

agk

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY & INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO. 109 OF 2014**

M/s. Madhav Kutir CHS Limited	...Petitioners
<i>Versus</i>	
Ms. Meena C. Somaiya	...Respondent

Mr. P.K. Pandey, *i/b Clayderman Co., for the Petitioner.*
Mr. Domesb Prakash Guchiya, *for the Respondent.*

CORAM: G.S. PATEL, J
DATED: 19th January 2015

PC:-

1. The Petition seeks revocation of the grant dated 28th February 2014 of Letters of Administration with Will annexed. The Will in respect of which Letters of Administration were granted was that of one Smt. Saundaryawati Bahuji Bagrodi alias Manorama. The Respondents to this Petition were the original Petitioners. The Will was said to have been executed in Mathura, Uttar Pradesh on 17th July 1987. It purported to make a disposition of immovable property in Mumbai.

2. The Petition was brought by the Respondent as a the Constituted Attorney of the legatees under the Will. One of the

properties mentioned in the Will is Plot No. 3, Survey No. 92, Hissa No. 3, CTS No. 488 situated at Village Kirol, Off. 7th Road, Rajawadi, Ghatkopar (East), Mumbai - 400 077. The Will acknowledges that there is a three-storey building standing on that plot. By her Will, the deceased made a bequest of this property to the Shri Gopal Lal Trust, one that she had apparently settled in her lifetime. The Respondents to this Petition were the Trustees of that Trust. They made an application for Letters of Administration through their Constituted Attorney.

3. The present Petitioner seeking revocation claims that the property has been disposed of by the deceased in her lifetime. A Cooperative Society, namely, the Petitioner, had already come into existence as far back as in the year 1987. It appears that based *inter alia* on the Letters of Administration the Trustees of Sri Gopal Lal Trust have attempted to change the land records to show their names as owners of this property. In addition, there appears to have been a litigation filed before the Additional District Judge, Mathura in the form of a money suit which was decreed and which decree was then put into execution against this very property.

4. This Petition is, unfortunately, completely misconceived. The revocation Petitioner, the Society in question, has no caveatable interest whatsoever in the estate of the deceased. It may have title to the property in question, but it is in no position to dispute the Will of the deceased. It is well-settled that the testamentary Court does not decide the question of title and the issuance of Letters of Administration with Will annexed does not confer on the Respondents any title that the testatrix did not have.

It is always open to the Petitioner to file a substantive Suit on title and seek suitable reliefs against the Respondents. The Petitioner cannot, however, on the basis that it has a competing title to the property seek to set aside the grant of Letters of Administration in this fashion.

5. The revocation Petition is not an appropriate remedy for the Petitioner. The revocation Petition is dismissed. There will be no order as to costs.

6. All contentions of the Petitioners are expressly kept open, including specifically that the deceased had disposed of all her right, title and interest in the property during her lifetime and that she did not have any valid title left in her to pass by testamentary bequest to any of the Respondents or to the Trust of which they are Trustees.

7. It is not out of place to mention that the Respondents are residents of neighbourhood plot. They appear to be residing on the neighbouring plot.

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

(G. S. PATEL, J.)