

CHAPTER XXVI

TESTAMENTARY AND INTESTATE JURISDICTION

369. Definitions. – In this chapter, unless there is anything repugnant in the subject or context –

- (a) “Judge in Chambers” means the Judge hearing testamentary matters in Chambers;
- (b) “Letters of Administration” includes letters of administrations with the will annexed;
- (c) “Will” includes a codicil

370. Non-contentious matters. – Non-contentious matters shall include applications for probate or letters of administration or succession certificate and the obtaining thereof when there is no contest as to the right thereto. They shall also include the issuing of Probate or Letters of Administration or succession certificate in contentious cases when the contest is terminated, and all *ex-parte* applications in matters of testacy and intestacy, not being proceedings in any suit.

371. Powers of the Prothonotary and Senior Master. – The Prothonotary and Senior Master shall have full power to administer oaths or solemn affirmations in all matters relating to the testamentary and intestate jurisdiction of the Court, to issue sub-poenas to bring in and lodge testamentary papers and documents and to exercise in non-contentious matters the powers conferred by the Indian Succession Act, 1925, on the District Judge.

372. Application through Advocate or in person. – Application for probate or letters of administration or succession certificate shall be made either in person or through an Advocate entitled to practice in this Court.

373. Application by parties in person. Personal attendance. – Persons desirous of applying in person for grant of probate or letters of administration or succession certificate shall not apply by letter, but shall

attend in person at the office of the Prothonotary and Senior Master. All fees payable by such parties shall be paid in advance in Court fee Stamps.

374. Application for probate. - The application for probate shall be made by Petition. There shall be annexed to the petition a copy of the last will and testament of the deceased. If the will be not in the English language, an official translation thereof shall be annexed. The original will shall be file separately and kept by the Prothonotary and Senior Master in the strong room of his office. There shall also be annexed to the petition (1) a schedule of the property and credits which the deceased died possessed of or entitled to at the time of his death which have or are likely to come to the petitioner's hands, (2) a schedule showing the debts of the deceased and all other items which by law the petitioners is allowed to deduct for the purpose of ascertaining the net estate of the deceased, and (3) a schedule of property , if any, held by the deceased is trust for another and not beneficially or with general power to confer a beneficial interest. The petition shall be in Form No. 97 with such variations as the circumstances of each case may require and shall be accompanied by-

- (a) the vakaltnama signed by the petitioner (Form No. 5), unless the petitioner appears in person;
- (b) the executor's oath (Form No. 101);
- (c) the affidavit of one of the attesting witnesses, if available (Form No. 102); and
- (d) a copy of the estate duty return, if filed with the Controller of Estate Duty.

The schedules to the petition shall be in Form No. 98,99 and 100 respectively with such variations as the circumstances of each case may require.

375. Application for Letters of Administration where the deceased has left a will - The application for letters of administration in cases where the deceased has left a will shall be made by petition. There shall be annexed to the petition a copy of the last will and testament of the deceased.

If the will be not in the English language, an official translation thereof shall also be annexed. The original will shall be filed separately and kept by the Prothonotary and Senior Master in the strong room of his office. There shall also be annexed to the petition (1) a schedule of the property and credits which the deceased died possessed of or entitled to at the time of his death which have or are likely to come to the petitioner's hands, (2) a schedule showing the debts of the deceased and all other items which by law the petitioner is allowed to deduct for the purpose of ascertaining the net estate of the deceased and (3) a schedule of property, if any, held by the deceased in trust for another and not beneficially or with general power to confer a beneficial interest. The petition shall be in Form No. 105 with such variations as the circumstances of each case may require and shall be accompanied by –

- (a) the vakaltname signed by the petitioner (Form No. 5), unless the Petitioner appears in person;
- (b) the administrator's oath (Form No. 106);
- (c) the affidavit of one of the attesting witnesses, if available. (Form No. 102)' and
- (d) a copy of the estate duty return, if filed with the Controller of Estate Duty.

