

Ajay

**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, Advocate i/by Mulla and Mulla for Plaintiff.
 - Mr. A.K. Singh a/w. Mr. Piyush Shah, Advocates for Defendant.
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CORAM : MILIND N. JADHAV, J.

DATE : MAY 07, 2026.

P.C.:

1. Heard Mr. Carnac, learned Advocate for Plaintiff and Mr. Singh, learned Advocate for Defendant.
2. In furtherance of the order dated 04.05.2026 with regard to marking of documents as Exhibits, Mr. Carnac would submit that

certain documents therein have been marked as Articles. He would submit that these documents are required to be marked as Exhibits in evidence as Plaintiff has taken further steps to exhibit them in accordance with law. He draws my attention at the outset to paragraph No.5 wherein by Article 'A' reference is made to the document being the original passbook of joint bank account having No. 06950100002293 held with Bank of Baroda by joint account holders i.e. both the deceased Vimla Choksi and Shailesh Choksi for the period 18.03.2006 to 10.08.2006. The said passbook has now been endorsed by the seal of the said bank and has been signed by the concerned officer of the Bank on 07.05.2026. In that view of the matter, the same is marked as Exhibit '**P-30**' in evidence subject to Plaintiff proving the contents thereof and right of Defendant to cross-examine the Plaintiff's witnesses kept entirely open in accordance with law.

3. Next he would draw my attention to Article 'B' of the order dated 04.05.2026. The document being the original passbook of joint bank account having No. 06950100002293 held with Bank of Baroda by joint account holders i.e. both the deceased Vimla Choksi and Shailesh Choksi for the period 30.06.2006 to 14.11.2006. The said passbook has been endorsed by the seal of the said bank and has now been endorsed by the seal and signed by the concerned officer of the Bank on 07.05.2026. In that view of the matter, the same is marked as Exhibit '**P-31**' in evidence subject to Plaintiff proving the contents

thereof and right of Defendant to cross-examine the Plaintiff's witnesses kept entirely open in accordance with law.

4. Next he would draw my attention to Article 'C' of the order dated 04.05.2026. The document being the bank statement with regard to which certificate under Section 65B has been filed by the Plaintiff. The said certificate dated 07.05.2026 is taken on record. In that view of the matter, there can be no impediment in marking the said document as Exhibit subject to cross-examination of its contents. In that view of the matter, Article 'C' is marked as Exhibit 'P-32' in evidence subject to Plaintiff proving the contents thereof and right of Defendant to cross-examine Plaintiff's witnesses kept entirely open in accordance with law.

5. Next he would draw my attention to Articles 'D' and 'E' stated in paragraph No.19 of the order dated 04.05.2026. He would submit that these documents are required to be marked as Exhibits in evidence as Plaintiff has taken further steps to exhibit them in accordance with law. The documents which are filed in the further compilation of documents are original passbooks in respect of Account No. 06950100002293 held with Bank of Baroda for the period between 04.11.2005 and 28.06.2006 and between 21.09.2004 and 25.01.2006. The said passbooks have now been endorsed by the seal of the said bank and have been signed by the concerned officer of the

Bank on 07.05.2026. In that view of the matter, the same are marked as Exhibits '**P-33 and P-34**' in evidence subject to Plaintiff proving the contents thereof and right of Defendant to cross-examine the Plaintiff's witnesses kept entirely open in accordance with law.

6. Next he would draw my attention to Article 'F' stated in paragraph No.24 of the order dated 04.05.2026 which pertains to the original passbook of joint bank account having No. 06950100002293 held with Bank of Baroda by deceased Vimla Choksi and Shailesh Shah for the period 09.08.2018 and 05.03.2019. The said passbook has now been endorsed by the seal of the said bank and has been signed by the concerned officer of the Bank on 07.05.2026. In that view of the matter, the same is marked as Exhibit '**P-35**' in evidence subject to Plaintiff proving the contents thereof and right of Defendant to cross-examine Plaintiff's witnesses kept entirely open in accordance with law.

7. Next he would draw my attention to Article 'F' stated in paragraph No.24 of the order dated 04.05.2026 which pertains to the original bank account statement of joint bank account No. 06950100000230 held with Bank of Baroda by deceased Shailesh Choksi and Geeta Shah with regard to which certificate under Section 65B has been filed by the Plaintiff. The said certificate dated 07.05.2026 is taken on record. In that view of the matter, there can be

no impediment in marking the said document as Exhibit subject to cross-examination of its contents. In that view of the matter, Article 'F' is marked as Exhibit '**P-36**' in evidence subject to Plaintiff proving the contents thereof and right of Defendant to cross-examine Plaintiff's witnesses kept entirely open in accordance with law.

8. Next he would draw my attention to Articles 'H' and 'I' stated in paragraph No.32 of the order dated 04.05.2026. He would submit that these documents are required to be marked as Exhibits in evidence as Plaintiff has taken further steps to exhibit them in accordance with law. There are two documents which are filed in the further compilation of documents which are original passbooks for the period of August 2017 to August 2018 and for the period of August 2018 to January 2020. The said passbooks have now been endorsed by the seal of the said bank and have been signed by the concerned officer of the Bank on 07.05.2026. In that view of the matter, the same are marked as Exhibits '**P-37 and P-38**' in evidence subject to Plaintiff proving the contents thereof and right of Defendant to cross-examine the Plaintiff's witness kept entirely open in accordance with law.

