

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

**MISC.PETITION NO. 97 OF 2017
IN
PETITION NO. 1324 OF 2016**

Rajkumar Tijomal Wadhwa & Ors.	...Petitioners
Vs.	
Bhavna Rameshlal Wadhwa	...Respondent
Mr.I.S. Thakur I/b. Global Juris Consults for Petitioners.	
Mr.Tejas Vora I/b. Sagar Kasar for Respondent.	

CORAM : S.C. GUPTE, J.

DATE : 14 DECEMBER 2017

P.C. :

This application is moved under Section 263 of the Indian Succession Act for revocation of the grant of letters of administration to the estate of the deceased granted to his widow, the Respondent herein. The application is on the footing that there is a substantial failure of the procedure and fraudulent suppression of facts in the original application for letters of administration. The basis of the revocation application is that the Applicant claims title to the property of the deceased from the record placed before the court. It appears that there was a nomination in favour of the Applicant herein by the deceased and that in pursuance of that nomination, the society has transferred the share certificate of the deceased to the Applicant. There is no registered gift deed placed on record before the court with regard to the particular property. A nomination in respect of a share certificate is no testamentary disposition nor is it a transfer *inter vivos*. If the Applicant herein claims any title to the property of the

deceased, which is not either a matter of admission on the part of the Respondent nor borne out by admitted documents on record, he cannot claim caveatable interest in the matter.

2 Learned Counsel for the Petitioner relies on a judgment of the Supreme Court in the case of **G. Gopal vs. C. Baskar**¹ in support of his case that he has caveatable interest in the matter. In the case before the Supreme Court, what was challenged before it was a judgment of the High Court revoking the probate granted in respect of a will executed by the testator. The record of the case showed that there was a settlement deed executed by the testator in respect of the estate in favour of the applicants for revocation. On the basis of this settlement deed, which was borne out on record, the applicants for revocation had sought a revocation order in respect of the probate granted. In that context, the Supreme Court held that the applicants for revocation had caveatable interest in the estate of the testator and were entitled to be served before any final order was passed. The facts of the present case do not admit of any such title on the part of the Petitioners herein. The claim appears to be merely on the basis of a nomination made in favour of one of the Petitioners. If the Petitioners have any claim to the property of the deceased, their remedy lies elsewhere. They must assert their title in an appropriate proceeding.

3 In any event, as far as Section 263 of the Indian Succession Act is concerned, an applicant for revocation must make out a just cause for revocation or annulment of the grant. As provided in the explanation to Section 263, there is a deeming fiction in respect of the just cause where either the proceedings to obtain the grant were defective in substance or

1 2008 DGLS(SC)1318

the grant was obtained fraudulently by making a false suggestion or by concealing from the court something material to the case or by means of an untrue allegation of a fact essential in point of law to justify the grant even when such allegation is made in ignorance or by way of inadvertence. Since the question of the Petitioners' title is a matter of contest and not in any way either admitted or borne out by the record, the proceedings cannot be said to be defective in substance for want of notice to the Petitioners herein. So also it cannot be said that there was any false suggestion or concealment on the part of the Respondents (original applicants for letters of administration). Any false suggestion or concealment so as to qualify as a ground for revocation of grant must be a suggestion or concealment knowingly made. From the facts before the court, it cannot be said either that the Respondents herein were aware of the title of the Petitioners herein or concealed the same from the court knowingly. Learned Counsel for the Petitioners herein relies on correspondence on the part of the Respondents herein with the society. Based on this correspondence, it is submitted that the Respondents were aware of the Petitioners' title to the suit flat. As I have noted above, the so called title is claimed purely on the basis of a nomination and there is no registered conveyance or testamentary disposition in favour of the Petitioners herein. Even assuming that the Petitioners have caveatable interest in the matter, the case does not fall in either of the clauses of the explanation to Section 263.

4 Accordingly, there is no merit in the revocation petition. The petition is dismissed. No order as to costs.

5 As far as the other property, namely, property at Ulhasnagar is

concerned, though there is a claim laid to it by the Petitioners on the basis of a registered gift deed, that claim is seriously contested. The Respondents herein rely on a communication received from the Sub-Registrar of Assurances that there is no registered document in respect of the subject property. No proof of registration is tendered by the Applicants in response. Since even this is a matter of contest, it must be prosecuted before an appropriate forum and not in a revocation application.

6 Accordingly, there is no merit in the petition. The petition is dismissed. No order as to costs.

(S.C. Gupte, J.)