

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO.65 OF 2017
IN
TESTAMENTARY PETITION NO.1033 OF 2014

Suresh Subai Rajbhar ... Petitioner
Vs.
Ashok Kumar Chaitar Rajbhar and others ... Respondents

Mr. H. S. Anand for Petitioner.
Mr. Vinay Bhanushali for Respondent No.1.
Mr. S. P. Thorat for Respondent No.2.
Mr. R. Y. Sirsikar for Respondent No.3.

CORAM : R. G. KETKAR, J.
DATE : AUGUST 8, 2017

P.C. :

Heard Mr. Anand, learned Counsel for petitioner, Mr. Bhanushali, learned Counsel for the respondent No.1, Mr. Thorat, learned Counsel for respondent No.2 and Mr. Sirsikar, learned Counsel for respondent No.3 at length.

2. By this Petition under Section 383(b) of the Indian Succession Act, 1925 (for short 'Act'), petitioner has prayed for revocation of grant of letter of administration dated 21.01.2016 issued by this Court to the first respondent in Testamentary Petition No.1033 of 2014. The petitioner has challenged the grant on the ground of respondent No.1 obtaining Letters of Administration fraudulently by making of a false suggestion or by the concealment from the Court material facts.

3. In support of this Petition, Mr. Anand submitted that respondent No.1 has admitted in his letter dated 25.02.2014 issued through Advocate Lakshman H. Pol to the Secretary of the second respondent and others that the structure in question was demolished on 11.02.2014.

However, he did not disclose the said fact in Testamentary Petition No.1033 of 2014. Respondent No.1 also suppressed that his mother had executed agreement of sale in favour of the petitioner on 17.01.2001. Respondent No.1 is a confirming party to the said transaction. In addition, respondent No.1 along with others made affidavit dated 17.01.2001 giving no objection for issuing a fresh Patch Holder's Card in favour of the petitioner herein. Mr. Anand further submitted that in pursuance of the agreement of sale, petitioner is put in possession of the structure covered by that agreement.

4. He submitted that respondent No.1's father Chaitar Rajbhar was found eligible for allotment of permanent alternate accommodation. His name was at Sr.No.282 of Annexure II. Father of respondent No.1 died in the year 1998. Annexure II was prepared on 29.05.2000. Respondent No.1's mother executed agreement of sale in favour of the petitioner on 17.01.2001. All these facts were suppressed by the respondent No.1 in Testamentary Petition No.1033 of 2014. He invited my attention to the order dated 11.01.2017 passed by the Deputy Collector (E.N.), S.R.A. and in particular document at Serial No.5. Respondent No.1 relied upon the Letters of Administration dated 21.01.2016 issued by this Court in Testamentary Petition No.1033 of 2014. Thus, after obtaining the Letters of Administration fraudulently and by suppressing material facts, respondent No.1 relied upon the Letters of Administration for declaring him as legal heir of the deceased Chaitar Rajbhar. He submitted that as the respondent No.1 has obtained the Letters of Administration fraudulently, this is a fit case for revoking the same under Section 383(b) of the Act. In support of his submissions, he relied upon the decision of the Apex Court in ***Meghmala Vs. G. Narasimha Reddy*, (2010) 8 SCC 383**, and in particular Head Note (D) and paragraph 33 thereof.

5. Mr. Anand submitted that petitioner has preferred Appeal No.21 of 2017 under Section 35 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short 'Slum Act') challenging the eligibility of the first respondent on the basis of the notification dated 16.05.2015 and the said appeal is pending. He further states that liberty may be given to the petitioner to approach Grievances Redressal Committee (G.R.C.) challenging the eligibility of respondent No.1. He states that within two weeks from today, petitioner will file appropriate proceedings before that Committee. The said Committee may be directed to dispose of the proceedings in a time bound manner.

6. On the other hand, Mr. Bhanushali submitted that no case is made out for revocation of Letters of Administration. He submitted that basically, petitioner has no locus to institute the Petition for revocation of the Letters of Administration as he has no caveatable interest. Petitioner is not one of the legal heirs of Chaitar Rajbhar. He relied upon the decision of the Apex Court in the case of **Krishna Kumar Birla Vs. Rajendra Singh Lodha, (2008) 4 SCC 300**. He submitted that the jurisdiction of probate Court is confined only to consider the genuineness of the Will. A judgment rendered in the probate proceedings, which is a judgment in rem, would not be determinative of the question of title. In other words, he submitted that remedy of the petitioner is to approach the appropriate Civil Court for obtaining reliefs and that the present Petition is misconceived.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. The petitioner has contended that respondent No.1 has obtained Letters of Administration by suppressing material facts as also obtained the same fraudulently. In support of this, strong reliance is placed upon

the decision of the Apex Court in **Meghmala** (*supra*). A perusal of **Meghmala's** decision (*supra*) shows that appellant before the Apex Court had obtained possession of the property involved therein after execution of the registered sale deed dated 21.05.1980. The respondent had relied upon the agreement of sale dated 23.01.1976 executed in favour of the Society. Though the proceedings were instituted by the respondent in the Civil Court on the basis of the agreement of sale, nothing was brought on record to show the outcome of the said proceedings. The Apex Court observed that an agreement of sale did not confer any right on the Society. As against this, the appellant acquired the title over the suit land by execution and registration of the sale deed dated 21.05.1980. In paragraphs 4 to 12, the Apex Court referred to the various proceedings between the appellant and the respondent, which proceedings were decided all along in favour of the appellant. It is in that context, the Apex Court observed that the respondent had obtained orders by playing fraud and that had vitiated the proceedings.

8. In the present case, it cannot be said that the respondent No.1 had obtained Letters of Administration either by suppressing material facts or fraudulently so as to maintain Petition under Section 383(b) of the Act. In the case of **Krishna Kumar Birla** (*supra*), the Apex Court has held that the jurisdiction of probate Court is confined only to consider the genuineness of the Will. A judgment rendered in the probate proceedings, which is a judgment in rem, would not be determinative of the question of title. The petitioner has already filed appeal under Section 35 of the Slum Act, which is pending. The petitioner also intends to approach G.R.C. The concerned authority will bear in mind the principles laid down in **Krishna Kumar Birla's case** (*supra*). In view thereof, no case is made out for granting any relief in the present Petition. Hence, Miscellaneous Petition fails and the same is dismissed

reserving liberty to the petitioner to approach the G.R.C. for establishing his eligibility. The petitioner is also at liberty to file application for expeditious disposal of the proceedings proposed to be filed before the Grievances Redressal Committee as also appeal filed under Section 35 of the Slum Act by filing appropriate applications. If such applications are filed, the concerned Authorities will pass appropriate orders for expediting the proceedings. All contentions of the first respondent in that regard are expressly kept open. Order accordingly.

(R. G. KETKAR, J.)

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