

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.1193 OF 2016**

Khirati Mahamad Sayyad	...Appellant
<i>Versus</i>	
Mahmoud alias Mabud Maksud Sayyad & Ors	...Respondents

Mr Makrand A Utagikar, for the Appellant.
Mr Ravi G Shinde, for the Respondents.

CORAM: G.S. PATEL, J
DATED: 13th June 2017

PC:-

1. Admit. The Respondents waive service.

2. By consent the Appeal is taken up for hearing and final disposal forthwith.

3. The impugned order of 17th February 2012, already five years old, granted probate to an alleged Will dated 3rd June 1996 of one Tamijabi Mahamad Hussain, who died on 15th September 1996. The three probate Petitioners were her sons. It seems that a public notice was issued in the daily newspaper 'Tarun Bharat' on 13th September 2011, but none responded.

4. The Appellant claims to be another grandson. He was residing in Pune. His name was not even shown as one of the heirs in the Probate Petition. No citation was personally served on him. At the relevant time, the Appellant was working in Pune and the publication in 'Tarun Bharat' was not to his knowledge.

5. It is in no one's interest to keep this Appeal pending for hearing and final disposal. The order will have to be set aside and the application remanded for a fresh hearing.

6. The parties will appear before Civil Judge, Senior Division, Barshi on 17th July 2017. They will submit in that Court an authenticated copy of this order. The learned Judge will issue the necessary directions including to the present Appellant to file a Caveat under Section 284 of the Succession Act, 1925 to oppose the Probate Application.

7. It goes without saying that the Applicants will be entitled to urge that the present Appellant has no caveatable interest and to file an appropriate application for discharge of the Caveat on that basis. If such an application is made for discharge of the Caveat, it will be decided on its own merits, including questions of limitation, if they arise. If there be no challenge to the Caveat, and the contest to the Probate Application proceeds, the application will be decided on its own merits after all parties are given an opportunity to lead evidence.

8. All contentions are expressly left open.

9. The Appeal is disposed of in these terms. No costs.

(G. S. PATEL, J.)