

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL NO. 332 OF 2017
IN
MISC. PETITION IN T. & I. J. NO. 125 OF 2016**

Ram Shivram Kukreja and another Appellants

Vs.

Bihari H. Wadhwa and 27 others Respondents

Mr. Pradip R. Kadam for the appellants

Mr. Mahesh Menon i/b Mahesh Menon & Co. for respondent nos. 2, 3, 4, 11, 13, 18, 19, 21, 23 to 28.

Mr. B. G. Saraf for respondent no. 9.

**CORAM : SMT. VASANTI A. NAIK,
SARANG V. KOTWAL, JJ.**

DATE : DECEMBER 15, 2017.

P.C.

By this intra court appeal, the appellants have appealed against the order of the learned Single Judge, dated 28/08/2017 rejecting prayer (a) in Misc. Petition No. 125 of 2016 and keeping it open for the appellants to approach the appropriate forum for claiming the relief sought by prayer clauses (b) to (d).

The appellants are some of the beneficiaries of the will executed by deceased Shivram Kukreja. A probate of the will was granted on 22/06/1998. In Testamentary Petition No. 542 of 1997, the appellants had filed Misc. Petition No. 125 of 2016 with a prayer for removal of the respondent nos. 1 & 2 as executors of the will. Certain other prayers pertaining to the allotment of the

shares in the property were also made. By the order of the learned Single Judge dated 28/08/2017, the prayer in prayer clause (a) in Misc. Petition No. 125 of 2016 was rejected and it was observed that it would be open for the appellants to move the appropriate forum for seeking the prayers made in prayer clause (b) to (d). It is stated on behalf of the appellants that the respondent no. 2 has assigned his entire share in the properties left behind Shivram Kukreja by deed of assignment, dated 23/03/2009 and in view of this, the respondent no. 2 would not be entitled to act as an executor and he is liable to be removed. It is submitted that the learned Single Judge did not consider this aspect of the matter in the right perspective while rejecting the application made by the appellants for removal of the respondent nos. 1 & 2 as executors.

On hearing the learned counsel for the parties and on a perusal of the order of the learned Single Judge it appears that the learned Single Judge was justified in rejecting the prayer made in the petition for removal of the executors. The learned Single Judge had rightly found that the appellant could not have prayed for the removal of the executors when they had entered into the memorandum of agreed terms with respondent no. 13-developer in respect of their share in certain properties. The learned Single Judge observed that the appellants could not have stayed the removal of the executors solely because the respondent no. 2 had assigned the rights of his share in the property of Shivram Kukreja to the respondent no. 13-developer. The learned Single Judge found that the appellants had also entered into the memorandum of agreed terms with the respondent no. 13 in the year 2003 and had accepted huge amounts by executing the said terms. We find that the learned Single Judge was justified in rejecting the prayer made by the appellants in prayer clause (a) specially when the appellants had also entered into the memorandum of agreed terms with respondent no. 13-developer in respect to certain properties that fell to their share. We find nothing wrong in the order rejecting prayer clause (a), in the

circumstances of the case. It cannot be said that merely because the respondent no. 2 had assigned his share as per the will of Shivram Kukreja to the respondent no. 13, he would not be entitled to act as an executor.

Since the order of the learned Single Judge is just and proper, we dismiss the appeal with no order as to costs.

[SARANG V. KOTWAL, J.]

[SMT. VASANTI A. NAIK, J.]