

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO. 116 OF 2015
IN
TESTAMENTARY PETITION NO. 473 OF 2012**

Monica Padmanabhan Nair & 11 Ors.	...Petitioners
<i>Versus</i>	
Titus Anthony Govaria & 3 Ors.	...Respondents

Mr. V. Bodke, *i/b Chitnis Vaithy & Co., for the Petitioners.*
Mr. Pankaj S. Shah, *for the Respondents.*

CORAM: G.S. PATEL, J
DATED: 21st March 2016

PC:-

1. The only ground for revocation in this is that the 12 Petitioners and Respondent Nos. 3 and 4 were never served with a citation in Probate Petition No. 473 of 2012. The original Petitioners are Respondent Nos. 1 and 2 to the revocation Petition.

2. In the probate Petition, the parents of the Petitioners and Respondent Nos. 3 and 4 were shown as heirs at Serial Nos. 4 to 8 in a table added by amendment below paragraph 10A. In other words, they were not even listed when the Petition was originally filed. This is despite the fact that the 1st Respondent and the

persons at Serial Nos. 4 to 8 of table below paragraph 10A are all clearly related to each other. This also means that the present Petitioners and Respondent Nos. 3 and 4 are also related to Respondent No. 1.

3. The fact that citation was not served on the persons mentioned at Serial Nos. 4 to 8 of the table is admitted. In the Petition, after amendment, the names of these persons at Serial Nos. 4 to 8 were scored out. I am now told that service of citation was effected by publication. I am further told that an order permitting this was taken on a mere praecipe. Then I am told that the order permitted publication in a single newspaper, i.e., Free Press Journal.

4. No copy of the praecipe is found on file today. No office copy is produced before me. In any case, having regard to Rule 400 of the Bombay High Court (Original Side) Rules, I do not see how any such order could ever have been obtained and that too on a mere praecipe. At the very least, a Chamber Order was required to be passed by the Prothonotary & Senior Master after being satisfied that service though attempted could not be effected. Any such order would, as is our invariable practise, have required publication in more than one newspaper and certainly in more than one language.

5. There is something seriously amiss in this matter. It is on the basis of this so-called notice by publication that the original probate Petition was allowed to be proceeded uncontested.

6. I cannot in any conscience allow this state of affairs to continue. The present revocation Petition will have to be allowed immediately.

7. The revocation Petition is made absolute. Probate issued on 12th April 2013 is forthwith revoked, cancelled and set aside. Respondent Nos. 1 and 2 are restrained from using in any manner any copy of the drawn up probate that they may have obtained.

8. The Prothonotary & Senior Master is directed to immediately place a report on the practice being followed in the matter of permitting service by publication. I am making it clear that in no case should such permission or leave be granted on a mere praecipe. Those praecipes are not numbered. They are outside our digital system. There is no method of keeping a record of praecipe either by number or date. Frequently they go missing. Orders on those praecipes are never uploaded. Therefore, no such order can or should ever be passed. Further, it is not proper to assume that because parties belong to any particular community or of a particular religious denomination that it is safe to allow publication in one English newspaper alone. There can be no such rule or practice. The office shall immediately place a report with its current procedure in such matters along with its suggestions for ensuring that matters of service are not dealt with so casually. I note that there is an objection on file regarding the affidavit purportedly proving service by publication raising precisely this query, i.e., as to the order permitting any such substituted service.

9. In the meantime, the Petitioners and Respondent Nos. 3 and 4 will be at liberty to take such steps as they may be advised in respect of any properties which may have been dealt with by the original probate Petitioners. All contentions in that behalf are kept open on both sides.
10. Affidavit dated 10th February 2015 of Respondent Nos. 1 and 2 is taken on file.
11. List the matter on 4th April 2016 for the Registry's report.

(G. S. PATEL, J.)