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO. 39 OF 2026

Devki Jagdish Thakkar ..Applicant
An adult, Indian Inhabitant,
Occupation : Housewife, earlier
residing at Flat No. 201, Prabhu Niwas,
Plot No. 17/4, R. K. Road, Wadala(W),
Mumbai – 400 031.

AND

Presently residing at :-
21/1, Rikhav Building Flat No. C,
2nd Floor, R. A. Kidwai Road,
Wadala (W),
Mumbai – 400 031.

ANAND SUDHAKAR SUDAME
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Versus

1. **Tulsidas Kanji Bhanushali** ..Respondents
An adult, Indian Inhabitant,
Occupation : Business,
presently residing at Flat No. 401,
4th floor, Building No. 32,
Fam Co-operative Housing Society Limited,
Plot Nos. 19 & 19A, Sector 11,
Koparkhairane,
Navi Mumbai – 400 709.

2. **Fam Co-operative Housing Society Limited**
Having office at Plot No. 19/19A, Sector 11,
Koparkhairane,
Navi Mumbai – 400 709.

3. **M/s. Godrej Project Development One**
Phirosha Nagar, Eastern Express Highway,
Vikhroli (E),
Mumbai – 400 079.

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4. **Azad Nagar Co-operative Housing Society Limited**
17/3, Dock Villa, R. N. 6,
R. A. Kidwai Road, Wadala,
Mumbai – 400 031.

Mr. Pheroze Mehta a/w. Mr. Ansul Bhuta i/b. Bhuta & Associates, Advocates, for the Applicant
Mr. Avinash Manwani a/w. Mr. Ajeet Manwani, Advocates, for Respondent No. 1
Ms. Srushti Pawar i/b. Mr. Abhijeet Mangade, Advocates, for Respondent No. 3

CORAM	:	**RAJESH S. PATIL, J.**
RESERVED ON	:	**08.05.2026**
PRONOUNCED ON	:	**14.10.2026**

JUDGMENT

1. By the present transfer Application filed under Section 24 of the Code of Civil Procedure, 1908 (for short "**CPC**"), the Applicant is seeking transfer of the Suit filed by her initially before the High Court, Bombay for partition which was later transferred to the Bombay City Civil Court pursuant to the Notification of January, 2024 due to monetary jurisdiction, to be transferred back to the High Court and to be heard along with two testamentary proceedings pending before the High Court. One proceeding filed by her and the other proceeding filed by Respondent No. 1.

1.1 Parties are closely related, being siblings. The Applicant is the sister of Respondent No. 1, who first filed Suit in this Court, being Suit

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No. 2174 of 2023 which has been transferred to the Bombay City Civil Court and numbered as Suit No. 6934 of 2024. The said Suit is for partition of the estate of the deceased father.

1.2 Thereafter, the Applicant herein filed the Testamentary Petition for seeking letters of administration under Section 218 with regard to the "Will" of the deceased father. Caveat was filed in the said Testamentary Petition by Respondent No. 1. I understand as of today, the said Caveat was dismissed for non-removal of office objections.

2. Thereafter, Respondent No. 1 herein, who is the brother of the Applicant filed Testamentary Petition No. 5014 of 2024 in High Court and as Caveat was filed hence, the Petition was converted into the Testamentary Suit, being Suit No. 337 of 2025. The said Testamentary Petition seeks letter of administration of registration of the Will of the deceased father.

3. Admittedly, in all three proceedings, as of today, issues have not been framed and an Interim Application in the form of Notice of Motion of Respondent No. 1 herein is pending before the City Civil Court, Bombay, seeking condonation of delay in filing Written Statement.

4. Learned Counsel for the Applicant has tendered brief notes along with the Judgments referred by him are as under :-

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(i) ***Shamita Singha And Another vs. Rashmi Ahluwalia And Anr.***, reported in ***(2020) 7 SCC 152***;

(ii) An order passed by a learned Single Judge of this Court in the case of ***Markand Balabhai Desai vs. Dhimant Balabhai Desai & ors***, reported in ***2018 SCC OnLine Bom 13468***;

(iii) The Judgment of the learned Single Judge in the case of ***Shanta Chatterjee vs. A. Chatterjee***, reported in ***2018 SCC OnLine Bom 15503***.

5. Learned Counsel for Respondent No. 1 has also tendered a note on behalf of Respondent No. 1 and relied upon the following Judgments.

