



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

ORIGINATING SUMMONS (LODGING) NO. 11394 OF 2025

Shireen Jamsetjee Jejeebhoy & Ors.

...Plaintiffs

Versus

Jamsheed Mehli Poncha & Ors.

...Defendants

- Mr. Aspi Chinoy Senior Counsel a/w Mr. Karl F. Tamboly, Mr. Anuj Desai, Mr. J.N. Mistry and Ms. Vijaya D. Rao i/b Mulla & Mulla & Craig Blunt & Caroe, for the Plaintiffs.
- Mr. Aditya Mehta a/w Mr. Rohan Dakshini and Ms. Shweta Jaydev i/b M/s. Rashmikant and Partners, for Defendant Nos.1 to 5.
- Mr. Jai Munim i/b Bachubhai Munim & Co., for Defendant No.6.
- Mr. P.J. Pardiwalla, Senior Counsel i/b Mr. Atul K. Jasnani, for Defendant No.7.

CORAM : MANISH PITALE, J.
RESERVED ON : 05th MAY 2025.
PRONOUNCED ON : 16th JUNE 2025.
(In Chamber)

ORDER:

1. These proceedings have been initiated as Originating Summons under Rule 238 of the Bombay High Court (Original Side) Rules, 1980, framing three questions for determination by this Court. The questions have arisen in the context of the Will and the Codicils executed by Ratan Naval Tata (hereinafter referred to as “the deceased”). The plaintiffs are executors and executrices named in the Will. The plaintiff Nos.1 and 2 are beneficiaries and defendant Nos.1 to 7 are also beneficiaries. Defendant Nos.1 to 5 are trustees of the Ratan Tata Endowment Foundation and Ratan Tata Endowment Trust.

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2. Before referring to the three questions framed for consideration of this Court in these Originating Summons, it would be appropriate to briefly referred to the chronology of events leading to filing of these Originating Summons.

3. The deceased, being a globally well-known industrialist and businessman, passed way on 09th October 2024. He had executed a Will dated 23rd February 2022, and thereafter, he executed four Codicils dated 06th April 2022, 30th September 2022, 24th March 2023 and 22nd December 2023.

4. The plaintiffs being the executors have applied for probate of the said Will and Codicils. Although there is no dispute amongst the parties, these Originating Summons have been filed for determination of questions that arise in the context of the effect of the fourth Codicil on the Will and in that context, as to the manner in which the Will has to be read alongwith the four Codicils.

5. The learned counsel for the parties submitted that clause 1 of the fourth Codicil while deleting paragraph No.13 of the Will and substituting the same with the paragraph specified in clause 1 of the said Codicil, not only referred to rest and residue of the estate of the deceased, but also specifically referred to the listed and unlisted shares of the deceased not specifically

covered elsewhere in the Will. In the original paragraph No.13A of the Will, there was no reference to listed and unlisted shares of the deceased and therefore, it was submitted that a question arises as to whether the listed and unlisted shares of companies held by the deceased not specifically covered elsewhere in the Will would stand bequeathed as per clauses 4 and 8 of the Will or as per substituted paragraph No.13 of the Will in terms of the fourth Codicil.

6. It was further brought to the notice of this Court that while paragraph No.13 of the Will consisted of clauses A to D, the language of substituted paragraph No.13 as per fourth Codicil indicated that only clause A of paragraph No.13 was substituted. This was because the substituted paragraph No.13 as per the fourth Codicil does not deal with the provisions earlier made in clauses B to D of paragraph No.13 of the Will. In that context, it was submitted that it appeared that only paragraph No.13(A) stood replaced by clause 1 of the fourth Codicil. It was submitted that therefore, this Court may consider answering the questions framed in the present Originating Summons accordingly.

7. With regard to the effect of a Codicil on a Will, reference was made to judgment of the Supreme Court in the case of **Bajrang Factory Ltd. and Another Vs. University of Calcutta and Others**¹. As regards the

¹ (2007) 7 SCC 183

jurisdiction of the Court considering Originating Summons as per the Bombay High Court (Original Side) Rules, 1980, reliance was placed on judgment of Division Bench of this Court in the case of **Charu K. Mehta Vs. Lilavati Kirtilal Mehta Medical Trust**².

