

Sharayu Khot.

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

MISCELLANEOUS PETITION NO. 50 OF 2018

IN

TESTAMENTARY PETITION NO. 233 of 2009

Mr. Ranjana Haribhau Jogdand

...Petitioner

Versus

Shri Ankush Haribhau Jogdand

...Respondent

Mr. Vijay Thakur for the Petitioner.

Mr. Vyom Shah (Legal Aid Counsel) for the Respondent.

CORAM : R.I. CHAGLA J

DATE : 10 December 2021

ORDER :

1. Heard learned Counsel for the parties.

2. By this Miscellaneous Petition, the Petitioner is seeking revocation of the grant of Letters of Administration issued by this Court on 21st May 2009 in Testamentary Petition No. 233 of 2009 in respect of the property and credits of the deceased Phoolabai Haribhau Jogdand.

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3. It is the case of the Petitioner that the deceased was the mother of the Petitioner and she was residing with the deceased at the time of her death at Rahul Nagar, Opposite Balwadi, Mulund Colony, Back side Mulund Darshan, Mumbai – 400 082. The deceased expired at Mumbai on 18th September 2002. The deceased left behind her surviving as her only heir and next of kin, according to the provisions of Hindu Succession Act, 1956, her son Uttam Haribhau Jogdand, 2nd son Ankush Haribhau Jogdand, 3rd son Sunil Haribhau Jogdand, married daughter Mrs. Anjana Anil D'Souza and the Petitioner, who is the daughter of the deceased.

4. Save and except these persons, the deceased had no other next to kin of the deceased. Parents of the deceased had predeceased the deceased. Husband of the deceased also predeceased the deceased.

5. The Petitioner is aggrieved by the grant of Letters of Administration which were granted in her absence. The Petition No. 233 of 2009 had been filed for grant of Letters of Administration to the property and credits belonging to the deceased Phoolabai Haribhau Jogdand. At paragraph 4 of the

Testamentary Petition, statement is made by the Respondent herein, who is the Petitioner therein, that the deceased left behind surviving her as her only heirs and next to kin, according to the Hindu Succession Act, 1956, the persons mentioned therein. There appears to be an absence of the name of the Petitioner as an heir and next of kin of the deceased when in fact the Petitioner being the daughter of the deceased Phoolabai Haribhau Jogdand, should have been mentioned in the said paragraph of the Petition.

6. The Consent Affidavits were obtained by the heirs of the deceased namely, Mrs. Anjana Anil D'Souza, Uttam Haribhau Jogdand and Sunil Haribhau Jogdand giving their free and full consent that the Letters of Administration can be granted to the Respondent herein. It is on the face of such Consent Affidavits that the Letters of Administration were granted to the Respondent herein.

7. It is the Respondent's case that the Petition for Letters of Administration was in respect of the Room No. 63, Shastri Nagar, Opp. MIG Post Office, bandra (E) 400 051, which has been described as **"the said room"**. It is the case of the

Respondent that the said room subsequent to the demise of the deceased was to go to the Respondent and that payment of each of the sibling's share in the said room was to be made to them, including making payment to the Petitioner towards her share in the said room. The Respondent has claimed that an amount of Rs. 70,000/- was paid towards the right, title and interest of the Petitioner as one of the heirs of the deceased.

8. The Affidavit cum No Objection Certificate of the Petitioner dated 7th November 2007 has been relied upon wherein the No Objection Certificate has been granted for transfer of the said room in the name of the Respondent with transfer of his documents.

9. Accordingly, it has been submitted by the learned Counsel for the Respondent that in view of the Petitioner having received her share in the said room in respect of which the Letters of Administration had been granted in favour of the deceased, there is no case made out for revocation for the grant of Probate as she was not a necessary party to be mentioned as heir of the deceased in the Petition for Letters of Administration of the property and credits belonging to the

deceased.

10. Learned Counsel for the Petitioner has submitted in counter that he has challenged the Affidavit cum No Objection Certificate dated 7th November 2007 as being fraudulently obtained and in fact, no monies have been received by the Petitioner towards her share of the said room.

11. The learned Counsel for the Petitioner has also relied upon an Affidavit cum Declaration dated 16th March 2001 in which the deceased had declared that the Petitioner was looking after the deceased along with her minor daughter Miss. Deeplaxmi and they had stayed in the said room. She had expressed her desire that her name be deleted and the name of the Petitioner be shown in respect of the said room.

12. Accordingly, the learned Counsel for the Petitioner has stated that the Petitioner would not have consented to the grant of Letters of Administration to the properties and credits belonging to the deceased in favour of the Respondent herein.

13. Learned Counsel for the Respondent in counter has submitted that the Affidavit cum Declaration dated 16th March 2001 is a forged document.

14. Learned Counsel for the Respondent has also relied upon the decision of the Supreme Court in **Anil Behari Ghosh Vs. Smt. Latika Bala Dassi & Ors.**¹. He submits that the omission to issue citations to persons who should have been apprised of the probate proceedings may well be in a normal case a ground by itself for revocation of the grant. But this is not an absolute right irrespective of other considerations arising from the proven facts of a case. He has submitted that in view of the Petitioner having received his share in respect of the said room and having filed said Affidavit cum No Objection Certificate for transfer of the said room in favour of the Respondent, the omission to issue citation to the Petitioner cannot result in revocation.

15. Having considered the submissions, Section 263 of the Indian Succession Act, 1925 provides that the grant of Letters of Administration may be revoked or annulled for

¹ (1955) 2 SCR 270

just cause. Just cause has been explained and deems to exist where, the proceedings to obtain the grant were defective in substance.

16. In my view, in the present case, the proceedings to obtain the grant were defective in substance as the Respondent herein who was the Petitioner in Testamentary Petition No. 233 of 2009 for Letters of Administration to the properties and credits belonging to the deceased had failed to mention the name of the Petitioner herein, who is the daughter of the deceased and who was clearly an heir and next to kin of the deceased, according to the Hindu Succession Act, 1956.

17. The Petitioner's name should have been shown in paragraph 4 of the Testamentary Petition No. 233 of 2009 and it was necessary for the Respondent herein to have obtained the consent of the Petitioner herein for grant of Letters of Administration in favour of the Respondent herein.

18. Further, considering the fact that the Petitioner herein has claimed that the Affidavit cum No

Objection Certificate dated 7th November 2007 was fraudulently obtained and that the Petitioner herein has not received the amount of Rs. 70,000/- towards the right, title and interest as one of the heirs of the deceased, it was necessary to obtain her consent for grant of Letters of Administration in favour of the Respondent herein.

19. I am of the view that the Petition for grant was clearly defective in substance. The Supreme Court in **Anil Behari Ghosh** (supra) has held that omission to issue citations to persons who should have been apprised of the probate proceedings in a normal case would be a ground by itself for revocation of the grant. This would be such normal case and such omission to issue citation or obtain consent from the Petitioner is a ground for revocation of grant in the facts and circumstances of the present case.

20. In view thereof, the Petition is required to be allowed. Hence, the following order :-

- (i) Grant of Letters of Administration issued by this

Court dated 21st May 2009 in Testamentary
Petition No. 233 of 2009 in respect of the
properties and credits of the deceased Phoolabai
Haribhau Jogdand is revoked.

(ii) The Miscellaneous Petition is accordingly,
disposed of in the above terms.

(iii) No order as to costs.

[R.I. CHAGLA J.]