IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION

MISC. PETITION NO.24 OF 2017
IN
TESTAMENTARY PETITION NO.251 OF 2016
WITH
NOTICE OF MOTION NO.174 OF 2017

Smt. Anita Narendra Umrao @ Painter … Petitioner/Applicant
Versus
Smt. Shobha @ Asha Narendra Painter
@ Umrao … Respondent

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Mr. Vishal Kanade i/b Prashant D. Patil for the Petitioner/Applicant.
Mr. Mayur Khandeparkar a/w Ms. Nafisa Khandeparkar and Raksha Thakkar i/b ALMT Legal for the Respondent.

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CORAM : S.C.GUPTE, J.

DATE : 17 NOVEMBER 2017

P.C. :

. This misc. petition seeks revocation of grant of letters of administration in favour of the Respondent. The short facts of the case may be stated as under :

2 The Petitioner claims to be the widow of the deceased Narendra Purushottam Painter alias Narendra Purushottam Umrao ("Narendra"). The marriage between the Petitioner and the deceased Narendra is claimed to have been solemnized at Mumbai on 20 June 1971. (This date, mentioned in the misc. petition, is later on sought to be corrected to "19 June 1974".) A son by the name of Sanjiv Narendra Umrao @ Painter

("Sanjiv") is claimed to have been born out of this wedlock. The son is said to be presently residing in United States of America. The Petitioner claims to have come to know about the grant of letters of administration to the property and credits of her deceased husband in favour of the Respondent when she took search on the official website of this Court on 28 November 2016. After obtaining a certified copy of the grant and copies of papers and proceedings of the case on or about 30 December 2016, the present misc. petition is filed by the Petitioner sometime in January 2017.

3 It is the case of the Petitioner that after the death of her deceased husband, Narendra, the Respondent and her sons and daughter, by misrepresenting the Revenue Authorities about an alleged marriage of the Respondent with deceased Narendra, got their names mutated in the revenue record concerning agricultural properties of the deceased at Village Salve, Tal. Murud, Dist. Raigad as also the house properties at Village Kashid in District Raigad. The Petitioner thereafter claims to have filed Special Civil Suit No.58 of 2012 before the Civil Judge Senior Division, Raigad at Alibag against the Respondent and her children for a declaration that the Petitioner and her son Sanjiv were the only legal heirs of the deceased Narendra and for injunctive reliefs against the Respondent and her children. This civil suit was decreed ex-parte against the Respondent and her children. The Court of Civil Judge Senior Division made a declaration that the Petitioner and her son were the only legal heirs of the deceased Narendra and granted a permanent injunction against the Respondent and her children, restraining them from obstructing or interfering with the peaceful possession of the Petitioner of, or creating third party rights in, the suit property. The Petitioner also claims to have

filed an RTS Appeal before the Sub-Divisional Officer (SDO), Raigad at Alibag, against the mutation entry referred to above. By a misc. application moved before the Court of Civil Judge Senior Division, Raigad at Alibag (Misc. Application No.37 of 2014), the Respondent and her children applied for setting aside the ex-parte judgment and decree in the special civil suit under the provisions of Order 9 Rule 13 of Code of Civil Procedure, 1908. On their application, the judgment and decree passed by the Court in the special civil suit was stayed on 26 August 2016 by a speaking order. It is the grievance of the Petitioner that the Respondent, in the premises, at any rate, had knowledge about the decree passed by the Court of Civil Judge Senior Division, Raigad at Alibag in the special civil suit *inter alia* declaring the Petitioner and her son to be the legal heirs of the deceased Narendra. It is submitted that inspite of this knowledge, the Respondent filed the present testamentary petition for letters of administration to the property and credits of the deceased Narendra, claiming to be his widow and legal heir along with her children and suppressing the facts of pendency of the Petitioner's civil suit and the decree passed therein. On these facts, it is submitted by the Petitioner, the proceedings to obtain the grant were defective in substance; the grant was obtained fraudulently by making false suggestions and also by concealing material facts; and at any rate, the grant was obtained by means of untrue allegations of facts essential in point of law to justify the grant. Relying on Section 263 of the Indian Succession Act, 1925, the Petitioner, in the premises, seeks revocation of the grant for a just cause.

