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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION (L) NO.26854 OF 2025
IN
SUIT NO.248 OF 2025

Santsaran Gursaran Advani Alias Papan Advani .. Applicant/
Org.Plaintiff

Versus

Nina H. Bhalla and Ors. .. Respondents

*Mr.Haresh Jagtiani, Senior Advocate a/w Adv.Pranay Kamdar
Adv.Pushpvijay Kanoji, i/b Adv.Pushpvijay Kanoji, Advocate for the
Applicant/Org.Plaintiff.*

*Mr.Nirman Sharma a/w Ms.Khushbu Prabhu, Advocate for the
Respondent No.1.*

CORAM: FIRDOSH P. POONIWALLA, J.
RESERVED ON: OCTOBER 17, 2025
PRONOUNCED ON: APRIL 20, 2026

Judgement :-

1. The present Suit, in which the Interim Application is filed, seeks the following final reliefs:

“(a) This Hon'ble Court be pleased to declare that the Plaintiff is the only sole surviving relative of the Deceased, the late Bimal

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Mohan Sikka in accordance with the Hindu Succession Act, 1956 and is entitled to succeed to the entire estate of the said Deceased in accordance with the applicable laws of intestate succession.

(b) This Hon'ble Court be pleased to declare that the Alleged Gift Deed is void ab initio and inoperative.

(c) This Hon'ble Court be pleased to declare that the Plaintiff is entitled to administer the estate of the Deceased in accordance with the applicable laws of intestate succession;

(d) This Hon'ble Court be pleased to Order and direct Defendant No. 3 to handover statements of bank accounts and demat accounts held in the name of the Deceased singly and/ or jointly to this Hon'ble Court;

(e) This Hon'ble Court be pleased to Order and direct Defendant No. 1 to render true and faithful accounts of all dealings and/ or transactions entered into with respect to the bank accounts, demat accounts and mutual fund accounts of the Deceased as held in Defendant No. 3 from the date of the Deceased's death till the date of filing of the present suit and thereafter;

(f) That on such disclosure being made by Defendant No. 1, Defendant No. 1 be Ordered and decreed to pay to the estate all amounts found due from Defendant No. 1;

(g) The Defendant No.1 be restrained, prohibited and/or prevented by an Order of permanent injunction from in any manner, directly and/or indirectly dealing with, transferring, creating third party rights alienating and/or otherwise disposing of the properties and assets forming part of the estate of the Deceased;

(h) The Defendant No. 1 be restrained by an Order of permanent injunction from holding herself out to be the owner of the said Flat or a member of the said Society Defendant No. 2 as well as refrain from effecting any transfer of ownership of the said Flat;

(i) The Defendant No. 2 be restrained by an Order of permanent injunction from allowing the Defendant No. 1 to access the said Flat;

(j) The Defendant No. 3 be restrained by an Order of permanent injunction from allowing Defendant No. 1 to operate the bank accounts, demat accounts and mutual fund accounts of the Deceased held in Defendant No. 3;”

2. The present Interim Application is filed seeking the following reliefs:

“a) Pending the hearing and final disposal of the present suit and until the time the entire estate of the Deceased is fully administered, the Court Receiver, High Court, Bombay or some other fit and proper person with full powers under Order XL, Rule 1 of the Code of Civil Procedure, 1908 be appointed as receiver of the estate of the Deceased;

b) Pending the hearing and final disposal of the present suit, the Defendants acting by themselves and/or through their servant/ agents and/or representatives, be restrained by an Order and injunction of this Hon'ble Court from in any manner directly or indirectly selling, transferring, disposing of and alienating, encumbering and/or creating any third party rights in respect of the assets forming part of the estate of the Deceased and such other assets as may be disclosed on oath by the Defendants or ascertained by this Hon'ble Court on enquiry.

c) That pending the hearing and final disposal of the present suit, the Defendant Nos. 1 & 3 be Ordered and directed to disclose on Affidavit full and complete details and/or particulars of all the properties (which are to their knowledge) forming a part of the estate of the Deceased and which are their possession or control;

d) That pending the hearing and final disposal of the present suit, the Defendant Nos. 1 & 3 be Ordered and directed to render true and faithful accounts of all the dealings entered into by the Defendant Nos. 1 & 3 or any other persons in respect of the properties of the Deceased and/or any part thereof.

e) That pending the hearing and final disposal of the present suit, on such disclosure being made and accounts being rendered, the Defendant Nos. 1 & 3 be ordered and decreed to

bring into the estate all amounts found due from them from the date of the death of the Deceased till the date of filing the present suit;

f) That pending the hearing and final disposal of the present suit, Defendant Nos and 1 and 2 be ordered and directed to deposit the original share certificate in respect of the said Flat with this Hon'ble Court. In the event, the original share certificate is not in possession of defendant No. 2, then the Defendant No. 2 be ordered and directed to issue a duplicate share certificate and the same be deposited before this Hon'ble Court.

g) That pending the hearing and final disposal of the present suit, the Defendants be Ordered and directed to give inspection to the Applicant/Org. Plaintiff of all relevant documents which are in their possession which belong to the estate of the Deceased including original share certificates, title documents and demat account statements.”

