

JSN

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO. 102 OF 2016
IN
TESTAMENTARY PETITION NO. 1732 OF 2015**

Waman Devram Patil

...Petitioner

Versus

Amrutlal Chhotubhai Naik

...Respondent

Mr. Sandeep Mishra, *with Mr. Prakash Mishra i/b Leena B. Lokare
for the Petitioner.*

Mr. Vishal Kanade, *with Mr. Ranjeev Carlhavo, i/b Sanjay Gawde
for the Respondent.*

CORAM: G.S. PATEL, J

DATED: 19th December 2016

PC:-

1. This Miscellaneous Petition will have to be allowed. The Petitioner, Waman Devram Patil (“**Waman**”) is the step son of the deceased Smt. Maniben Devram Patil (“**Maniben**”). The Respondent, Amrutlal Chhotubhai Naik (“**Amrutlal**”) claims to have looked after her in her old age. In Testamentary Petition No. 1732 of 2015, Amrutlal obtained Letters of Administration to a Will dated 10th December 2012 that Amrutlal claimed had been left by Maniben.

2. Admittedly, the Petition for Letters of Administration with Will annexed did not cite Waman as an heir. Mr. Kanade for

Amrutlal states that his client was unaware of Waman's whereabouts or that he was a step-son, and he points out that even in the revocation Petition it is not alleged that Amrutlal knew that Waman was Maniben's stepson.

3. Be that as it may, the lack of mention of Waman Patil as an heir and non-service of a citation on him is fatal. Mr. Kanade in fairness accepts this position and submits that appropriate course would be to allow the Miscellaneous Petition, but not to dismiss the main Testamentary Petition and instead to permit the revocation Petitioner the liberty of filing a Caveat. I think this is appropriate and correct as it preserves the rival rights and contentions of both sides.

4. Hence the following order:

- (a) The Miscellaneous Petition is made absolute in terms of prayer clause (a).
- (b) The Letters of Administration with Will Annexed dated 14th March 2016 issued in favour of Amrutlal Naik in Testamentary Petition No. 1732 of 2015 are revoked and cancelled.
- (c) Testamentary Petition No. 1732 of 2015 is restored to file.
- (d) Mr Mishra for the Revocation Petitioner, Waman Deveram Patil, waives formal service of citation.
- (e) The Revocation Petitioner, Waman Deveram Patil, will file his Caveat and Affidavit in Support thereof in

Testamentary Petition No. 1732 of 2015 on or before 20th January 2017.

- (f) Upon that Caveat and Affidavit in Support being filed the Testamentary Petition No. 1732 of 2015 is to be renumbered as a Suit and set down for framing issues on 6th February 2017.
- (g) If no Caveat and Affidavit in Support are filed by that date, Testamentary Petition No. 1732 of 2015 will stand made absolute without further reference to Court and the grant of Letters of Administration with Will Annexed will revive and stand restored, without requiring it to be re-issued.

(G. S. PATEL, J.)