

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISC. PETITION NO. 53 OF 2017
IN
PETITION NO. 1978 OF 2015**

Rabinder Kumar Sibal

.... Petitioner

Vs.

**Monit Pahwa through
C.A. Suraj Sant Kumar Kala**

.... Respondent

Mr. Mehul Shah Advocate for Petitioner
Mr. Sajjad Patel Advocate for Respondent

**CORAM : R. D. DHANUKA, J.
DATE : AUGUST 2, 2017.**

P.C.:

1 By this petition filed under section 263 of the Indian Succession Act, 1925, petitioner seeks revocation of the Probate dated 23/01/2017 granted by this Court to the respondent in petition no. 1978 of 2015 on various grounds. The petitioner is admittedly the real brother of the deceased Rajkumar Devnath Sibal. It is the case of the petitioner that the said deceased had left behind petitioner as well as his brother Mr. Tej Kumar Devnath Sibal. According to the petitioner, respondent herein is an outsider and had fraudulently filed a petition inter alia praying for probate in this Court i.e. petition no. 1978 of 2005, based on an alleged Will dated 11/12/2014.

2 The learned counsel for the petitioner invited my attention to averments made by the respondent in petition no. 1978 of 2015, more particularly paragraph 8. He submits that a false statement came to be made in the Testamentary Petition that the said deceased died as widower and had left no issues and without any heirs and next of kin according to Hindu Succession Act, 1956. He submits that though the petitioner and his brother would fall under Class II according to the provisions of Hindu Succession Act, no citation was served upon the petitioner and his brother.

3 The learned counsel for the petitioner invited my attention to affidavit-in-reply filed by the respondent and in particular paragraph 11 and 17 alleging that respondent herein was not aware that the petitioner was the brother of the said deceased and therefore, it was mentioned by the respondent in Testamentary Petition filed by him that the deceased died without any surviving heirs. It is further contended that before issuing probate, respondent had issued a notice which was published in two local newspapers.

4 The learned counsel for the respondent could not dispute before this Court that the petitioner and his brother were the real brothers of the said deceased Rajkumar Devnath Sibal. The learned counsel also could not

dispute that in case of intestacy, the petitioner and his brother would have right in the property of the said deceased.

5 The next submission of the learned counsel for the respondent is that the petitioner has also propounded a separate will dated 23/07/2011 and has also filed a separate Testamentary Petition No. 619 of 2017 in this Court. He submits that the will propounded by his client is subsequent in point of time. He submits that his client would file a caveat in the Testamentary Petition No. 619 of 2017, if citation served upon his client by the petitioner herein.

6 The learned counsel for the petitioner in rejoinder submits that in so far as Testamentary Petition No. 619 of 2017 is concerned, respondent herein does not fall under Class I or Class II nor is next of kin of the deceased and the petitioner is not required to serve any citation upon the respondent.

7 In view of the admitted position that the petitioner and his brother were the real brothers of the said deceased, they were required to be served with citation in view of the petitioner and his brother falling in Class II according to Hindu Succession Act, 1956. Admittedly, petitioner and his brother were not served with any citation as per Bombay High Court

(Original Side) Rules. Respondent made an averment in the Testamentary Petition filed by him that the said deceased was a widower and had not left any legal heirs or next of kin according to Hindu Succession Act, 1956. It is the case of the respondent in affidavit-in-reply that respondent was not aware that the petitioner was the brother of the said deceased.

8 Perusal of the paragraph 17 of the affidavit-in-reply indicates that it is the case of the respondent that the petitioner and his brother had not taken any part except attending funeral. It is further stated that if respondent had the knowledge about the petitioner being the brother of the said deceased, he would have mentioned the name of the petitioner and his brother in the Probate Petition. It is thus clear beyond reasonable doubt that the relationship of the petitioner and his another brother with the deceased is not disputed by the respondent. In my view, the respondent thus could not have obtained grant of Probate from this Court without effecting citation upon the petitioner and his brother. The grant is accordingly liable to revocation.

9 In so far as the submission of the learned counsel for the respondent that he is entitled to oppose the grant of probate in the Testamentary Petition No. 619 of 2017 filed by the petitioner herein is concerned, I do not propose to express any views on the alleged rights of the respondent to

file any caveat in the Testamentary Petition. As and when, any such issue arises, the same can be decided on its own merits. I therefore, pass following order.

- (a) Misc. Petition No. 53 of 2017 is made absolute in terms of prayer clause (a).
- (b) Testamentary Petition No. 1978 of 2015 is restored to file.
- (c) Respondent herein (Original Petitioner) in 1978 of 2015 is directed to serve the citation upon the petitioner and his brother Mr. Tej Kumar Devnath Sibal within 2 weeks from today.
- (d) Petitioner and his brother may file caveat and affidavit in support in accordance with provisions of Indian Succession Act, 1925 and Bombay High Court (Original Side) Rules within the time prescribed therein and shall serve a copy thereof upon the learned Advocate for Respondent.
- (e) In view of the order passed aforesaid, the respondent shall not act upon the said probate dated 23/01/2017 in any manner whatsoever.
- (f) No order as to costs.

(R. D. DHANUKA, J.)