

HARSHADA H. SAWANT
(P.A.)

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

TESTAMENTARY PETITION NO.3726 OF 2021
WITH
TESTAMENTARY PETITION NO.397 OF 2021
WITH
CAVEAT NO.133 OF 2022
IN
TESTAMENTARY PETITION NO.397 OF 2021
WITH
TESTAMENTARY SUIT NO.96 OF 2022
IN
TESTAMENTARY PETITION NO.397 OF 2021
WITH
WILL NO.153 OF 2021

Ushaben Ashwinkumar Hundiwala alias
Usha Ashwinkumar Hundiwala .. Deceased

Jatin Ashwinkumar Hundiwala .. Petitioner

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- Ms. Mumtaz Shaikh, Advocate i/by Mr. Prem Gidwani for Plaintiff in Testamentary Suit No.96 of 2022.
 - Mr. A. R. Kapadia a/w. Mr. M. R. Sherekar, Advocates for Petitioner in Testamentary Petition No.3726 of 2021.
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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 05, 2025

P.C.:

1. Heard Ms. Shaikh, learned Advocate for for Plaintiff in Testamentary Suit No.96 of 2022 and Mr. Kapadia, learned Advocate for Petitioner in Testamentary Petition No.3726 of 2021.

2. On 08.10.2025, the following order was passed:-

"1. Heard Ms. Shaikh, Advocates for Plaintiff and Mr. Kapadia Advocates for Defendants.

2. *The Stage of Testamentary Suit is for framing of issues. After hearing the learned Advocate at the bar and perusing the draft issues, the following issues are framed in the Suit for adjudication:-*

- (i) Whether the Plaintiff proves that Will dated 06.12.1999 was duly and validly executed and attested in accordance with law as the Last Will and Testament of the deceased?*
- (ii) Whether the Plaintiff proves that the deceased was of sound and disposing mind at the time of execution of the said Will?*
- (iii) Whether Defendants prove that the said Will is forged, fabricated, fraudulent and/or that it was executed by the deceased under any undue influence, coercion or pressure?*
- (iv) What reliefs / orders?*

3. *Advocate for Plaintiff is directed to file Affidavit of Documents alongwith a List of Witnesses. A copy of Affidavit of Documents shall be served on Advocate for Defendants within a period of four (4) weeks from today. Advocate for Defendants shall take inspection of documents in the office of Advocate for Plaintiff / within a period of two (2) weeks thereafter.*

4. *The Admission and Denial of documents alongwith reasons shall be conveyed by Advocate for Defendants to Advocate for Plaintiff within a period of one (1) week thereafter.*

5. *On the next adjourned date, the Affidavit of Documents with originals, list of Witnesses alongwith Admission and Denial of documents by Defendants shall be placed before the Court for the purpose of exhibiting the documents in evidence.*

6. *Stand over to 26th November, 2025.”*

3. Today, in compliance of the aforesaid order the learned Advocates have made the following submissions:-

3.1. Ms. Shaikh would place on record list of witnesses on behalf of Plaintiff and submit that Plaintiff would lead evidence of two witnesses namely Ajay Hundiwala and Prakash Govinddas Parekh. The said list of witnesses dated 23.10.2025 is taken on record.

3.2. Next she has placed on record Affidavit-in-lieu of

examination-in-chief of both the witnesses namely Ajay Hundiwala and Prakash Govinddas Parekh which are both dated 23.10.2025. She would submit that both witnesses are residents of United States of America (for short 'USA') and have prepared their affidavit-in-lieu of examination-in-chief and notarised the same in USA and filed the same.

3.3. She has also placed on record list of documents which are tendered as evidence on behalf of Plaintiff by the two witnesses which the Plaintiff desires to refer to and rely upon in support of Plaintiff's case. She would submit that the two documents which Plaintiff would rely upon are the original Death Certificate of the deceased Smt. Ushaben Ashwinkumar Hundiwala and the last Will and testament dated 06.12.1999 executed by the deceased.

3.4. She would submit that original Will of the last Will and testament dated 06.12.1999 is in the custody of the Office of the Prothonotary and Senior Master of this Court. Hence photocopy of the said Will is annexed to the list of documents. She would submit that copy of the original Death Certificate is appended to the list of documents.

3.5. She would persuade the Court to take the list of documents on record. However since both the witnesses are not present before the Court, she would submit that this Court be pleased to pass

appropriate directions for the purpose of marking of documents and for recording the cross-examination of the Plaintiff's witnesses. She would submit that both the witnesses are residents of USA as they are working over there and both of them have given instructions to her to intimate the Court that they shall come to India and shall be available for deposition and marking of documents and for cross-examination between 02.02.2026 and 06.02.2026.

3.6. She would submit that both the witnesses, one of whom is the Plaintiff have intimated to her that since they are working in Companies in the USA, they have applied for leave to come to India during the aforesaid period for deposing in the present Suit proceedings and they have been granted leave by their respective organisations for the said period. Hence she would submit and persuade the Court to keep the matter on 02.02.2026 which is a Monday, First on Board for marking of the Will and the original Death Certificate and for confirming the contents of affidavit-in-lieu of examination-in-chief in the presence of the Court when both the Plaintiff's witnesses shall remain present personally. She would submit that once that is done on behalf of Plaintiff, appropriate directions will be sought from the Court to complete their cross-examination on commission until the said witnesses are present in India.

4. The affidavit-in-lieu of examination-in-chief of both the witnesses is taken on record. It is seen that Plaintiff is the legal heir and beneficiary under the Will whereas Prakash Govinddas Parekh is one of the attesting witnesses. Hence before the documents namely the original of the Will and original Death Certificate are marked as Exhibits, the witnesses will have to remain present in Court to confirm the same for the purpose of marking of the Will. Atleast the attesting witness namely Prakash Govinddas Parekh will have to remain present for marking of the Will.

5. In view of the request made by Ms. Shaikh and which is also not opposed by Mr. Kapadia, present Testamentary Suit proceedings are directed to be listed 'First on Board' on 02.02.2026 to enable the Advocate for Plaintiff to make appropriate Application for marking of the Will and other document and for examination-in-chief of Plaintiff's witnesses and for passing of further directions for completion of their cross-examination of on Commission on that date.

6. Department / Registry is directed to place the original copy of the Will, list of witnesses, the affidavit-in-lieu of examination-in-chief of Plaintiff and attesting witness before the Court on 02.02.2026 for the purpose of the aforesaid exercise.

7. Liberty to apply to the parties, in case of any exigency.

8. Stand over to **02nd February, 2026.** To be placed under the caption '**First on Board**'.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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