8. Before considering the submissions made before this Court in the backdrop of the fact that there is no dispute between the parties, it would be appropriate to first refer to the jurisdiction exercised by this Court under Rule 238 of the Bombay High Court (Original Side) Rules, 1980, while considering such Originating Summons. In the case of ***Charu K. Mehta Vs. Lilavati Kirtilal Mehta Medical Trust (supra)***, the Division Bench of this Court elaborately discussed the said aspect of the matter by specifically referring to Rules 238 to 258 of the Bombay High Court (Original Side) Rules, 1980. After referring to earlier judgments in the context of the said Rules, it was reiterated that the Originating Summons before the Judge in chambers contemplated a summary procedure and once the Originating Summons are accepted the plaint is numbered as Ordinary Suit before the Court. It was held that the Originating Summons is an appropriate remedy where a question of interpretation arises that does not require appreciation of evidence or determination of disputed complex factual matrix. It was further laid down that if the Judge considering the matter finds that the relief sought cannot be

2 2013(3) Mh.L.J.269

conveniently and properly considered in an Originating Summons, the same may be dismissed and the parties be referred to a suit in the ordinary course.

9. Thus, it is clear that the Originating Summons are intended to cover cases involving pure questions of construction of a document where there are no disputed questions on facts. In the present case, the parties have not raised any dispute on facts and the questions framed for consideration pertain purely to interpretation of the aforesaid Will and Codicils, particularly the effect of the fourth Codicil. Hence, these Originating Summons are accepted and entertained, as a consequence it is directed that the same shall be numbered as an Ordinary Suit.

10. The questions framed for consideration in these Originating Summons are as follows :

“a) *Whether the listed and unlisted shares of companies held by the deceased Ratan Naval Tata (other than ordinary and preference shares of Tata Sons Ltd. Specially dealt with in Clause 5 of the Will dated 23rd February 2022 as substituted by the 1st Codicil dated 6th April 2022) including shares in RNT Associates Pvt. Ltd held by the deceased Ratan Naval Tata stand bequeathed as per the terms of Clauses 4 and 8 of the said Will to Plaintiff Nos.1 and 2 and Defendant No.7 ; OR whether the same constitute a part of the deceased’s residual estate and stand bequeathed to the Ratan Tata Endowment Foundation*

and Ratan Tata Endowment Trust as per clause 13 of the said Will as substituted by the 4th Codicil dated 22nd December, 2023.

- b) Whether clause 13 (as set out in para 1 of the Fourth Codicil dated 22nd December, 2023) substitutes the entire clause 13 of the Will dated 23rd February 2022, or whether only clause 13A thereof stands substituted and clauses 13B, C and D of the said Will (unamended) continue to remain in force and effect.*
- c) What provision should be made for the Plaintiffs' costs and incidental to this Originating Summons?*
- d) To what further and other reliefs are the Plaintiffs entitled to, in the facts and circumstances of the case?"*

11. In order to determine the aforesaid questions, it is necessary to refer to the relevant clauses of the Will dated 23rd February 2022, the first Codicil dated 06th April 2022 and the Fourth Codicil dated 22nd December 2023.

12. Clauses 4, 5, 8 and 13 of the Will dated 23rd February 2022, read as follows :

"4. FINANCIAL PROPERTIES :

My movable properties, assets and investments comprise of inter alia, shares (including Ordinary Shares of Tata Sons Limited and Preference Shares of Tata Sons Limited), Debentures, Units of Unit Trust of India and other funds, other similar financial instruments, Bank balances, Fixed

Deposits (either in Banks or Companies), amounts in National Savings Scheme (NSS) lying in Post Office, amounts in Public Provident Fund (PPF) lying with Central Bank of India, TV Sets, music systems, furniture and fixtures, painting, object of art, motorcars, apparels and such further and other amounts whatsoever and wheresoever invested and in whatever form the same may be and in whatever capacity I am entitled to claim or demand and that I may die possessed of at the time of my death (hereinafter called Financial Properties). Some of these investments stand in my name alone and for some such investments, I have made nominations. I say that the nominations are for the sake of convenience only and that all such investments whether in my individual name without nomination or with nomination shall be dealt with as per the provisions of this Will. My Financial Properties also include my shares in and my right, title and interest in any form whatsoever in RNT Associates Private Limited, Mumbai. Out of these Financial Properties, I make the following bequests in paragraphs 5, 6, 7 and 8, making it clear that first the bequests in paragraphs 5, 6 and 7 should be made and thereafter from the remaining Financial Properties, and other bequests in paragraph 8 should be made.

