

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO. 31 OF 2015
IN
TESTAMENTARY PETITION NO. 429 OF 2005**

Kanchanben Parmanand Shah	...Petitioner
<i>Versus</i>	
Mayur Shah & Sundershana Alias Kalpana Shah	...Respondents

Mr. Nigel Quraishy, with Mr. Garfield Mendonsa, for the Petitioner.
Mr. Mayur Shah, Respondent No. 1, present in person.
Smt. Sudershana Alias Kalpana Shah, Respondent No. 2, present in person.

CORAM: G.S. PATEL, J
DATED: 7th August 2015

PC:-

1. Heard. The Respondents appear in person. The Petition seeks revocation of a succession certificate issued to the Respondents in respect of the property and estates of one Girishkumar Parmanand Shah. The revocation Petitioner is the mother of the deceased. The 1st Respondent is his son. The 2nd Respondent claims to be the widow of the deceased. The revocation

Petitioner disputes this. She says that the marriage between the deceased and the 2nd Respondent was annulled.

2. This, however, makes no difference as regards paternity of Respondent No. 1. That is a matter that stands concluded *inter alia* by an order of a learned Single Judge of this Court (Smt. R.S. Dalvi, J.) passed on 11th July 2008. The present revocation Petitioner was before the Court on that date and was represented through her Constituted Attorney, the deceased's sister, who represents her even today. The present revocation Petitioner was heard. The order of 11th July 2008 make a specific reference to a DNA test carried out on Respondent No. 1. It notes in paragraph 8 that that DNA report in terms found that it was not possible to conclude that the deceased was not the biological father of the 1st Respondent by the 2nd Respondent. Thus, it was held in that order that the deceased and the 2nd Respondent were the parents of the 1st Respondent.

3. By another order dated 8th May 2009, the share of the mother of the deceased was directed to be justified and an amount of Rs. 80,865/- deposited in the Registry. That was, in fact, done. Thereafter, an application was made for modification of that order. That application for modification was disposed of by Mr. Justice R.D. Dhanuka on 8th July 2013, by consent. It appears that the present revocation Petitioner was not represented in Court on that date, though this is controverted by the present Respondents. By that clarificatory order, the present 1st Respondent stated that the name of the 2nd Respondent would be added to the Heirship Certificate while at the same time maintaining that the present revocation Petitioner's interest in the sum of Rs. 80,865/- would

continue to be deposited. The Respondents contend that the present revocation Petitioner was present before the Court on 8th July 2013 and then again on 10th July 2013 at the time of an order for speaking to the minutes.

4. I am unable to accept the case made by the present revocation Petitioner that the succession certificate was obtained by fraud or by suppression. It is also not possible to accept the submission that the order passed on 8th July 2013 is liable to be recalled. The interest of the revocation Petitioner has been adequately protected not only by the order of 8th July 2013, but also by the previous order passed by Dr. Justice D.Y. Chandrachud, as he then was, on 8th May 2009. If there is still any remaining doubt, it is clarified that the reference in the order of 8th July 2013 to the deposit of Rs. 80,865/- is a reference to the amount in the name of the deceased's mother, i.e., the present revocation Petitioner.

5. The entire Petition is based on a complete misreading of the order of 8th July 2013. This is clarified by the 1st Respondent, who states that the amount claimed in prayer (L) of the Miscellaneous Petition is already deposited in this Court in the name of the present revocation Petitioner, Kanchanben Parmanand Shah. That fully protects her interest. If there was any controversy about the effect of the order of 8th July 2013, that is clarified and resolved by accepting the present statement as an undertaking to the Court.

6. The present Miscellaneous Petition is disposed of in these terms with no order as to costs.

(G. S. PATEL, J.)