

R.M. AMBERKAR
(Private Secretary)

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

TESTAMENTARY SUIT NO. 39 OF 1989

Xavier H. Geoffrey Almeida (since deceased)
Greta Magdalena Almeida .. Plaintiffs
Versus
Rui F. Rodrigues & Ors. .. Defendants

WITH
INTERIM APPLICATION NO. 584 OF 2021
WITH
EXECUTION APPLICATION NO. 271 OF 2021

-
- Mr. Piyush Raheja i/by Mr. Dinesh P. Guchiya for Plaintiffs
 - Mr. Saeed Akhtar for Defendant No. 1A.
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CORAM : MILIND N. JADHAV, J.

DATE : JUNE 08, 2023

P.C.:

1. Heard Mr. Raheja, learned Advocate for Plaintiffs and Mr. Akhtar, learned Advocate for Defendant No. 1A.

2. In this group of matters, the principal matter is Testamentary Suit No. 39 of 1989. The executors who had filed the suit are the son and daughter of the deceased have also expired in the interregnum. Equally the Defendants in the suit have also expired in the interregnum and the proceedings are now contested / represented by the legal heirs of the said parties.

3. Interim Application No. 584 of 2021 has been filed by the legal heirs of the executors seek impleadment as Plaintiffs. Mr. Raheja

would submit that it is settled law that the legal heirs of the executors cannot be impleaded so as to continue the proceedings. He seeks to refer to and rely upon the decision of the Supreme Court in the case of **Vatsala Srinivisan Vs. Shyamala Raghunathan**¹.

4. Mr. Akhtar, learned Advocate for the heirs of the Defendants would however submit to the contrary and state that probate can only be granted to the executors and no other person. He strongly opposes impleadment of the heirs of the executor as Plaintiffs.

5. Be that as it may, Mr. Raheja has also informed the Court that the substantive title Suit bearing No. 1816 of 1989 has been filed by the executors in this Court and is presently being prosecuted by the legal heirs of the executors against the Defendants / their legal heirs. That apart Mr. Akhtar would inform that cross Suits have also been filed by the Defendants which are pending hearing in this Court before the regular Court.

6. After hearing the learned Advocates for sometime, it appears that the area of dispute / *lis* between the parties can be amicably resolved if both the parties desire to do so. In the past, the parties have been referred to mediation and the mediation has failed. It can never be late in the day to persuade the parties considering the dispute involved in respect of the immovable property to which the parties

¹ (2016) 13 SCC 253

stake their claim. Both the learned Advocates are therefore requested by this Court to persuade the parties to arrive at an amicable resolution which shall strictly be without prejudice to their rights and contentions. Considering the long standing dispute, the parties will be at liberty to apply to the learned Chief Justice for transfer of the pending title suits before one Court.

7. Mr. Akhtar would submit that he would persuade his clients and obtain appropriate instructions. Equally Mr. Raheja is also requested by the Court to persuade his clients and inform the Court accordingly.

8. Stand over to **6th July, 2023.**

[MILIND N. JADHAV, J.]

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