

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
REVIEW PETITION (L) NO. 1 OF 2019**

IN

NOTICE OF MOTION NO. 177 OF 2018

IN

TESTAMENTARY SUIT NO. 178 OF 2017

IN

TESTAMENTARY PETITION NO. 620 OF 2017

Gunita Malhotra & Anr

...Petitioners

Versus

Kavita Malani & Anr

...Respondents

Mr Girish Godbole, *with Dr Abhinav Chandrachud, Udayan Jain, Puvvi Asher, Yumi Patel & Janhavi Doshi, i/b M/s. Mansukhlal Hirallal & Co, for the Petitioners.*

Mr DD Madon, Senior Advocate, *with Aditya Shiralkar, i/b M/s. Shiralkar & Co, for the Respondent No. 1.*

Mr Joaquim Reis, Senior Advocate *with Ashish Suryavanshi, i/b Ashish Suryavanshi, for the Respondent No. 2.*

CORAM: G.S. PATEL, J
DATED: 6th February 2019

PC:-

1. Heard.

2. I admitted the Review Petition on 30th January 2019.

3. The Petition seeks a review of my order dated 3rd October 2018. This was in the Notice of Motion No. 177 of 2018 filed by the Plaintiffs in the Testamentary Suit No. 178 of 2017. That Notice of Motion sought to dismiss the only two Caveats on the limited ground that the Caveators did not have a caveatable interest. The entire argument that day was premised on the Plaintiffs being positioned higher than the Caveator Defendants in the hierarchy under Section 8 of the Hindu Succession Act 1956 and the Schedule to that Act. There was indeed no other consideration whatsoever. On behalf of the Defendants there was a great deal of anxiety expressed as to what the Plaintiffs would do in regard to some property, and therefore in several distinct paragraphs of the order I made some clarifications that the Defendants would be at liberty to pursue several remedies in regard to the title.

4. The Review Petition is directed to the first part of that order and proceeds on the basis that thereafter the Defendants/Review Petitioners learnt that the deceased was not a Hindu at all and that the provisions of Hindu Succession Act would not apply to him. This is no mere allegation. It is said to be supported by several documents including some evidence of burial, an obituary notice and some documents issued by the Municipal Authority that contained an endorsement of "R.C.", said to mean 'Roman Catholic'. I am not examining the correctness or effect of these documents and I note that Mr Madon for Respondent No. 1 submits that even if this be so, there is in the Hindu Succession Act itself a complete answer. He also submits that the statements made by the

Defendants/Review Petitioners in their own pleadings must be looked at. Mr Madon also submits that none of these documents establish that the deceased was indeed a Christian. For instance, mere burial does not determine religion. In any case, his submission is that the deceased was not in fact a Christian at all and that the Defendants/Review Petitioners themselves have accepted this position.

5. Mr Madon may be right or wrong, but the point is that no occasion arose to look at any of these pleadings in this context, i.e., whether the Hindu Succession Act applied in the first place. It may be applicable. It may not. That is a matter that will have to be determined in the Notice of Motion itself, but I do not see how it is possible to say that the order under review, which does not address this question at all, even as a question of law, can be sustained and allowed to continue. This is most certainly a sufficient reason within the meaning of Order 47 to allow the Review Petition.

6. All contentions must of course be left open and no part of the present order is to be read as a conclusive determination of the contentions on either side.

7. The Review Petition is made absolute. The order dated 3rd October 2018 is reviewed and recalled. The Notice of Motion No. 177 of 2018 is restored to file. It will be placed before the Bench to which these matters are assigned for further arguments on the earliest convenient date. Mr Godbole for the Petitioners does not press the other prayers in his Review Petition.

8. The Review Petition is disposed of in these terms. There will be no order as to costs.

9. It needs to be clarified that the order of 3rd October 2018 will continue unaffected by this order only to the extent that it also made an order (included at the end) on Chamber Summons No. 43 of 2018. That part of the 3rd October 2018 disposing of the Chamber Summons will remain undisturbed.

(G. S. PATEL, J)