

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY*****T. & I. J.*****MISC.PETITION NO. 12 OF 2017****IN****TESTAMENTARY PETITION NO. 20 OF 2016****Sitaldas Teckchand Manghir Malani** ..... Deceased**Sushil Sitaldas Manghir Malani** ..... Petitioner

Mr.Anil Lulla for the Petitioner.

Mr.B.G.Saraf on Notice/Petitioner in TP/20/2016.

**CORAM : R.D. DHANUKA, J.****DATE : 4<sup>th</sup> JULY, 2017****P.C.**

Mr. Lulla, learned counsel for the petitioner states that the proclamation has been already issued pursuant to the order dated 8<sup>th</sup> March, 2017 in the newspapers 'Free Press Journal', Mumbai Circulation in English, 'Navshakti' in Marathi and 'Sindhivasi' in Sindhi. Affidavit of service is already filed. None appeared for the respondent when the matter was called out. No affidavit in reply is filed.

2. By this petition, the petitioner seeks revocation of the grant issued by this court in favour of Mr.Sushi Shitaldas Manghirmalani in Testamentary Petition No.1092 of 2013 *inter alia* praying for Letters of Administration to the property and credit of late Mr.Sitaldas Teckchand Manghirmalani.

3. It is the case of the petitioner that in this misc. petition that the petitioner is the only son of the deceased Mr.Sitaldas Teckchand Manghirmalani who died in Mumbai on 29<sup>th</sup> March,1997. Learned counsel appearing for the petitioner states

that the said deceased died leaving behind the only son and next-of-kin according to Hindu Succession Act, i.e. the petitioner herein and the daughter Mrs.Veena Suresh Mansukhani. He submits that the parents of the deceased had predeceased the deceased. The wife of the deceased expired on 23<sup>rd</sup> February, 2005 at Mumbai.

4. According to the petitioner the said deceased had left a Will dated 25<sup>th</sup> September, 1972 which was duly registered. On 24<sup>th</sup> April, 2016, the petitioner filed a petition bearing No.20 of 2016 *inter alia* praying for Letters of Administration with Will annexed dated 25<sup>th</sup> September, 1972 left by the deceased father of the petitioner Sitaldas Teckchand Manghirmalani. The petitioner after filing of the said petition came to know from the Office of this court that a grant was already issued by the Office in favour of Mr.Sushi Shitaldas Manghirmalani in Testamentary Petition No.1092 of 2013 in respect of the estate of the said deceased Mr.Sitaldas Teckchand Manghirmalani which petition was filed through Mr.B.G.Saraf, advocate practicing in this court.

5. This court thereafter issued a notice to the learned advocate Mr.B.G.Saraf on 27<sup>th</sup> January,2017. The petitioner thereafter filed this Misc.Petition No.12 of 2017 *inter alia* praying for revocation of the said grant issued in favour of Mr.Sushi Shitaldas Manghirmalani. This court passed an order on 27<sup>th</sup> January,2017 in this petition directing the petitioner to serve a copy of this petition upon advocate Mr.B.G.Saraf and to remain present in court.

6. Pursuant to the said order passed by this court, Mr.B.G.Saraf, Advocate filed an affidavit on 3<sup>rd</sup> March,2017 placing certain facts on record. He placed on record as to how the said Testamentary Petition No.1092 of 2013 was filed by him on behalf of Mr.Sushi Shitaldas Manghirmalani. The said Mr.Sushi Shitaldas

Manghirmalani had showed him his election card and had also produced a copy of the death certificate of his parents.

7. By an order dated 28<sup>th</sup> April, 2017, this court accepted the affidavit filed by Mr.B.G.Saraf, Advocate on record and granted ad-interim relief in terms of prayer clause (a) of the Notice of Motion (L) No.140 of 2017.

8. By an order dated 22<sup>nd</sup> June, 2017 passed by this court, this court after recording various reasons made Notice of Motion (L) No.140 of 2017 absolute in terms of prayer clauses (a) and (b).