4 The Petitioner has alleged in the misc. petition that she was the legally wedded wife of the deceased Narendra, residing with him at

Mumbai at the time of his death on 22 June 2011. Leaving side the alleged mistake, which is claimed through an oversight, concerning the date of the marriage between the Petitioner and the deceased Narendra, there are several inconsistencies in the case of the Petitioner on various crucial aspects of the matter, such as the date of the Petitioner's birth, her identity, her residence, her marriage and her whereabouts generally, as will be presently noticed.

5 The Petitioner has been a proclaimed offender facing criminal prosecution for fabrication and falsification of passports and identities. The Petitioner was first apprehended in the year 2001 and procured bail thereafter. In her application under Section 437 of the Code of Criminal Procedure, the Petitioner furnished three addresses to the Investigating Officer, none of which matches the address of the deceased Narendra. One address was of New Delhi, whilst the other was of Andheri (West), Mumbai and the third was of Calcutta (Kolkata). It was her case before the Chief Metropolitan Magistrate at Delhi that due to her several matrimonial problems, she had become mentally ill; that, as a result, she had left Delhi and Mumbai and presently shifted at Kolkata; and that she renounced the world and started religious activities. It was her case that before a few months of her application (the application to the Magistrate was made sometime on 27 March 2015), her husband had died and therefore, she came to the address at Andheri (West), Mumbai and after the cremation ceremony of her deceased husband, she came to know from her neighborhood that police were looking for her and had approached her residence at Delhi. She accordingly claimed to have surrendered herself before the Central Bureau of Investigation (CBI) on 24 March 2015. In her

later application under Section 85 of the Code of Criminal Procedure, seeking release of immovable property at Andheri (West), Mumbai, on 29 October 2015, she stated before the Court of the Chief Metropolitan Magistrate at New Delhi that after being enlarged on bail, sometime in November 2001, she received a setback in her life when she was refused asylum by her husband and children; she had no one to look after her and accordingly, she was left with no option but to start living life as a nomad shuttling from one place to another in search of food and shelter; she was left with no other option but to take recourse in spiritualism for her livelihood; she used to travel from one city to the other with some spiritual groups; though she tried to contact her family members, even after adoption of the spiritual path, she was neglected by her family members. Sometime in February 2015, she claimed to have come to know about the death of her husband and upon a visit to her parental house, she claimed to have come to know about the CBI officials looking for her since a long time. She claimed to have thereafter visited her house at Andheri (West), Mumbai and learnt that her house at Andheri (West), Mumbai had been attached under Section 83 of the Code of Criminal Procedure and accordingly applied for release of the immovable property by her application under Section 85 of the Code of Criminal Procedure. On the other hand, in her special civil suit before the Court of Civil Judge Senior Division, Raigad at Alibag, she has claimed that her husband, deceased Narendra, died on 22 June 2011; that at the relevant time, she was with him; that due to the sudden death of her husband, she sustained severe mental shock and required nearabout a year to get over the shock; that after coming out of the shock, she went to Nandgaon to enter the names of herself and her son in the 7/12 extract in respect of the properties acquired through heirship right, being the sole legal heirs of her deceased husband; and that she there came to know about the mutation entry effected in favour of the Respondent herein and thereafter proceeded to file the special civil suit. As is very obvious and requires no further elaboration, the Petitioner is lying through her teeth and that too differently on different occasions to suit her designs to secure different reliefs and orders from different courts. Her averments on different occasions spin a veritable tale of mystery.

6 The documents produced by the Respondent in her reply to the misc. petition confound this mystery further. The Petitioner appears to have obtained even a ration card in the name of herself, of her brother, one Ashok Amula Bhushan, and, to think of it, even of Narendra Purushottam Umrao, her so called deceased husband, in the year 2013, when it is beyond doubt that the deceased had passed away in the year 2011. The identity proof *inter alia* submitted by her for obtaining the ration card is in respect of one Anjali Narendra Umrao. There is a panchnama, which is also placed on record, which shows the following members in her family, i.e. she herself, said to be aged 57 years, her brother Ashok Amula Bhushan, said to be aged 55 years and her husband Narendra Purushottam Umrao, said to be aged 62 years. There is also her own statement in this behalf which is also on record. One more shocking incident is the Petitioner's prosecution before the Metropolitan Magistrate's Court at Delhi, where she has been declared a proclaimed offender. The order passed by the learned Metropolitan Magistrate reveals that forged passports were recovered from her possession. There is an observation in the order that she had entered into a criminal conspiracy with two others, forged

documents and on that basis, made fraudulent representations and dishonestly induced the authorities to deliver passport booklets, etc. As against the Petitioner's claim of having only one son (i.e. Sanjiv, through her wedlock with the deceased), certified copy of her passport bears a visa entry showing the names of her four children, named, Rupesh, Bhavani, Chirag and Prashant.