FACTS

3. The Plaintiff is the brother of Late Bimal Mohan Sicka (hereinafter referred to as the “Deceased”), a Hindu woman who passed away on 31st May 2025 at the age of 81 years. Defendant No. 1 is one Nina H. Bhalla, who was first introduced to the Deceased around the year 2004 as a niece of one Farida Mistry, a friend of the Deceased. Defendant No. 1 is the Executrix of the Deceased's estate in terms of the last will and testament dated 10th April 2023 of the Deceased. Defendant No. 2 is the Nepean Sea Co-operative Housing Society Limited. Defendant No. 3 is IndusInd Bank Limited.

4. The Plaintiff has filed the present Suit against the Defendants for seeking appropriate reliefs *inter alia* declaring that the Plaintiff is the only sole surviving relative of the Deceased and is entitled to succeed to and administer the entire estate of the Deceased in accordance with the laws of Intestate Succession and that the Defendants be restrained, by an Order of permanent injunction, from, directly and/ or indirectly, dealing with, transferring, creating third party rights, alienating and/ or otherwise disposing of the properties and assets forming part of the estate of the Deceased.

5. The Deceased's husband, Mohan Mooljee Sicka, passed away on 1st March 1997. The Deceased had made a previous Will dated 16th August 2016. According to the Plaintiff, he had good relations with the Deceased. The same was *inter alia* demonstrated by the Deceased hosting a party at Willingdon Club for Duenka Advani, i.e. the Plaintiff's wife, showing the close family bond. Further, the Plaintiff and the Deceased teamed up and won a bridge tournament at Bombay Gymkhana.

6. On 1st October 2022, the Deceased emailed the Plaintiff stating that she was losing her concentration when reading or playing games on desktop/ Ipad and her memory had taken a ride.

7. On 26th January 2023, the Deceased suffered a stroke. One Dr. Karishma Jethmalani addressed an email dated 3rd March 2023 to the Plaintiff whereby she attached the Deceased's neuro-psychological evaluation. The said email *interalia* stated the Deceased was experiencing significant cognitive difficulties in multiple areas, including memory, word finding and visuospatial functions, as a consequence of the stroke.

8. On 28th March 2023, the Deceased transferred an amount of Rs.5,00,000/- to the Plaintiff as a gift.

9. On 10th April 2023, the Deceased executed a Will. In the said Will, the Deceased appointed Defendant No.1 as the Executrix. The said Will also stated that the Deceased had given her entire inheritance from her mother to the Plaintiff and, hence, was not leaving anything for him in the Will and that the Plaintiff had no rights to claim anything. This Will, which is disputed by the Plaintiff, makes bequests to various persons, including Defendant No.1.

10. On 25th April 2023, Dr.Karishma Jethmalani addressed an email to the Plaintiff attaching the follow up of the Neuropsychological evaluation

findings of the Deceased. The said report stated that following six sessions of treatment, there had been a notable improvement in the Deceased's registration, executive and visuospatial functions. However, her naming ability and free recall (particularly delayed verbal memory) had not improved as expected. The said report further stated that, as a result, the Deceased had been referred to a speech therapist for further intervention and management of her naming difficulties. The report stated that continued follow-up and monitoring would be required to assess the Deceased's progress and make appropriate adjustments to her treatment plan.

11. On 30th May 2023, 1st June 2023 and 20th December 2023, the Plaintiff addressed emails to the Deceased fixing doctors' appointments for her.

12. The Deceased executed a Gift Deed dated 6th May 2024 in favour of Defendant No.1 whereby the Deceased gifted to Defendant No.1 residential Flat no. I-B on the 1st floor of the building known as Shanaz, in Nepean Sea Co-operative Housing Society Ltd, Plot No.90, Napean Sea Road, Mumbai 400 006. This Gift Deed is also disputed by the Plaintiff.

13. According to the Plaintiff, on 15th July 2024, a cheque of Rs.5 Crores was deposited in the joint account of the Deceased and the Plaintiff on the oral understanding that the interest on the said sum of Rs.5 Crores would be enjoyed by the Deceased with the principal amount accruing to the Plaintiff on the demise of the Deceased.

14. On 15th July 2024 itself, there was reversal of the said Rs.5 Crores from the Joint Account of the Deceased and the Plaintiff to the Joint Account of the Deceased and Defendant No.1. According to the Plaintiff, this was at the instance of Defendant No.1.

