

Sharayu.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
CHAMBER SUMMONS NO. 64 OF 2015
IN
TESTAMENTARY SUIT NO. 100 OF 1998**

Mr. Kirit Ramji Thakkar	...Applicant
<i>In the matter between</i>	
Smt. Jyoti Nitin Thakkar	...Plaintiff
<i>And</i>	
Mr. Pravinchandra Ramji Thakkar & Anr.	...Defendants

Mr. R.R. Varma, *for the Plaintiff.*

CORAM: G.S. PATEL, J
DATED: 23rd June 2015

PC:-

1. The Applicant is one of the heirs of the deceased Smt. Manekbai w/o Ramji Vishram Thakkar. Smt. Manekbai died in Mumbai on 26th September 1997 and is said to have left a Will dated 12th January 1997. The present Applicant, Mr. Kirit Ramji Thakkar, is mentioned in paragraph 9 of the Petition itself as one of her heirs. He was required to be cited. He is also a legatee under the will.

2. The original Probate Petition was filed by one Smt. Jyoti Nitin Thakkar, also one of the heirs of the deceased and the present Applicant's sister, seeking Probate to that Will. Jyoti was named as an executor in the Will in question. It appears that one of the heirs, , Pravin Ramji Thakkar, filed a Caveat and the Petition was renumbered as Suit.

3. According to the Applicant, he was never served with the citation, although this was required. It seems that on 8th December 2009 the Suit itself was dismissed for default (Anoop V. Mohta, J.). That order was corrected on 19th January 2010. Liberty was granted to the Plaintiff (the original Probate Petitioner, Jyoti) to file an appropriate application for restoration of the matter. It appears that no application of that kind was ever made. The result is that the Probate Petition itself stood disposed of. However, the original Will No. 308 of 1998 was lodged with this Court, where it has remained since.

4. Now the present Applicant, one of the heirs of the deceased and also a legatee and beneficiary under the Will, seeks to propound that very Will. He is clearly interested in having the Will proved. A Probate Petition for that purpose was earlier filed. For no fault of the applicant, that Probate Petition came to be dismissed for default and the Probate Petitioner took no steps to have it restored. The present Applicant is undoubtedly entitled to demand that the Will be proved in its solemn form. I do not see why he should be driven to filing a separate Petition for Letters of Administration with Will annexed. It may be possible for the present Applicant to seek, on making out an appropriate case, removal of the Probate Petitioner

and for conversion of the Probate Petition into one for Letters of Administration with Will annexed.

5. Hence, the following order.

- (a) The Order dated 8th December 2009 is recalled.
- (b) Testamentary Suit No. 100 of 1998 and Testamentary Petition No. 861 of 1998 are both restored to file.
- (c) Registry has also Advocates for the Applicant will give notice, enclosing or attaching an ordinary copy of this order, to the Plaintiff, the Defendant as also to their respective Advocates.

6. List the matter for further directions on 22nd July 2015.

7. Chamber Summons is disposed of in these terms with no order as to costs.

(G. S. PATEL, J.)