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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO. 71 OF 2012
IN
TESTAMENTARY PETITION NO. 470 OF 2003**

Sharda Santosh Mane (Sharda alias Shalan ...Petitioners
Jaywant Pandhare) & Anr.

Versus

Dhurpa Jaywant Pandhare & Anr. ...Respondents

Mr. B.S. Nayak, *for the Petitioners.*

CORAM: G.S. PATEL, J
DATED: 8th June 2015

PC:-

1. The Respondents are absent though served. The record indicates that on 7th April 2014, over a year ago, notice was directed to be issued to the Respondents. At that time, ad-interim reliefs in terms of prayer clause (g) were granted. The record also indicates that a notice was issued on 23rd April 2014 to the Respondents. Further, an affidavit of service dated 26th August 2014 is also on file.

2. The petition seeks that a Succession Certificate dated 14th March 2015 granted in Petition No. 470 of 2003 be revoked. The

Succession Certificate was in relation to one Jaywant Bira Pandhare, who died on 5th March 2000 at Sangola. According to the Revocation Petitioners, the Respondent, Dhurpa, was the first wife of the deceased. They had a daughter named Sindhu. In the Petition, it is claimed that the Respondent and the deceased had “an oral divorce” in 1984 and the deceased then married one Sushila on 10th June 1985. A certificate of 24th August 2007 has been issued by the Police Patil of Kole certifying this marriage. Sushila and the deceased lived and cohabited as husband and wife after 10th June 1985. The present revocation Petitioners are the married daughter and son of the deceased and Sushila. Their birth certificates are annexed as Exhibit “B” and Exhibit “B1” to this petition. There is, Mr. Nayak, learned Advocate for the Petitioners says, a presumption of validity of marriage that attaches to such long cohabitation as man and wife. That Sushila bore children by the deceased only adds to this presumption. It is one that the Respondent must rebut.

3. At the time when Jaywant passed away, his mother Laxmi Bira Pandhare was still alive. She died on 1st June 2006. After Laxmi’s demise, therefore, the deceased’s heirs were his first wife Dhurpa; Sindhu, their daughter; Sushila, the deceased’s second wife; and two present Petitioners.

4. It appears that the deceased worked with the Mumbai Port Trust and the names of both the wives are on record of the Mumbai Port Trust. Both wives’ names are also shown on the Village Property cards. Various amounts are due and recoverable by the heirs of the deceased from the Mumbai Port Trust, which has asked

the Petitioners' mother to submit a Succession Certificate. The case of the Petitioners is that they are entitled to a share in the estate of the deceased. This includes not only the dues from the Mumbai Port Trust but also the right to apply for transfer of the ration card; gratuity and other statutory entitlements; dues from the Mumbai Dock Workers Cooperative Credit Society Limited and so on.

5. It seems that the Respondent filed Petition No. 470 of 2003 but made no mention in that petition of the present Petitioners or their mother, thereby attempting to exclude them entirely from the estate of the deceased. The Petitioners were not served with citations by the Respondent. It is on this basis that Mr. Nayak submits that the Succession Certificate granted to the Respondent on 14th March 2005 in Petition No. 470 of 2003 is liable to be revoked.

6. In my view, Mr. Nayak is justified in his submission. The Respondent could not have obtained a Succession Certificate to the exclusion of the present Petitioners or their mother. The Respondent has, despite service as noted above, failed to contest this petition. It also appears that the Respondent has withdrawn a sum of Rs. 1,60,866/- from the Mumbai Port Trust on the basis of the succession certificate that she obtained exclusively in her own name.

7. In view thereof, and especially in view of the fact that the Petitioners have clearly and candidly not sought to exclude the

Respondents from her correct share in the estate of the deceased, this petition deserved to be allowed.

8. The Petition is made absolute in terms of prayer clauses, (a), (b), (c), (d) and (e), with no order as to costs. For convenience, these prayers are set out below:

- (a) “That this Hon’ble Court be pleased to revoke the original Grant of Succession Certificate dated 14th March 2005 issued by this Hon’ble Court in Petition No. 470 of 2003.
- (b) That this Hon’ble Court be pleased to direct the Respondent to deposit the original Grant of Succession Certificate with the Prothonotary & Senior Master, High Court, Mumbai immediately to prevent further misuse of the said Grant.
- (c) That this Hon’ble Court be pleased to direct the Respondent to refund Rs. 1,60,866/- withdrawn from the Mumbai Port Trust on the basis of the alleged Succession Certificate dated 14th March 2005 granted in Petition No. 470 of 2003 by this Hon’ble Court.
- (d) That this Hon’ble Court be pleased to hold that the Petitioners herein are entitled to the share in the dues of the deceased from the Bombay Port Trust.

- (e) That this Hon'ble Court be pleased to hold that Smt. Sushilabai Jaywant Pandhare and Smt. Dhurpa Jaywant Pandhare being wives of the deceased Jaywant Pandhare are entitled to $\frac{1}{2}$ share in the pension to be payable by the Mumbai Port Trust on behalf of the deceased."

9. All concerned to act on an authenticated copy of this order.

(G. S. PATEL, J.)