15. According to the Plaintiff, on 16th July 2024, there was a transfer of Rs.5 Crores from the sole account of the Deceased to the Joint Account of the Deceased and the Plaintiff. On 29th July 2024 again, there was a reversal of Rs.5 Crores from the Joint Account of the Deceased and the Plaintiff to the Joint Account of the Deceased and Defendant No.1. Again it is the contention of the Plaintiff that this was done at the instance of Defendant No.1.

16. In May 2025, the Deceased was admitted to the Masina Hospital, Byculla and later shifted to the ICU. On 31st May 2025, the Deceased passed away.

17. On 31st May 2025 itself, a transfer of Rs.10 lacs was made from the Deceased's sole account to Mukesh Atmaram, being the amount bequathed to Mukesh Atmaram under the Will dated 10th April 2023.

18. On 10th June 2025, a payment of Rs.11 lacs was made to a religious trust, namely, Shri Sai Baba Sansthan Trust, Shirdi, by debiting the sole account of the Deceased after her death. This bequest did not form a part of the Will of the Deceased.

19. In these circumstances, the Plaintiff filed the present Suit and Interim Application on 26th August 2025.

20. On 30th August, 2025, a Probate Petition was filed by Defendant No.1 seeking Probate of the Will dated 10th April 2023 of the Deceased.

21. Defendant No.1 filed an Affidavit in Reply dated 15th September 2025 to the Interim Application. Plaintiff filed an Affidavit in Rejoinder dated 19th September 2025. Thereafter, Defendant No.1 filed an Additional Affidavit in Reply dated 22nd September 2025 and a Compilation of Documents dated 8th October 2025.

22. Various arguments were advanced by the Counsel for the Plaintiff and Defendant No.1. Written submissions were also filed on behalf of the Plaintiff and Defendant No.1. On 17th October 2025, the matter was reserved for Judgement.

23. Defendant No.1 obtained a Probate of the Will dated 10th April 2023 of the Deceased on 7th March 2026.

24. By a further Additional Affidavit dated 17th March 2026, Defendant No.1 put on record the said Probate obtained by her.

25. In the light of the same, by an Order dated 2nd April 2026, this Court placed the matter on 9th April 2026, in order to consider the implications of this Probate on the pending Interim Application. On 9th April 2026, the Counsel appearing on behalf of the Plaintiff and Defendant No.1, made submissions on the implication of the Probate on the pending Interim Application and the Judgement was reserved.

**SUBMISSIONS OF DEFENDANT NO.1 ON MAINTAINABILITY OF THE
SUIT BY THE PLAINTIFF**

26. Mr.Nirman Sharma, the learned counsel appearing on behalf of Defendant No.1, submitted that in a suit for administration of estate of a Deceased, it is imperative for a Plaintiff, as a matter of fact and law, to clearly establish a share/entitlement in the estate of the Deceased in accordance with provisions of law, which in this case is the Hindu Succession Act, 1956 (“**the HSA**”). Mr.Sharma submitted that, if the Plaintiff fails to establish a share even at the stage of final hearing of the Interim Application, there was no question of interim reliefs being granted. Grant of such interim reliefs would necessarily operate till the final hearing of the Administration Suit in this Court, which would amount to defeating the statute of succession. Mr.Sharma submitted that, in the present case, even if the registered Gift Deed and the registered Will are ignored, the Plaintiff would still not be able to make out a case for interim relief.

27. Mr.Sharma submitted that the contention of the Plaintiff in relation to the action of the Executrix can be permitted to be raised only if the Plaintiff is able to establish a share/entitlement in accordance with Section 15 of the HSA. Without this requirement being fulfilled, permitting a party to

level allegations against the actions of an Executrix, would amount to granting a back door entry, which is impermissible.

28. On the Plaintiff's lack of entitlement under the HSA, Mr.Sharma submitted that, for intestate succession of a female Hindu, such as the Deceased, Sections 14 to 16 of the HSA apply.

29. Mr.Sharma submitted that Section 15(1) of the HSA provides that the property of a female Hindu dying intestate would devolve, according to the rules set out in Section 16, firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband. Secondly, upon the heirs of the husband. Thirdly, upon the mother and father. Fourthly, upon the heirs of the father, and lastly, upon the heirs of the mother.

30. Mr.Sharma submitted that, in the present case, the Deceased had no children, and her husband, Mr. Mohan Sicka, pre-deceased her. Her husband's sister, Mrs. Shridevi Ruparel, survived her. Therefore, the Deceased's husband's sister, Mrs. Ruparel, falls under entry 'b', of Section 15(1) i.e. heir of the husband. Mrs. Ruparel has given an Consent Affidavit/Affidavit in Support of the Probate Petition filed by Defendant No.1.