5. CHARITY:

I desire that my Ordinary Shares of Tata Sons Private Limited and my Preference Shares of Tata Sons Private Limited, if any, be always held in the Trust for Public

Charitable purposes and that the income therefrom be always distributed for public charitable purposes in the manner described hereafter. Accordingly, I give, devise and bequeath the above share to a Section 8 Company registered under the Companies Act, 2013 named "RATAN TATA FOUNDATION" which is already set up. I desire that Mr. Darius Khambatta, Ms. Deanna Jeejeebhoy, Ms. Shireen Jeejeebhoy and Mr. Mehil Mistry should be the Directors of this Section 8 Company. I hereby direct the Executors & Trustees of this my Last Will and to the Directors of RATAN TATA FOUNDATION that they cannot sell or transfer the shares of Tata Sons Private Limited in any manner except to an existing shareholder of Tata Sons Private Limited approved by the Board of Directors of Tata Sons Private Limited. The income from these shares and Funds should be distributed for the following public charitable purposes in accordance with the provisions of the objects of "RATAN TATA FOUNDATION". The income of the Foundation shall be utilized for public charitable purposes in a fair, equitable and reasonable manner every year by distributing to bodies, institutions etc. named by me and failing that, towards the following distributions :

- a) To schools, or colleges or vocational institutions for education of deserving students from very poor families or from orphanages*
- b) For direct scholarships to deserving student from poor or destitute families with no other means of*

assistance.

c) Donations to orphanages and/or old age homes for the poor or for the support and well being of poor and homeless children.

d) To individuals in dire and urgent need of funds arising out of extraordinary circumstances or medical needs.

e) To veterinary hospitals and private organizations or individuals looking after the welfare of stray and abandoned dogs.

8. OTHER BEQUESTS :

(A) I have bequeathed Ordinary Shares and Preference Shares of Tata Sons Limited in paragraph 5 above. I give, devise and bequeath the aforesaid remaining Financial Properties referred to in paragraph 4 in the following manner and to the following persons in the following proportions :

- | | | |
|--|---|---|
| <p>a) to my sisters, Ms. Shireen Jejeebhoy and Ms. Deanna Jejeebhoy, and if any one of them predeceases me or the other, then to the survivor.</p> | } | <p>1/3rd (One third)
to each</p> |
| <p>b) to Mr. Mohini M. Dutta</p> | | <p>1/3rd (one third)</p> |

However, if any of them chooses to take over any of my other assets like car, painting etc, its value to be determined by three values (and taken out of public auction) and such value will be part of each one's 1/3rd share respectively.

(B) If both, Ms Shireen Jejeebhoy and M Deanna

Jejeebhoy predecease me, then their above share should go to the Estate for distribution to RNT FOUNDATION under paragraph 5 and form part of Trust Fund, unless any of them has surviving child or children, the same should be given to such child/children.

- (C) *If Mr. Mohini M. Dutta predeceases me, then his above share should be given to his children, namely, Priyanka and Nayantara in equal proportions.*

13. RESIDUARY ESTATE ETC. :

A. *I direct that the rest and residue of my estate, whatever the same may be and wherever the same may be found, including any property to which I may be entitled but which I have not received during my lifetime, should be distributed equally between Charity referred to in paragraph 5 above and the beneficiaries listed in paragraph 8 above.*

B. *My Executors shall be at liberty to keep my estate in the state of investment in which the same shall be at my death for a period not exceeding two years from the date on which the probate is obtained, as they may in their absolute discretion think fit without being answerable or accountable to any party for any loss caused thereby.*

C. *I hereby devise and bequeath my land in Seychelles to RNT Associates Pte Ltd – Singapore.*

D. *It is my wish that the interest of Mr. R. Venkatraman and Mr. Patrick McGoldrick in RNT Associates Private Ltd, India and in RNT Associates Pte*

Ltd – Singapore be protected as shareholders of both companies and be allowed to continue as the shareholders of both those companies as long as they desire to be associates.”

