

Amberkar

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

TESTAMENTARY SUIT NO. 48 OF 2023
IN
TESTAMENTARY PETITION NO. 550 OF 2022

Vimla Mafatlal Choksi nee
Vimlaben Choksi nee
Vimla Chaukshi .. Deceased

Geeta Mukesh Shah .. Plaintiff

Versus

Rashmi Mafatlal Choksi .. Defendant

WITH
TESTAMENTARY SUIT NO. 50 OF 2023
IN
TESTAMENTARY PETITION NO. 551 OF 2022

Shailesh Mafatlal Chokshi .. Deceased

Geeta Mukesh Shah .. Plaintiff

Versus

Rashmi Mafatlal Choksi .. Defendant

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- Mr. Jeyhaan Carnac i/by Mulla and Mulla, Advocates for Plaintiff
 - Mr. A.K. Singh & Mr. Piyush A. Singh, Advocate for Defendant

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CORAM : MILIND N. JADHAV, J.

DATE : MAY 4, 2026

P. C.:

1. Heard Mr. Carnac, learned Advocate for Plaintiff and Mr. Singh, learned Advocate for Defendant. Exercise of marking of documents as Exhibits in both above Suits is taken up in seriatim as per Compilation of Documents placed before Court in accordance with provisions of the

Indian Evidence Act, 1872. Following original documents and copies of documents are placed before Court for marking as Exhibits with reference to the Affidavits in lieu of Examination-in-Chief of Plaintiff in both the Suit proceedings.

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2. Original death certificate of Vimla Chokshi dated 13.12.2021 is marked as Exhibit '**P-3**' by consent.

3. English translation of Will of deceased Vimla Choksi dated 28.11.2005 issued by the Chief Translator, High Court, Mumbai is marked as Exhibit '**P-4**' by consent.

4. Next document is PAN card of deceased Vimla Choksi. Original PAN Card is shown to me. I have perused the same. Same is compared with the copy of PAN Card which is present in the affidavit of documents. Said copy of the PAN Card is marked as Exhibit '**P-5**' by consent, the Original PAN Card is returned back to Mr. Carnac since the said document may be required for any other collateral purpose by Plaintiff with leave to produce it if called for by Court in future.

5. Next document is the original passbook of joint bank account having No. 06950100002293 held with Bank of Baroda by the joint account holders i.e. both the deceased Vimla Choksi and Shailesh Choksi for the period 18.03.2006 to 10.08.2006. Mr. Carnac would

argue that being the original passbook, said document is required to be marked as primary document under Section 62 read with Section 64 of the Indian Evidence Act, 1872. However, I disagree with Mr. Carnac. Said passbook does not have any Bank endorsement and is therefore required to be proved by either filing Section 65B certificate or Certificate by Bank under the Banker's Books of Evidence Act, 1891 of the statement of account contained therein. To that extent to enable the Plaintiff to take appropriate steps, said original passbook is marked as Article 'A'.

6. Next document is the original passbook of joint bank account having No. 06950100002293 held with Bank of Baroda by the joint account holders i.e. both the deceased Vimla Choksi and Shailesh Choksi for the period 30.06.2006 to 14.11.2006. As delineated above, this passbook is also required to be proved by either filing Section 65B certificate or Certificate under the Banker's Books of Evidence Act, 1891 of the statement of account contained therein. To that extent to enable the Plaintiff to take appropriate steps, said original passbook is marked as Article 'B'.

7. Next document is original bank account statement of joint account No. 06950100002293 held with Bank of Baroda by both deceased for the period 06.04.2005 to 20.03.2006. Said statement is printed on Bank of Baroda's watermark paper without any

authentication whatsoever. According to Mr. Carnac, said statement has been given to the Plaintiff by the Bank. If that be the case, Plaintiff is at liberty to approach the bank and either file 65B certificate certifying the electronic document of the account therein or Certificate under Banker's Books of Evidence Act, 1891 to enable the Court to mark the said document as Exhibit. For present, same is marked as Article 'C'.

