

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
APPEAL NO. 696 OF 2011
IN
TESTAMENTARY SUIT NO. 101 OF 2000
IN
TESTAMENTARY PETITION NO. 895 OF 2000
WITH
NOTICE OF MOTION NO. 3142 OF 2011
IN
APPEAL NO. 696 OF 2011**

Shekhar Rameh Chitnis & Ors

...Appellants

Versus

Dr Ramesh Dattatray Poddar

...Respondent

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SANJAY
MORMARE

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**Mr Ruchir Tolat, i/b M/s. LC Tolat & Co, for the Appellants.
Mr Ajit Tamhane, with Ashish Ghadge, i/b Tamhane & Co, for the
Respondent.**

**CORAM G.S. Patel &
 Abhay Ahuja, JJ.
DATED: 13th July 2022**

PC:-

1. The First Appeal is against a final order and judgment dated 15th December 2020 in Testamentary Suit No. 101 of 2000 in Testamentary Petition No. 895 of 2000. The impugned order

incorrectly records that the Testamentary Petition is in the Administration Suit. In fact, there was a separate Administration Suit No. 1662 of 1994. By the impugned order this suit was dismissed.

2. The facts are somewhat peculiar. In our view, in light of subsequent circumstances it will not be necessary to assess the First Appeal as we have might otherwise have been required to do, that is to say a full reappreciation and re-examination on facts and law. The reason is that the Trial Court materially misdirected itself on a fundamental issue, and secondly, the appellant has given instructions to his advocate and these instructions change the entire complexion of the matter.

3. One Dr Ramesh Dattatray Poddar (**“Dr Poddar”**) was the Plaintiff in the Testamentary Suit and the Petitioner in the Testamentary Petition. He sought probate of a Will dated 12th June 1992 of one Laxmibai Vishnu Chitnis (**“Laxmibai”**). She died on 11th July 1992.

4. Now Dr Poddar was not the executor named in Laxmibai’s Will. Laxmibai’s Will made a bequest of her entire estate in favour of one of her son, Kishor Vishnu Chitnis (**“Kishore”**). Kishor in turn made a Will on 21st October 1994. In this, he appointed Dr Poddar as an executor. Kishore died on 20th September 1998. Kishor was the executor named in Laxmibai’s Will apart from being a sole legatee. He had sought probate of Laxmibai’s Will but that

probate petition came to be dismissed for default and was never restored.

5. Dr Poddar obtained probate to Kishor's Will on 18th September 2000. On the strength of that probate he sought to obtain probate to Laxmibai's Will. This was clearly unsustainable. Probate can only be obtained by a named executor. Dr Poddar was not a named executor in Laxmibai's Will.

6. Faced with this, Dr Poddar sought to convert his Petition to one for Letters of Administration with Will annexed. This also he could not do because he was not a beneficiary or a legatee under Laxmibai's Will. Apparently, he was advised to do this on the basis that he represented Kishor's estate, which vested in him as the executor of Kishor's Will. He had no standing to seek probate to Laxmibai's Will. He was bound to administer Kishor's estate as it stood, and if there was anything not realized to Kishor's estate from Laxmibai's estate and under her Will, it was only Kishor's legatees (the beneficiaries of his Will) who could seek Letters of Administration with Laxmibai's Will Annexed.

7. This aspect of the matter was never considered and the learned Single Judge proceeded to grant Dr Poddar Letters of Administration with Will Annexed to Laxmibai's Will.

8. Faced with this, before us in appeal, Mr Tamhane has obtained written instructions from Dr Poddar. He is clear that whatever he did was for the benefit of the legatees under the two

Wills. Dr Poddar himself has no personal interest in either estate. He has now filed an Affidavit dated 12th July 2022 specifically disclaiming interest in either estate and, in a signed and affirmed writing, renounced executorship of the Kishor's Will and estate.

9. An executor can renounce executorship at any time. There was no doubt that the probate was obtained to Kishore's Will. But that estate now cannot be administered by the executor who has renounced executorship. We do not say anything further in this regard.

10. There is also an Affidavit of Sarika Sachin Shilotri ("**Sarika**"). She is one of the legal heirs and the legatees under Kishore's Will, which was probated.

11. Obviously, we will need to protect the rights of Kishore's legatees as also the heirs of Kishor and Laxmibai.

12. As a result, the Appeal succeeds. The impugned order is quashed and set aside. The grant of Letters of Administration with Will annexed to Dr Poddar of Laxmibai's Will is set aside. The Appellants'/original Defendants' Administration Suit No. 1662 of 1994 will necessarily stand restored to file.

13. We specifically grant liberty to Sarika and all other heirs, legatees or beneficiaries of Kishor's estate as also Laxmibai's estate to take appropriate steps in accordance with law.

14. The Appeal is disposed of in these terms with no order as to costs.

15. In view of this, the pending Notice of Motion does not survive and it is disposed of as infructuous.

16. If there are any interim order in the administration Suit, the Plaintiff must apply to the Testamentary Court for a restoration of earlier relief or for further relief (or both).

(Abhay Ahuja, J)

(G. S. Patel, J)