

Sharayu.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISC. PETITION (L) NO. 1841 OF 2014
IN
MISC. PETITION NO. 25 OF 2014**

Jayraj Ashok Chaudhari & Anr.	...Petitioners
<i>Versus</i>	
Maya Bharat Gavali & Ors.	...Respondents

Mr. R.S. Apte, *Senior Advocate i/b Ashutosh Gole for the Petitioners.*
Mr. R. Dholakia, *i/b Ms. Sonali Patil, for the Respondents.*

CORAM: G.S. PATEL, J
DATED: 6th May 2015

PC:-

1. The Miscellaneous Petition seeks that an Order dated 18th February 2014 passed in Miscellaneous Petition No. 25 of 2014 be recalled and that the Legal Heirship Certificate granted to Respondents in respect of the property of one Simubai Heman Gavali (“**Simubai**”) be revoked.

2. I have heard Mr. Apte, Learned Counsel for the Petitioners (“**the Chaudharis**”), and Mr. Dholakia, Learned Counsel for the

Respondents (“**the Gavlis**”). Affidavits in Reply and Rejoinder have been filed.

3. The order dated 18th February 2014 (copy at **Exh.C** to the Petition, paperbook page 26) indicates that the Heirship Petition filed by the Gavlis was accepted, a proclamation dispensed with and the matter taken up forthwith for final disposal. It appears that the Court accepted that the Gavlis were Simubai’s children. No such statement is to be found in the Petition itself which is annexed to the present revocation Petition. In fairness, Mr. Apte points out that in Affidavit in Support of the Heirship Petition, it was claimed by one of the Gavlis that Respondents Nos. 1 and 2 were the married daughters and Respondent No. 3 was the son of Simubai. However, there are no documents annexed to the Heirship Petition to substantiate this. The Affidavit in Support of the Heirship Petition (at pages 73 and 74 of the paperbook) was dated 29th January 2014 and was filed on the basis of a Power of Attorney that was itself revoked on 2nd October 2012 by the 3rd Respondent.

4. The Heirship Petition only says in paragraph 4 that Simubai died leaving the Gavlis as her heirs and legal representatives. It nowhere shows how the Gavlis were related to Simubai. Even more curious is the statement in paragraph 6 of the Heirship Petition that the Heirship Certificate is required to show the Gavlis’ relationship with the deceased and to get certain land revenue record changed. I would imagine that it is the other way around and that an Heirship Certificate would follow a demonstration of kinship and not *vice-versa*.

5. Further, in paragraph 5 of that very Heirship Petition, the Gavlis have clearly stated that they were aware of a Will made by Simubai in favour of the present revocation Petitioners i.e., the Chaudharis. If this be so, the Gavlis, while applying for an Heirship Certificate could not have obtained an order dispensing with the proclamation.

6. That is not all. In certain proceedings before the District Superintendent of Land Record, Pune on 23rd January 2013 an order came to be passed. That order *inter alia* records that the present 3rd Respondent submitted an Affidavit dated 31st July 2012 before that Authority. He also submitted notes of written arguments on 11th January 2014. In these he said :

1. Chhaya Rathod, Maya Gavli and I are not three real brother-sisters. We three have been looked after by our maternal aunt late Simubai Himan since our childhood. The Respondent Nos. 1 and 2 have not produced any single evidence about taking birth from late Simubai, that means birth certificate etc. Certificate is not produced as to in which school they were studying.

2. Respondent No. 3's real mother is Smt. Durgabai and father late Gulab Sirvar and father of Smt. Maya Gavli and Chhaya Rathod are Kisan Gadekar and mother Parubai Kisan Gadekar. Education of Maya and Chhaya is from Gurukul and V.P.S. Highschool and education of Dilip is in the name of guardian i.e. as Dilip Dada Himan Gavli. Since basically there is discrepancy in the name of Chhaya Rathod and Maya Gavli, they cannot get school certificate, therefore, Appellants have given letter to the said highschool, they informed that the said certificate cannot be given to third person, by

clearly mentioning the names of Chhaya Rathod and Maya Gavli and Respondent Nos. 1 and 2 have given false affidavit that we are all real sisters and brother and Simanbai is our real mother and the said act is of criminal nature.

3. Simubai Himan has executed Will on dt. 23/06/1995 in favour of Appellants. I am witness to it and I myself have brought stamp of Rs. 20/- for it. Ad. N.K. Gade and N.G. Ambekar have sined the said Will as witnesses in my presence and my maternal aunt Simubai Himan had no illness of any nature at the time of executing Will and her mind was fully sound and she has signed voluntarily thereon after reading it.”

7. Mr. Dholakia is unable to point out what steps or action, if any, the Gavlis have taken against this order. As far as I can tell, no appeal has been filed by them and these observations have not been set aside or recalled at their instance.

8. There is also the question of whether this Court ever had jurisdiction to entertain the Heirship Petition in the first place. Simubai lived in Lonavala. It is where she had property. The Will propounded by the Petitioners pertains to that property. In the Heirship Petition (paperbook page 34) it is stated in paragraph 2 that Simubai also had an address at Room No. 2, Gitanjali Building, Lamington Road, Mumbai Central, Mumbai – 400 007. This Mumbai address is not the address shown on the Death Certificate of Simubai (paper book page 92). Mr. Dholakia is unable to point to any document on the basis of which the Gavlis claimed that Simubai had an address at Mumbai Central, Mumbai. If she did not, and her last and permanent address was at Lonavala and her

property was at Lonavala, this Court would not have had the jurisdiction to entertain the Heirship Petition at all.

9. In my view, there is no answer whatsoever to this Petition on merits. The Petition is made absolute in terms of prayer clause (a). The Legal Heirship Certificate dated 18th February 2014 is revoked. The order dated 18th February 2014 is recalled and set aside.

10. Both the Petitioners and the Respondents will be at liberty to file appropriate proceedings, if not already done, before courts of competent jurisdiction including in relation to the property in question at Lonavala to establish their title to the immovable property in question.

(G. S. PATEL, J.)