31. On the other hand, the Plaintiff falls under entry 'd' of Section 15(1), i.e. heirs of the father of the Deceased. Mr.Sharma submitted that, as per Section 16, the heirs in the earlier entries exclude those in the subsequent entries in Section 15(1). Therefore, the Deceased's husband's sister, Mrs. Shridevi Ruparel, who is at entry 'b', excludes the Plaintiff who is at entry 'd'. Mr.Sharma submitted that this makes it clear that, by virtue of Section 15(1) of the HSA, the Plaintiff has no entitlement to the Deceased's property.

32. Mr.Sharma next submitted that, in response to the argument of Defendant No.1 that the Plaintiff has no entitlement under Section 15(1) of the HSA, the Plaintiff has sought to rely on the Judgement of a Single Judge of this Court in *Mamta Dinesh Vakil v. Bansi S. Wadhwa (2012) SCC Online Bom 1685* to argue that Section 15(1) has been declared unconstitutional. Mr.Sharma submitted that this argument of the Plaintiff is incorrect:

33. Mr.Sharma submitted that a reference to paragraph 218 of the decision in *Mamta Dinesh Vakil (Supra)* records that the Hon'ble Chief Justice had directed the Court to decide the issues in the suits relating to the Constitutional validity of the relevant provisions with a rider that if they are to be declared as unconstitutional by a Single Judge, the issue is to be

referred to the Division Bench of this Court. Mr.Sharma submitted that the issue of constitutionality in both suits was therefore referred to the Division Bench of this Court.

34. Further, Mr.Sharma submitted that, in the reference made by the learned Single Judge to the Division Bench, the Division Bench held that it would not be necessary to decide the said issue of constitutional validity of Section 15 of the HSA. The net result is that the Division Bench did not give any findings to the effect that Section 15(1) is unconstitutional.

35. Mr.Sharma submitted that, in these circumstances, Section 15(1) of the HSA has not been declared unconstitutional. Mr.Sharma further submitted that the same continues to be applied even by the Hon'ble Supreme Court and, in this context, referred to the following Judgements:

(i) Subhas Chandr Das vs Ganga Prasad (1966 SCC Online SC 103)

(ii) Arunachala Gounder vs. Ponnusamy [(2022) 11 SCC 520]

(iii) Dhani Ram vs. Shiv Singh (2023 SCC Online SC 1263)

(iv) Sachidhanandam vs. E. Vanaja (2023 SCC Online SC 1448)

36. At the hearing held on 9th April 2026, Mr.Sharma referred to the Order of the Hon'ble Supreme Court in **Snidha Mehra vs. Union of India & Ors. (in Writ Petition (Civil) Nos.732 of 2020)**. Mr.Sharma submitted that, by the said Order, the Hon'ble Supreme Court did not entertain the Petition challenging the validity of Section 15(1)(b) of the HSA as the Writ Petition was filed purely as a Public Interest Litigation and left the question open.

37. In these circumstances, Mr.Sharma submitted that Section 15(1) is constitutional and makes it clear that the Plaintiff has no entitlement to the property of the Deceased.

38. Mr.Sharma then relied upon Section 15(2) of the HSA. Mr.Sharma submitted that the Plaintiff had argued inapplicability of Section 15(1) of the HSA but has advanced no submissions on the applicability of Section 15(2) of the HSA, which stands independent of Section 15(1). Mr.Sharma submitted that Section 15(2) provides specific rules for inherited property and the Plaintiff's argument regarding constitutionality of Section 15(1) does not extend to Section 15(2).

39. Mr.Sharma submitted that Section 15(2)(a) provides that the property inherited from the father or mother devolves upon the heirs of the father (if the Deceased had no children). He further submitted that Section 15(2)(b) provides that the property inherited from the husband or father-in-law devolves upon the heirs of the husband (if the Deceased had no children).

40. Mr.Sharma submitted that, therefore, Section 15(2) provides that if the property of a female Hindu dying intestate is not self-acquired, it would revert to the source i.e. the heirs of the father, mother or husband from whom the Deceased acquired the properties.

41. Mr.Sharma submitted that, in the present case, the properties of the Deceased were acquired through her husband. Therefore, Section 15(2) (b) applies here, further negating the Plaintiff's claim.

**SUBMISSIONS OF THE PLAINTIFF ON THE MAINTAINABILITY OF THE
SUIT BY THE PLAINTIFF**

42. Mr.Haresh Jagtiani, the learned Senior Counsel appearing on behalf of the Plaintiff, submitted that there was no merit in fact and in law in Defendant No. 1's submission that the Plaintiff lacked caveatable interest.

43. Mr.Jagtiani submitted that Section 15(1) of the HSA has been held as unconstitutional by a coordinate bench of this Court in **Mamta Dinesh Vakil (Supra)**. He submitted that the said finding has not been overruled by a subsequent Judgement, including the Appeal Court Order disposing of the Appeal therefrom.