8. Insofar as documents at Sr. Nos. 9 and 10 are concerned, they are copies of Form No. 2D filed by deceased Vimla Choksi with the Income Tax Department for the assessment years 2004-2005 and 2005-2006. Copy of both the Forms are placed before me for marking them as Exhibits. Plaintiff has filed additional affidavit-in-lieu of examination in chief dated 02.05.2026 wherein Plaintiff has placed on record the factual details of filing of the said forms and purpose for the same. Reason given by Plaintiff is that she has been unable to locate and trace the original forms from her custody. These forms are admitted by the Court to the extent of marking the forms as Exhibits subject to keeping all contentions of Defendant expressly open for the purpose of cross-examination of Plaintiff. In that view of the matter, having been satisfied that case made out by Plaintiff by secondary evidence in the additional Affidavit and the reasons for not being able to trace the original forms accepted and considering the fact that the

said forms are in fact public documents required to be filed for income tax purpose, both forms are marked as Exhibit 'P-6' and 'P-7'. Contentions of Defendant to cross-examine Plaintiff on the contents of the Forms are kept open.

9. Next document at Sr. No. 11 is the original Form No. 2D which bears acknowledgment of original stamp of the Income Tax Department and therefore it is construed as primary document under Section 62 read with Section 64 of the Indian Evidence Act, 1872 subject to keeping all contentions of Defendant expressly open for the purpose of cross-examination of Plaintiff. Said document is marked as Exhibit 'P-8'.

10. Document at Sr. No. 12 is the photocopy of cheque bearing No. 313029 dated 09.12.2005 and document at Sr. No. 13 is the original taxpayers counterfoil as against the said very cheque. Though it is a photocopy, Mr. Carnac would draw my attention to the additional affidavit wherein in paragraph No. 3(c), the Plaintiff has given explanation with regard to not having the original of the said document as it is deposited with the Bank. Said cheque has been given to the bank. Fact that the said cheque has been given to the bank is proved and certified by the original tax-payers counterfoil which is a receipt issued by the bank with regard to acknowledging the acceptance of the said said cheque for payment of advance tax, in

that view insofar as both these documents are concerned, there cannot be any impediment to mark them as Exhibits in evidence subject to keeping the right of Defendant to cross-examine the Plaintiff in respect of the contents of the said documents in accordance with law. Hence copy of the cheque at Sr. No. 12 and original taxpayers counterfoil at Sr. No. 13 in COD are marked as Exhibits '**P-9**' and '**P-10**' respectively by consent.

11. Document at Sr. No. 14 is the original taxpayers counterfoil of acknowledgment of payment of cheque No. 313024 for Rs. 1000/- issued by Bank of Baroda. Since it is original copy and primary document, it is marked as Exhibit '**P-11**' by consent.

12. Document at Sr. No. 15 is the original taxpayers counterfoil of acknowledgment of payment of cheque No. 313027 for Rs. 1000/- issued by Bank of Baroda. Since it is original copy and primary document, it is marked as Exhibit '**P-12**' by consent.

13. Document at Sr. No. 16 is the copy of Challan No. ITNS 280 for the assessment year 2006-07 *qua* cheque No. 313027 which is marked as Exhibit 'P12'. This document is therefore marked as Exhibit '**P-13**' subject to keeping the right of Defendant to cross-examine the Plaintiff in respect of the contents of the said documents in accordance with law.

14. Document at Sr. No. 17 is the copy of Challan No. ITNS 280 for the assessment year 2006-07 *qua* cheque No. 313029 which is marked as Exhibit 'P10'. This document is therefore marked as Exhibit '**P-14**' subject to keeping the right of Defendant to cross-examine the Plaintiff in respect of the contents of the said documents in accordance with law.

