

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO. 54 OF 2010
IN
TESTAMENTARY PETITION NO. 237 OF 2009
WITH
TESTAMENTARY PETITION NO. 282 OF 2010**

Veena J Shah	...Petitioner
<i>Versus</i>	
Deepak V Mehta	...Respondent
Rajendra V Mehta	...Deceased

Mr Sanjeev Sawant, with BK Barve, Sandeep Barve, Archana Lad, Sheetal Tanpure and Santosh Wagh, i/b BK Barve & Co, for the Petitioner.

Ms Smita Patel, CA of Respondent is present in person.

ARUN
RAMCHANDRA
SANKPAL

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by ARUN
RAMCHANDRA
SANKPAL
Date: 2021.01.20
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**CORAM: G.S. PATEL, J.
DATED: 19th January 2021**

PC:-

1. This order will dispose of Miscellaneous Petition No. 54 of 2010. The circumstances need some explanation.

2. A good starting point is my order of 6th June 2016 which reads thus:

“1. Ms. Smita Patel appears for Constituted Attorney of Mr. Rajendra Vinayak Mehta, the original Plaintiff in Testamentary Petition No.237 of 2009. There was earlier a great deal of controversy about whether Ms. Patel was entitled to represent Mr. Mehta as his Constituted Attorney. The matter was carried to the Division Bench in Appeal. That Appeal was decided on 28th April 2016 by a Division Bench of which I was then a member and which was headed by Justice S.C. Dharmadhikari. It is stated before me that Mr. Mehta’s opponents have since carried that matter in by way of a Special Leave Petition to the Supreme Court and that this SLP is to be listed on 29th June 2016.

2. It is true that it is a result of that Division Bench order that these matters are placed for directions today before me and it is because of that appellate order that I am at all able to grant Ms. Patel a hearing. As of today, however, there is no restraint against my hearing Ms. Patel or any order preventing her from representing Mr. Mehta. I do not think it is necessary to accept the application for an adjournment *simpliciter* because the directions that I propose to pass today cannot possibly result in any sort of determination of any of the issues. The matter itself will undoubtedly have to be posted after 29th June 2016, and that, I think, should suffice.

3. Testamentary Petition No.237 of 2009 was filed by Mr. Mehta for probate to his mother’s Will. That Petition succeeded. A Miscellaneous Petition No.54 of 2010 is filed for revocation of that probate by one Veena Jaswant Shah. Ms. Veena Shah had herself filed a Testamentary Petition No.282 of 2010 also propounding the Will of a same deceased, but one that was of an earlier point in time. On account of probate being granted to Mr. Mehta in his probate Petition No.237 of 2009, which propounded a later Will, there was no question of probate being granted to Veena Shah in her probate Petition No.282 of 2010. There is,

however, a Miscellaneous Petition No.104 of 2013 filed by Mr. Rajendra Mehta in Veena Shah's Testamentary Petition. In addition, there is Notice of Motion No.53 of 2013 filed by Mr. Mehta in Veena Shah's Miscellaneous Petition No.54 of 2010.

4. To my mind, the logical starting point is Miscellaneous Petition No.54 of 2010. Should that Miscellaneous Petition fail, then the probate granted to Mr. Mehta will undoubtedly hold the field and all the other applications will be infructuous. On the other hand, if that Miscellaneous Petition No.54 of 2010 succeeds, then, necessarily, the probate granted to Mr. Mehta will stand revoked and Ms. Veena Shah's Testamentary Petition No.282 of 2010 will necessarily have to proceed. Everything therefore hinges on the outcome of Miscellaneous Petition No.54 of 2010 and this should be logically our starting point. Having regard to the nature of the controversy, it seems to be necessary that for a quick and focused disposal of the Miscellaneous Petition, issues should be drawn in the Miscellaneous Petition No.54 of 2010, so that parties can address themselves precisely to those issues and can lead evidence, if necessary, on those issues alone. I note that in 2014, there appears to have been some evidence taken in Testamentary Petition No.282 of 2010. I will for the present keep that on hold and proceed instead, for the reasons already indicated, with Miscellaneous Petition No.54 of 2010.

5. In her Notice of Motion No.53 of 2013 as also in a submission that she hands up today, Ms. Patel seeks various directions including in regard to the issuance of witness summonses and production of certain papers. These however seen to relate to the proceedings in Testamentary Petition No.282 of 2010 and Miscellaneous Petition No.104 of 2013. It may not be necessary to have these directions

issued at this stage since I am not taking up that matter first. Should Ms. Patel require such directions in Miscellaneous Petition No.54 of 2010 she will of course, be at liberty to make an application for that purpose. That, however, will follow after issues have been properly framed so that all concerned may know exactly the issues to which they must address themselves.

6. Given the nature of the proceedings I would request both sides to draw up draft issues. I must insist that these be limited to the ones that are necessary for proper determination of Miscellaneous Petition No 54 of 2010. Drafts should be exchanged in advance.

7. List all these matters together on 4th July 2016 under the caption of framing issues, it being understood that issues will be framed in Miscellaneous Petition No.54 of 2010 on that date.”

