

SHEPHALI

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO. 96 OF 2015
IN
TESTAMENTARY PETITION NO. 322 OF 2014**

Milind Satish Sabnis	...Petitioner
<i>Versus</i>	
Shobha Jagdish Sarma & Another	...Respondents

Mr. Uday Warunjikar, *i/b Mr. Pravartak Pathak, for the Petitioner.*
Mr. Pravin Samdhani, Senior Advocate, *i/b Maniar Srivastava Associates, for the Respondent.*

CORAM: G.S. PATEL, J
DATED: 8th July 2016

PC:-

1. Heard. Mr. Warunjikar has tendered an Affidavit in Rejoinder.

2. There was an order dated 26th August 2015 that dealt in some detail with the factual background of this matter. Paragraphs 3 to 8 of that order are relevant. These are set out below.

- “3. A few facts are necessary. The Petitioner’s case is that in 2009 he was negotiating with one Ashok Hassanand Punjabi to purchase some immovable property at Bandra owned by Ashok Punjabi and his

family. Even according to the Petitioner himself, Ashok Punjabi only expressed a desire to create a charitable trust from the income generated through the sale of that property. He died on 30th August 2010. The Petitioner claims to have then approached Ashok Punjabi's sister, Sheila Hassanand Punjabi, in January 2011. It seems that Sheila also echoed her brother's sentiments.

4. Sheila thereafter passed away. The Respondents sought and obtained probate to her Will dated 12th October 2010. A copy of that Will is at Exhibit "D", page 20 of this Petition. The Will does not in itself at all transfer the immovable property to a Charitable Trust. It does not itself create any such trust. It only directs the executors appointed under that Will to

"use the said bungalow or income generated from the said bungalow for philanthropic purposes or for public charitable purposes in the name of my parents Mrs. Parmeshwari Hassanand Punjabi and Hassanand Wasumal Punjabi."

5. Clause 3(b) of the Will specifically empowers the Trustees to lease or let out the immovable property or to sell it in part or full, to retain the corpus and to use the income and the corpus itself for such philanthropic and charitable purposes. Similar dispositions are made in respect of certain bank accounts and other items.

6. The Petitioner claims that in January 2015, he found that the 2nd Respondent had made an application to enter his name in the record of rights. The Petitioner then sought information under the RTI Act. He received some documents. It is then that, according to the Petitioner, he came to know of the Will

and the probate in question. Paragraph 8 of the petition reads thus:

“8. The Petitioner states that in aforesaid circumstances the Petitioner herein made enquiry with the office of Assistant Charity Commission, Mumbai whether the Trust in the name of the deceased Parents is registered or not. However, to the utmost shock and surprise to the Petitioner, Petitioner learnt that no such application is made to the office of Assistant Charity Commissioner neither any intimation of existence of such Will contemplated under Section 53 of the Bombay Public Trust Act, 1950 given to the said office. In such circumstance, the Petitioner himself made an application to the Assistant Charity Commissioner, Mumbai for creation of Trust in accordance with the Will of the deceased. The copy of the Application dated 29th April 2015 is annexed herewith and marked as **Exhibit -E.**”

7. It is important to note that the Petitioner himself has sought to create a trust in the name of the deceased on his somewhat mistaken belief that the trust in fact has been created under Sheila Punjabi's Will. *Prima facie* what the Petitioner says in paragraph 8 does not appear to be correct. The deceased appears to have made a disposition directing the utilisation of the income and the corpus, if realised on sale, for specific purpose. This is not in any sense the same thing as creating a Trust by the Will. The Petitioner himself is a complete outsider to all of this.

8. It cannot be without significance that it was the Petitioner himself who sought to purchase this very

property in Bandra as far back as in 2009-2011 and that it is the Petitioner, a unsuccessful purchaser, who now wants to bring this property into the hands of a trust that he himself claims to have settled and which he appears to control.”

3. This is very much the position that continues even to this day. The difficulty in Mr. Warunjikar’s way is that on the Petition as it stands, his client appears to have, or at any rate to once have had, some interest in the property at Bandra. I do not see how the Petitioner can raise contentions about impropriety or any alleged fraud unless he disclaims an interest. When I put this to Mr. Warunjikar, he took time to seek instructions. In fairness, he has today placed before a signed statement by the Petitioner. This is dated 7th July 2016 and in this the Petitioner makes it clear that he now disclaims all interest in this property. For what it is worth, I take this statement on record. It is marked “X” for identification.

4. But that is only one half of Mr. Warunjikar’s troubles today. The second, in my view, presents an insurmountable difficulty, and that is the question of *locus*. I am unable to what standing or right the Petitioner has to make any such complaint. His entitlement in law to bring this revocation Petition is unclear. Once again, in fairness, Mr. Warunjikar puts this no higher than to say that the Petitioner has approached this Court “in the public interest”. If that is so, then I fear Mr. Warunjikar and his client may have lost their way. They may perhaps be on the wrong floor. They are certainly in the wrong Court.

5. This is a testamentary jurisdiction. For all practical purposes, I exercise the powers of a District Court. I cannot enlarge the scope of the enquiry or of the proceedings before me.

6. The Petitioner is at liberty to adopt such proper or appropriate proceedings as are legitimately available to him in law. Should he do so, all contentions on both sides are kept open for being agitated in such proceedings.

7. This Petition is dismissed. There will be no order as to costs.

(G. S. PATEL, J.)