

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

TRUST PETITION NO.4 OF 2014

Indukumar Ladhobhai Momaya & Ors.	...	Petitioners
Vs.		
Jayantilal Ladhobhai Momaya & Ors.	...	Respondents
Bharat H Mehta, Adv. for petitioner.		
Mr. Firoz Bharucha, Adv. i/b. Niranjan Jagtap & Co.for respondent		
Nos.1 and 2.		

CORAM : MRS. ROSHAN DALVI, J.

DATE : 12th January, 2015.

P.C. :

1. The dispute between the parties in the trust petition was almost entirely considered in the order dated 17th December, 2014 which need not be repeated. The interpretation of the trust deed which was called for was made. The case of the respondent was that a will was also executed by father of respondent No.1 reiterating the trust created by him and that the petitioner no.1 was given another bequest under the will. Copy of the registered will admitted by the parties is produced for the Court's inspection. Clause 5 of the will on page 1 itself shows the declaration of testator reiterating the settlement deed made by him on 21st January, 1944. It is declared that under the settlement deed the settlor has given the income of the Ghatkopar property, which is the suit property, to his 4 sons as stated therein. The will was executed after the birth of petitioner. Despite that the settlement in favour of the four sons only is declared.

2. As stated by the petitioner the will also shows at page 3 a separate bequest made in favour of respondent No.1. This bequest is of an agricultural land of about 18 Bighas given absolutely to the son

of testator Indukumar, petitioner No.1.

3. Further petitioner No.1 has been bequeathed certain movable properties absolutely being cash, silver ware, brass and copper ware, furniture, clothes and household goods.

4. Consequently it is clearly seen that the beneficiaries under the settlement are only the four sons of the settlor / testator. Petitioner No.1 is not the beneficiary. His heirs, therefore, cannot be beneficiaries. Consequently the petitioners have no legal right to maintain the petition.

5. It is the case of the petitioner that he has not received any of these bequests. The petitioner No.1 is stated to have been 2 years old when his father expired. Respondent Nos.1 and 2 then were 7 and 5 years of age respectively. Consequently the minors' property was being managed by their mother, as their natural and legal guardian at the relevant time. The petitioners have not challenged any act of their mother in not handing over the bequests of immovable as well as movable properties made to petitioner No.1 by the testator. In any event the claim of the petitioners in the settlement deed alone is required to be seen.

6. Hence Trust Petition is dismissed. However, petitioner No.1 shall be entitled to take recourse of law in accordance with law in respect of the bequest made to the petitioner as feasible.

(ROSHAN DALVI, J.)