44. Further, Mr.Jagtiani submitted that the 207th Report of the Law Commission of India had recommended that Section 15 of the Hindu Succession Act be modified to give precedence to the Hindu female's natal heirs over her husband's heirs.

45. Mr.Jagtiani also submitted that the Hon'ble Supreme Court is seized of a vires challenge to Section 15 of the HSA having taken cognizance of the matter, despite inter se settlement between the litigants, given the importance of the issues involved.

46. Mr.Jagtiani submitted that the upshot of this discussion is that there is a strong possibility that the order of succession set out in Section 15 of the Hindu Succession Act will be declared unconstitutional in as much as it

discriminates on the basis of sex. Mr.Jagtiani submitted that, if so, the Plaintiff will be the sole surviving heir of the Deceased, being her sibling.

47. Next, Mr.Jagtiani referred to the Judgement of this Court in **Induben Jethalal Nagrecha vs. Jagjivandas Shamji Suchak 2024 SCC OnLine Bom 2823** wherein this Court held that a caveatable interest may be a wide one. Further, this Court held that what would be a caveatable interest would depend on the facts of a case and no hard and fast rule can be laid down. Mr.Jagtiani further submitted that the said Judgement laid down that a caveatable interest can be maintained where there is a possibility of inheritance of property by intestate succession.

48. Mr.Jagtiani submitted that the Plaintiff is certainly a potential heir if the Order of succession set out in Section 15 of the HSA is held ultra vires, as has been done by a coordinate bench of this Court in **Mamta Dinesh Vakil (Supra)**.

49. Mr.Jagtiani further submitted that the argument of Defendant No. 1, that the absence of a caveatable interest amounts to non-disclosure of a cause of action, is the exclusive remit of an application under Order VII Rule

11 of the Code of Civil Procedure, 1908 (“CPC”) However, an Application under Order VII Rule 11 of the CPC has not been preferred as yet.

50. Further, Mr.Jagtiani submitted that a plain reading of Rule 397 of the Bombay High Court (Original Side) Rules, 1980 makes it mandatory on the part of the executor propounding a will to serve a citation on the heirs and next of kin of the Deceased, which in this case is the Plaintiff.

51. Mr.Jagtiani further submitted that the phrase 'next of kin' admits of no ambiguity and is advisedly a term of wider import than heir. Mr.Jagtiani submitted that the only person who answers this description is the Plaintiff.

52. Further, Mr.Jagtiani submitted that the language of Section 15 of the HSA makes it clear that the Section only applies to property inherited by the Deceased female Hindu through intestacy. If the property is inherited by 'devise' i.e. a testamentary instrument, or by virtue of possession, Section 15 will have no application. This is because Section 14 contemplates an absolute ownership by a Hindu female, which concept is not captured in Section 15 of the HSA.

53. Mr.Jagtiani submitted that a harmonious construction of Sections 14 and 15 of the HSA must lead to the conclusion that the operation of Section 15 is limited to intestate succession by a Deceased female Hindu and not where she inherits property in the manner contemplated under Section 14.

54. Mr.Jagtiani submitted that, therefore, the Plaintiff undoubtedly has a caveatable interest under Rule 397 of the Bombay High Court (Original Side) Rules as a next of kin of the Deceased.

55. Further, Mr.Jagtiani submitted that there is a real and strong possibility that, assuming that Section 15 is applicable, the provision may be held to be unconstitutional and, therefore, the Plaintiff would be the sole surviving legal heir of the Deceased.

56. Finally, Mr.Jagtiani submitted that the Judgement in **Mamta Dinesh Vakil (Supra)** currently holds the field at least as far as this Court is concerned and this Court ought not to pass a ruling which would disturb the ratio and findings of this Judgement, keeping in mind the doctrine of stare decisis.

**ANALYSIS AND FINDINGS ON MAINTAINABILITY OF THE SUIT BY THE
PLAINTIFF**

57. I have heard the arguments of the learned counsel for the parties. In my view, the question that arises in the present case is that if the Deceased had died intestate, whether the Plaintiff would have an interest in the estate of the Deceased.

58. Sections 15 and 16 of the HSA read as under:

“15. General rules of succession in the case of female Hindus.—(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;
(b) secondly, upon the heirs of the husband;
(c) thirdly, upon the mother and father;
(d) fourthly, upon the heirs of the father; and
(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1),—

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the Deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred in sub-section (1) in the Order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the Deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the Order specified therein, but upon the heirs of the husband.

16. Order of succession and manner of distribution among heirs of a female Hindu.—The Order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestate's property among those heirs shall take place according to the following rules, namely:—

Rule 1.—Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry, and those included in the same entry shall take simultaneously.

Rule 2.—If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3.—The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) of section 15 shall be in the same Order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death.”

59. Section 15(1) provides that the property of a female Hindu dying intestate would devolve:

(a) First, upon sons and daughters (including children of pre-deceased children) and husband.

