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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO. 98 OF 2013
IN
TESTAMENTARY PETITION NO. 1011 OF 2009**

Kumar Chandravadan Pathak	...Petitioner
<i>Versus</i>	
Hansa Chandravadan Pathak	...Respondent

Mr. N.D. Jaywant, *for the Petitioner.*
None *for the Respondent.*

CORAM: G.S. PATEL, J
DATED: 21st January 2015

PC:-

1. None appears for the Respondent. The Respondent has not been represented on the last several occasions.

2. This is a Petition under Section 263 of the Indian Succession Act, 1925. It seeks revocation of a probate granted on 4th July 2011 in respect of the last Will and testament dated 23rd September 1993 of one Dr. Chandravadan Ambashankar Pathak. The probate was granted to Smt. Hansa Chandravadan Pathak, the deceased's widow.

3. The revocation Petition was filed by the original probate Petitioner's and deceased's son. It is his case that the Will dated 23rd September 1993 is a forged and fabricated document and that does it not bear the signature of the deceased. In his Petition, the revocation Petitioner has contended that the deceased was a medical practitioner. There was no conceivable reason that he should make a Will in Gujarati, as he was completely fluent and conversant with English . Further, the deceased never in fact signed anything in Gujarati.

4. The revocation Petitioner has also alleged that during 1992-93 (i.e. at or about the time when the Will is said to have been made), the deceased was in indifferent health. He was admitted to Harkisondas Hospital on several occasions. The revocation Petitioner alleges that the deceased could not have been of a sufficiently sound state of mind, memory or understanding to make the Will. Certainly, his physical condition did not permit this. The Petitioner has also alleged that the doctor's certificate of fitness was obtained subsequently. On the date that it was made, and on the date of the Will, the doctor was not in Mumbai. There are other problems as well. The revocation Petitioner contends that the citation was deliberately issued at a different address although the probate Petitioner (Respondent to this Petition) knew perfectly well that the revocation Petitioner lives in Vashi. Yet the service was said to have been effected at a diagnostic centre at Worli, which is the revocation Petitioner's business address. The affidavit of service dated 20th December 2010 in the probate Petition purports to state that citation was served on 8.30 a.m. on 10th November 2010. There are two problems in this. The Petitioner is not

available at his business address at that time on any day. Further, on 10th November 2010, the Petitioner was in Pune visiting his friend and was not in Mumbai. It was also a holiday during the Diwali period of that year. There was no question, therefore, of any service being effected on him on that date. The Petitioner's friend and host in Pune has affirmed an affidavit dated 6th October 2012 confirming that the Petitioner was with him in Pune from 6th November 2010 to 10th November 2010.

5. There is also a long history of disputes between the Petitioner and Respondent, including proceedings in the Bombay City Civil Court and in this Court.

6. In my view, in these circumstances, and given the fact that the Respondent has persistently stayed away from these proceedings at least for the last year if not more, and that too despite a notice from Mr. Jaywant, learned Advocate for the Petitioner, the revocation Petition deserves to be allowed.

7. For all these reasons, the revocation Petition is made absolute in terms of prayer clause (a). Probate dated 4th July 2011 in Probate Petition No. 1011 of 2009 of the Will dated 23rd September 1993 of Dr. Chandravadan Ambashankar Pathak is revoked and annulled. There will be no order as to costs.

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

(G. S. PATEL, J.)