



| | | | |
|---------------|----|----|------|
| Received on | 30 | 08 | 2025 |
| Registered on | 30 | 08 | 2025 |
| Decided On | 09 | 04 | 2026 |
| Duration | 00 | 07 | 10 |
| | YY | MM | DD |

GJGS020034972025



EXH. 21

**IN THE COURT OF 4th ADDITIONAL SENIOR CIVIL JUDGE, GIR
SOMNATH @ VERAVAL.**

CIVIL MISCELLANEOUS APPLICATION NO. 21 OF 2025

**APPLICANTS :(1) Heirs of Dec. Champagauri Devbharthi
Yogesh Durlabhbai Bharti,
Age: 35, Occu: Service,
Residing at Veraval Road, Keshod.**

Versus

OPPONENT : NOBODY

**SUBJECT : Petition under Section 276 of The Indian
Succession Act, 1925 for grant of Probate
of death of Late Champagauri daughter of
Devbharti Mohanbharti**

APPEARANCE :

Ld. Advocate for the Applicants : Mr. P.R.Rupapara

-: JUDGMENT :-

1. The brief facts of the present application are as such that the applicant is the nephew of Late Champagauri d/o. Devbharti Mohanbharti. She has been expired on 08.10.2021 at

Keshod. The petitioner submits that Late Champagauri d/o. Devbharti Mohanbharti was his Aunt and she was unmarried and residing with Petitioner. As she was died unmarried there is no legal heirs except petitioner. The Petitioner was taking care of Late Champagauri d/o. Devbharti Mohanbharti and she was residing with him. Late Champagauri d/o. Devbharti Mohanbharti has prepared a will on 20.03.2020, which was notarized before Notary. There is no other subsequent will in existence or brought out by any person. The petitioner is the sole beneficiary of the Will dated 20.03.2020 and is entitled and has the right to file the present petition. Late Champagauri d/o. Devbharti Mohanbharti has been died at Keshod but the Immovable Property mentioned in the Will is situated within the jurisdiction of this Court. It is also submitted that the Will and last testament dated 20.03.2020 was duly executed in presence of two witnesses namely Mr. Jayesh Vrujlal Joshi and Mr.Nalin Amrutbhai Thakar and the said Will duly Notarized with the Notary Mr.H.C.Khanpara on 20.03.2020 vide Serial No.1498, book No.1, Page No.169. In view of the above narrated facts and circumstances, the applicant most respectfully pray that the probate be granted in favour of the applicant on the basis of Will of the deceased Late

Champagauri d/o. Devbharti Mohanbharti. The applicant has prayed for the following relief:-

- (A) Be pleased to grant probate in favour of petitioner of the Last Will and Testament executed by Late Champagauri d/o. Devbharti Mohanbharti on 20.03.2020.
- (B) Such other and further relief as deemed fit and proper be granted.

2. The total value of the estate bequeathed by the deceased Late Champagauri d/o. Devbharti Mohanbharti to the applicant who is the beneficiary of the Will of the deceased is valued about Rs. 7 Lacs. Approximate valuation of the properties mentioned in the Will are as under:

SCHEDULE-I
List of Immovable Property left behind by the deceased
Champagauri d/o. Devbharti Mohanbharti at the time of her
death.

| SN | Properties | Approximate valuation |
|----|--|-----------------------|
| 1 | Residential House situated at Survey No.1434-3, Plot No.8, admeasuring 137.5 square meter, purchased by Late Champagauri d/o. Devbharti Mohanbharti vide Registered Sale Deed No.328 dated 18.01.2019. | Rs. 7 Lacs |
| | Total | Rs. 7 Lacs |

Applicant stated that since there was no liability of the deceased to be discharged, no substantial amount was

spent towards any other expense head. Therefore, the approximate value of the properties of the deceased is as set out in the schedule hereinafter.

2. The applicant has also produced affidavits of Mr. Jayesh Vrujlal Joshi and Mr. Nalin Amrutbhai Thakar, who were the witnesses of the Will made by Late Champagauri d/o. Devbharti Mohanbharti, wherein, they have stated that the Last will dated 20.03.2020 was signed by the Late Champagauri d/o. Devbharti Mohanbharti in their presence and the Will was Notarized before Notary H.C. Khanpara.