(b) Secondly, upon the heirs of the husband.

(c) Thirdly, upon the mother and father.

(d) Fourthly, upon the heirs of the father, and

(e) Lastly, upon the heirs of the mother.

60. In the present case, the Deceased had no children, and her husband, Mr. Mohan Sicka, pre-deceased her. The Deceased's husband's sister, Mrs. Shridevi Ruparel, survived her. Therefore, the Deceased's husband's sister, Mrs. Ruparel, falls under entry 'b' of Section 15(1) i.e. heir of the husband of the Deceased.

61. As per Section 16 of the HSA, the heirs in the earlier entries exclude those in the subsequent entries. In these circumstances, the Deceased's husband's sister, Mrs. Shridevi Ruparel, who falls in entry 'b', excludes the Plaintiff who falls in entry 'd' of Section 15(1). This makes it clear that, by virtue of the provisions Section 15(1), the Plaintiff has no entitlement to the Deceased's property at intestacy. For the aforesaid reasons, if the Deceased had died intestate, the Plaintiff would not have an interest in the estate of the Deceased.

62. Faced with this situation, it is the case of the Plaintiff that, in **Mamta Dinesh Vakil (Supra)**, a Single Judge of this Court has held that

Section 15(1) of the HSA is violative of Article 15(1) of the Constitution of India. I am unable to accept this submission. In **Mamta Dinesh Vakil (Supra)**, in paragraph 211, the Court held as under:

“211. The issue relating to constitutional Validity in both the above suits are answered in the affirmative to declare Sections 8(b) (c) and (d) r/w the Class II of the Schedule of the HSA as also Section 15(1) of the HSA unreasonable as discriminatory and, therefore, unconstitutional and ultravires as being violative of Article 15(1) of the Constitution of India.”

63. However, in paragraphs 216, 218 and 219, the Court held as under:

“216. However, until the Constitutional Validity of Section 15(1) is finally determined by the Division Bench of this Court, the estate of the Deceased cannot be depleted.

218. The Honourable Chief Justice directed this Court to decide the issues in the above suits relating to Constitutional Validity of the aforesaid provisions with a rider that if they are to be declared unconstitutional by this Court as a single Judge, the issue be referred to the Division Bench of this Court. The issue of constitutionality in both the above suits, shall, therefore be referred to the Division bench of this Court.

219. The Prothonotary and Senior Master of this Court as also any party may place the Suits before the Honourable Chief Justice for assignment of the suits to a Division Bench of this Court for consideration of the issues relating to the Constitutional Validity.”

64. This clearly shows that the issue of constitutionality of Section 15(1) has to be decided by a Division Bench of this Court and, till then, Section 15(1) cannot be held as unconstitutional.

65. The reference made by the learned Single Judge in **Mamta Dinesh Vakil (Supra)**, to the Division Bench did not result in a finding of Section 15(1) being unconstitutional. In the said Appeal, the Division Bench held as follows:

“ Since in the present case the Will has been executed in favour of the daughter of sister of the deceased, the issue raised in the connected Petition will not apply to the facts of the present case and it will not be necessary to decide the said issue of validity of Section 15 of the Hindu Succession Act. Hence, stand over to 18th March, 2015 at 4:00 p.m.”

66. The result of this is that the Division Bench did not give any findings to the effect that Section 15(1) is unconstitutional.

67. Further, in the following Judgements, which were rendered after the decision of the Single Judge of this Court in **Mamta Dinesh Vakil (Supra)**, the Hon’ble Supreme Court has referred to Section 15(1) of the HSA. The Judgements are as follows:

(i) **Arunachala Gounder vs. Ponnusamy [(2022) 11 SCC 520]**

(ii) **Dhani Ram vs. Shiv Singh (2023 SCC Online SC 1263)**

(iii) **Sachidhanandam vs. E. Vanaja (2023 SCC Online SC 1448)**

68. Further, in an Order dated 19th November 2025 passed by the Hon'ble Supreme Court, in **Snidha Mehra (Supra)**, the Hon'ble Supreme Court held that the Court did not wish to entertain the Petition to consider the validity of Section 15(1)(b) of the HSA as this Writ Petition was filed purely as a Public Interest Litigation. This also shows that Section 15(1) has not been declared unconstitutional.

69. For the aforesaid reasons, by virtue of the provisions of Sections 15 and 16 of the HSA, if the Deceased had died intestate, then the Plaintiff would not have had any interest in the estate of the Deceased. In these

circumstances, the reliefs sought by the Plaintiff in the Interim Application cannot be granted.

70. As far as the submission of Mr.Jagtiani on the 207th Report of the Law Commission of India is concerned, Mr.Jagtiani has relied upon the following extract from the said report.

