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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO. 11 OF 2016
IN
TESTEMANETARY PETITION NO. 735 OF 2012**

Jayashree Chandrakant Kalekar & Ors	...Petitioners
<i>Versus</i>	
Sourabh Jayprakash Mhatre	...Respondent

Mr Saurabh M Railkar, *for the Petitioners.*

Mr Vijay Agade, *i/b Sanjay R Kolhapure, for the Respondent.*

CORAM: G.S. PATEL, J
DATED: 20th February 2018

PC:-

1. The Miscellaneous Petition will have to be allowed for the very reasons set out in my order of 2nd May 2016 granting interim relief. There is still no real answer to any of the points then canvassed and discussed. The order of 2nd May 2016 reads thus:

"1. Admit.

2. The original Respondent was the original Petitioner in Testamentary Petition No.735 of 2012 seeking Letters of Administration with Will annexed to the property and credits of one Ahilyabai Haribhau Mhatre, who is said to have died in Mumbai on 6th December 2011 leaving a Will

dated 21st January 2010. The Respondent claims to be the sole legatee under that Will.

3. The three Revocation Petitioners are all Ahilyabai's children. Petitioner Nos. 1 and 3 are her married daughters. Petitioner No.2 is her son. The Respondent to the Revocation Petition, i.e., the original Petitioner in the Testamentary Petition, is the son of a another son of Ahilyabai, i.e., Ahilyabai's grandson and the nephew of the three Petitioners.

4. Mr. Railkar points out that in the original Petition, the Petitioner (the present Respondent) mentioned the name of the Revocation Petitioner No.2 and the maiden name of Petitioners Nos. 1 and 3 as Ahilyabai's heirs. Before marriage they were known respectively as Jyoti Haribhau Mhatre, (after marriage, Jayashree Chandrakant Karlekar) and Malti Haribhau Mhatre (after marriage, Megha Dnyaraj Patil). In fact Mr. Railkar points out that there is no person by name as Malti Haribhau Mhatre. Her maiden name was Jaymala Haribhau Mhatre and this was, of course, known to the Respondent.

5. What is more curious is that in respect of all these three children of Ahilyabai, viz., the three Petitioners, the present Respondent said that their residential addresses were not known. On that basis he obtained an order of substituted service, although he must have known full well that the present Revocation Petitioners reside in Thakurdwar, Mulund and Thane respectively.

6. This is sufficient reason in my view, to grant the Petitioner the interim relief sought in terms of prayer clause (b).

7. The Petition is made returnable on 4th July 2016. Affidavit in Reply to be filed and served on or before 17th

June 2016. Affidavit in Rejoinder to be filed and served on or before 27th June 2016.

8. The Petition to be listed for hearing and final hearing on 4th July 2016.

9. Till further orders there will be an interim order in terms of prayer clause (b), which reads as follows:-

“(b) that pending hearing and final disposal of this Petition, the Respondent be restrained from dealing with or disposing off or in any manner create third party interest in regard to Suit lands more particularly described in Amended Schedule No.I (Exhibit C to the Petition);”

10. All concerned to act on an authenticated copy of this order.”

2. The Miscellaneous Petition succeeds.

3. However, having regard to the circumstances, I will direct the Respondent to deposit the original grant of Letters of Administration with Will annexed in this Court on or before 9th March 2018, rather than to direct a cancellation of the grant. The reason is that if the opposition to the Testamentary Petition fails, then the grant will revive.

4. The Testamentary Petition No. 735 of 2012 stands revived and restored to file.

5. Mr Railkar states that the 3rd Revocation Petitioner passed away on 19th November 2016. Her husband does not independently want to contest or be impleaded. Therefore, on or before 16th March 2018, Revocation Petitioners Nos. 1 and 2 will file their Caveats and their respective Affidavits in Support and serve these on the Advocate for the Respondent to the Revocation Petition (original Petitioner in the Testamentary Petition). The Testamentary Petition will then be renumbered as a Suit of 2018 and be listed for framing issues on 28th March 2017.

6. The Respondent to the Revocation Petition will, on or before 9th March 2018, give Mr Railkar inspection of all documents relied on in the Affidavit in Reply to the Revocation Petition. In addition, the Revocation Petitioners may take inspection and ordinary copies from the Court records of all necessary documents.

7. The Miscellaneous Petition is disposed of in these terms. No costs.

(G. S. PATEL, J)