13. Clause 1 of the first Codicil dated 06th April 2022, reads as follows :

“1. *Delete the existing paragraph 5 of my Will and in its place substitute the following paragraph :*

“5. *I am involved in the process of incorporating a taxable company in New Delhi under the provisions of Section 8 of the Companies Act, 2013 which is intended to be known as “**Ratan Tata Endowment Foundation**” or alternatively “**R. N. Tata Endowment Foundation**”. I have signed the No Objection letters for obtaining one or the other of the aforesaid names for the company from the Office of the Registrar of Companies, New Delhi. I am also involved in the process of establishing a taxable Public Charitable Trust of which I am to be the Settlor and it will be based in New Delhi and is intended to be known as the “**Ratan Tata Endowment Trust**”. I am also involved in the process of establishing a “for profit” private limited company in New Delhi. It is through these three entities that I desire to carry out my charitable intent.*

a) *I give devise and bequeath my entire shareholding of equity shares in Tata Sons Pvt. Ltd. To the aforesaid entities in the following proportions :*

- i) *The Sec. 8 company intended to be known as Ratan Tata Endowment Foundation or R. N. Tata Endowment Foundation60%*
- ii) *The taxable Public Charitable Trust intended to be known as Ratan Tata Endowment Trust20% &*
- iii) *The for profit private limited company to be incorporated in New Delhi.... ..20%*
- b) *I give devise and bequeath my entire shareholding of preference shares in Tata Sons Pvt. Ltd. To the Sec. 8 company intended to be known as the Ratan Tata Endowment Foundation or R. N. Tata Endowment Foundation.*
- (c) *In the event that the aforesaid Section 8 company intended to be known Ratan Tata Endowment Foundation or R. N. Tata Endowment Foundation or the taxable public charitable trust based in New Delhi intended to be known as Ratan Tata Endowment Trust or the for profit private limited company to be incorporated in New Delhi or any one or more of them are/is for any reason not formed within a period of one year after my death, then I give, devise and bequeath my shareholding of equity and preference in Tata Sons Pvt. Ltd. / my remaining undistributed shareholding, of equity and preference shares in Tata Sons Pvt. Ltd. Equally to the following six taxable charitable trusts viz. Tata Social Welfare Trust, Tata Education Trust, R.D. Tata Trust, Sarvajanik Seva Trust, Jamsetji Tata Trust and Navjbai Ratan Tata Trust;*
- d) *The Directors / Trustees of the aforesaid entities shall not*

donate or transfer the whole or part of the corpus of my bequest except to such Trusts created and established by the Founder of the Tata group Mr. Jamsetji Tata, his sons Sir Dorabji Tata and Sir Ratan Tata and other members of the Tata family and other existing/ associates Tata Trusts or those set up hereafter and Section 8 Companies set up or to be set up hereafter by or with the assistance of the Tata Trusts or existing Section 8 Companies.”

14. By Clause 1 of the fourth Codicil dated 22nd December 2023, paragraph No.13 of the Will dated 23rd February 2022, was substituted. Clause 1 of the fourth Codicil dated 22nd December 2023, reads as follows :

“1. In my Will delete paragraph 13 and in its place substitute the following :-

“13. I give, devise and bequeath the rest and residue of my estate, both movable or immovable, whatsoever and wheresoever situate including my listed and unlisted shares and including property or assets to which I am entitled but not received during my lifetime and not specifically covered elsewhere in this my Will, to the Ratan Tata Endowment Foundation and Ratan Tata Endowment Trust in equal shares absolutely.”

15. It is relevant to note here that Section 2(b) of the Indian Succession Act, 1925, defines Codicil to mean an instrument made in relation to a Will, and explaining, altering or adding to its dispositions, and shall be

deemed to form part of the Will. In the case of *Bajrang Factory Ltd. And Another Vs. University of Calcutta and Others (supra)*, the Supreme Court referred to the said definition and after considering various judgments pertaining to the principles of construction of Will and Codicils observed that the Codicil would prevail over the Will. This was specifically observed after noting the facts of the said case where a particular clause of the Codicil was held to prevail over the Will. Therefore, it is clear that the Codicil while altering or adding to the dispositions under the Will is deemed to be forming part of the Will and the original Will has to be considered with the alterations introduced by the Codicils.