*"5.6 ... Accordingly, it is urged that Section 15(1) should be modified to ensure that the general Order of succession does not place a woman's husband's heirs above those who belong to her natal family like her father and mother and thereafter her brother and sister. It is contended that when a man dies intestate, his wife's relatives do not even figure in the Order of succession despite the manner in which he may have acquired the property. In view of this, parity is sought in the case of female by applying the same rules as applicable to male's property.
[...]"*

71. It is Mr.Jagtiani's submission that the Law Commission of India had recommended that Section 15 of the HSA be modified to give precedence to the Hindu female's natal heirs over her husband's heirs. In my view, it is true that such a recommendation has been given by the Law Commission. However, the said recommendation has not been implemented by the legislature and Section 15(1) has not been amended to bring about the changes suggested by the Law Commission. In these circumstances, the 207th

Report of the Law Commission of India cannot carry the case of the Plaintiff any further.

72. Further, as stated hereinabove, Mr.Jagtiani has submitted that, if Defendant No.1 wanted to submit that the Plaintiff had no caveatable interest, then Defendant no.1 should have filed an Application under Order VII Rule 11 of the CPC. I am afraid that I am unable to accept this submission of Mr.Jagtiani. In an administrative suit, the burden is on the Plaintiff to show that he / she has an interest in the estate of the Deceased. Similarly, in the Interim Application also, the Plaintiff would have to prima facie show that he has an interest in the estate of the Deceased. If in the Interim Application, the Plaintiff is unable to show prima facie that he/she has an interest in the estate of the Deceased, then the Court would not be inclined to grant any interim reliefs in favour of the Plaintiff.

73. For the aforesaid reasons, in the present case, the burden was on the Plaintiff to show that, if the Deceased died intestate, then the Plaintiff would have an interest in the estate of the Deceased. In my view, the Plaintiff has failed to show any such interest in the estate of the Deceased. In these circumstances, the Plaintiff would not be entitled to any reliefs in the present

Interim Application and it is not at all necessary for Defendant No.1 to file an Application under Order VII Rule 11 of the CPC.

74. The other argument of Mr.Jagtiani is that Rule 397 of the Bombay High Court (Original Side) Rules, 1980 makes it mandatory on the part of the executor propounding the Will to serve a citation on the heirs and next of kin of the Deceased, which in this case is the Plaintiff.

75. In my view, since the Plaintiff would not have any interest in the estate of the Deceased if the Deceased died intestate, the Plaintiff would not fall within the definition of heirs or next of kin in Rule 397. For this reason, this submission of Mr.Jagtiani also cannot be accepted.

76. In the light of my aforesaid findings, I have not dealt with all the other arguments of the Plaintiff and Defendant No.1 and the Judgements cited by them in support thereof as set out in their respective Written Submissions.

77. Further, there is one more reason as to why the Plaintiff cannot get any relief in this Interim Application. Defendant No.1 disclosed the Probate Petition filed by her for Probate of the Will dated 10th April 2023 of

the Deceased in her Affidavit in Reply dated 15th September 2025. The Plaintiff did not file any Caveat in those proceedings. Further, by a Further Additional Affidavit dated 17th March 2026, Defendant No.1 disclosed that, on 7th March 2026, this Court had granted a Probate of the Will dated 10th April 2023 of the Deceased to Defendant No.1. The Probate granted to Defendant No.1 is authenticated evidence of the Will from which Defendant No.1 derives her title and by virtue of which the property of the Deceased vests in her from the death of the Deceased. For these reasons also, the Plaintiff would not be entitled to any of the reliefs sought in the Interim Application.

78. In this context, Mr.Jagtiani submitted that the Plaintiff had no chance to oppose the grant of the Probate as the issue of caveatable interest was involved and that the Plaintiff has filed a Petition for revocation of the Probate. The fact that the Plaintiff did not file a caveat, is, in my view, an admission on the part of the Plaintiff that he does not have a caveatable interest in the estate of the Deceased. As far as the Petition filed for revocation of the Probate is concerned, the same will be decided by the Testamentary Court on its merits. The same does not entitle the Plaintiff to any interim relief in the present Interim Application.

79. Mr.Jagtiani has also submitted that since the Suit was filed before the Probate was obtained, the subsequent event would make no difference to the reliefs being sought in the present Interim Application. Again, I am afraid that I am unable to agree with the said submission of Mr.Jagtiani. As held by me hereinabove, as a result of the granting of the Probate, the property of the Deceased vested in Defendant No.1 from the date of death of the Deceased. Therefore, unless and until the Probate is revoked, the interim reliefs sought in the present Interim Application cannot be granted to the Plaintiff.