The Schedules to the petition shall be in Forms No. 98, 99 and 100 respectively with such variations as the circumstances of each case may require.

376. Application for Letters of Administration where the deceased died intestate. – The application for letters of administration in cases where the deceased has died intestate shall be made by petition. There shall be annexed to the petition (1) a schedule of the property and credits which the deceased died possessed of or entitled to at the time of his death which have or are likely to come to the petitioner's hands.(2) a schedule showing the debts of the deceased and all other items which by law the petitioner is allowed to deduct for the purpose of ascertaining the net estate of the deceased, and (3) a schedule of property, if any, held by the deceased in trust for another and not beneficially or with general power to confer a beneficial

interest. The petition shall be in Form No. 103 with such variations as the circumstances of each case may require and shall be accompanied by –

- (a) the vakalatnama signed by the petitioner (Form No. 5) unless the petitioner appears in person;
- (b) the administrator's oath (Form No. 104); and
- (c) a copy of the estate duty return, if filed with the Controller of Estate Duty.

The schedule to the petition shall be in Form No. 98, 99 and 100 respectively with such variations as the circumstances of each case may require.

R.377. Application for succession certificate.—The application for succession certificate shall be made by petition. There shall be annexed to the petition a schedule of the property of the deceased in respect of which the succession certificate is applied for. The petition shall be in Form No. 110 with such variations as the circumstances of each case may require and shall be accompanied by—

- (a) the vakalatnama signed by the petitioner (Form No.5), unless the petitioner appears in person;
- (b) the petitioner's oath (Form No.112); and
- (c) a copy of the estate duty return, if filed with the Controller of Estate Duty.

The schedule to the petition shall be in Form No.111 with such variations as the circumstances of each case may require.

378. Name, etc., of petitioner and caveator in petition and caveat. The name, place of residence, description and occupation, if any, of the petitioner shall be given in every petition and of the caveator in every caveat

379. Verification of petition. – The petition for probate or letters of administration or succession certificate shall be subscribed by the Petitioner

and his Advocate on record (if any), and shall be verified by the petitioner in the manner prescribed for verification of plaints.

380. Payment of Court-fees - The Court-fees noted at the foot of the notice issued by the Prothonotary and Senior Master shall be paid within three days after receipt of such notice.

381. Certificate of Prothonotary and Senior Master for court-fee paid in advance. - Every application for probate or for letters of administration or for succession certificate shall be accompanied by the certificate of the Prothonotary and Senior Master that the Court fees payable has been paid, unless the Judge in Chambers otherwise directs.

382. Delay in application – In any case where an application for probate or letters of administration or succession certificate is made for the first time after the lapse of three years from the death of the deceased, the reason for the delay shall be explained in the petition. Should the explanation be unsatisfactory, the Prothonotary and Senior Master may require such further proof of the alleged caused of delay as he may deem fit.

383. Interlineations, alterations, etc., in the will should be sworn to by the attesting witness. - When interlineations, alterations, erasures or obliterations appear in the will (unless duly executed as required by the Indian Succession Act, 1925, or recited in or otherwise identified by the attestation clause), a statement shall, if possible, be made in the affidavit of the attesting witness whether they existed in the will before its execution or not. If the attesting witness is unable to make the statement, he shall state so in the affidavit.

384. In absence of attesting witness, other evidence to be produced. – If it is not possible to file an affidavit of any of the attesting witnesses, an affidavit of some other person, if any, who may have been present at the execution of the will shall be filed, but if no affidavit of any such person can be filed, evidence on affidavit shall be produced of that fact and of the handwritings of the deceased and attesting witnesses, and also of any circumstances which may raise a presumption in favour of due execution.

385. Production of deed, paper, etc., referred to in will. – If a will contains a reference to any deed, paper, memorandum, or other document of

such a nature as to raise a question whether it ought not to form a constituent part of the will, such deed, paper, memorandum or other document shall be produced, with a view to ascertain whether it is entitled to probate, and if not produced, its non-production shall be accounted for.