3. Upon receiving this application, this Court has passed an order to issue notice to publish public notice in daily newspaper. Public notice inviting the objection from public was published in "Divya Bhaskar" daily newspaper dated 08.10.2025 which is produced at Exh. 16. But, nobody had come before this Court to raise any objections, even after expiry of one month of the public notice. Therefore, this application is proceeded.

4. Thereafter, the applicant has produced his evidence as follows.

[i] Oral evidence submitted by the applicant:

| Sr. No. | Particulars | Exh. No. |
|---------|--|----------|
| 1 | Examination-in-chief affidavit of the applicant. | 11 |
| 2 | Examination-in-chief affidavit of the witness Mr. Jayesh Vrujlal Joshi. | 12 |
| 3 | Examination-in-chief affidavit of the witness Mr.Nalin Amrutbhai Thakar. | 13 |

[ii] Documentary evidence submitted by the applicant:

| Sr. No. | Particulars | Exh. No. |
|---------|--|----------|
| 1 | Certified Copy of Death Certificate of Late Champagauri d/o. Devbharti Mohanbharti. | 19 |
| 2 | Certified Copy of Registered Sale Deed No.328 showing the purchase of property by Late Champagauri d/o. Devbharti Mohanbharti. | 18 |
| 3 | Public notice published in daily news paper "Divya Bhaskar" | 16 |
| 4 | Receipt of Public notice published in daily news paper "Divya Bhaskar" | 15 |
| 5 | Original Will dated 20.03.2020 prepared by Late Champagauri d/o. Devbharti Mohanbharti | 17 |

5. Heard the learned advocate Mr. P.R.Rupapara for the applicant. The learned advocate for the applicant has orally argued in consonance with the averments of this application and prayed that the probate certificate as prayed for may be issued in favour of the applicant.

6. The following points are required to be framed for determination of this application as under:

(1) Whether the applicants are entitled to get the probate certificate as prayed for?

(2) What order?

7. Answer of the above said points are as under :-

(1) In Affirmative.

(2) As per final order.

REASONS

8. **Point No. 1 :**

8.1 The applicant has filed the present application with a prayer to issue the probate certificate with respect of the immovable properties of testatrix deceased Champagauri d/o. Devbharti Mohanbharti. Therefore, it is necessary to determine that whether the applicants had fulfilled all the necessary legal procedures to obtain the probate certificate or not ? For that it is necessary to take into consideration the provisions of Section 276 of the Indian Succession Act, 1925 which is as under :

"276. Petition for probate.-

(1) Application for probate or for letters of administration, with the Will annexed, shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the Will or, in the cases mentioned in sections 237, 238 and 239, a copy, draft, or statement of the contents thereof, annexed, and stating-

(a) the time of the testator's death.

(b) that the writing annexed is his last Will and testament,

(c) that it is duly executed,

(d) the amount of assets which are likely to come to the petitioner's hands, and

(e) when the application is for probate, that the petitioner is the executor named in the Will.

(2) In addition to these particulars, the petition shall further state,-

(a) when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode, or had some property, situate within the jurisdiction of the Judge; and

(b) when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

(3) Where the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another State, the petition shall further state the amount of such assets in each State and the District Judges within whose jurisdiction such assets are situate."

(8.2) Now in this case when the applicant has sought the relief of obtaining the probate certificate of unprivileged Will annexed at Exh. 17, then the question arise that on the basis of such Will, whether the probate certificate can be granted? For that purpose first of all the provisions of Section 57, 59, 61, 63, 213 and 222 of The Indian Succession Act, 1925 is required to be taken into consideration. On perusal of the above said provisions, it is clear that Probate shall be granted only to an executor appointed by the Will and in such circumstances the person who intends (executor) to get probate certificate has to prove that the Will was signed by the testator on his free will and testator who has executed the said Will was of sound mind

and disposing state of mind and not being a minor at the time of execution of said Will and the testator understood the nature and effect of the dispositions and has properly executed the Will and said Will or any part of a Will has been not caused by fraud or coercion, or by such importunity as takes away the free agency of the testator and the same is executed by following the necessary legal procedure enumerated in Section 63 of The Indian Succession Act and such Will is the last Will executed by the testator and by such Will the testator has appointed him as legatee of his assets. Apart from this considering the provisions of Section 63 of The Indian Succession Act as well as Section 68 and 71 of The Indian Evidence Act, it is also required to prove that the said Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will and each of the witnesses shall sign the Will in the presence of the testator and to prove the contents of the said Will, the applicant has to examine at least one of the attesting witness as per Section 68 and 71 of the Indian Evidence Act.