80. Next, Mr.Jagtiani submitted that, prior to Defendant No.1 filing the Probate Petition, she had approached the Plaintiff for his Consent Affidavit giving consent to the Probate being granted to Defendant No.1. Mr.Jagtiani stated that this fact has not been mentioned in the Probate Petition. Mr.Jagtiani further submitted that the Probate court had not been informed about the present Administrative Suit. He submitted that this shows that the Probate has been obtained fraudulently and is vitiated by fraud, and therefore the same cannot come in the way of this Court granting reliefs in the present Interim Application. Again, I am unable to accept the submission of Mr.Jagtiani. In my view, just because the Probate Petition does not refer to the fact of consent being sought from the Plaintiff and the

same being refused and does not refer to the present Administrative Suit, the same does not mean that the Probate has been obtained by fraud. These two facts are not essential facts to be pleaded in the Probate Petition.

81. Mr.Jagtiani also referred to paragraph 10 of the Probate Petition and submitted that there had been an amendment to increase the estate to Rs.40 Crores. In my view, the same also does not vitiate the Probate. The Probate Court has granted the Probate as amended.

82. Mr.Jagtiani also referred to paragraph 50 of the Judgement of the Hon'ble Supreme Court in **Asma Lateef and Anr. vs. Shabbir Ahmad and Ors (2024) 4 SCC 696** which reads as under:

“50. Although not directly arising in the present case, we also wish to observe that the question of jurisdiction would assume importance even at the stage a court considers the question of grant of interim relief. Where interim relief is claimed in a suit before a civil court and the party to be affected by grant of such relief, or any other party to the suit, raises a point of maintainability thereof or that it is barred by law and also contends on that basis that interim relief should not be granted, grant of relief in whatever form, if at all, ought to be preceded by formation and recording of at least a prima facie satisfaction that the suit is maintainable or that it is not barred by law. Such a satisfaction resting on appreciation of the averments in the plaint, the application for interim relief and the written objection thereto, as well as the relevant law that is cited in support of the objection, would be a part of the court's reasoning of a prima facie case having been set up for interim relief, that the balance

of convenience is in favour of the grant and non-grant would cause irreparable harm and prejudice. It would be inappropriate for a court to abstain from recording its prima facie satisfaction on the question of maintainability, yet, proceed to grant protection pro tem on the assumption that the question of maintainability has to be decided as a preliminary issue under Order 14 Rule 2 CPC. That could amount to an improper exercise of power. If the court is of the opinion at the stage of hearing the application for interim relief that the suit is barred by law or is otherwise not maintainable, it cannot dismiss it without framing a preliminary issue after the written statement is filed but can most certainly assign such opinion for refusing interim relief. However, if an extraordinary situation arises where it could take time to decide the point of maintainability of the suit and non-grant of protection pro tem pending such decision could lead to irreversible consequences, the court may proceed to make an appropriate Order in the manner indicated above justifying the course of action it adopts. In other words, such an Order may be passed, if at all required, to avoid irreparable harm or injury or undue hardship to the party claiming the relief and/or to ensure that the proceedings are not rendered infructuous by reason of non-interference by the court.”

83. In my view, paragraph 50 supports the view taken by me in this Judgement. In paragraph 50, the Court has stated that where interim relief is claimed in a suit before a civil court and the party to be affected by grant of such relief, or any other party to the suit, raises a point of maintainability thereof, or that it is barred by law, and also contends on that basis that interim relief should not be granted, grant of relief in whatever form, if at all, ought to be preceded by formation and recording of at least a prima facie satisfaction that the suit is maintainable or that it is not barred by law. The Hon’ble Supreme Court has further held that it would be inappropriate for a

court to abstain from recording its prima facie satisfaction on the question of maintainability.

84. Applying these principles to the present case, since on the basis of Section 15(1) of the HSA, I have come to the conclusion that, even if the Deceased had died intestate, the Plaintiff would not have any interest in the estate of the Deceased, the same does entitle the Plaintiff to interim relief.

85. Further, in paragraph 50 of the said Judgement, it has been held that if an extraordinary situation arises where it could take time to decide the point of maintainability of the suit and non-grant of protection pro tem pending such decision could lead to irreversible consequences, the Court may proceed to make an appropriate order in the manner indicated above justifying the course of action it adopts. In other words, such an order may be passed, if at all required, to avoid irreparable harm or injury or undue hardship to the party claiming the relief and/or to ensure that the proceedings are not rendered infructuous by reason of non-interference by the court. Since, I have decided the issue of maintainability, the aforesaid findings of the Hon'ble Supreme Court would not be applicable to the present case. In these circumstances, the Judgement in the case of **Asma Lateef and Anr. (Supra)**, does not carry the case of the Plaintiff any further.

Order

86. In the light of the aforesaid discussion and for all the aforesaid reasons, the following Order is passed:

- a. Interim Application (L) No.26854 of 2025 is rejected.
- b. In the facts and circumstances of the case, there will be no Order as to costs.

[FIRDOSH P. POONIWALLA, J.]