

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

Ushaben Ashwinkumar Hundiwala alias  
Usha Ashwinkumar Hundiwala .. Deceased

Jatin Ashwinkumar Hundiwalla .. Petitioner

- .....
- Mr. Prem Gidwani a/w. Ms. Mumtaz Shaikh, Advocates 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.
  - Attesting Witness No.1 present.

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**CORAM : MILIND N. JADHAV, J.**

**DATE : FEBRUARY 02, 2026**

**P.C.:**

- 1.** Heard Mr. Gidwani, learned Advocate for Plaintiff in Testamentary Suit No.96 of 2022 and Mr. Kapadia, learned Advocate for Caveator and 2 Caveatrices. Issues have been framed.
- 2.** Pursuant to the order dated 05.12.2025, matter was to be

listed on board today. However inadvertently, it was not listed. Hence, it was mentioned by Mr. Gidwani, learned Advocate for Plaintiff / Petitioner in the morning session at the outset and in view of exigency stated in the previous order, the matter was listed before this Court on production board for recording evidence. There is effective compliance of the order dated 05.12.2025 before me.

**3.** The name of deceased is Mrs. Ushaben Ashwinkumar Hundiwala. Petition No.397 of 2021 has been converted into Suit due to contest by Vandana Anilkumar Gujar, Nayana Yogesh Shah (Caveatrices) and Jatin Ashwinkumar Hundiwala (Caveator). There are two documents in the Affidavit of Documents filed by Plaintiff; namely the original death certificate and Will. Mr. Gidwani has placed on record the original copy of Death Certificate of deceased which is appended to the Testamentary Petition. The same is directed to be removed therefrom and replaced with a photostat copy and the original death certificate shall be marked as Exhibit and kept in the safe custody alongwith original Will. It is issued by Municipal Corporation Aurangabad Ward F and signed by Deputy Registrar of the Corporation. It bears the original signature, stamp and seal of the Corporation. Considering that it is the original copy issued, there can be no impediment to mark the same under Section 65 of the Indian Evidence Act, 1872 as primary document. The Death Certificate of the deceased Usha Ashwinkumar Hundiwala certifying date of her death

on 11.12.2014 is taken on record and marked '**Exhibit P-1**' in evidence.

**4.** The next document which Mr. Gidwani refers to and relies upon is the original Will of the deceased dated 06.12.1999. The original Will is placed before me alongwith Administrator's oath of Petitioner filed in Testamentary Petition No.397 of 2021. I have perused the same. It is the original copy on a blue coloured paper dated 06.12.1999. The signature on the same is original. In that view of the matter, being original document there can be no impediment in marking the same as Exhibit. The Will dated 06.12.1999 is marked as '**Exhibit P-2**'. Mr. Kapadia in his usual fairness does not object to marking of both the aforesaid documents being original documents.

**5.** Mr. Gidwani has next drawn my attention and persuaded me to consider the Affidavit-in-lieu of examination-in-chief dated 23.10.2025 filed by Prakash Govinddas Parekh, attesting witness No.2 to the Will of deceased. He would submit that attesting witness No.1 – A. G. Parikh has expired. He would submit that attesting witness No.1 - A. G. Parikh is the first witness of Petitioner / Plaintiff in the present proceedings. He would submit that he is the attesting witness. His Affidavit is taken on record. It is affirmed on 25.10.2025 before the notary public in the State of New Jersey on Commission. Inadvertently it appears that date mentioned on the docket is 23.10.2025. The same has also been so mentioned in the previous order. The correct date of

Affidavit of the attesting witness No.2 Prakash Govinddas Parekh stands corrected to 25.10.2025.

**6.** Mr. Prakash Govinddas Parekh is present in Court before me. Mr. Prakash Govinddas Parekh is administered oath and is on Solemn Affirmation (S.A.). His Affidavit is shown to him. He confirms having affirmed and verified the Affidavit as attesting witness and informs the Court and affirms his signature on page No.4 of the same. He identifies the original Will on which he has signed and which is marked as Exhibit P-2. Mr. Gidwani rests his case in so far any examination-in-chief is concerned. The attesting witness is ready for cross-examination. Mr. Kapadia to cross-examine. Mr. Prakash Govinddas Parekh is on Solemn Affirmation (S.A.).

**7. CROSS-EXAMINATION BY MR. KAPADIA IS RECORDED BY THE COURT:-**

**PER MR. P. G. PAREKH :**

- (i) I shifted to United States of America in year 2000 to be precise on 11.11.2000. Mr. Ajay Bipin Hundiwala is my sister's son. The other attesting witness A. G. Parik is my cousin brother. Apart from Ajay Bipin Hundiwala and the two attesting witnesses on the day of execution, Usha Ashwinkumar Hundiwala the testatrix was present. I am a retired Chartered Accountant.

(ii) Attention of witness is drawn to paragraph No.6 of his affidavit-in-lieu of examination-in-chief. I have made the statement that testatrix was of sound mind at the time of execution of Will on basis of her disposition before me and she having informed me to sign the Will as attesting witness after she appended her signature. The Will has been written in her own handwriting in my presence by the testatrix Usha Ashwinkumar Hundiwala herself.

(iii) It is true that Usha Ashwinkumar Hundiwala was residing after 1996 at Aurangabad (Chattrapati Sambhaji Nagar). In 1999, Usha Ashwinkumar Hundiwala travelled to Mumbai due to bereavement in the family. My brother-in-law of had expired and she visited Mumbai for that reason. At that time Usha Ashwinkumar Hundiwala decided to prepare her Will and she executed the same in Mumbai. I am not aware whether she travelled alone or with any other family members in the year 1999 when she had come to Mumbai but I can definitely recollect that she was accompanied by her husband. My brother-in-law had expired in the last week of November -1999.

(iv) I am not not aware as to who was the custodian of the Will after it was signed by the testatrix and the attesting witnesses. I am not aware as to who carried the Will after it was executed. I only confirm that I have signed as attesting witness on the Will alongwith the other attesting wittiness after it was signed by Usha Ashwinkumar Hundiwala. Usha Ashwinkumar Hundiwala herself called me to sign as attesting witness to her Will. Attention of witness is drawn to paragraph No.4 of his affidavit-in lieu of examination-in-chief.

(v) I disagree that signature on the Will appended by me is my forged signature. I deny that I was not present when the Will was executed. I deny that I have come all the way from the United States of America to merely support the case of Petitioner and have only come to depose as I am the attesting witness of the Will. I deny that I have made any false deposition in my affidavit-in-lieu of examination-in-chief.

**CROSS-EXAMINATION IS COMPLETED BY MR. KAPADIA.**

**8. RE-EXAMINATION OF MR. P. G. PAREKH BY MR. GIDWANI**

**(ON S.A.) :-**

Attention of witness is drawn to his deposition in his cross-

examination with regard to relationship of the deceased brother-in-law. Witness in re-examination clarifies and deposes that the brother-in-law who had expired was also the brother-in-law of the deceased Usha Ashwinkumar Hundiwala.

**RE-EXAMINATION IS COMPLETED.**

**9.** Witness is discharged. Since evidence of the attesting witness is recorded in Court by the Court itself, his signature on the deposition stands dispensed with as it is part of the order passed by the Court.

**10.** At joint request of both the learned Advocates, stand over to **03<sup>rd</sup> February 2026 at 03:00 p.m.** for recording of evidence of the 2<sup>nd</sup> witness of Plaintiff, Mr. Ajay Bipin Hundiwala.

H. H. SAWANT

[ MILIND N. JADHAV, J. ]

Digitally signed  
by HARSHADA  
HANUMANT  
SAWANT  
Date:  
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