3. The next relevant order is that of KR Shriram J of 30th June 2017, when inter alia issues were framed. KR Shriram J also gave directions for filing Affidavit of Documents etc. In that order KR Shriram J also dismissed Notice of Motion No. 264 of 2016. That is not material to today’s order.

4. The most important order in this sequence is one that followed on 24th February 2017. Ms Smita Patel was present. For the longest time, as the previous orders show, she has conducted this litigation as the Constituted Attorney of the two Respondents, viz., Rajendra Vinayak Mehta and Deepak Vinayak Mehta. Rajendra Mehta was alive on 24th February 2017. The reason to note this will be shortly apparent. The 2nd Respondent, Deepak Mehta, was personally

present in Court before KR Shriram J on 24th February 2017. It is best to reproduce that order in full.

“1. In the order dated 10th February 2017, in the cause title, the words ‘CHAMBER SUMMONS NO. 333 OF 2016’ is corrected to read as ‘CAVEAT IN TEST. SUIT NO. 333 OF 2016’.

Rest of the order remains unaltered.

Corrections be incorporated in the original order.

2. Ms. Patel states that there are certain issues required to be added. On the last occasion also Ms Patel was told to come with draft issues that she wants to be added. Ms Patel today states that she had given a list of draft issues. We are unable to locate that in the Court records and proceedings. I asked Ms Patel to give a fresh copy. Ms Patel refused.

Stand over after six weeks.

3. Shri Barve for the petitioner states that he has received a copy of an application on behalf of respondent no.2 today. Shri Barve states that he would like to file reply to this and seeks four weeks since he was served a copy only yesterday.

Time granted.

4. Mr Deepak Vinayak Mehta, respondent no.2 is present in Court and states that the Probate granted in Petition No. 23 of 2009 on 4th September 2009 be revoked. He states that he does not wish to go ahead with the Probate. At the same time, I find that there is another respondent, i.e., respondent no.1-Rajendra Vinayak Mehta. He is not present in Court nor is there anything from him in writing. Therefore

both the respondents are directed to give in writing to this Court that they do not wish to go ahead with the Probate Granted.

Stand over to 7th April 2017 for directions.”

5. As paragraph 4 of that order shows, Deepak Vinayak Mehta, Ms Patel’s principal, made a statement to KR Shriram J that he did not wish to go ahead with the Probate that he had obtained and that he was consenting to a revocation of the Probate in Petition No. 23 of 2009. That Probate was granted on 4th September 2009. Miscellaneous Petition No. 54 of 2010 seeks a revocation of that very Probate.

6. I may only note for completeness that thereafter on 1st March 2017, KR Shriram J corrected some typographical errors in the order.

7. About a month later on 7th April 2017, for reasons that need not detain us today, KR Shriram J removed the matter from his list.

8. Rajendra Mehta apparently passed away sometime in 2018.

9. The result of this is that the power of attorney to Ms Patel from Rajendra Mehta does not and cannot survive. Any power of attorney is valid only during the lifetime of the person who gives it. Today, therefore, Ms Patel cannot claim to represent Rajendra Mehta, who is no more.

10. As regards her other principal, the 2nd Respondent, Deepak, Mehta, there can be no doubt in law that a Constituted Attorney can only do whatever the principal could do and is bound by all acts of the principal.

11. Deepak Mehta himself appeared in person before KR Shriram J on 24th February 2017. He expressly consented to a revocation of the Probate granted on 4th September 2009 in Testamentary Petition No. 237 of 2009. He expressly stated that he did not wish to continue with that Probate.

12. This order has not been challenged, reviewed, recalled, modified or set aside. It has not been carried in appeal. There is no application pending for any such variation or modification. To Ms Patel's submission that she has already filed such an application, I can only say that my Court Associate has personally checked the records in Court and there is no record of any such recall application having been filed after 2017.

13. Ms Patel states that Deepak Mehta though now in America and aged about 75 years, is willing to come to this Court, apparently (or so I understand) to now seek to withdraw his statement to KR Shriram J. I refuse to permit this. This is a solemn statement made by a party before the Court, though perhaps not on oath, in the presence of his own Constituted Attorney to a Judge of this Court and which statement the Judge has recorded. There is no challenge or controversy about the correctness of what the Court recorded.

14. It is impossible to permit Ms Patel now to go back on this position. Indeed, to my mind, she simply does not have the authority to do so acting as she does on a power of attorney.

15. To permit her to do this would be effectively to permit a Constituted Attorney to do something plainly contrary to what the principal has done.

16. If there is a commitment by that principal to a Judge of this Court, it is binding on all. In saying that, I include not only the principal Deepak Mehta, 2nd Respondent, but also myself and, in particular Ms Patel.

17. Accordingly, Miscellaneous Petition No. 54 of 2010 is made absolute. The Probate granted in Testamentary Petition No. 237 of 2009 on 4th September 2009 is revoked.

18. As mentioned in paragraph 4 of my order of 6th June 2016, the revocation necessarily implies that the present Revocation Petitioner's independent Testamentary Petition No. 282 of 2010, which is now converted into a contested Testamentary Suit No. 225 of 2016, will have to proceed in accordance with law.

19. Accordingly list the Testamentary Suit No. 225 of 2016 for directions on 1st February 2021 in physical Court.

20. The Revocation Petition is disposed of in these terms.

21. 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)