386. Unsigned or unattested will.- In cases in which it is not necessary that a will should be signed by the testator or attested by witnesses to constitute a valid testamentary disposition of the testator's property, the testator's intention that it should operate as his testamentary disposition shall be clearly proved by affidavit or otherwise.

387. Attempted cancellation to be accounted for. – Any appearance of an attempted cancellation of a testamentary writing by burning, tearing, obliteration or otherwise, and every circumstance leading to a presumption of abandonment or revocation of such writing or part thereof shall be accounted for.

388. Application for probate of non-cupative or privileged will. - Application for probate of a non-cupative or privileged will shall be referred for disposal to the Judge in Chambers.

389. Disclosure of all persons having prior right to the grant. - the petition for letters of administration shall disclose the names of all persons having a prior right to the grant and shall state whether the party applying is the only next-of-kin of the deceased.

390. Administration to a creditor. - In all applications by a creditor for letters of administration, it shall be stated particularly how the debt arose.

391. Marking will. - Every will, copy of a will or other testamentary paper, which is sworn to or affirmed by an executor or administrator, shall be marked by the person before whom the oath or affirmation is made.

392. Proof of identity – The Prothonotary and Senior Master may, in cases where he deems it necessary, require proof, in addition to the statements made in the petition for probate, or letters of administration or succession certificate, of the identity of the deceased or of the party applying for the grant.

393. Renunciation of probate or letters of administration. – No. person, who renounces probate of a will or letters of administration to the property of a deceased person in one character, shall, without the leave of the Judge in chambers, apply for representation to the estate of the same deceased in another character.

394. Application by constituted attorney - An application for letters of administration or succession certificate may be made by a constituted attorney of a person residing out of the State of Maharashtra, provided that such constituted attorney resides within the State and that such application is made through an Advocate entitled to practice in this Court.

395. Proof of execution of power of attorney – Unless a power of attorney appointing a constituted attorney can, under section 85 of the Indian Evidence Act, 1872, be presumed to have been executed and authenticated as in the said section mentioned, the Prothonotary and Senior Master may require further proof of its due execution.

396. Notice of application to whom to be given – The Prothonotary and Senior Master shall give notice of all applications for probate or letters of administration to the Collector of Bombay and the Superintendent of Stamps.

397. Notice of next-of-kin – (1) In all applications for probate, letters of administration and succession Certificate, notice of the application shall be given to all the heirs and next-of-kin of the deceased mentioned in the petition except to those whose consent has been filed in the proceedings.

(2) In all applications for probate and letters of Administration the citation shall be affixed on some conspicuous part of the Court house and also in the office of the Collector of Bombay.

(3) In all applications for succession certificate, notice of the application shall be affixed on some conspicuous part of the Court house.

(4) No grant of probate, letters of administration or succession certificate shall be made until after the expiry of fourteen clear days from the date of the service of the citation or notice, and from the publication thereof in newspapers, if any, and from the affixing thereof on the court house and

in the Collector's Office as the case may be, unless the Judge in Chambers otherwise directs.

398. Issue and return of processes. – All processes and citations shall issue from and be returnable to the office of the Prothonotary and Senior Master and shall be prepared, signed and dated by him or one of his assistants and sealed executed and returned, in the same manner as processes in suits on the Original Side of the Court.

399. Service of citations – Citations shall be served personally when possible. Personal service shall be affected by leaving a true copy of the citation with the party cited and taking his acknowledgement on the original.

400. Service by advertisement – Citations which cannot be personally served as required by the last preceding rule shall be served by publishing the same in such local newspapers as the Prothonotary and Senior Master may direct.

401. Caveat – Any person intending to oppose the grant of probate or letter of administration shall file a caveat in Form No. 116 within fourteen days from the service of the citation upon him or within such shorter time as the Judge in Chambers may direct. Notice of the filing of the caveat shall be given by the Prothonotary and Senior Master to the petitioner or his Advocate on record. The Judge in Chambers may extend the time to file a caveat, provided the grant has not in the meantime been issued.

