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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO. 81 OF 2019
IN
MISCELLANEOUS PETITION NO. 132 OF 2018**

Geeta Sudhakar Bhosale & Ors	...Petitioners
<i>Versus</i>	
Hawan Sudhakar Bhosale	...Respondent

**Mr Kanhaiya S Yadav, with Anu C Kaladharan & Atithi A
Bedmutha, for the Petitioners.
Mr Aditya Roktade, for the Respondent.**

**CORAM: G.S. PATEL, J
DATED: 8th March 2021**

PC:-

1. Miscellaneous Petition No. 81 of 2019 seeks revocation of the heirship certificate granted in Miscellaneous Petition No. 132 of 2018. The original Miscellaneous Petition was filed by one Hawan Sudhakar Bhosale seeking a heirship certificate in respect of Sudhakar Haribhau Bhosale, his father. Hawan said that Sudhakar died intestate and was survived by Hawan's mother Saraswati and himself. Saraswati is supposed to have consented to the Grant.

2. This Court allowed the Miscellaneous Petition on 26th November 2018. It noted that there were only two legal heirs.

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3. The Revocation Petition is filed by three persons. The first revocation Petitioner is Geeta Sudhakar Bhosale. She says that she is the first and only legally wedded wife of deceased Sudhakar. Prabhat and Vivek are her sons by her marriage to Sudhakar.

4. Geeta, Prabhat and Vivek were not even cited as heirs in the original Miscellaneous Petition. The extreme peculiarity in this Petition is that everybody concerned, i.e. Geeta, Prabhat, Vivek, Hawan and Saraswati all claim to be residing in the same address at the relevant time, i.e. Block No. 18A, Sighani Building, near Kennedy Bridge, Opera House, Girgaon, Mumbai 400 004. Today, Geeta, Prabhat and Vivek live elsewhere, but in the revocation Petition, Geeta and her sons say that they live at Kennedy Bridge premises. Prabhat and Vivek were born there and their birth certificates, which are annexed, show the names of Sudhakar and Geeta at this very address. The ration card that is at Exhibit C also seems to show the same address with their names. The caste certificates at Exhibit 'B' for Prabhat and Vivek show the name of Sudhakar as their father but show an address in Thane, to which Sudhakar seems to have moved this family.

5. Geeta asserts that her marriage with Sudhakar was never formally annulled or dissolved. During the subsistence of her marriage with Sudhakar he could not possibly have contracted a second marriage with Hawan's mother Saraswati. While Hawan may be one of Sudhakar's heirs, Saraswati is not. But Geeta, Prabhat and Vivek would certainly be his heirs and were entitled to have been cited as such in the heirship petition.

6. There is an Affidavit in Reply to the revocation petition by Hawan. It does not and cannot possibly deal with the contentions taken by Geeta about her prior marriage. Whether Hawan knew about this or not is irrelevant. Even if there was a marriage between Sudhakar and Saraswati (some photographs are annexed to the Affidavit in Reply), in law this will make no difference.

7. The other difficulty now is that Hawan seems to have withdrawn Sudhakar's various benefits, including provident fund and gratuity.

8. Hence, the following order:

- (a) The Miscellaneous Petition No. 81 of 2019 is made absolute;
- (b) The order of 26th November 2018 on the main Miscellaneous Petition No. 132 of 2018 is recalled and set aside.

9. But this is only a part of what is required. It would be unjust and unfair to expect Geeta and her sons to file a separate civil suit for recovery of the dues. The correct order would be to require Hawan to bring back into Court the entire amount that he has withdrawn and then require the parties to make necessary applications accordingly.

10. Hawan will thus file a Further Affidavit in Miscellaneous Petition No. 81 of 2019 setting out what amount he has withdrawn and when and stating by what date he will bring those back into Court.

11. At present, as between Geeta, her two sons and Hawan, I am leaving all contentions open as to the sharing of the amount.

12. That Affidavit is to be filed and served on or before 22nd March 2021.

13. List the matter on 1st April 2021.

14. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production of a digitally signed copy of this order.

(G. S. PATEL, J)