

psv

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

**APPEAL NO.326 OF 2015
IN
MISCELLANEOUS PETITION NO.85 OF 2012**

Ms.Uma Vithal Jhaveri & Anr.	...Appellants
Vs.	
Mr.Nikhil Vithal Jhaveri	...Respondent

Mr.Abhay Khandeparkar with Mr.Rahul Patil and Ms.Shruti Bardia i/b.
M/s.Jayakar & Partners for Appellants.
Mr.Sarosh Bharucha with Ms.Aliya Khan i/b. M/s.Vashi & Vashi for
Respondent No.1.

**CORAM : NARESH H. PATIL AND
G.S. KULKARNI, JJ.**

DATE : 13th JUNE 2018

P.C.:

This appeal is directed against the order passed by the learned Single Judge on 29th April 2014 in Miscellaneous Petition filed by the appellants for revocation of the probate granted in respect of the Will executed by Vithal Shyamdas Jhaveri.

2. It is contended by the appellants that after the death of first wife of Vithal Jhaveri, he married second time with Ms.Meena Jhaveri. He had four children from his first wife and two children from second wife.

Vithal Jhaveri died on 10th December 1992. He had executed a Will. The said Will was probated by the High Court on 30th December 1996 in a Probate Petition No.214 of 1994. The appellants have been staying abroad since long. A petition came to be filed seeking revocation of the Probate.

3. The respondent herein raised issue of limitation. He claims to be the sole executor of the Will and Testament dated 12th October 1992.

4. The learned Counsel appearing for the appellants submits that the learned Single Judge committed an error in dismissing the appeal on the ground of limitation. As citation was not served on the appellants who are legal heirs of the second wife of the deceased Vithal Jhaveri, the petition ought not to have been dismissed on the ground of limitation as the issue goes to the root of the matter. As citation was not served, the proceeding gets vitiated and therefore, the petition itself becomes null and void. Reliance placed by the learned Single Judge on the correspondence of the respective Advocates for the parties in ascertaining knowledge to the appellants, is of no relevance according to the learned Counsel, and even if its knowledge is attributed to the appellants, for want of service of citation, the petition ought not to have been dismissed on the ground of limitation.

5. The learned Counsel appearing for the respondent submits that the revocation petition is hopelessly barred by law of limitation. The appellants had full knowledge about the Will, but they willingly remained silent and did not raise any objection to grant of Probate. After a gap of 10 to 12 years, the appellants decided, for the reasons best known to them, to file revocation petition on the ground of not serving the citation upon the legal heirs of the deceased. The learned Counsel for the respondent therefore urged to dismiss this appeal on merits.

6. We have perused the record produced before us. The learned Single Judge has in detail discussed relevant issues and by a reasoned judgment and order and dismissed the revocation petition filed by the appellants. In paragraph 12 of the judgment, the learned Single Judge refers to a copy of the letter dated 16th November 2000 which was sent in reply to the petitioners' Advocates' notice dated 7th November 2000 which indicated that the respondent herein had informed the appellants' Advocate as far back as on 16th November 2000 about the Will and Testament of the deceased Vithal Jhaveri and that the Probate has already been granted by this Court in respect of the said Will and Testament.

7. It is clear from the record that inspite of such intimation and knowledge, the appellants did not bother to take any steps. The learned Single Judge then referred to Section 263 of Indian Succession Act 1925 and Article 137 of Limitation Act 1963. The learned Single Judge has rightly referred to a view of the Division Bench of this Court that an order passed by this Court granting probate on letters of administration is an order in rem and limitation would commence from the date of grant of probate. The learned Single Judge in paragraph 16 of the judgment refers to the correspondence between the learned Advocates of the parties and a letter dated 20th December 2000 addressed by the appellants herein for demanding copy of the probated Will. The learned Single Judge was right in observing that the communication made in 2000 would not extend the period of limitation.

8. We have perused the relevant provisions of law and the judgments referred by the learned Single Judge. We do not find any error or perversity in the impugned order passed by the learned Single Judge.

9. In spite of knowledge, the appellants, for the best reason known to them, did not take necessary steps. The delay is abnormal which has not been explained. The plea regarding non service of citation on appellants need not be considered in view of the fact that the appellants conveniently allowed 10 to 12 years to pass in resorting the remedies available to him in law. There has to be finality in respect of the matters of this nature. We do not expect generation to contest a litigation. Considering the lapse on the part of the appellants and in view of the observations and conclusions drawn by the learned Single Judge, we are of the considered view that there is no merit in the appeal. Appeal is accordingly dismissed.

[G.S. KULKARNI, J.]

[NARESH H. PATIL, J.]