

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****ORDINARY ORIGINAL CIVIL JURISDICTION****APPEAL NO. 548 OF 2015****IN****MISC. PETITION NO. 120 OF 2015****IN****TESTAMENTARY PETITION NO. 1838 OF 2014**

Shri Gibson Manuel D'souza

.. Appellant

versus

Armstrong Joseph D'souza

.. Respondent

**WITH****APPEAL (L) NO. 834 OF 2015****IN****MISC. PETITION (L) NO. 650 OF 2015****IN****TESTAMENTARY PETITION NO. 1838 OF 2014****WITH****NOTICE OF MOTION (L) NO. 3653 OF 2015**

Peter John D'Souza &amp; Ors.

.. Appellants

versus

Armstrong Joseph D'souza

.. Respondent

Mr. Aspi Chinoy – Senior Advocate with Mr. Milind Sathe – Senior Advocate with Mr. Kamlesh Gumbre, B. A. Rumad, Mr. Hemant Ghadigaonkar i/b. Sonali Jadhav for Appellants.  
Mr. Vincent D'Silva for Respondent.

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

**DATE : 14 SEPTEMBER 2016**

**P.C.:**

1] In these two appeals, the challenge is to the order dated 21 September 2015 by which the learned Single Judge has dismissed the appellants' petitions seeking revocation of Letters of Administration

with a certified copy of the Will annexed on the basis that the petition for Letters of Administration included some property to which the appellants now claim some title.

2] Mr. Aspi Chinoy and Mr. Sathe, learned Senior Advocates for the appellants have submitted that the respondent is misusing the Letters of Administration particularly before the revenue authorities, by insisting that such letters confer upon him '*title*' to the suit property. For this reason, the learned Senior Advocates submitted that the Letters of Administration deserve to be revoked or in any case, an endorsement ought to have been made upon the Letters of Administration to the effect that such letters are not determinative of the title of the parties to the properties referred to in the schedule to the testamentary petitions.

3] We are not satisfied that the impugned order warrants interference based upon the aforesaid submissions. From the perusal of the impugned order, it appears that similar submission was rejected earlier by the appeal court, in these very proceedings. Letters of Administration with certified copy of the Will annexed were initially granted on 31 March 2011. The Grant was however revoked and the matter was carried in appeal by the original petitioners. On 30 September 2014, the appeal court rejected the present appellants' contention by holding that the present appellants have no caveatable interest in the matter and their claims to the suit property, if any, were unaffected by the grant of Letters of Administration with the certified copy of the Will annexed. The appeal court, in fact clarified that such grant would not affect the title of the true owner of the suit property in question.

4] There is also reference to at least two other orders in the same

proceedings, in which the same view came to be reiterated. In the context of the order of the appeal court dated 30 September 2014, the contention that there was some ambiguity in the observations was disposed of by the learned Single Judge in his order dated 10 June 2015, in the following manner :

*“To my mind there is absolutely no doubt or ambiguity about the order of the Appeal Court. It categorically states that any question of title will remain unaffected by the present Petition for Letters of Administration with Will annexed. In other words, any contest as to title to this property will necessarily have to be in a properly brought civil suit, irrespective of whether or not that property is included in the schedule to the Testamentary Petition. The mere inclusion of that property in the schedule to the Testamentary Petition does not by itself determine, confer or confirm title to the property.”*

5] The circumstance that the Letters of Administration are being allegedly misused or misinterpreted by the respondent in the context of claim to the suit property, is clearly not a ground which warrants revocation of the Letters of Administration. Since it has been repeatedly stated and clarified that the grant of Letters of Administration will not affect the title of the true owner of the suit property, it is for the appellants to institute appropriate proceedings before the civil court, in case, the appellants apprehend that their alleged right, title or interest to the suit property is being challenged by the respondent. In fact, Mr. Vincent D'Silva, the learned counsel for the respondent pointed out that one of the appellants Mr. Gibson Manuel D'souza had in fact instituted S.C. Suit No. 2032 of 2012, the plaint in which, has been rejected by the City Civil Court on 23 March 2016.

6] The observations in the impugned order, as well as the repeated observations in the orders referred to in the impugned order, sufficiently protect the interest, if any, of the appellants. In these

circumstances, we are satisfied that there is no case made out to interfere with the impugned order.

7] These appeals are accordingly dismissed. There shall be no order as to costs.

8] In view of the disposal of appeals, notice of motion (I) no. 3653 of 2015 does not survive and is disposed of accordingly.

**CHIEF JUSTICE**

**(M. S. SONAK, J.)**

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