

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO. 115 OF 2017**

Rosalina Fernandes Alias Reema Kishan	...Petitioner
<i>Versus</i>	
Ivor Salvadore Viegas	...Respondent

Mr Tejas Vora, i/b V Shukla & Associates, for the Petitioner.
Ms Rohini Pandit, for the Respondent.

CORAM: G.S. PATEL, J
DATED: 30th January 2018

PC:-

1. The Miscellaneous Petition will have to be allowed at least to the following extent. Testamentary Petition No. 137 of 1995 sought Letters of Administration with Will annexed in respect of a Will dated 7th September 1972 of one Theodomiro Fransisco Severino Salvadore Viegas. The Letters of Administration were granted on 16th February 1996 to one Ivor Salvadore Viegas. The present Petitioner Rosalina Fernandes claims to be the adopted daughter of an adopted son of the deceased. Her adoptive father Martin was cited as a heir by the Respondent in the Testamentary Petition seeking Letters of Administration with Will annexed in respect of the Will dated 7th September 1972. Rosalina claims that she has now found a subsequent Will dated 15th May 1979 of which she is the beneficiary. She has filed Testamentary Petition No. 1505 of 2017

now renumbered as Testamentary Suit No. 172 of 2017 in which she seeks Letters of Administration with Will annexed of the later Will of 15th May 1979.

2. Obviously if the later Will is successfully propounded the grant of the earlier Will must be recalled and set aside. For this reason alone, the Petition is made absolute in terms of prayer clause (b), requiring the Respondent to deposit the original Grant dated 16th February 1996 in this court.

3. The Respondent will not act on the basis of the Grant in any manner whatsoever till the disposal of Testamentary Suit No. 172 of 2017.

4. Ms Pandit with some justification expresses an apprehension that the administration of the deceased's estate is being unduly prolonged and delayed. Hence, list Testamentary Suit No. 172 of 2017 peremptorily for framing issues on 6th February 2018 at the end of the supplementary board and for directions for an early trial. Obviously a Caveat has already been filed.

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

(G. S. PATEL, J)