15. Document at Sr. No. 18 is the letter dated 07.12.2021 addressed by the Advocate for Plaintiff to Defendant. Mr. Carnac has shown me office copy of the said letter. He would submit that it is received by one Trupti G. Ghag whose original signature is appended thereon. He would submit that the mobile number which is given below the said name Trupti G. Ghag is that of Defendant's daughter. He would further submit that the said document is the office copy maintained in the office of Advocate for Plaintiff which bears reference No. HNV/2223 dated 07.12.2021 and the office register for certifying the same is also available for producing the same before the Court. Mr. Carnac produces the same before the Court. In view thereof said letter is marked as Exhibit '**P-15**' subject to keeping the right of Defendant to cross-examine the Plaintiff in respect of the contents of the said documents in accordance with law.

16. Document at Sr. No. 19 is income tax refund order dated 21.08.2006 issued in favour of deceased Vimla Choksi. Since it is

original and a public document, it is marked as Exhibit '**P-16**' colly along with photocopy of the cheque of the amount of which is stated in the refund order.

17. Document at Sr. No. 20 is original medical certification of cause of death issued by Corporation for the purpose of certifying the cause of death of the deceased. It is in respect of deceased Vimla Choksi. Since the original death certificate has been issued by the Corporation, there can be no impediment in marking this document as Exhibit subject to keeping the right of Defendant to cross-examine the Plaintiff in respect of the contents of the said document in accordance with law. Considering that it is only on the basis of this very document that ultimately death certificate would be issued by the Corporation after cremation / burial of the deceased, said document being primary document is marked as Exhibit '**P-17**'.

18. Next document at Sr. No. 21 is the photocopy of PAN Card of attesting witness - Pravina Shah, original of which is shown to me. Copy of the PAN Card is marked as Exhibit '**P-18**' and the original PAN Card is returned back to this witness since the said document is required by her for collateral purpose with leave to produce the same later if called for by Court.

19. Next two documents which are filed in the further compilation of documents are original passbooks in respect of Account No. 06950100002293 for the period between 04.11.2005 and 28.06.2006 and between 21.09.2004 and 25.01.2006. Said passbooks are required to be proved by filing either Section 65B certificate or Certificate under the Banker's Books of Evidence Act, 1891. To that extent to enable the Plaintiff to take appropriate steps with the Bank, said original passbooks are marked as Articles 'D' & 'E'.

20. Further three documents are filed in the additional compilation of documents with regard to expert witness who is the handwriting expert. Mr. Carnac has placed on record copies of two certificates issued by International Forensic Science Institute and Indo-American Institute of Graphology in favour of the expert witness. He would submit that originals of the same are available with this witness. With regard to these documents, Mr. Carnac undertakes to produce the originals before the Court and the Court also apprises that same shall be returned back forthwith after verifying them with the copies which are appended because the said documents are the property of the concerned expert witness and he may require them for other collateral purpose. Needless to state that the originals will be carried by this witness at the time of his cross-examination. In that view of the matter, these documents will be marked as Exhibits in evidence on the

next adjourned date. Insofar as the expert handwriting witness is concerned, original report which is duly signed by the expert witness which was referred to on the previous date when he appeared before this Court at the time of placing his affidavit of evidence, has been placed before the Court as acknowledged by him. The original Report prepared by the said witness is marked as Exhibit '**P-19**' since it is affirmed by the witness.

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21. Document at Sr. No. 2 in the COD is medical certification of cause of death issued by Corporation for the purpose of certifying the cause of death of the deceased. It is in respect of deceased Shailesh Choksi. Since the original death certificate has been issued by the Corporation, there can be no impediment in marking this document as Exhibit subject to keeping the right of Defendant to cross-examine the Plaintiff in respect of the contents of the said documents in accordance with law. Considering that it is only on the basis of this very document that ultimately death certificate would be issued by the Corporation after cremation / burial of the deceased, said document is marked as Exhibit '**P-20**'.

22. Original death certificate of Shailesh Chokshi dated 08.12.2021 is marked as Exhibit '**P-21**' by consent.

23. Original General Power of Attorney issued by deceased Shailesh Choksi in favour of Plaintiff dated 24.03.2017 is marked as Exhibit 'P-22' subject to keeping all contentions of Defendant expressly open for the purpose of cross-examination of Plaintiff.