16. The questions framed in these proceedings, quoted hereinabove, will have to be answered by taking into consideration the said position of law. A perusal of clauses 4 and 8 of the Will dated 23rd February 2022, shows that clause 4 defines financial properties, which include shares. Clause 8 pertaining to other bequests specifically referred to financial properties defined in paragraph No.4 other than ordinary shares and preference shares of Tata Sons Limited, which stood bequeathed as per paragraph No.5 of the Will. The above quoted paragraph No.8 of the Will bequeathed such remaining financial properties, including shares other than ordinary shares and preference shares of Tata Sons Limited, in a specific manner in favour of plaintiff Nos.1 and 2, as also defendant No.7.

17. Paragraph No.13 of the Will pertains to residuary estate etc. and it consists of clauses A to D, which have been quoted hereinabove. Clause A of paragraph No.13 of the Will directs that the rest and residue of the estate of the deceased is to be distributed equally between charity referred to in paragraph No.5 and the beneficiaries listed in paragraph No.8 of the Will. It is significant to note that clause A of paragraph No.13 of the Will makes no reference to the listed and unlisted shares of the deceased, not specifically covered elsewhere in the Will. Since financial properties defined in paragraph No.4 of the Will include shares, absence of reference to listed and unlisted shares of the deceased not specifically covered elsewhere in the Will indicates that such shares would stand bequeathed to the beneficiaries specifically mentioned in paragraph No.8 of the Will.

18. But, clause 1 of the fourth Codicil substitutes paragraph No.13 of the Will, making no reference to the beneficiaries listed in paragraph No.8 of the Will and additionally includes listed and unlisted shares of the deceased not specifically covered elsewhere in the Will in the rest and residue of the estate of the deceased.

19. It is relevant to note that if the substituted paragraph No.13 as per clause 1 of the fourth Codicil is applied in the context of listed and unlisted shares, paragraph No.8 of the Will already having dealt with the

same, would lead to a situation where no listed and unlisted shares of the deceased would be available for the Ratan Tata Endowment Foundation and Ratan Tata Endowment Trust. Considering the effect of clause 1 of the first Codicil, which substituted paragraph No.5 of the Will and the intention and the thrust of the deceased towards making available large part of his estate for charitable purposes to the Ratan Tata Endowment Foundation and Ratan Tata Endowment Trust, question A framed in the present proceedings will have to be answered with this in mind.

20. Since the Codicil will prevail and the Will has to be considered with such alteration/addition made by the Codicil, question A framed in these proceedings is answered by holding that listed and unlisted shares of the deceased not specifically covered elsewhere in the Will form part of the rest and residue of his estate and stand bequeathed to Ratan Tata Endowment Foundation and Ratan Tata Endowment Trust in equal shares absolutely.

21. As regards question B, this Court finds that although clause 1 of the fourth Codicil states that paragraph No.13 of the Will stands deleted and it is substituted in the manner specified in the said clause, this Court finds that the language of the substituted paragraph No.13 replaces the language of clause A of paragraph No.13 of the Will. Clauses B and D of the Will are in the form of directions and show the desire of the deceased, while clause C

thereof indicates a bequeath of land in Seychelles to RNT Associates Pte Ltd – Singapore. Clauses B to D of paragraph No.13 of the Will do indicate the mind of the deceased as regards specific directions and desires, while clause A thereof deals with the rest and residue of the estate of the deceased. Viewed from this angle, this Court finds that clause 1 of the fourth Codicil, while substituting paragraph No.13, in real terms, appears to be substituting clause A of paragraph No.13. The intention of the deceased was to replace clause A of paragraph No.13 of the Will, in the light of paragraph No.5 of the Will being earlier substituted by clause 1 of the first Codicil, apart from including listed and unlisted shares forming part of the rest and residue of the estate of the deceased. Hence, question B is answered by holding that clause 1 of the fourth Codicil substitutes only clause A of paragraph No.13 of the Will, while clauses B, C and D of paragraph No.13 of the Will continue to remain in force.

22. Question C is answered by directing that the plaintiffs would be entitled to costs for the present proceedings from the estate of the deceased. Question D is answered in terms of the findings rendered on questions A and B.

23. The present proceedings stand disposed of in above terms. Pending applications, if any, also stand disposed of.

(MANISH PITALE, J.)