(i) ***Kanwarjit Singh Dhillon vs. Hardyal Singh Dhillon & ors***, reported in ***(2007) 11 SCC 357***;

(ii) ***Pasupati Nath Das (dead) vs. Chanchal Kumar Das (dead) by L.Rs. & ors.***, reported in ***(2018) 18 SCC 547***;

(iii) ***Sunil Waman Bhide vs. Chandrahas Laxman Kanhere & ors.***, reported in ***CRA No. 351 of 2023***.

6. I have heard learned Counsel for the respective parties and with their help gone through the documents on record.

7. The following is the table describing the properties mentioned in all the three Suits :-

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SCHEDULE OF PROPERTIES (SUIT) (Pg. 52 of MCA)	SCHEDULE OF PROPERTIES (IN TP FILED BY APPLICANT) (Pg. 206 of MCA)	SCHEDULE OF PROPERTIES (IN TP FILED BY RESPONDENT) (Pg. 259 of MCA)
1. Room No. 1, situated in Chawl No. 12, Azad Nagar, Rafiq Kidwai Rd., Wadala West, Mumbai – 400031	A. Room No. 1, situated in Chawl No. 12, Azad Nagar, Rafiq Kidwai Rd., Wadala West, Mumbai – 400031	a) Room No. 1, situated in Chawl No. 12, Azad Nagar, Rafiq Kidwai Rd., Wadala West, Mumbai – 400031
2. Fam CHS Ltd., Plot No. 19 & 19A, Sector 11, Narayan Fakirji Marg., Koper Khairne, Navi Mumbai – 400709, Flat No. 402 (Which included two flats: 401 & 402 on 4th Floor)	B. Flat No. 401, 4th Floor, Bldg. No. 32, Plot No. 19 / 19A, Sector 11, Koperkhairne, Navi Mumbai	b) Being Ownership Flat No. 402, FAM CHS, Plot Nos. 19 & 19A, Koperkhairne, Navi Mumbai – 400709 and membership rights including five shares of ₹50 each being Serial Nos. 5066 – 5070 covered by share certificate nos. 1014 issued by society. Flat Admg. 490 Sq. Ft.
3. Room No. 4/16 and open plot no. 133 both situated at Vill. Modkuba, Post. Vindh, Tal. Mandvi, Dist. Kutch, Gujarat	2) Residential Property with Two Rooms No. 4/16 in Vill. Modkuba, Post. Vindh, Tal. Mandvi, Dist. Kutch, Gujarat – 370460 / 370465 3) One Plot No. 133 – 36 x 40 Sq. Ft. in Vill. Modkuba, Post. Vindh, Tal. Mandvi, Dist. Kutch, Gujarat – 370460 / 370465	c) Room No. 4/16 and adjoining Plot No. 133, Vill. Modkuba, Post. Vindh, Tal. Mandvi, Dist. Kutch, Gujarat. House and Plot Admg. 4500 Sq. Ft.
4. Agricultural Land, Vill. Modkuba, Survey No. 17/P3, Naming Chandgal, Admg. 3 Acre 31 Guntha	4) Agricultural Farm – 1/3rd Portion of the Farm known as "Changlai" S. No. 17/P3 Vill. Modkuba, Post. Vindh, Tal. Mandvi, Dist. Kutch, Gujarat – 370460 / 370465	d)Changdai, Agricultural Land having Survey No. 17/P3, Vill. Modkuba, Gujarat,Agriculture Land admg. About 3 Acre 0130680 Sq. Ft.

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8. Out of the four properties which are mentioned above, admittedly, three properties i. e. the property at Sr. Nos. 1, 3 & 4 are common properties in all the three Suits. Except property No. 2, where it has been disputed by Respondent No. 1 herein that it is not a common property. The property No. 2 in two Suits has been mentioned as in one Suit, it has been mentioned as flat No. 401 and in another Suit, it has been mentioned as flat No. 402 and first Suit it has been mentioned as flat No. 401 along with and flat No. 402 together mentioned as flat No. 402. Therefore, even in the property at Sr. No. 2, the building in which the flat is situated in all the three proceedings has been mentioned as FAM Co-operative Housing Society which is the flat is situated on the 4th floor but identification of the flat is in dispute. Since in one Suit, it is claimed that out of two flats, one flat has been given by way of Gift Deed. As far as the parties to the Suits are concerned, in the Suit which is pending before the Bombay City Civil Court which was earlier filed in the High Court, Bombay, the present Applicant is the Plaintiff and the Respondent No. 1 is the Defendant No. 1 – the main contesting party. The Applicant herein has filed Testamentary Petition before this Hon'ble Court, wherein the Respondent No. 1 has filed a Caveat. Similarly, Respondent No. 1 has filed Testamentary Petition before this Hon'ble Court, wherein the

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Applicant herein has filed a Caveat. Therefore, the dispute between the parties major portion of the assets are one and the same.