7 The CBI's lookout notice for the Petitioner confounds the mystery even further. The notice claims that the Petitioner has various different identifies at different addresses. There were two passports procured by her, one in the name of Anita Umrao from Mumbai and the other from New Delhi, in the name of Anu Aggarwal, bearing different dates of birth. The lookout notice and material published on the CBI website mentions the Petitioner's date of birth as 21 January 1970. (She claims to have married the deceased Narendra on 19 June 1974.)

8 The purported marriage certificate, which is probably the only document produced by the Petitioner in support of her case of marriage with the deceased, is also *prima facie* suspect. The certificate bears the name of her father as 'Amulya Bhushan', whereas her passport shows the name of 'Purshottam Umrao'. Her age shown in the marriage certificate is 22 years (as of 19 June 1974), whilst her two passports show her date of birth as 17 November 1955 and 21 January, 1970. The signatures of fathers of both bride and bridegroom on the certificate are missing. Besides this marriage certificate, there is no other document in support of her claim to the marriage with the deceased. The so-called photograph of the marriage relied upon by the Petitioner does not depict either the

deceased as a bridegroom or the Petitioner as a bride. The driving licence of the Petitioner shows her residential address at Murud; her bank statement shows a residential address at Santacruz in Mumbai; and her bank pass-book shows her residential address in Andhra Pradesh.

9 In the face of all this material, learned Counsel for the Petitioner would have the Court believe that the Petitioner is the legally wedded wife of the deceased Narendra and on the basis of active concealment of this fact and fraudulent representations in that behalf by the Respondent, the grant was obtained by the Respondent and this grant ought to be revoked for a just cause. Our courts have held that since revocation of a grant sets aside an earlier valid judicial order, the court should be cautious and insist on strict proof of presence of any one of the circumstances stated in the provision, namely, Section 263 of the Succession Act, as in the present case. (See the cases of **R. Shivagnanam Vs. PKS Mudaliar**[1], **Pradeep Kumar Chatterjee Vs. Shibarata Chatterjee**[2].)

10 As held by this Court in the case of **Kusum Chandrakant Shankardas Vs. Rajeshri Chandrakant Shankardas**[3], any application under Section 263 of the Indian Succession Act, 1925 (which is *para materia* with Section 383 dealing with succession certificate in connection with which observations were made in **Kusum**'s case) for revocation of a grant must make out three ingredients; firstly, it needs to be shown that there is a false suggestion or concealment of a material particular in the application; secondly, such suggestion or concealment must be shown to

1 AIR 1978 Mad. 265

2 2004(1) JCR 484 (Jhr.)

3 Misc. Petn. No.32/17 dated November 1, 2017.

have been made knowingly, that is to say, by someone who does not believe the suggestion to be true or has knowledge or belief of the fact concealed; and thirdly, there should be no other consideration affecting the maintainability of the application for revocation, including equitable considerations, if any, affecting the applicant's right to seek revocation. It is difficult to see how any of these ingredients is even remotely made out in the present case. Learned Counsel for the Petitioner simply relies on the decree passed by the Court of Civil Judge Senior Division Raigad at Alibag and states that by this decree the Petitioner was declared to be the legal heir of the deceased Narendra as his legally wedded wife. It is borne out by the record that the special civil suit was filed by declaring a wrong address of the Respondent and her children. The Court of Civil Judge Senior Division, at Raigad, Alibag has, on an application made in that behalf by the Respondent herein, come to a *prima facie* conclusion that the writ of summons was not infact served on the Respondent and on that basis, has stayed the decree passed in that suit in favour of the Petitioner herein. Learned Counsel, however, submits that the decree itself still stands and is not yet set aside. Learned Counsel relies on the case of **Shree Chamundi Mopeds Ltd Vs. Church of South India Trust Association.**[4] **Chamundi Moped**'s case has no bearing on the facts of our case. That was a case where the Court was concerned with suspension of proceedings under Section 22 of the Sick Industrial Companies Act. In that case, proceedings under Sections 15 and 16 of the Sick Industrial Companies Act had been terminated by BIFR and even an appeal from that order under Section 25 of that Act was dismissed by the Appellate Authority. The question before the Court was whether stay of the dismissal order of the

