

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****APPEAL (L) NO. 611 OF 2015
WITH
NOTICE OF MOTION (L) NO. 864 OF 2016**

Miss Samrin d/o. Mohammed Iqbal Ansari .. Appellant
versus
Mr. Vilas Krishnarao Basutkar & Ors. .. Respondents

Mr. C. S. Shinde i/b. M/s. Vijaykumar & Co. for Appellant.
Mr. Sachin S. Punde for Respondent No. 1.

**CORAM: DR. MANJULA CHELLUR, C. J. AND
M. S. SONAK, J.**

DATE : 01 SEPTEMBER 2016

P.C.:

- 1] With the consent of the parties, the matter is disposed of.
- 2] We have gone through the impugned order. The appellant is claiming title to the property based on a conveyance deed said to have been executed by two persons whose names were shown in the register of the society as owners of the property. The respondent is claiming rights over the very same property under a Will which is yet to be probated.
- 3] Apparently, the sellers of the property to the appellant and the respondents would have succeeded to the property in the normal course of succession but for the testament which is yet to be established. So far as title of the testator, the appellant is not at all challenging the same. Now the question is whether the sellers of the

property to the present appellant are keen in defending the probate proceedings filed by the respondents. If they are not attending to the proceedings with all the required caution and enthusiasm, according to the appellant the interest of the appellant would be at jeopardy. Therefore he seeks to come on record in the proceedings to safeguard his interest if the sellers of him were to be lethargic or indifferent in prosecuting the matter. We are aware of the settled position that probate of a Will will not declare title to properties of party who gets the probate but the factual situation in this case is entirely different since no one is questioning the title of the testator. Under these circumstances, we are of the opinion that the appellant would be proper party to the proceedings. Accordingly, appeal is allowed. Formerly the order dated 15 June 2015 is set aside. Chamber summons is allowed.

4] In view of disposal of appeal, notice of motion does not survive and stands disposed of.

CHIEF JUSTICE

(M. S. SONAK, J.)