24. Next document is the original passbook of joint bank account having No. 06950100000230 held with Bank of Baroda by deceased Shailesh Choksi and Geeta Shah for the period 09.08.2018 and 05.03.2019. Said passbook is required to be proved by filing either Section 65B certificate or Certificate under the Banker's Books of Evidence Act, 1891. To that extent to enable the Plaintiff to take appropriate steps, said original passbook is marked as Article 'F'.

25. Next document is original bank account statement of account No. 06950100000230 held with Bank of Baroda by deceased Shailesh Choksi and Geeta Shah. Said statement is printed on Bank of Baroda's watermark paper without any authentication whatsoever. According to Mr. Carnac, said statement has been given to the Plaintiff. If that be the case, Plaintiff is at liberty to approach the bank and get 65B certificate certifying the account therein to enable the Court to mark the said document as Exhibit. For present, same is marked as Article 'G'.

26. Original certificate issued by Dr. Sushil Tandel is marked as Exhibit '**P-23**' by consent subject to keeping all contentions of Defendant expressly open for the purpose of cross-examination of Plaintiff.

27. Original certificate issued by Dr. Rajesh Gala is marked as Exhibit '**P-24**' by consent subject to keeping all contentions of Defendant expressly open for the purpose of cross-examination of Plaintiff.

28. English translation of Will of deceased Shailesh Choksi dated 01.08.2018 issued by the Chief Translator, High Court, Mumbai is marked as Exhibit '**P-25**' by consent.

29. Next document is PAN card of deceased Shailesh Choksi. Original PAN Card is shown to me. I have perused the same. Same is compared with the copy of PAN Card which is present in the affidavit of documents. Said copy of the PAN Card is marked as Exhibit '**P-26**' by consent. Original PAN Card is returned back to Mr. Carnac since the said document may be required for any other collateral purpose.

30. Next document is Aadhar card of deceased Shailesh Choksi. Original Aadhar Card is shown to me. I have perused the same. Same is compared with the copy of Aadhar Card which is present in the affidavit of documents. Said copy of the Aadhar Card is marked as

Exhibit '**P-27**' by consent. Original Aadhar Card is returned back to Mr. Carnac since the said document may be required for any other collateral purpose.

31. Original nomination Form No. SH013 for seeking shares of Bharat Diamond Bourse is shown to me. Mr. Carnac submits that the original form would be required by Plaintiff for other collateral purposes considering that Plaintiff is a nominee therein. Copy of the said Form is marked as Exhibit '**P-28**'. Original nomination form is returned back to Mr. Carnac. If required, original Form shall be produced at the time of cross-examination if called for by Defendant to prove its contents.

32. Next two documents which are filed in further compilation of documents are original passbooks for the period August 2017 to August 2018 and for the period August 2018 to January 2020. Said passbooks are required to be proved by filing either Section 65B certificate or Certificate under the Banker's Books of Evidence Act, 1891. To that extent to enable the Plaintiff to take appropriate steps, said original passbook is marked as Articles '**H**' & '**T**'.

33. Insofar as the expert handwriting witness is concerned, original report dated 09.12.2025 which is duly signed by the expert witness which was referred to on the previous date when he appeared before

this Court at the time of placing his affidavit of evidence, has been placed before the Court. This document being the primary document, it is marked as Exhibit '**P-29**' under Section 62 read with Section 64 of the Indian Evidence Act, 1872.

34. For Documents which are marked as Articles, Plaintiff shall obtain appropriate certificate from the concerned bank and the same shall be submitted to this Court on the next adjourned date for further marking of documents in seriatim.

35. Stand over to **7th May, 2026 at 5.00 p.m.**

Amberkar

[MILIND N. JADHAV, J.]

RAVINDRA
MOHAN
AMBERKAR

Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2026.05.06
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