402. Affidavit in support of caveat. – An affidavit in support of a caveat shall be filed within eight days from the date of the filing of the caveat, notwithstanding the Court vacations. Such affidavit shall state the right and interest of the caveator, and the grounds of the objections to the application. A copy of the said affidavit shall be served by the caveator on the petitioner or his advocate on record. If such affidavit be not filed within the prescribed time, the caveat shall not prevent the grant of probate or letters of administration. No such affidavit shall be filed after the expiry of the said eight days without an order of the Judge in Chambers.

403. Procedure on affidavit in support of caveat being filed – (i) Upon the affidavit in support of the caveat being filed, the petition shall be numbered as suit in which the petitioner shall be the plaintiff and the caveator shall be defendant. Notice of the fact that the petition has been

renumbered as a suit shall be given by the Prothonotary and Senior Master to the petitioner or his Advocate on record. The notice shall be in Form No. 117. The petition shall be treated as the plaint and the affidavit in support of the caveat shall be treated as the written statement of the caveator. The procedure in such suit shall, as nearly as may be, be according to the procedure applicable to civil suits on the Original Side of the Court.

(ii) Where there are two or more caveators and each of them has filed an affidavit in support of his caveat, separate suit numbers shall not be given to the petition, but all the caveators shall become party defendants in one suit.

404. Chamber summons for directions – On the petition being numbered as a suit, the plaintiff shall apply by Chamber Summons to the Judge in chambers for directions. The application shall be made within ten days from the date of the filing of the affidavit in support.

405. Notice to prove will in solemn form – In a testamentary suit the party opposing the will may, with his affidavit, give notice to the party setting up the will that he merely insists upon the will being proved in solemn form and only intends to cross-examine the witnesses produced in support of the will, and he shall thereupon be at liberty to do so, and shall not, in any event, be liable to pay the costs of the other side, unless the Court shall be of opinion that there was no reasonable ground for opposing the will.

406. Affidavit opposing grant of succession certificate. – Any person intending to oppose the grant of succession certificate shall, within fourteen days from the service of the notice upon him or within such shorter time as the Judge in Chambers may direct, file an affidavit stating his right and interest in the estate of the deceased and the grounds of his objection to the application. A copy of the said affidavit shall be served on the petitioner or his Advocate on record. The petition shall be placed on the board of the Judge in Chambers on a day to be fixed by the Prothonotary and Senior Master. The Prothonotary and Senior Master shall notify on his notice board the date on which such petition shall be set down for hearing and he shall do so at least eight days before such date. If a party has appeared in person, the Prothonotary and Senior Master shall give notice of the date to such party by sending a letter to him by post under certificate of posting.

At the hearing of the petition, the Judge may make such order as he may deem fit.

407. Procedure when two or more petitions for succession certificate are filed - When two or more petitions have been filed for the grant of a succession certificate, the petitions shall be placed on the board of the Judge in chambers on a day to be fixed by the Prothonotary and Senior Master. The Prothonotary and Senior Master shall notify on his notice board the date on which such petitions shall be set down for hearing and he shall do so at least eight days before such date. If a party has appeared in person, the Prothonotary and Senior Master shall give notice of the date to such party by sending a letter to him by post under certificate of posting.

At the hearing of the petitions, the Judge may make such order as he may deem fit.

408. Provisions regarding indigent person to apply - The provisions of Order XXXIII of the Code of Civil Procedure and the rules relating to suits by indigent persons contained in Part II, Chapter XIII shall, with any necessary modifications, apply to applications for probate, letters of administration and succession certificate.

In cases where the petitioner has been given leave to proceed as an indigent person the Prothonotary and Senior Master shall, before issuing the grant, place the papers before the Judge in Chambers and the Judge may impose such terms and conditions on the petitioner as he thinks fit to secure payment of the court fees payable.

