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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY & INTESTATE JURISDICTION

MISCELLANEOUS PETITION NO.99 OF 2018

Chandru B. Kirpalani	...Petitioner
V/s.	
Dr.(Ms.) Maya B. Kirpalani & Ors.	...Respondents

Mr.Mehul Shah for the Petitioner.
None for the Respondents.

CORAM : R.D. DHANUKA, J.
DATE : 9TH JANUARY, 2019.

P.C. :-

1. Mr.Shah, learned counsel appearing for the petitioner tenders affidavit of service dated 11th December, 2018 and would submit that insofar as the respondent no.1, who was appointed as an executrix under the Will dated 7th February, 2005 of Smt.Devibai Bulchand Kirpalani is concerned, the notice and papers have been returned unserved by the Postal Authorities with remark "unclaimed" Insofar as the respondent nos.3, 4 and 5 are concerned, the same are served. Insofar as the respondent no.2 is concerned, the packet containing the notice and the papers of the respondent no.2 is returned unclaimed.

2. Learned counsel for the petitioner invited my attention to a Will of the deceased Smt.Devibai Bulchand Kirpalani dated 7th

February, 2005 and also the correspondence annexed to the petition. He submits that the petitioner as well as the respondent nos.2 to 5 are the beneficiaries under the said Will. He submits that the respondent no.1 was appointed as a sole executrix of the said Will dated 7th February, 2005.

3. Learned counsel invited my attention to the correspondence annexed at Exhibits "C" to "F" of the petition and would submit that the petitioner had repeatedly called upon the respondent no.1 to take appropriate steps to apply for probate of the said Will, the respondent no.1 has refused to act as an executrix. The petitioner thereafter even forwarded a draft affidavit to the respondent no.1 for execution giving her consent to relinquish her right to apply for Letters of Administration with a Will annexed dated 7th February, 2005. Though the said letter along with the draft was received by the respondent no.1, the respondent no.1 has neither agreed to act as an executrix nor relinquished her rights. He however, invited my attention to paragraph 11 of the letter dated 24th January, 2018, last paragraph of the letter dated 7th September, 2017 from the respondent no.1 stating that she did not intend to execute the Will at her costs due to the reasons recorded in the said letter.

4. It is thus clear beyond reasonable doubt that though the deceased Smt.Devibai Bulchand Kirpalani expired on 7th February,

2005, the respondent no.1 did not take any steps to seek probate of the last alleged Will dated 7th February, 2005 of the deceased Smt.Devibai Bulchand Kirpalani. Though the petitioner repeatedly called upon the respondent no.1 to file the testamentary petition seeking probate, the respondent no.1 has refused to act as an executrix and to apply for probate on the allegations set out in the letter dated 7th September, 2017. The petitioner has disputed the allegations made by the respondent no.1 in the letter dated 7th September, 2017 by the petitioner's advocate's letter dated 24th January, 2018.

5. Insofar as the other respondents are concerned, they have also not come forward to seek removal of the respondent no.1 as an executrix.

6. In my view, the petitioner has made out a case for removal of the respondent no.1 under section 301 of the Indian Succession Act, 1925.

7. I therefore, pass the following order :-

a). The Miscellaneous Petition No.99 of 2018 is made absolute in terms of prayer clause (a). Since the respondent no.1 in her letter has already informed the petitioner that she does not possess any original Will of the deceased Smt.Devibai Bulchand Kirpalani dated 7th February, 2005, prayer clause (b) cannot be

granted by this Court. The petitioner would be at liberty to take appropriate steps to rely upon the photocopy of the said Will in accordance with law and to apply for appropriate reliefs for Letters of Administration of the alleged Will annexed.

b). The petitioner is also directed to convey this order to the other respondents.

(R.D. DHANUKA, J.)