

Shephali

REPORTABLE

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

CHAMBER SUMMONS NO. 21 OF 2018

IN

TESTAMENTARY SUIT NO. 88 OF 2008

IN

TESTAMENTARY PETITION NO. 1078 OF 2007

Mahesh N Bhat

...Plaintiff

Versus

Mark Uppaluri

...Defendant

Mr Nikhil S Bafna, *with Ms Mani Prakash, for the Petitioner.*

Mr Mihir Desai, *with Mr SS Jadhav, for the Respondent/Applicant.*

CORAM: G.S. PATEL, J

DATED: 18th July 2018

PC:-

1. The Chamber Summons is filed by the Respondent seeking inspection of documents relating to the immovable assets listed in the schedule to the Probate Petition. Both items in the Probate Petition are bank accounts. The first of these is a bank account in Mumbai (“**the Mumbai account**”). The second is the bank account in Bangalore (“**the Bangalore account**”). Mr Desai on behalf of the

Applicant clarifies that what is required is copies of the bank statements and the account opening forms, if available.

2. At the same time, Mr Desai had also raised an argument about the jurisdiction of this Court. This was on the basis that since the only asset within the jurisdiction of this Court is a bank account, this Court would not have the jurisdiction to entertain the Petition.

3. I have heard both sides at some length on this question. In my view, the objection as to jurisdiction is not correctly taken. It appears to me that the submissions made by Mr Bafna for the Probate Petitioner are correct.

4. The argument from Mr Desai is based on a reading of Section 57 of the Indian Succession Act 1925. This is how that section reads:

"57. Applicant of certain provisions of Part to a class of Wills made by Hindus, etc.— The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply —

(a) *to all Wills and codicils made by any Hindu, Budhhist, Sikh or Jaina, on or after the first day of September, 1870, within the territories which at the said date were subject to the Lieutenant-Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and*

(b) *to all such Wills and codicils made outside those territories and limits so far as relates to immovable property situate within those territories or limits; and*

(c) to all Wills and codicils made any Hindu, Buddhist, Sikh or Jaina on or after the first day of January, 1927, to which those provisions are not applied by clauses (a) and (b).

Provided that marriage shall not revoke any such Will or codicil."

(Emphasis added)

5. It seems to me clear that all that this section does is to specify the class of Wills of which probate is necessary. That class covers Wills made in one of the specified towns, i.e., the presidency towns; or where the Will in question relates to immovable property within the local limits of the ordinary original civil jurisdiction of the High Courts in those towns. This does not mean that Probate cannot be granted of other Wills that fall outside the class, i.e., Wills made outside those towns, or which relate to immovable property situated outside towns, or both. Thus, a Will made outside Mumbai, and relating to immovable property outside Mumbai does not *compulsorily* require probate. For such a Will, probate is merely optional. The section does not say that probate of such a Will cannot be granted.

6. In fact, correctly read, the provision regarding jurisdiction of the court before which a petition can be brought for probate is in Sections 270 and 271 of the Succession Act:

"270. When probate or administration may be granted by District Judge.— Probate of the Will or letters of administration to the estate of a deceased person may be granted by a District Judge under the seal of his Court, if it

appears by a petition, verified as hereinafter provided, of the person applying for the same that the **testator or intestate, as the case may be, at the time of his deceased had a fixed place of abode, or any property, movable or immovable, within the jurisdiction of the Judge.**

271. Disposal of application made to Judge of District in which deceased had no fixed abode.—When the application is made to the Judge of a district in which the deceased had no fixed abode at the time of his death, it shall be in the discretion of the Judge to refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, to grant them absolutely or limited to the property within his own jurisdiction."

(Emphasis added)

7. The emphasised portion of Section 270 makes it clear that the court before which the probate petition can be brought (not must be brought) is the one with jurisdiction over the place where the deceased lived; or, if the deceased had 'no fixed place of abode' — clearly meant to embrace propertied itinerants, a familiar class in this country — where the deceased held *any* property, either movable or immovable. Section 271 then confers a discretion: where the estate is spread over more than one jurisdiction, one court may refuse the petition and direct it to be made in another court within whose jurisdiction some other property is situated.

8. Section 57 correctly read is thus a combination of a provision for jurisdiction but as applicable to a certain class of Wills, i.e., those

of which probate is compulsory. Section 270 speaks of a broader class.

9. In the present case, the Mumbai account was not actually in the name of the deceased at any time. It was opened by the probate Petitioner after the deceased's death. The Petitioner deposited into this account some amount in cash that, according to the Petitioner, was left by the deceased in the hands of the Petitioner during the deceased's lifetime. This is of course a matter of trial and evidence and contentions in this behalf of both sides will have necessarily to be kept open. But this does not mean that this Court lacks the jurisdiction to entertain the present Petition. It will be of course for the Petitioner to withstand a cross-examination on this aspect of the matter; but that is the most that can be said about this submission at this stage.

10. In the present case, the deceased had no fixed abode. The Will itself says so. The Will was not made in Mumbai. There is no immovable property in Mumbai. Thus, probate is not strictly compulsory in respect of this Will. Section 57 will not apply to it. But this does not mean that no probate can ever be sought. If probate is sought, one must look at the provisions of Section 270. Those, as I have noted, make it clear that if one of the movables is said to be within the jurisdiction of this Court, this Court certainly has the jurisdiction to entertain the Petition.

11. It is, however, necessary to clarify that this ruling does not mean that Mr Desai has accepted the fact that the deceased did

leave cash with the probate Petitioner. That is the matter that will have to be left to the trial since this is a contested Testamentary Petition.

12. List the Testamentary Suit on 20th August 2018 for marking the Plaintiff's documents. If there is any additional issue to be framed, I will take up that matter on that day.

13. The Chamber Summons is disposed of in these terms.

(G. S. PATEL, J)