9. The Supreme Court in its latest Judgment in the case of ***Shamita Singha*** (supra) has held that the Probate Court having primacy in determining the question of grant of letter of administration or probate, it would be expedient for the ends of justice that the High Court of Bombay hearing, the Testamentary Petition should decide also the Suit for partition as well. As parties in both the Suits are one and the same, it will be convenient for both of them and even to the Court. Paragraph No. 9, 10, 11 and 12 read as under :-

> *"**9**. In the facts of this case, the outcome of the probate proceeding in my opinion would have impact on the suit for partition pending before the Delhi High Court. Majority of the assets in respect of which letters of administration have been sought for are common to those in respect of which partition is asked for. Of course, grant of letters of administration, if ordered, per se would not determine the title of the testator in the assets scheduled to the testamentary petition. I find from the joint affidavit of the respondents herein filed in support of the chamber summons taken out by them in the aforesaid testamentary petition that they are contending the will to be a forged one. In the same affidavit, the deponent of which is Rashmi Ahluwalia, it has also been pleaded that during the period of her marriage with the deceased, they had purchased various properties together.*
>
> ***10**. I have already observed that the testamentary proceeding would have a direct bearing or impact on the pending suit for partition. If the letters of administration are granted to the petitioner in the testamentary proceeding, then the assets of the deceased may not remain*

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available as the partible estate of Pawan Kumar Singha (deceased). In the plaint of the suit for partition, a copy of which has been annexed to this transfer petition, the properties of Pawan Kumar Singha (deceased) have been listed in Para 2 thereof, referring these assets as that of the deceased. The character of these assets as joint property of Rashmi Ahluwalia and the deceased, however, has been only hinted in the affidavit taken out in support of the chamber summons in the testamentary petition. The respondents are contesting the petition for grant of letters of administration. If the partition suit proceeds independently and the plaintiffs therein succeed, then there would a possibility of inconsistent findings by the two High Courts, provided the petitioners succeed in the testamentary proceeding. In situations of this nature, this Court in Balbir Singh Wasu v. Lakhbir Singh, reported in (2005) 12 SCC 503, Nirmala Devi v. Arun Kumar Gupta, reported in (2005) 12 SCC 505 and Chitivalasa Jute Mills v. Jaypee Rewa Cement, reported in (2004) 3 SCC 85, has directed clubbing together of both proceedings for hearing. I am satisfied that certain common issues would arise for adjudication of both these proceedings. In the written statement of the first and second defendants in the partition suit, the point of execution of the will by Pawan Kumar Singha (deceased) has been raised.

***11**. Ms Mishra has argued that the suit for partition having been instituted before the testamentary petition, her client's suit must be allowed to proceed first and the testamentary petition could be transferred to the Delhi High Court, if necessary. It is also her submission that major portion of the assets of the deceased lie in Delhi. A petition for transfer under Section 25 of the Code, however, is decided on consideration of the ends of justice. The "first past the post" is not the principle that can be applied in proceedings of this nature. Thus, the view taken by the Delhi High Court in Praveer Chandra v. Aprajita, reported in 2019 SCC OnLine Del 10820 would not the respondents here, as that proceeding was founded on a different principle embodied in Section 10 of the Code. I am of the opinion that the Probate Court having primacy in determining the question of grant of letters of*

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administration or probate, it would be expedient for the ends of justice that the Bombay High Court, which is hearing the testamentary petition, should decide the suit for partition as well. The plaintiffs in the suit for partition are also contesting the testamentary petition and they would not be greatly inconvenienced in prosecuting the suit before the Bombay High Court. The petitioners claim that the will has been executed in Mumbai and the two attesting witnesses who have affirmed affidavits to support the will are also from Mumbai. Copies of these affidavits appear at pp. 39 and 41 of the paper book filed in connection with the transfer petition. These are also factors which I have considered in forming my opinion in favor of transfer of the suit.

