

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO.76 OF 2016
IN
SUIT NO.46 OF 2006
IN
PETITION NO.22 OF 2002

Girish Ramanlal Khambolja	...	Deceased
Arun Narendrakumar Khambolja	...	Petitioner
Vs.		
Rekha Girish Khambolja	...	Respondent

Mr. V. S. Kapse a/w. Mr. Kunal Rane for Petitioner.
Mr. Sanjay Jain a/w. Ms Aditi Phatak a/w. Mr. J. D'souza i/b. Zohair & Co. for Respondent.

CORAM : R. G. KETKAR, J.
DATE : SEPTEMBER 27, 2017

P.C. :

Heard Mr. Kapse, learned Counsel for the petitioner and Mr. Jain, learned Counsel for the respondent at length.

2. By this Petition under Section 263 of the Indian Succession Act, 1925 (for short 'Act'), petitioner has inter alia prayed for revocation and annulment of the grant of letters of administration dated 09.07.2014 in favour of the respondent in Petition No.22 of 2002.

3. In support of this Petition, Mr. Kapse submitted that respondent had instituted Petition No.22 of 2002 for grant of letters of administration to the property and credits of Girish Ramanlal Khambolja (for short 'deceased'). In that Petition, Caveat was filed by the tenant, Hardeep Trilokinath Trehun. The Caveat was dismissed on the ground that tenant had no caveatable interest in the property. On 29.07.2009, this Court directed issuance of grant. In that order, it was observed that

caveat filed by Hardeep T. Trehun was dismissed on 07.09.2006. Citation was duly served and nobody came forward to contest the proceedings. He submitted that during the pendency of Petition No.22 of 2002, respondent had taken out Notice of Motion No.14 of 2005. Though father of the petitioner, Narendra Ramanlal Khambolja was not named in the Petition, he was made respondent No.2 in that Motion. He further submitted that Shantaben though was served with the citation, did not file the Caveat to oppose the Petition. Subsequently, Shantaben instituted Revocation Petition bearing Miscellaneous Petition (L) No.1108 of 2010. The same was dismissed for not removing office objections.

4. He invited my attention to the Petition instituted by the respondent and in particular paragraph 4. In paragraph 4, respondent contended that deceased had left him surviving as his only heir and next-of-kin according to Hindu Succession Act, 1956, Shantaben Ramanlal Khambolja (mother). He submitted that along with the Petition, Schedule I was enclosed detailing the immovable properties. In respect of item No.(2), it was stated that property in Panchgani, District Satara stands in the joint names of - (i) Shantaben Ramnalal Khambholja, (ii) Narendra Kumar Ramanlal Khambholja (father of the petitioner) and (iii) Girish Ramanlal Khambolja (husband of the respondent). In respect of item No.(4), it was stated that one acre plot No.172/4, Halka No.76 at Dharmasin Sagar stands in the name of Narendra Kumar Ramanlal Khambolja and Girish Ramanlal Khambolja. In short, he submitted that respondent was aware that Narendra Kumar is heir and legal representative of Ramanlal Khambolja and has interest in the properties at Sr.No.(2) and (4) of Schedule I. Despite that, Narendra Kumar was not brought on record in the Petition. He, therefore, submitted that Letters of Administration were obtained by suppressing these material

facts. He further submitted that respondents also suppressed filing of Suit by Shantaben being Special Civil Suit No.194 of 2001 against the respondent and Narendra Kumar. That Suit was decreed on 28.10.2010. It was declared that Shantaben is the sole owner of property at Panchagani. Though respondent is party to that proceeding, the pendency of the Suit was also suppressed from this Hon'ble Court.

5. Mr. Kapse submitted that petitioner herein is claiming independent right and not through his father. He submitted that Shantaben has executed Will on 13.03.2011 and share in flat at Bandra and Worli are bequeathed to Narendra Kumar. He submitted that the letters of administration is rendered void as the Will is surfaced. He has taken me through the orders passed by this Court in the Notice of Motion and order passed by the Division Bench in appeals filed against the orders of the Single Judge.

6. On the other hand, Mr. Jain submitted that no case is made out for revocation of letters of administration. He submitted that the Testamentary Court cannot go into the question of title. The only question which the Testamentary Court has to look into is as to whether Will is validly executed and attested. He submitted that pendency of the Suit will also not be a relevant circumstance for revocation of the letters of administration. Upon taking instructions, he states that respondent will not assert right in respect of the property at Panchagani merely on the basis that it is part of the grant mentioned in the Schedule to the grant. Statement made by Mr. Jain is accepted.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Mr. Kapse has relied upon the Will dated 13.03.2011 executed

by Shantaben Ramnalal Khambolja. He further submitted that petitioner has filed Petition for grant of probate and the same is pending. In paragraph 3 of that Will, Shantaben has referred to flat No.22, Shivsagar, 19, Worli Sea Face, Mumbai. In paragraph 4, she has referred to flat No.7, 3rd floor, Geeta Niketan, 264 Linking Road, Bandra (West), Mumbai-50. As the Petition for grant of Probate is pending, it is not necessary to consider this aspect in the present proceedings.

8. In view of the statement made by Mr. Jain that merely because property at Panchgani is mentioned in the Schedule-I of the Letters of Administration, respondent will not assert her title, I do not find any case is made out for acceptance of the Petition. Subject to that, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Minal Parab