

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY AND INTESTATE JURISDICTION

MISC. PETITION NO. 36 OF 2017

IN

TESTAMENTARY PETITION NO. 1746 OF 2012

Vaintey Co-op Hsg. Society Ltd.	]	Petitioner
Vs.		
Maria Fernandes (since deceased)	]	
Shri Stanley Mascarenhas	]	Respondent

.....

Mr. Neelesh Kalantri, for petitioner.

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CORAM : R.G. KETKAR, J.

DATE : 10th AUGUST, 2017.

P.C.

Heard Mr. Kalantri, learned Counsel for the petitioner at length.

2. By this Petition, petitioner Society has, inter alia, prayed for revocation of Letters of Administration dated 31st March, 2015 in Testamentary Petition No. 1746 of 2012 after condoning delay in filing Misc. Petition as also for injunction restraining the respondent from disposing or alienating or creating third party interest in flat No. 7737, Vaintey Co.op.Hsg. Society Ltd., 197, Kannamwar Nagar-1, Vikroli (E), Mumbai; for directing respondent to hand over possession of the said property to the petitioner.

3. In support of this Petition, Mr. Kalantri submitted that respondent had instituted Testamentary Petition No. 1746 of 2011 in this Court. By order dated 31st March, 2015, Letters of

Administration was granted to the respondent. He submitted that several persons have entered into correspondence with the petitioner/society claiming right in respect of the property. He submitted that petitioner though is not effected, because of constant correspondence made by the persons claiming interest in the property, it has instituted present Petition. He, therefore, submitted that Petition requires consideration.

4. I have considered submissions advanced by Mr. Kalantri. I have also perused Testamentary Petition No. 1746 of 2012. Mr. Kalantri submitted that the respondent has not clarified as to on what basis, he is claiming heir and legal representative of Maria Fernandes and claiming right in respect of the premises in petitioner/Society. A perusal of the Testamentary Petition and in particular paragraphs 4 onwards show that respondent has set out relations with deceased Maria Fernandes. This Court had granted Letters of Administration on 31st March, 2015. Even, if the persons claiming interest in subject matter of the property are writing letters to the Society, the petitioner is at liberty to inform them to adopt appropriate proceedings. It cannot be said that the petitioner has locus to maintain the present Petition for revocation of Letters of Administration.

5. In view thereof, on the ground of maintainability of the Petition, at the instance of the petitioner/Society, the same is dismissed. Order accordingly.

[R.G. KETKAR, J.]