

VPH

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

APPEAL No. 93 OF 2015
IN
MISCELLANEOUS PETITION No. 95 OF 2013
IN
TESTAMENTARY PETITION No. 1135 OF 2010

Balu Popat More ... Appellant
Vs.
Mrs. Manda Bhaskar Gaikwad ... Respondent

Mr. K. R. Iyengar, for the Appellant.
Mr. S. V. Sadavarte, for Respondent.

CORAM : V. M. KANADE, &
Dr. SHALINI PHANSALKAR-JOSHI, JJ.

DATE : OCTOBER 1, 2015

PC.

1. Heard the learned counsel appearing on behalf of the Appellant and the Respondent. The Appellant is aggrieved by the order passed by the learned Single Judge, dated 15th December, 2014, dismissing his petition for revocation. Learned Single Judge has observed that the Appellant was not in a position to satisfy the Court as to how the Applicant was related to the deceased and on that count, the petition was dismissed.

2. In our view, the learned Single ought to have examined the statutory provisions to see whether the Appellant has locus to file petition for revocation of letters of administration. Perusal of Section 263 of the Indian Succession Act, 1925 reflects the reasons for revocation can be allowed. Section 263 of the said Act reads as under:

“263. Revocation or annulment for just cause. - The grant of probate or letters of administration may be revoked or annulled for just cause.

Explanation.- Just cause shall be deemed to exist where-

- (a) the proceedings to obtain the grant were defective in substance; or
- (b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or
- (c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or
- (d) the grant has become useless and inoperative through circumstances; or
- (e) the person to whom the grant was made has

willfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.”

3. Perusal of the section discloses that if it is shown to the Court that the grant of probate or letters of administration may be revoked or annulled for just cause, the application can be allowed. The Court, therefore, has not taken into consideration this aspect, and therefore, we are of the view that aspect as to whether the petitioner (Appellant herein) is entitled to file application for revocation, has to be considered after examining the statutory provisions and judgments, if any, of the Apex Court and the High Court. The impugned order is, therefore, set aside and the matter is remanded back to the learned Single for examining the statutory provisions and the judgments, if any, of the Apex court and the High Court, on the above aspect. All contentions raised by both parties are kept open.

Sd/-

[Dr. SHALINI PHANSALKAR-JOSHI, J.]

Sd/-

[V. M. KANADE, J.]

Vinayak Halemath

CERTIFICATE

Certified to be true and correct copy of the original
signed Order.