

**Order below Exhibit 01**

1. The present application has been preferred seeking grant of Probate in respect of the Will executed by the deceased. Perused the application, the contents of the Will (Exhibit 25) produced on record and the proceedings of the case.
2. The primary question that arises for consideration is whether the applicant is entitled to the grant of Probate under the provisions of the Indian Succession Act, 1925.
3. Section 222 of the Indian Succession Act, 1925, provides that Probate shall be granted only to an executor appointed by the Will. The appointment of an executor may either be express or arise by necessary implication from the tenor of the Will. However, unless the Will appoints an executor, either expressly or by necessary implication, Probate cannot be granted.
4. This Court has carefully examined the contents of the Will produced on record. The testator, after narrating his ownership over the suit property, has recorded that his daughter Smt. Sagunaben had been residing with him since her marriage and had been looking after him in his old age by providing him with food, clothing, medicines, maintenance and all necessary care. Thereafter, the operative bequest in the Will reads as under:

"મારી આ વયોવૃદ્ધ ઉંમરમાં મારી દેખભાળ તથા સેવા સાકરી અને મારી માદગી હોય ત્યારે પણ દવાદારૂ કપડાલત્તા અને ભરણપોષણ તેમજ તમામ પ્રકારની દેખરેખ તથા સેવાચાકરી કરતી આવેલ છે તેથી કુદરતી લાગણીથી પ્રેરાઈ હું ઉપર જણાવેલ મારી સ્વપાજીત ખેતીની જમીન મારા મરણ બાદ સગુણાબેન રતુભાઈ તે ઇન્દ્રસિંગ જેઠીયાભાઈની પત્ની તમામ હક્ક સાથે આથી આપવા જણાવું છું."

5. The aforesaid recital unequivocally shows that the testator merely bequeathed his self-acquired property in favour of his daughter. It

creates only a beneficial interest in her favour as a legatee. The Will further contains the following recital:

"મારા મરણની તમામ અંતિમક્રિયા તથા ત્યાર બાદની તમામ વિધીનો ખર્ચ મારી પુત્રી સગુણાબેન રતુભાઈ વસાવા તે ઇન્ડ્રસિંગ જેઠીયાભાઈ વસાવાની પત્ની એ કરવાનું રહેશે."

6. The aforesaid clause merely casts an obligation upon the beneficiary to perform the last rites and bear the expenses thereof. Except for the aforesaid direction, there is no recital in the entire Will appointing the applicant to administer the estate of the deceased.
7. Significantly, the Will does not authorise the applicant to collect or realise the estate of the deceased, discharge liabilities or debts, represent the estate before any authority, distribute the estate, carry the Will into effect, or otherwise administer the estate. There is also no recital expressly appointing the applicant as an Executor of the Will.
8. Section 222 of the Indian Succession Act, 1925 specifically provides that Probate shall be granted only to an executor appointed by the Will. Though sub-section (2) recognises that such appointment may arise by necessary implication, such implication must clearly emerge from the tenor of the Will showing that the testator intended the person to administer his estate. A mere bequest of property in favour of a beneficiary or a direction to perform funeral rites does not, by itself, constitute an appointment of an executor by necessary implication.
9. Reading the Will as a whole, this Court finds that the applicant has merely been made the sole beneficiary under the Will. The recitals extracted hereinabove demonstrate that the testator intended only to confer ownership of his property upon the applicant after his death because of the services rendered by her during his lifetime. The Will nowhere appoints the applicant, either expressly or by necessary implication, as the executor of the Will. Consequently, the applicant cannot claim Probate under Section 222 of the Indian Succession Act, 1925.

10. In the absence of an executor appointed under the Will, the appropriate remedy available to the applicant is to seek Letters of Administration with the Will annexed under the provisions of the Indian Succession Act, 1925, particularly Section 232 read with Section 276 thereof, and not Probate.
11. However, considering that the defect was purely technical and curable, this Court repeatedly granted opportunities to the applicant to convert the present Probate petition into an application for grant of Letters of Administration with the Will annexed. The proceedings disclose that sufficient time was granted from 30.12.2025 till 23.07.2026 for the said purpose. Further, a specific Rojkam dated 04.06.2026 was recorded making it clear that the applicant would be heard on the issue of maintainability of the Probate petition in view of the absence of an executor under the Will and to enable her to take necessary steps for conversion of the proceedings.
12. Despite repeated opportunities extending over nearly seven months, neither did the applicant remain present before the Court nor were any steps taken to amend or convert the proceedings. Ultimately, the learned advocate appearing for the applicant, after issuing notice to the applicant, sought permission to retire from the proceedings on the ground that despite due intimation, the applicant neither remained present nor gave any instructions to proceed further. Permission came to be granted accordingly. Thereafter also, no one appeared on behalf of the applicant.
13. Thus, although this Court was inclined to permit conversion of the present proceedings into one seeking Letters of Administration, the applicant herself failed to avail of such opportunity despite abundant time and repeated indulgence granted by the Court. The Court cannot indefinitely keep a legally non-maintainable Probate petition pending.
14. 14. In view of the mandatory provisions contained in Section 222 of the Indian Succession Act, 1925 and in absence of any executor

appointed under the Will, the present application seeking Probate is not maintainable and deserves to be rejected. Hence, following final order is passed:

Order

1. The present application seeking grant of Probate is hereby rejected, as the Will in question does not appoint any executor and, therefore, Probate cannot be granted in view of Section 222 of the Indian Succession Act, 1925.
2. It is clarified that this Court has not adjudicated upon the genuineness, validity or due execution of the Will on merits.
3. It is further clarified that this order shall not preclude the applicant from filing an appropriate application seeking Letters of Administration with the Will annexed, if otherwise maintainable in law and subject to the law of limitation, if any, and all other legal objections available under law.
4. No order as to costs.

Order is pronounced today in open Court at Sagbara.

Place: Sagbara
Date: 23/07/2026

(Bharatkumar Ashokbhai Chaudhari)
Principal Civil Judge
Sagbara, Dist.Narmada
Judge Code: GJ01651