

SHEPHALI

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO. 116 OF 2016
IN
TESTAMENTARY PETITION NO. 1742 OF 2012**

Swaran Jaggi & Another	...Petitioners
<i>Versus</i>	
Jaikishan Hiraiya Jakkulla	...Respondent

Mr. Rohan Mahadik, i/b The Juris Partners, for the Petitioners.

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

PC:-

1. The revocation Petition is *prima facie* not maintainable. The revocation Petitioners claim to have acquired good title from the deceased during his lifetime to the property listed at Serial No. 1 in the Schedule of Assets annexed to Testamentary Petition. They say that they purchased it under a registered document for valuable consideration.

2. This itself does not give them a caveatable interest. This is now firmly settled by the recent binding decision of a Division Bench of this Court in *Purushottam Vishandas Raheja v Asha*

*Shrichand Raheja & Anr.*¹ It is, therefore, sufficient to clarify that should the Respondent succeed in the Testamentary Petition, the grant of probate cannot and will not affect the title of the Revocation Petitioners to the property in question. If the Respondent claims title to that property, he (as executor) or the legatees in the Will sought to be propounded will necessarily have to adopt appropriate civil proceedings in a Court of competent jurisdiction, impeaching the Revocation Petitioners' title document. Neither the Respondent nor the legatees can, only on the basis of the probate, claim title to a property in respect of which the Revocation Petitioner has a registered document of transfer indicating that, at the time of his death, the deceased himself had no surviving title to that property, having divested himself of it *inter vivos*. All contentions as to the title are specifically kept open and are not decided either by this order or in the Testamentary Petition.

3. With these observations, the Miscellaneous Petition is dismissed as withdrawn at Mr. Mahadik's request, with no order as to costs. Drawn up order dispensed with. All concerned to act on an authenticated copy of this order. Refund, if any, according to the rules.

(G. S. PATEL, J.)

1. Appeal No. 598 of 2011, decided on 26th July 2016 (A.S. Oka & A.A. Sayed JJ).