409. Search of proceedings - Search of proceedings shall be granted only on precipes signed by the applicant or his Advocate on record.

410. Certified copies - Certified copies of wills and other documents furnished by the office shall be signed by the Prothonotary and Senior Master or one of his assistants and shall be sealed with the seal of the Court.

411. Production of papers in High Court - An application for production of papers and proceedings in the High Court shall be made to the Prothonotary and Senior Master before 4-15 p.m. on the day previous to that on which they are required, stating the reasons therefore.

412. Production of papers in other Courts – No papers and proceedings filed in the office shall be produced in Courts other than the High Court without the order of the Judge in Chambers, and no original will filed in the office shall be produced in any place beyond the limits of the High Court, except in the custody of one of the clerks of the office of the Prothonotary and Senior Master and under a like order.

413. Grants limited to State of Maharashtra - All grants of probate or letters of administration shall, unless otherwise ordered, be issued by the Prothonotary and Senior Master so as to have effect only throughout the State of Maharashtra

414. Grants throughout India - In all cases in which it is ought to obtain grant of probate or letters of administration to have effect throughout India, such grant shall be expressly asked for, and it shall be further stated in the petition that, so far as the petitioner has been able to ascertain or is aware, there are no property and credits other than what are specified in the schedule attached to the petition.

415. Amendment of grant to extend to India - A grant, limited to the State of Maharashtra, may be amended on obtaining an order from the Prothonotary and Senior Master so as to extend its effect throughout India. The application shall be by affidavit stating where the additional property and credits are situate. The Prothonotary and Senior Master shall make the order for amending the grant on the petitioner paying the court fee in respect of the additional property and credits and in the case of grant of letters of administration on the petitioner giving a further bond in respect of the said property and credits.

416. Application for extension of succession certificate – The Prothonotary and Senior Master may extend a succession certificate to any debt or security not originally specified therein. The application for such extension shall be by affidavit stating the particulars of the debt or security; and on payment of the court fee payable in respect thereof and on the petitioner giving a further bond, if required, the certificate may be extended.

417. Limited letters of administration - Unless otherwise ordered by the Judge in Chambers, limited letters of administration shall not be granted unless every person entitled to the general grant has consented or renounced or has been cited and has failed to appear.

418. Limited grant not to be issued to person entitled to general grant. – Unless otherwise ordered by the Judge in Chambers, a limited grant shall not be issued to a person who is entitled to a general grant of administration to the property of the deceased.

419. Blind or illiterate testator – The Prothonotary and Senior Master shall not grant probate of the will or letters of administration with the will annexed of any blind or obviously illiterate or ignorant person, unless he has satisfied himself that the said will was read over to the testator before its execution, and that the testator understood at such time the contents thereof.

420. Administration Bond in the case of Letters of Administration – (a) In all cases of letters of administration, save and except under section 241, Indian Succession Act, 1925, the person to whom the grant is made shall give a bond in Form No. 118 with one surety and the bond shall, unless the Judge in Chambers otherwise directs, be given for the gross value of the estate. Such bond shall be prepared in the registry.

(b) The exception made above in respect of a grant under section 241 shall not operate when the deceased is a Hindu, Muslim, Buddhist, Sikh Or Jain.

421. Administration Bond in the case of Succession Certificate. - In all cases of succession certificate, the person to whom the grant is made shall give a bond in Form No. 120 with one surety and the bond shall, unless the Judge in Chambers otherwise directs, be given for the gross value of the estate. Such bond shall be prepared in the registry.

422. Surety to be justified in certain cases – (a) In the following cases the surety to the bond shall justify for the whole amount of the estate –

- (i) When the person to whom the grant is made has taken out letters of administration or succession certificate for the use and benefit of a lunatic or person of unsound mind, unless he be a committee of the estate of such lunatic appointed by the Court and has given security.
- (ii) When the person to whom the grant is made has taken out letters of administration or succession certificate for the use and

benefit of a minor, unless he be a guardian of the property of such minor appointed by the Court and has given security.

