

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO.81 OF 2016
IN
PETITION NO.1632 OF 2012

Chandrabai Naraindas Vazir ... Petitioner
Vs.
Kumari Rameshkumar Vazir ... Respondent

Mr. Pradeep Thorat i/b. Mr. Vivek V. Salunke for Petitioner.
Mr. Zal Andhyarujina a/w. Mr. Sameer T., Ms Komal Joshi and Mr. Sameer Singh i/b. ALMT Legal for Respondent.

CORAM : R. G. KETKAR, J.
DATE : AUGUST 22, 2017

P.C. :

Heard Mr. Thorat, learned Counsel for the petitioner and Mr. Andhyarujina, 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 prayed for revocation, annulment, cancellation and setting aside the grant of Letters of Administration dated 13.03.2015 made in favour of the respondent in Testamentary Petition No.1632 of 2012 by this Court.

3. Respondent had instituted Petition No.1632 of 2012 in this Court for Letters of Administration with the Will and Testament dated 09.09.1997 annexed to the property and credits of Rameshkumar Naraindas Vazir. In that Petition, petitioner had filed Caveat. It is not in dispute and is a matter of record that the Caveat was rejected for not removing office objections on 14.10.2014. It is also not in dispute that petitioner applied for recalling of that order and for restoration of Caveat, which was also dismissed on 04.12.2014. The present Petition is instituted for revocation of the Letters of Administration principally

on the ground that respondent had obtained the Letters of Administration fraudulently by making false suggestion or by concealing from the Court something material to the case as contemplated by explanation (b) to Section 263 of the Act.

4. In support of this Petition, Mr. Thorat has invited my attention to to the Memorandum recording family arrangement dated 15.11.2008 (for short 'Memorandum'), and in particular clauses 2(b), (c), 3(a), (d), 5(i) and (ii) as also ground (D) of the Petition. He also invited my attention to the Deed of Release dated 15.11.2008. He submitted that the Memorandum and Deed of Release, both dated 15.11.2008, are not registered instruments. He submitted that respondent has committed breach of the Memorandum. Though the respondent has included Bungalow situate in land bearing No.261 in Sindh Co-operative Housing Society situate at Aundh, Pune 411 007, she had suppressed the fact that the said property is owned by the petitioner. He, therefore, submitted that in view of explanation (b) to Section 263 as the respondent has obtained Letters of Administration fraudulently, it is a fit case to revoke the Letters of Administration.

5. On the other hand, Mr. Andhyarujina submitted that no case is made out for revocation of the Letters of Administration. He submitted that in fact, the petitioner has contended that the Memorandum is valid and that the respondent has committed breach of the said Memorandum. Under the Memorandum, petitioner had given up her rights in favour of her sons - (i) Ashok Naraindas Vazir and (ii) respondent's husband, Ramesh Naraindas Vazir and retained life interest. He submitted that the said fact is clearly reflected at Sr.No.10 of the Schedule I annexed to the Petition for Letters of Administration. In other words, respondent did not suppress any fact while obtaining the Letters of Administration.

6. Mr. Andhyarujina further submitted that in any case, the petitioner was conscious of the contents of the Schedule I annexed to the Petition filed by the respondent. She had filed Caveat, which was dismissed for non-removal of office objections. The proceedings taken out for restoration of the Caveat were also dismissed. The petitioner, therefore, cannot maintain the present Petition for revocation.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Section 263 in so far as it is material for deciding the controversy raised in this Petition reads thus,

“263. Revocation or annulment for just cause.- The grant of probate or letters of administration may be revoked or annulled for just cause.

Explanation.- Just cause shall be deemed to exist where-

(a) ...

(b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or

(c) to (e) ...”

8. A perusal of the record shows that respondent had filed Petition for obtaining Letters of Administration in this Court. Along with that Petition, Schedule I was annexed. Clause 10 of that Schedule is to the following effect:

10. 50% share, right, title and interest in Plot of land bearing No.262, together with Bungalow standing thereon in Sindh Co-operative Housing Society situated at Aundh, Pune - 411 007 pursuant to Memorandum recording Family Arrangement dated 15th November 2008 read with Release Deed also dated 15th November 2008 executed by Smt. Chandrabai N. Vazir in favour of the deceased and Ashok Narayandas Vazir subject to life interest of Smt. Chandrabai N. Vazir and other terms and conditions of the Memorandum recording Family Arrangement dated 15th November 2008 having present value of ...

Rs.3,50,00,000=00

The said Plot of land and bungalow are self-occupied and do not fetch any income.

9. It is not in dispute that the petitioner had filed Caveat in that proceedings. A perusal of Item 10, extracted hereinabove, shows that respondent had referred to the Memorandum as well as Release Deed, both dated 15.11.2008, executed by the petitioner herein in favour of respondent's husband, Ramesh Naraindas Vazir and his brother Ashok Naraindas Vazir subject to retaining life interest in her favour. It, therefore, cannot be said that respondent had suppressed any fact from this Court while obtaining Letters of Administration. The petitioner, having filed Caveat, was fully aware of the contents of the Petition as also the annexure to the Petition. As noted earlier, the Caveat filed by her was dismissed. The application made by restoration was also dismissed.

10. Apart from that, on one hand, petitioner came with the case that the Memorandum was validly made and the respondent has committed breach of the said Memorandum and on the other, is attacking the Memorandum on the ground that it is not a registered instrument. In my opinion, having regard to Section 263 of the Act, the said controversy cannot be gone into in the present proceedings. Suffice it to note that in view of the material on record, it is not open to the petitioner to contend that the respondent had obtained Letters of Administration fraudulently by suppressing the material facts. In the light of the above discussion, no case is made out for granting any relief in the Petition. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)