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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO. 79 OF 2016
IN
TESTAMENTARY PETITION NO. 828 OF 2015**

Dilip Jivram Mehta	...Petitioner
<i>Versus</i>	
Mr. Ramjibhai Hariram Rajgor	...Respondent

Mr. Karl Shroff, *i/b Ms. Laxmi Jasani, for the Petitioner.*
Dr. A. Chandrachud, *with Mr. Manish Doshi, i/b Vimadalal & Co.,*
for the Respondent.

CORAM: G.S. PATEL, J
DATED: 14th December 2016

PC:-

1. *Prima facie*, the Petition for revocation is not maintainable. It seeks revocation of probate granted on 23rd December 2015 to one Mr. Ramjibhai Hariram Rajgor in respect of the Will dated 9th May 2003 left by one Ranchhoddas Shivji Joshi.

2. The Petition sets out that Ranchhoddas died leaving this Will. His wife and their only married daughter died before he. He was survived by several sisters, *viz.*, Gangaben, Bhanumati, Kantaben and Narmada. There was also a fifth sister, Mongiben. However, she died on 10th August 2001, *i.e.*, before Ranchhoddas, who died on

7th January 2013. The Petitioner is Mongiben's son and Mr. Shroff contends that being the son of a predeceased sister, he was entitled to be cited and served.

3. This is incorrect as Dr. Chandrachud points out. Sections 8 and 9 of the Hindu Succession Act, 1956 read with the Schedule make it abundantly clear that those heirs ranked higher in the Schedule to that Act take in preference to heirs ranked lower. As regards heirs in Class-I, all take simultaneously and to the exclusion of all other heirs. However, in Class-II those in the first entry of Class-II are preferred to those in the second entry and those in second entry preferred to those in the third entry, and so on. Section 8 makes it clear that the heirs in Class-II take only if there are no heirs in Class-I.

4. Admittedly there are no Class-I heirs. In Class-II the surviving four sisters — Gangaben, Bhanumati, Kantaben and Narmada — were those who were alive at the time of Ranchhoddas's death. They would, therefore, be heirs falling Item (4) of Item II in Class II. The Petitioner, on the other hand, would fall in Item 2 of Item (IV) of Class II, *i.e.*, a lower ranked entry. The four sisters who survived Ranchhoddas would, therefore, exclude the son of a predeceased sister.

5. Mr. Shroff contends that Bhanumati's own children were also cited. This is incorrect. Bhanumati herself was originally cited. She died pending the Petition and, therefore, her heirs were brought on

record. They were not impleaded as children of a predeceased sister. This distinction make all the difference.

6. This being the only ground urged for revocation, there is no substance in this Petition. The Miscellaneous Petition is dismissed. There will be no order as to costs.

(G. S. PATEL, J.)