9. Learned counsel appearing for the petitioner submits that the said Mr.Sushi Shitaldas Manghirmalani had impersonated the petitioner as son of the said deceased and has fraudulently obtained the grant from this court in Testamentary Petition No.1092 of 2013. He submits that the said Mr.Sushi Shitaldas Manghirmalani is not the son of the said deceased.

10. Learned counsel appearing for the petitioner filed a compilation of documents for perusal of this court and has also produced the originals of those documents which includes the latest AADHAR card issued in favour of his client, original of the leaving certificate issued in his favour by Bombay Scottish Orphange Society High School, Caddel Road, Mahim, Mumbai 400 016, original of the death certificate of the deceased Mr.Sitaldas Teckchand Manghirmalani issued by the Municipal Corporation of Greater Bombay, certificate issued by the Office of the Regional settlement dated 22<sup>nd</sup> April, 1958, original of the Commissioner's Allotment Order dated 14<sup>th</sup> February, 1959 and various other documents. He submits that these documents produced before this court would

clearly indicate that the petitioner herein was the only son of the said deceased Mr.Sitaldas Teckchand Manghirmalani and not the said Mr.Sushi Shitaldas Manghirmalani who had personated the petitioner.

11. A perusal of the record clearly indicates that the said Mr.Sushi Shitaldas Manghirmalani had clearly personated the petitioner herein and has fraudulently filed the said Testamentary Petition No.1092 of 2013 *inter alia* praying for Letters of Administration in his favour in respect of the estate of late Mr.Sitaldas Teckchand Manghirmalani.

12. A perusal of the said Testamentary Petition No.1092 of 2013 filed by Mr.Sushi Shitaldas Manghirmalani indicates that the said petitioner had disclosed the name of two heirs and the next-of-kin in paragraph (4) of the said petition Mohina Manghirmalani, widow of the said deceased and the name of the said petitioner himself i.e. Mr.Sushi Shitaldas Manghirmalani. In the schedule annexed to the said petition, the said petitioner had disclosed the same properties which are forming part of the estate of the said deceased which are disclosed by the present petitioner in Testamentary Petition No.20 of 2016 filed for Letters of Administration. Though the present petitioner and his sister were the only son and daughter of the deceased, they were deliberately not cited in the said Testamentary Petition No.1092 of 2013. No citation was served thereon. The said Mr.Sushi Shitaldas Manghirmalani has thus fraudulently obtained the grant of Letters of Administration by suppressing the true and correct facts and by impersonating himself as the son of the said deceased.

13. I have perused the original documents produced by the petitioner in this misc. petition. I am satisfied that the petitioner is the son of the said deceased and that the grant was fraudulently obtained by Mr.Sushi Shitaldas Manghirmalani in

Testamentary Petition No.1092 of 2013 by committing fraud upon this court.

14. I, therefore, pass the following order :-

(a) The grant issued by this court in Testamentary Petition No.1092 of 2013 on 26<sup>th</sup> February, 2014 in favour of Mr.Sushi Shitaldas Manghirmalani is revoked. Mr.Sushi Shitaldas Manghirmalani is directed to return the original grant issued by this court and shall deposit the same with the Prothonotary and Senior Master within two weeks from the date of publication of this order.

(b) This order shall be published by the petitioner in the newspapers (1) “Free Press Journal” (in English) Mumbai Edition and (2) “Navshakti” (in Marathi) Mumbai Edition and also in (3) “Sindhivasi” (in Sindhi), Mumbai Edition within two weeks from today. Mr.Sushi Shitaldas Manghirmalani shall not act upon the said grant issued by this court issued on 26<sup>th</sup> February, 2014 in any manner whatsoever.

(c) Place the Testamentary Petition No.20 of 2016 on board for hearing on 17<sup>th</sup> July, 2017 after directions matters.

15. Misc. Petition No.12 of 2017 is disposed of in the aforesaid terms. The respondent is directed to pay cost of Rs.one lakh to the petitioner within two weeks from the date of publication of this order.

**(R.D.DHANUKA, J.)**