

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4122 OF 2018

Smt. Kamarunnisa Sayyed ImamuddinPetitioner
V/s.
Babu @ Sarfaras Abdul Rehman & Ors.Respondents

Ms. Chaitrali Deshmukh i/b. Sachin Gite for the petitioner.

**CORAM : MRS. MRIDULA BHATKAR, J.
DATED : 18TH JUNE, 2018.**

P.C.:

- . Not on board. Upon mentioning, taken on production board.
2. In this Writ Petition, the order dated 03rd February, 2018 passed by the 8th Joint Civil Judge, Senior Division, Nashik in Regular Civil Suit No.720 of 2013 is challenged.
3. Respondent no.1 has filed the Regular Civil Suit No.720 of 2013 against the present petitioner and other respondents for revocation of probate. In the said suit, alongwith the revocation of the probate and for cancellation of will, a relief that he be declared as a legal heir of Late Sayyed Imamuddin is sought. The petitioner who is the defendant no.1 moved this application on the ground that the said relief cannot

be claimed in the suit and so the suit is not maintainable. The Trial Court rejected the said application. Hence, this Writ Petition.

4. The learned counsel for the petitioner, on production, submits that the said relief of revocation cannot be asked by the plaintiff in view of section 264 of the Indian Succession Act. She further submits that probate is granted in favour of the petitioner and against that order, appeal lies before the High Court. Hence, the order of grant of probate was required to be challenged before this Court, instead a suit is filed before the Civil Judge, Senior Division, Nashik who is not a competent authority to try the matter.

5. Considered the submissions advanced by the learned counsels for both the parties. A short point involved in this Writ Petition which can be decided and the petition can be disposed of at the stage of production. Section 264 of the Indian Succession Act confers powers to the District Judge to grant or to revoke probate. In the present petition, the probate was granted in favour of the petitioners in the year 1989. At that time, the respondent no.1/original plaintiff was not party to the proceedings and therefore, the plaintiff readily filed the separate proceedings for revocation of the said probate before the Civil

Court. The Civil Judge, Senior Division may be delegated the powers to conduct the matters for grant or revocation of probate.

6. The relief of cancellation of will, revocation of probate and declaration that the plaintiff is the legal representative of Late Sayyed Imamuddin can be asked in one and the same suit in view of the Order 2 Rule 2 of CPC. Hence, the order passed by the learned Judge of the Trial Court cannot be faulted with. No illegality is found. Writ Petition is dismissed *in limine*.

(MRS. MRIDULA BHATKAR, J.)