

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

**MISC. PETITION NO.68 OF 2014
IN
TESTAMENTARY PETITION NO.1172 OF 2011**

Ganesh Ramchandra KadamPetitioner

Vs.

Vijay Chandrakant KadamRespondent

Mr. Harish Ramesh Pawar for the petitioner.

Mr. Prashant P. Kulkarni for the respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 28th FEBRUARY, 2017

PC.:

1 This Misc. Petition is filed for revoking the Letters of Administration dated 19th December, 2012 given to the respondent in petition no.1172 of 2011.

2 In paragraph 23 of the petition, the petitioner has made a categorical statement that the petitioner is one of the surviving heir of the deceased - Mr. Sanjay Ramchandra Kadam and no notice or citation was ever received by the petitioner in respect of the said Letters of Administration.

3 The deceased was one Sanjay Ramchandra Kadam, who was a bachelor and died on 23rd October, 2010. The petitioner is the brother of the deceased. The respondent is the nephew of the deceased. The deceased

has another brother, one Dr. Chandrakant Ramchandra Kadam. The respondent is the son of this Dr. Chandrakant Ramchandra Kadam. It is also stated and admittedly so that Dr. Chandrakant Ramchandra Kadam is still alive. The parties do not dispute their relation to the deceased.

4 The main ground of the petition is non service of the citation upon the petitioner. In the affidavit in reply there is no paragraphwise denial but in paragraph 4 it is only stated that the citation was served by affixing the same on the notice board of this Hon'ble Court and the office of the Collector at Old Custom House at Mumbai.

5 Rule 399 and Rule 400 of the Bombay High Court (O.S.) Rules are relevant and for the ease of reference are reproduced hereunder :

“399. Service of citations – Citations shall be served personally when possible. Personal service shall be affected by leaving a true copy of the citation with the party cited and taking his acknowledgement on the original.

400. Service by advertisement – Citations which cannot be personally served as required by the last preceding rule shall be served by publishing the same in such local newspapers as the Prothonotary and Senior Master may direct.”

6 Therefore, personal service of the citation upon a party is mandatory. Only if the citation cannot served personally under Rule 399 of the Bombay High Court (O.S.) Rules, then the Prothonotary and Senior Master may direct publishing the same in such local newspapers as he deems fit.

7 No such personal service has been effected. It is not the respondent's case that he attempted to serve the petitioner personally but he was unable to and therefore, he had applied for service by advertisement. Infact it is not even the respondent's case that he advertised the citation in newspapers as required under Rule 400 of the Bombay High Court (O.S.) Rules. I have to note that the respondent has in effect misled the court by playing fraud on the court and obtained the Letters of Administration. Respondent's conduct smacks of utter dishonesty.

8 In the circumstances, in my view, it is a fit case to grant the relief as sought in prayer clause – (a) of the petition. The Letters of Administration dated 19th December, 2012 in petition no.1172 of 2011 stands revoked. The petition accordingly stands disposed.

9 The respondent to pay a sum of Rs.25,000/- as cost to the petitioner herein and also donate a sum of Rs.25,000/- to Army Welfare Fund Battle Casualties. These amounts to be paid within four weeks from today.

(K.R. SHRIRAM, J.)