

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL NO. 668 OF 2016
IN
MISCELLANEOUS PETITION (L) NO. 35 OF 2016**

Smt. Omvati W/o. Late Liladhar

K. Garg and anr.

.. Appellants

V/s.

Smt. Lata Hemant Garg w/o. Hemant

L. Garg and ors.

.. Respondents.

Mr. S.R. Patel for the Appellants.

Mr. Prajot Jaggi for Respondent Nos.1 to 3.

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

DATE : 8 DECEMBER 2016.

P.C.

1] Heard learned counsel for the appellants.

2] Miscellaneous Petition (L) No. 35 of 2016 came to be filed in Probate Petition No. 722 of 1998 seeking revocation of probate granted on 16th April 2015 in Testamentary Petition. The position of the parties before us are as under:

The revocation petitioners are the widow, son and daughter of the deceased. The beneficiaries under the Will of late Maheshchandra Liladhar Garg is daughter-in-law of the deceased by name Lata Hemant Garg, wife of another son of the deceased through a previous wife.

3] Learned Single Judge, after taking into consideration the contentions raised across the Bar with regard to the signature found on the consent affidavit especially signature of the 1st appellant Smt. Omavati, proceeded to observe as under, which is self-explanatory.

“7. Mr. Dhanuka is correct in pointing out that there are thus two conflicting versions. In the present Petition it is first averred that there is an Affidavit signed in blank for use before MHADA. In the Suit in the City Civil Court, one that was filed several years after the affidavit annexed to the probate petition, the story is changed and it is now accepted that what was signed was an Affidavit but an allegation is now made that this was by misrepresentation and undue influence.

8. There are no particulars of any such misrepresentation or undue influence. At a minimum, these would required to be pleaded with some particularity. There are no particulars at all. The two allegations are conceptually different. If it is a case of undue influence then it must be shown who exercised that under influence, on whom and in what manner; and that the person allegedly exercising that undue influence was in some position of dominance over the others. There is nothing to suggest this. I do not know whether the allegations of undue influence in the City Civil Court suit are directed against any of the Respondents to this revocation Petition (Defendants to that Suit) or against Mr. Ashok Sarogi or somebody else. Similarly, no details of the alleged misrepresentation are set out.

9. There is yet another disturbing factor. I find that the present revocation Petition has been signed at its end, by the 1st Petitioner, Omvati in Devanagari. However, on the Consent Affidavit supporting the Testamentary Petition her signature appears in English.

10. Omvati is present in Court. I have asked her to step into the witness box. She is administered oath. I have put questions to her myself and noted her answers. These are

set out below. I note for the record that Ms. Pallavi Potnis from the Chief Translator's office is present to assist the Court.

1. To Court. Do you ever sign in English?
 Ans. I used to sign in English, but now I sign in Hindi.
- 2 To Court (Shown original Affidavit of consent at pages 23 to 25 of Testamentary Petition No.722 of 1998.)
 Is this your signature at page 24?
 Ans. No, this is not my signature.
3. To Court: Please produce a photo identity card with your signature.
 Ans. I produce my PAN Card for PAN No.AFEPG3754Q.
 (A photocopy of the PAN Card is received in evidence and marked Exhibit "P1". The original is returned to the witness, Omvati.)
4. To Court: I am asking you once again to look at your PAN card and the Affidavit, on both of which your signature appears in English. I repeat the question: Have you signed the Affidavit that I have shown you?
 Ans. I never used to sign like this.
5. To Court: Please show me a sample of your signature today.
 Ans. I produce a paper on which I have signed in Court.
 (The witness hands up a slip of paper on which she has signed in Court. Her signature is in Devanagri. This is taken on record and marked in evidence as Exhibit "P2".)

11. As the forgoing testimony shows, all this is exceedingly problematic. It is directly contrary to what Mr. Patel has submitted before me for the Petitioners; for his instructions are to accept specifically that the Affidavit was in fact signed before an Associate of this Court. He has proceeded on that basis. This is not the basis on which the

Petition proceeds. The statement in the Petition is directly contrary. The filing of the Affidavit in Court (Mr. Patel's stand today) is, however, the basis of the statements made in the Complaint in the City Civil Court. i.e., both today in Court and in the City Civil Court Suit Petitioner No.1 accepted that she signed that Affidavit dated 22nd May 1998 before an Associate of this Court. In the Petition, she says the signature was "in blank" at the house of the Advocate.

12. Today, before me, she contradicts herself yet again and now sets up a third case. She denies her signature on the affidavit altogether. This is contrary to (a) the Petition; (b) the Complaint in the City Civil Court; and (c) her instructions to Mr. Patel. These contradictions cannot possibly be resolved or reconciled.

13. Prima facie it seems to me that the dispute raised by the Petitioner has nothing to do with the Affidavit but it is probably a property-related dispute. It is well-settled that probate proceedings do not decide questions of title. If the revocation Petitioners believe that they have title to any of the properties that they have mentioned in the revocation Petition, they are at liberty to adopt appropriate proceedings in that regard in relation to those properties. This is, however, not a ground for revocation of the probate granted.

14. It is not possible in these circumstances to hold that the revocation Petitioners have made out any sort of a case for the grant of any relief. As I have noted, the 1st Petitioner's versions are exceedingly problematic, and every version that is put forward contradicts the one that went before. Mr. Dhanuka may not be wrong in saying that this is an attempt to capitalise on the fact that certain adverse orders have been passed against Mr. Saraogi's personally. Those allegations are irrelevant. There may have been a finding against him in one particular case, but I will not proceed on the basis that every allegation made against Mr. Saraogi must be held to be established without proof. These are Courts of law, and we are required to proceed on the basis of proof, and not on some surmise or conjecture

as to the character or credentials of any particular Advocate.

15. I find that there are insufficient particulars pleaded in the Petition and in the City Civil Court's Suit. The contradictions that I have spoken of are sufficiently noted. The 1st Petitioner's (Omvati's) testimony in this Court inspires no confidence at all.

16. The Miscellaneous Petition is dismissed. At the cost of repetition, it will be open to the revocation Petitioners to adopt such proceedings as are permissible in law in regard to any immovable properties in the estate of the deceased.

4] Ultimately, after opining the conduct and the change of stand of the parties from time to time before the Probate Court and also in the miscellaneous petition, apart from the stand of the parties in the City Civil Court in a pending suit, the learned Single Judge was justified in rejecting the miscellaneous petition. However, the observations in para 16 of the impugned order protect the interests of the parties that the petitioners are entitled to adopt any such proceedings, which are permissible in law with regard to any immovable properties said to be the property of the deceased Liladhar K. Garg. We find no good ground to intervene. Accordingly, the appeal is disposed of.

(CHIEF JUSTICE)

(M.S.SONAK, J.)