***12**. I accordingly direct that the suit filed in the Delhi High Court by Rashmi Ahluwalia registered as CS (OS) No. 2888 of 2014 be transferred from the said High Court to the Bombay High Court. On transfer, the said suit is to be listed before the Hon'ble Judge before whom testamentary Petition No. 821 of 2016 is pending adjudication. The Hon'ble Judge may hear both the proceedings simultaneously, clubbing them together, if necessary. In the event the Hon'ble Judge before whom the said testamentary petition is listed or pending listing does not have the determination to hear the suit for partition as per the roster of the Bombay High Court, for appropriate order of assignment so that both the suit and the testamentary petition can be heard together."*

(Emphasis supplied)

10. The learned Counsel appearing for contesting Respondent No. 1 has referred to the Judgment of ***Kanwarjit Singh Dhillon*** (supra). The Judgment of ***Kanwarjit Singh Dhillon*** was also considered by the Supreme Court in its latest Judgment of ***Shamita Singha*** (supra) which has been referred by me in the earlier para.

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11. In ***Kanwarjit Singh Dhillon***, the Respondent No. 1 had applied for probate which was granted. The said Order was also affirmed by the High Court. Thereafter, the Appellant filed Civil Suit for declaration and injunction to the effect that the Suit properties were joint Hindu family properties. In the said Suit, Respondent No. 1 raised a preliminary issue by filing an Application stating therein that since the probate had already been granted, the Civil Court will have no jurisdiction to proceed with the Suit for declaration of title and permanent injunction. The preliminary issue was framed in the said Suit. The learned Civil Judge dismissed the Suit on the finding that once the probate is granted by a Competent Probate Court, the Civil Court cannot have jurisdiction to entertain the Suit for declaration and injunction seeking that the properties were joint Hindu family properties. The High Court also affirmed the view taken by the Civil Judge. Against the said order, an SLP was filed before the Supreme Court in which the Supreme Court held that the High Court as well as the Civil Court have acted illegally in the exercise of its jurisdiction and dismissing the Suit on the preliminary issue holding that after the probate having been granted by the Probate Court, the Civil Court had no jurisdiction to proceed. The Supreme Court had also confirmed the Order passed by the High Court of granting of probate. Hence, the

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Judgment of ***Kanwarjit Singh Dhillon*** (supra) decided by the Supreme Court in the year 2007 will not be applicable to the facts of the present case.

12. As far as the Judgment of the Supreme Court in the case of ***Kulwinder Kaur alias Kulwinder Gurcharan Singh vs. Kandi Friends Education Trust And Ors.***, reported in ***(2008) 3 SCC 659*** is concerned, the Appeal was filed by a widow of a person who was the founder-Chairman of the Respondent – Educational Trust and she was also trustee of the said trust. As new trustees were inducted and the husband of the Appellant in the elections held was elected as Chairman of the trust. However, the new trustees raised an objection against the said elections. The husband of the Appellant sought certain amendment with the constitution of the trust which was approved by the majority though newly elected members opposed such amendment. Thereafter, the husband of the Appellant was killed while he was in a park along with the Appellant. In the said Criminal case, the newly elected trustees were arrested and an FIR was lodged. Subsequently, election was held for the post of Chairman of trust and the Appellant was elected as Chairperson. The daughter of the Appellant also became a trustee. The new trustees hence filed a Suit for declaration challenging the proceedings conducted in the meeting held by the trust

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in which the Appellant was elected as Chairman. In the said Suit, the Appellant filed an application for injunction, however, only limited relief was granted and the new trustees were also allowed to attend the meeting. The other reliefs were refused. The new trustees, thereafter, filed a Suit against the Appellant. So also filed a transfer Application before the District Court for transfer of the Suit. The said transfer Application was dismissed as withdrawn. Thereafter, the trust filed an Application under Section 24 of the CPC for transfer of the Suit from the C.J.S.D. to any other Court of competent jurisdiction in Chandigarh or in the state of Haryana in view of peculiar facts and circumstances of the case in the interest of justice. A Single Judge of the High Court transferred the Suit to Chandigarh. The said order was challenged before the Supreme Court. The Supreme Court by its Order set aside the order passed by the High Court and remitted the matter to the High Court for fresh disposal in accordance with law holding that the power under Section 24 of the CPC cannot be exercised *ipse dixit* in the manner in which it has been done and further held that *prima facie*, the High Court needs to be satisfied as to the grounds put forward by the Plaintiff in the transfer Application considering the facts of that case. In my view, this Judgment would not be in aid of Respondent No. 1.

