

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL (L) NO. 400 OF 2016
IN
TESTAMENTARY PETITION NO. 1677 OF 2014
WITH
NOTICE OF MOTION (L) NO. 3103 OF 2016

Petition for Probate of the Last
Will and Testament of Mr. Bruno
Augustine DaCosta.

.. Appellant

Sadiq Taqui Rizvi

.. Respondent

Mr. S. Samantaray with Mr. PN. Mehta for the appellant.

Mr. Ketan Trivedi, Administrator, present in Court.

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

DATE : 24th OCTOBER 2016

P.C.:

Heard learned counsel for the appellant as well as
Mr. Ketan Trivedi, the Administrator.

2. One Mr. Bruno Augustin DaCosta and his sister Dorothy,
as submitted the learned counsel for the appellant, were not married

and they do not have any other relatives living. Mr. Bruno was the Principal of an educational institution and his sister, Dorothy @ Dora DaCosta, is under the care of Prem Dham, St. Ignatius Hospital Campus, Prabhat Nagar, Honavar, Uttara Kannada District, Karnataka. Though she is physically in good health, she requires constant medical attention and care so far as her mental status. Prem Dham is an institution who takes care of such people. Therefore, during life time of Mr. Bruno DaCosta, he had kept his sister at Prem Dham in District of Uttara Kannada, Karnataka State.

2. In Testamentary Petition No.1677 of 2014 filed by Mr. Sadiq Rizvi, Sr. Maria of Prem Dham appeared and brought to the notice of the Court certain facts. Her appearance was in response to direction by the Court dated 18th August 2016.

3. As could be seen from the details recorded by the learned Single Judge, we notice that so far as the payment towards maintenance of Miss Dorothy, the last payment was in July 2014. It is also on record that apart from Dorothy, another brother Mr. Edward was also taken care of by Prem Dham. Apparently, Mr. Edward is no more. Therefore, at present only Miss Dorothy, who is in custody of Prem Dham, is attended to by the institution. Sr. Maria informed the Court that estimated expenses of Miss Dorothy would come to Rs.12,000/- per month and Rs.15,000/- per month would be the ideal amount to attend to the needs of Miss Dorothy.

4. There is an attempt on the part of the appellant to say that all the cheques sent by the present appellant to Prem Dham were not at all credited since they were never deposited in the bank, therefore there was no justification to suspect the conduct of the appellant. Apparently there are four apartments in Mumbai, which are properties of Mr. Bruno. Two apartments are in Shamiana Co-operative Housing Society at Bandra and other two apartments are in Bapa Sitaram Nagar being Flat Nos.106 and 207, Village Naringi at Virar. Apart from these properties, one property is at Pune being Flat No.103 of New Sujata Co-operative Housing Society, Bund Garden Road, Pune. So far as properties at Virar, it is alleged that they are bequeathed under a Will to third parties, who are not the blood relatives of the deceased. These flats are let out to one Mr. Mark Anderson and Mr. John Lobo, who are said to be the friends of the deceased, and they are in possession of these two flats as per the Will propounded by the appellant. So far as the flat at Pune, one Mr. Albert, half brother of Mr. Bruno, is supposed to have some benefit in this property.

5. Coming to the present appellant, though the properties were tenanted, according to him, during the life time of Mr. Bruno DaCosta, they fell vacant and subsequently both the properties are said to be in possession of the present appellant including Garage No.G2.

6. Meanwhile, one Mr. Teddy William David has filed a caveat in the present testamentary suit, who represents one Grace Educational Trust. They are also claiming some interest in the estate of the deceased through another Will said to have been executed by Mr. Bruno on 27th July 2014. Testamentary Suit No. 1845 of 2016 came to be filed by Mr. Teddy William David. Apparently the said suit was dismissed for default and the same is later restored.

7. Under these circumstances, when Ms. Dorothy, the only sibling of the deceased Bruno DaCosta, is alive and is in custody of Prem Dham, having regard to vast properties left behind by the deceased and also the fact that the accounts are totally managed by a third party, who has nothing to do with the family of the deceased, the learned Judge was of the opinion that a third party Administrator, who is neutral to the entire matter, ought to be in charge of the matter and therefore one Mr. Ketan Trivedi, a Court Officer, was appointed as the Administrator. Aggrieved by the same, the present appeal is filed.

8. Learned counsel for the appellant brings to our notice provisions of the Indian Succession Act to contend that unless there are extreme circumstances to doubt the bonafides of the appellant, normally the executants of the Will should be in charge of the affairs of the estate of the deceased.

9. Both the testamentary suits are yet to be decided till they come to a logical end. Vast properties and bank accounts of the deceased have to be managed. Having regard to the above facts, we see there are rival claimants, one through Grace Educational Trust and another through the neighbour of the deceased. By appointing Mr. Trivedi as the Administrator, who will take care of the properties and the accounts, no prejudice to the rights of the parties is being caused, since ultimately the decision in the testamentary suits have to decide who shall get what and which property. Especially having regard to the rival claims with regard to the estate of the deceased, we are of the opinion that the learned Judge was justified in passing the impugned order. We make it clear that the Administrator should immediately take charge of the matter as indicated in the impugned order by approaching the concerned bank and also verify whether all dues of Prem Dham for maintenance of Miss Dorothy DaCosta are paid or not. If not paid, he shall immediately arrange to make such payment and shall regularly pay the amounts in future. Since this order is passed in the presence of the Administrator and the appellant, who has initiated the testamentary petition, the Administrator need not even wait for a copy of this order. He is at liberty to implement the order of the learned Single Judge forthwith.

10. We decline to intervene since no prejudice whatsoever is caused to the interest of the proposed beneficiary or the executant of

the Will. Accordingly the appeal is dismissed.

11. In view of dismissal of the appeal, the notice of motion does not survive and stands disposed of.

12. Stay of this order is sought for by the learned counsel for the appellant. The same is rejected.

(M.S. SONAK, J.)

CHIEF JUSTICE