(8.3) Therefore, considering all the aforesaid necessary legal provisions with regard to Will and its validity for

obtaining the probate certificate, if the evidence produced on record by the applicant is evaluated then it appears that, the applicant has filed his examination-in-chief by way of written affidavit vide Exh.11 and narrated all the facts stated in his application and thereby fully supported the averments of the application. It is also evident from the document produced on record vide Exh. 19 i.e., death certificate of testatrix deceased Champagauri d/o. Devbharti Mohanbharti that She expired on 08.10.2021 at Keshod. But, the property mentioned in the Will is situated within the local jurisdiction of this Court and therefore, as per Section 272 of the Indian Succession Act, 1925 this Court is empowered to decide the present application as District Delegate. Apart from this from the affidavit of witness no. 1 Jayesh Vrujlal Joshi Exh. 12 & witness no. 2 Nalin Amrutbhai Thakar vide Exh. 13, it appears that they are the attesting witnesses of the said Will. Further, in their affidavit they have stated that at the time of execution of the said Will the testatrix was of sound mind and the said Will has been signed by them and both of them have seen the testatrix signing the Will and both of the witnesses had signed the Will in the presence of the testatrix. The Will was signed and notarized before the office of the Notary, Keshod. Therefore, it

appears that the said Will was executed by following the necessary legal procedure enumerated in Section 63 of The Indian Succession Act and such Will is the last Will executed by the testatrix.

(8.4) Therefore, considering all the oral as well as documentary evidence produced on record, it is not in dispute that the testatrix Late Champagauri d/o. Devbharti Mohanbharti had appointed the applicant as the executor of the said Will. Therefore, here in this case the applicant is able to establish the facts that the Will of the testatrix Late Champagauri d/o. Devbharti Mohanbharti vide Exh. 17 has been validly executed and it is her last Will and the same is genuine and reliable. Despite issuing the public notice is published in local newspaper at Veraval, nobody had come before this Court to raise the objections or to contest this application. Thus, this Court is of the view that the applicant being appointed as executors of the Will dated 20.03.2020 (Exh. 17) by the testatrix in order to distribute her properties as mentioned in the said Will among the beneficiary, is entitled to receive the probate certificate of properties as mentioned in the aforesaid Schedule, standing and registered in name of

testatrix–deceased Champagauri d/o. Devbharti Mohanbharti.

Thus, this Court is of the opinion that, there is no impediment to grant Probate Certificate in favour of the applicant, as prayed for. Therefore, I hereby answer Point No. 1 in affirmative and following final order is passed below Point No. 2 in the interest of justice.

-: ORDER :-

- (1) The present application is hereby allowed.
- (2) Probate Certificate as prayed for is ordered to be issued in favour of the applicant namely **Yogesh Durlabhbhai Bharti**, residing at Shiv Krupa, Veraval Road, Keshod, in respect of the Will dated 20.03.2020 vide Exh. 17 executed by the testatrix deceased Champagauri d/o. Devbharti Mohanbharti, only for the purpose of distributing the immovable property (more particularly as mentioned aforesaid in Schedule-I).
- (3) The applicant is also directed to submit bond/surety of the like amount of the value of properties.
- (4) The applicant – executor is directed to give undertaking to administer the said Will and to make a full and true inventory of the said properties and credits and exhibit the

same in this Court within six months from the date of this judgment, and also to render to this Court a true account of the said property and credits within one year from the date of this judgment.

(5) Probate Certificate is hereby ordered to be issued in favour of the applicant on payment of requisite Judicial Stamps.

Signed and pronounced in open Court today on this 9th day of April, 2026.

Date : 09.04.2026

Place: Veraval

(H. J. Vasavada)

4th Additional Senior Civil Judge

& District Delegate

Gir-Somnath @ Veraval

(Judge Code No.GJ01386)