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13. As far as the Judgment of ***Pashupatinath Das*** (supra) passed by the Supreme Court in the year 2008 i. e. before the Judgment of the Supreme Court in the case of ***Shamita Singh*** (supra) was delivered, wherein the Supreme Court was considering facts where that the schedule of the wheel was in three parts part (I) and part (II) of the schedule was given to family DET. Therefore, the properties of part (I) and part (II) were of the trust properties and the property mentioned in part (III) were to be devised in accordance with the Will. The son of the testator applied for grant of probate by filing a probate case before the High Court. A joint Caveat was filed. Thereafter, registered Will was executed by the caveator, who submitted that the estate should not go into the hands of younger son and further stated that while her husband was alive, he had canceled and nullified the Will because of the behaviour of the son and his family. In the Testamentary Suit, single Judge of the High Court granted probate which was challenged in Appeal. Thereafter, an Application was preferred for grant of probate of the Will executed by Shyama i.e. widow Nandlal Das. In the said Probate Petition, Caveat was filed and the matter was contested. Hence, the Petition became a Testamentary Suit. The said Suit was dismissed by the High Court, which sought for probate of the Will of Shyama. This decision was challenged in Appeal before the Division

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Bench of the High Court. Issues were framed. The Division Bench of the High Court accepted the Appeal. The same was challenged before the Supreme Court. The Supreme Court held that scope of the probate proceeding is quite limited holding that the scope was only confined to whether the execution of the Will of the probate was satisfactorily proved and the SLP was dismissed. Again the facts of this case will not be in aid of Respondent No. 1.

14. As far as single Judge of this Court in ***Sunil Bhide*** (supra) is concerned, the issue involved was whether the probate of the Will executed in one place but relating to immovable property of another place is impermissible. The Single Judge was considering the issue under Section 115 of the Civil Revision Application. Findings recorded in the said Judgment would have no bearing in the present proceeding, as the present proceeding is under Section 24 of the CPC.

15. In the order passed by the learned Single Judge of this Court in ***Shanta Chatterjee*** (supra), the learned Single Judge was not considering the issue under Section 24 of the CPC. In the said proceeding, in the Testamentary Suit, the Plaintiff had already closed his case and the Defendant's Advocate had communicated that he does not wish to lead any evidence and the Defendant's evidence can be closed. The trial, thus, was complete and the Suit was ready for hearing

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and final disposal. Therefore, in the said proceeding, the evidence was already closed and the Suit was ready for final hearing and the Application was not under Section 24 of the CPC for transfer. Therefore, the discussion made in the said order is not applicable to the present proceeding.

16. In the case of ***Markand Desai*** (supra), the learned Single Judge of this Court by hearing the Application under Section 24 of the CPC, transferred and closed the Suit filed before the Bombay City Civil Court with Testamentary Suit for partition in order to avoid conflicting decisions. The facts in the said proceedings are similar to the facts of the present proceeding.

17. In the present proceeding also the Probate Petitions filed by both the contesting parties are pending before this High Court, in its Testamentary and intestate jurisdiction. The Partition Suit filed by the present Applicant was initially filed before this High Court but because of the change in the pecuniary jurisdiction it got transferred in the City Civil Court, Bombay. In all the three proceedings, admittedly, as of today, the evidence has not started. Therefore, it will be in the interest of the parties, if the Partition Suit pending in the Bombay City Civil Court is transferred back to this High Court and the Single Judge of this Court hearing the two Testamentary Suits should decide the Suits

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for partition as well.

18. If one Testamentary Petition establishes that a particular Will is genuine and operative, that finding can have a direct and substantial bearing upon the estate available for partition and the shares of the parties. Separate adjudication may result in duplication of evidence and the possibility of inconsistent findings.

19. Therefore, considering the law, as laid down by the Supreme Court in the case of *Shamita Singh* (supra), the **MCA No. 39 of 2026 stands allowed** and the Suit No. 6934 of 2024 pending before the Bombay City Civil Court is hereby **transferred and clubbed, to be heard along with** Testamentary Petition No. 2647 of 2024 and Testamentary Petition No. 5014 of 2024.

(RAJESH S. PATIL, J.)

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