4 (1992) 3 Supreme Court Cases 1

Appellate Authority by the High Court had the effect of reviving the disposed of proceedings so as to invite the suspension of proceedings under Section 22 of that Act. Be that as it may, it cannot be said in the present case that the decree passed in the special civil suit has been got rid of. To that extent learned Counsel is right. The misc. application in this behalf by the Petitioner under Order 9 rule 13 of the Code of Civil Procedure, 1908, is till pending. There is, however, nothing to indicate on what basis the Respondent's address was shown at Delhi and how the Petitioner claims to have served the writ of summons in that suit on the Respondent and her children. It is the Respondent's case, and there is abundance of material to support *prima facie* merits of that case, that the Petitioner's claim in the suit for declaration as a legal heir of the deceased being his legally wedded wife, is fraudulent. It is anyway the Respondent's avowed case that it is fraudulent and the Respondent has even adopted appropriate steps to set aside the decree passed by the Civil Court on the basis of these fraudulent representations; and the Civil Court has *prima facie* even held in her favour. On these facts, it cannot possibly be suggested that simple non-mention of the factum of the pending civil suit and the decree passed ex-parte therein in the original testamentary petition seeking grant of letters of administration, implies a fraudulent conduct or making of false suggestion or concealment of something material to the case on the part of the Respondent herein.

11 There is nothing to indicate that the allegations of fact made to justify the grant, are anyway false or involve any concealment. There is absolutely nothing to show that there is any active concealment or suggestion of falsehood. There is nothing to show that any suggestion or

concealment is made knowingly by the Respondent in her testamentary petition. The Respondent cannot be said to have had any knowledge or belief of the fact concealed or made any suggestion which she does not believe to be true as noted above. The Respondent relies on a wealth of material in support of her claim to be the widow and legal heir of the deceased. She not only relies on the marriage certificate, but also (i) the passport of the deceased which shows the Respondent as his wife, (ii) birth certificates of her children which show the deceased as their father, (iii) photographs of the last rites of the deceased, (iv) affidavits of the sisters of the deceased affirming the Respondent and her children to be the legally wedded wife and children, respectively, of the deceased, etc.

12 Learned Counsel sought to rely on the judgment of the Supreme Court in the case of **Narendra Purshotam Umrao Vs. B.B. Gujral**[5], submitting that this order of the Supreme Court decides a case filed by the Petitioner herself for issuance of habeas corpus for release of her husband Narendra Purshotam Umrao. The petition is filed by one Vijayaben Purshotam Umrao as indicated in the order and not by the Petitioner herein. If anything, it only confounds the mystery even further.

13 In the premises, there is no merit whatsoever in the present misc. petition. Infact, this case calls for an action under Section 340 read with Section 195(1) (b) of Code of Criminal Procedure and Sections 192 to 194 of Indian Penal Code, for a complaint to the Metropolitan Magistrate's Court for investigation of the offences referred to therein.

5 (1979) 2 Supreme Court Cases 637

14 If it is the Petitioner's case that she is indeed the legally wedded wife of the deceased, she may well agitate her status in the special civil suit filed by her. Rejection of her revocation application does not operate as *res judicata* for any issues arising in her pendency suit. Our court has held that even in the face of a grant and without its revocation by the probate court, a civil suit is competent to adjudicate on the status of legal heirship. It is made clear that the observations made in this order are merely for the purpose of deciding the Petitioner's application for revocation and shall not preclude the civil court deciding the Petitioner's special civil suit from making an independent assessment of the merits of the case.

15 In the premises, the misc. petition is dismissed. The Petitioner shall pay the costs of the petition quantified at Rs.50,000/- (Rs. Fifty Thousand Only) to the Respondent. Let a complaint be issued under Section 340 read with Section 195(1)(b) of the Code of Criminal Procedure for making inquiry into the offences referred to in clause-(b) of sub-section(1) of Section 195 by the Metropolitan Magistrate having jurisdiction over the matter.

16 Learned Counsel for the Petitioner applies for continuation of the interim order in the misc. petition not to act on the grant and also for stay of the order passed by this court under Section 340 of the Code of Criminal Procedure. The application is rejected.

17 In view of the disposal of the misc. petition, Notice of Motion No.174 of 2017 does not survive and the same is disposed of.

(S.C. GUPTE, J.)