9. Next Mr. Carnac would draw my attention to Exhibit 'P-19' and 'P-29' which is Handwriting Expert's Report. He would submit that Handwriting Expert's Reports are filed in both the Suit proceedings separately and marked as Exhibits. He would submit that as recorded

by the Court in paragraph No.20, copies of two certificates issued by the International Forensic Science Institute and Indo-American Institute of Graphology have also been produced and relied by the Handwriting Expert. He would submit that liberty and leave be granted to the Handwriting Expert to produce the originals of the said certificates at the time of recording of his cross-examination before the Court Commissioner as he will be bringing them with him. To that extent, leave and liberty is granted to the witnesses to mark the certificates if originals are produced before recording his cross to the satisfaction of the Court Commissioner as also Mr. Singh who will be represented by Defendant. If the said original certificates are produced, the same are directed to be examined appropriately and their copies will be endorsed as Exhibits by the Court Commissioner and the originals will be returned back to the Handwriting Expert. This order and direction is given by consent of both parties.

10. After the cross-examination of the Handwriting Expert is concluded before the Court Commissioner and before the matter is taken up for final hearing, if any objections are raised, they will be considered by Court. Liberty to apply to Court is also granted to both parties in case of any disagreement on marking of these 2 certificates as Exhibits. Needless to state that if the originals are produced, Defendant shall be at liberty to cross-examine the Handwriting Expert on the contents and the veracity of the said certificates.

11. In addition to the above, after taking appropriate instructions, Mr. Carnac has placed on record two further documents i.e. bank statements which are duly endorsed by the Bank and Section 65B certificate has also been filed before the Court. The first statement of account is for the period of 01.04.2017 to 31.03.2020 which pertains to the joint account No. 06950100000230 held with Bank of Baroda held by the deceased Shailesh Choksi with the Plaintiff who is the sister of the deceased. Since Section 65B certificate is produced and the statement is duly endorsed and signed by the concerned bank, the same is taken on record and marked as Exhibit subject to Plaintiff proving the contents thereof and right of Defendant to cross-examine Plaintiff's witnesses on its contents are expressly kept open. Accordingly, the same is taken on record and marked as Exhibit 'P-39'.

12. Next he would draw my attention to the second document i.e. the bank statement which is duly endorsed by the Bank and Section 65B certificate has also been filed before the Court. The statement of account is for the period of 10.04.2004 to 13.03.2006 which pertains to the joint account No. 06950100002293 held by both the deceased namely Vimla Choksi and Shailesh Choksi. Since Section 65B certificate is produced and the statement is duly endorsed and signed by the concerned bank, the same is taken on record and marked as Exhibit subject to Plaintiff proving the contents thereof and right of Defendant to cross-examine Plaintiff's witnesses on its contents are

expressly kept open. Accordingly, the same is taken on record and marked as Exhibit 'P-40'.

13. The stage is now set for cross-examination of the witnesses of the Plaintiff. By consent of the parties, cross-examination of the three witnesses in the first Suit and cross-examination of the four witnesses in the second Suit will be conducted in seriatim and jointly as agreed upon by the parties in view of the facts and circumstances of the case and as recorded in the previous order dated 04.05.2026. The cross-examination of all Plaintiff's witnesses is referred to the Court Commissioner.

14. By consent of both the parties, exercise of cross-examination of above witnesses in both the Suits on the basis of their respective affidavits-in-lieu of evidence and the documents which have been marked as Exhibits in evidence is referred to the Court Commissioner Ms. Niharika A. Chandurkar, (Mobile No.9766396383) learned Advocate practicing as Counsel and Advocate in this Court is appointed as Commissioner to record the cross-examination and re-examination of all the Plaintiff's witnesses.

15. The Court Commissioner is at liberty to exercise discretion under order XVIII, Rule 4(4) of the Code of Civil Procedure, 1908 to note the demeanor of the witnesses where necessary.

16. All witness action shall be conducted strictly in question and answer form.

17. The Commissioner will also be at liberty to decide / direct whether the whole or any part of the cross-examination should be video recorded for later reference of the Court. If that should be done then the original audio visual recording will have to be submitted along with the Commissioner's Report to the Registry.

18. Liberty to the parties as also to the Commissioner to apply to Court to seek clarification in case of any difficulty.

19. All costs of the commission and the Commissioner's fees shall be borne by the Plaintiff only since Plaintiff's witness action is being conducted. For Defendant's witnesses, the costs will be borne by Defendant.

20. Parties shall also pay costs of Rs.500/- per hearing to the Court Clerk who attends the Commission with Court Papers outside the Court premises, if required. This is required since these clerks attend the commission in addition to their regular duties and outside their normal working hours. Registry, in the alternative is directed to make available Court Room premises in this Court for witness action if the parties so request. In that case costs of Rs.500/- shall not be payable.

21. The Commissioner is not to permit any applications for adjournment on dates previously fixed except where absolutely unavoidable. Counsel's inconvenience or unavailability does not constitute such unavoidability.

22. Writ of commission stands dispensed with.
23. Both learned Advocates after taking instructions have consented for the above exercise and assured the Court that they / parties shall co-operate with the Court Commissioner and not seek any adjournments unless utmost necessary.
24. Court Commissioner to file status Report after four (4) months of the Commission. Plaintiff's Advocate shall prepare a set of papers / brief alongwith index of pleadings and Exhibits and hand over the same to the Court Commissioner and shall cooperate with all parties for arranging the hearing schedule.
25. Since the exercise of marking of documents has been conducted in Court by marking the documents and by virtue of the said marking of documents, the Associate of this Court may now be required to endorse each of the documents as Exhibits, leave and liberty is granted to the Advocate of the Plaintiff to file the said documents online by e-filing, after the said documents are marked and this copy is uploaded. Department shall allow the same. Re-verification stands dispensed with.
26. Stand over to **3rd September 2026.**

[MILIND N. JADHAV, J.]

Ajay

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by AJAY
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