(iii) When the person to whom the grant of letters of administration or succession certificate is made is entitled to a life interest.

(b) When the person to whom the grant of letters of administration or succession certificate is made is entitled to a portion only of the estate, the surety to the bond shall justify for the whole estate less the share of the grantee and of such sharers as shall consent in writing thereto.

(c) In all other case the surety may be a common surety. The Judge in Chambers may, however, in a proper case and for reasons to be recorded in writing dispense with the justification of surety.

423. Companies of sureties – An approved company may be accepted as a common or justifying surety and in such cases the bond shall be given for the amount of the property for which the grant is to be made. The Prothonotary and Senior Master shall maintain a list of companies approved for this purpose by the Chief Justice

424. Attestation of bonds. – Administration bonds shall be attested by a Gazetted Officer of the Court or the Chief Superintendent of the office of the Prothonotary and Senior Master or, if executed outside the Court house, by such person as may be nominated by the Prothonotary and Senior Master for that purpose.

425. Application under section 10 of the administrators General Act, 1963 – An application under section 10 of the Administrators General Act, 1963, (Act, No. 45 of 1963) shall be made by petition and presented to the Judge hearing testamentary matters in Court.

426. Probates etc., to be drawn up by the office – All probates or letter of administration or succession certificates shall be drawn up by the office of the Prothonotary and Senior Master and Shall be in Forms Nos. 121, 122, 123, 124, 125, 128 or 129 as the case may be, with such variations as the circumstances of each case may require.

427. Schedules of property etc., to be annexed to grant – Copies of the schedules annexed to the petition for probate or letters of administration shall be annexed to the grant of probate or letters of administration.

428. Grant under section 254 of the Indian Succession Act – Whenever under section 254 of the Indian Succession Act, 1925, the Court appoints as administrator a person other than the person who would have been entitled to the grant, the fact shall be so stated in the grant.

429. Prothonotary may refer a matter to the Judge - In the case of doubt or difficulty in any non-contentious matter, the Prothonotary and Senior Master may refer the matter to the Judge in Chamber.

430. Registers of grants – All grants of probate, letters of administration and succession certificate issued during a calendar year along with the wills and their translations, if any, shall be copied out in registers to be maintained by the Prothonotary and Senior Master.

431. Certificate under section 274(1) (a) of the Indian Succession Act - With every certificate to be sent to a High Court under the provisions of section 274(1) (a) of the Indian Succession Act, 1925, the Prothonotary and Senior Master shall send a copy of so much of the Schedule of the property and credits of the deceased as relates to the estate within the jurisdiction of such Court.

432. Bills of costs in suits – All bills in testamentary suits shall be taxed in the same manner as in other civil suits.

433. Notice by executor or administrator to creditors under sections 360 and 367 of the Indian Succession Act – Where an executor or administrator has given notice to creditors and others in the form contained in Form No. 134, such notice shall be deemed to satisfy the requirements of sections 360 and 367 of the Indian Succession Act, 1925.

434. Notice to be given to parties of the filing of the account – Executors, administrators and holders of succession certificate who have filed in the Court an account of their administration shall give notice thereof to all parties on whom the citation or notice had been served before the grant or who had waived service thereof, and shall within two weeks from the filing of the account file in the proceedings an affidavit proving service of such notice.

435. Disposal of petitions for non-prosecution – All testamentary petitions, in which grants or certificates have not been issued owing to non-prosecution of the petitions for one year after the petitions have been filed, shall be treated as disposed of and no action shall be taken on such petitions, unless an order is obtained from the Judge in Chambers giving permission to the petitioner to proceed with the petition already filed.

436. Practice – In cases not provided for by this Chapter, or by the rules of procedure laid down in the Indian Succession Act, 1925, or by the Code of Civil Procedure, the Judge may, if he thinks fit, follow the practice and procedure of the Probate Division of the High Court of Justice in England, so far as they are applicable and not inconsistent with this Chapter and the said Act and the said Code.
