

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

APPEAL NO.308 OF 2015
IN
REVOCATION PETITION NO.130 OF 2013
IN
TESTAMENTARY PETITION NO.673 OF 2008

Santosh Prabhakar Salvi & Anr.		Appellants
V/s.		
Jamunabai Raghu Kachare		Respondent

Mr. Shailesh Shah, Sr. Counsel, a/w. Ms. Saloni Ghule, i/by Mr. H.V. Kode, for the Appellants.

Mr. Ranjit Thorat, Sr. Counsel, a/w. Mr. Pradeep Thorat, i/by Mr. J.S. Suryawanshi, for the Respondent.

CORAM : V.M. KANADE &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 7TH SEPTEMBER, 2015.

P.C. :

1. Heard learned counsel for the parties.
2. The Appellants are aggrieved by the order dated 15th December, 2014, thereby setting aside probate to a Will dated 4th April, 1998 and allowing the Petition for revocation filed by the Respondent herein.

3. The Respondent herein is a daughter of a sister of a Hindu widow, who was not served with the citation. It is an admitted position that the Hindu widow did not leave any other Class-I heir. The learned Single Judge, therefore, was of the view that service of citation was necessary and this being not done, the Probate, which was granted, was set aside. The learned senior counsel appearing on behalf of the Appellants submitted that the Appellants had also raised an issue regarding the actual identity of the Respondent. It is submitted that it was their case that she was not the sister of the widow, who has expired. It is submitted that this issue was not considered by the learned Single Judge.

4. In our view, there is no infirmity in the order passed by the learned Single Judge. The issue as to whether the Respondent was, in fact, the daughter of the Hindu widow's sister, will have to be decided in the Probate Petition and not in the Petition for revocation. Hence, we are not inclined to interfere with the said order. The Appeal is dismissed.

5. All contentions of both the parties are kept open, including the question as to whether the Respondent is the sister's daughter of the Hindu widow.

6. Order of status-quo is vacated forthwith.

7. Liberty is granted to the Appellants to apply for ad-interim relief, if he so desires.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[V.M. KANADE, J.]

CERTIFICATE

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