

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

**INTERIM APPLICATION NO.1940 OF 2019
IN
TESTAMENTARY SUIT NO.164 OF 2019**

Kunal Mahesh Bhalinge ...Applicant/Defendant

In the matter between :-

Manik Namdeo Bhalinge ...Deceased

And

Uma Mahesh Bhalinge ...Plaintiff

**WITH
INTERIM APPLICATION (L) NO.5827 OF 2022**

Ms. Akansha Agrawal a/w. Mr. Manish Boura i/by M/s. A. S. Khan & Associates for Applicant/Defendant.

Mr. J. S. Kini a/w Ms. Sapna Krishnappa for Plaintiff.

CORAM : R. I. CHAGLA, J.

DATED : 29th JULY, 2022.

P.C.

1. The matter has been placed today for passing orders. The arguments of both sides were heard and concluded on 22nd July 2022.

2. Ms. Akansha Agrawal, learned counsel appearing for the Applicant/Defendant has only pressed for prayer clause (d) of the Interim Application which reads thus;

“(d). That pending the hearing and final hearing of the suit this Hon’ble Court be pleased to appoint a fit and a proper person to administer the estate of the Deceased Mr. Manik Namdeo Bhalinge or some other fit and proper person be appointed as Administrator of the estate of the Deceased, described in the Plaint hereinabove, as also of all the bank accounts, Out standings, books debts, papers, vouchers and documents of the Deceased and relating to the estates of the Deceased with all powers including the power to collect the rent.”

3. A few facts are relevant to be mentioned. There are two Wills, one Will came to be executed by the deceased-Manik Namdeo Bhalinge on 11th July 2001, which is duly registered wherein the father of the Applicant namely Mahesh Bhalinge is a sole legatee to the entire estate. The second Will which is contested in the captioned Testamentary Suit No.164 of 2019, in which the present Interim Application has been taken out is stated to be executed by the deceased-Manik Namdeo Bhalinge on 24th April 2017 and which is registered wherein the Plaintiff-Uma Mahesh Bhalinge is the sole

legatee to the entire estate.

4. It is necessary to note that the deceased-Manik Namdeo Bhalinge, expired on 19th June 2017, at the age of 99 years, shortly after executing the contested Will. Though the deceased passed away in the year 2017, the Plaintiff did not file Probate Petition/LOA Petition in respect of the contested Will till 26th February 2019. It is further necessary to note that the father of the Applicant, namely Mahesh Bhalinge passed away at the age of 58 years on 4th January 2019.

5. In the Petition for Letters of Administration-LOA filed by the Plaintiff, the Caveat had been filed by the Applicant before this Court on 3rd July 2019 and by virtue of which the Testamentary Petition was converted to the Testamentary Suit No.164 of 2019.

6. The present Interim Application was taken out in the captioned Testamentary Suit on 12th December 2019. Thereafter, on 25th October 2021, the Petition for Letters of Administration was filed by the Applicant, Kunal Bhalinge in respect of the Will executed by the deceased-Manik Namdeo Bhalinge on 11th July 2021.

7. Ms. Agrawal submits that the present Interim Application is filed under Section 247 of the Indian Succession Act, 1925 for appointment of Administrator pendente lite i.e. pending the captioned Testamentary Suit for grant of Letters of Administration. She has submitted that as per the said provision, the Court may appoint an administrator of the estate of the deceased person, who shall have all rights and powers of general administrator, other than the right of distributing of the estate of the deceased and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

8. Ms. Agrawal has submitted that the necessity to take out the Interim Application for appointment of an Administrator is in view of the fact that the Applicant is contesting the Will of the deceased which is the subject matter of the captioned Testamentary Suit and there is no executor to take charge of the estate. Further, the Plaintiff is dealing with the estate in a manner which is detrimental to the legal heirs of the deceased and appropriating properties belonging to the estate to herself and to her family members. Accordingly, necessary orders of this Court are required for appointing an Administrator pending final adjudication of the

captioned Testamentary Suit for preservation of the estate of the deceased. She has further claimed that the Plaintiff is siphoning monies and pilfering the estate.

9. Ms. Agrawal has taken this Court through certain acts of the Plaintiff, who she claims has taken control of the estate and is unilaterally administering the estate to her own benefit and receiving gains and improvement from the estate. She has referred to the dealings of the Plaintiff with regard to one of the properties of the estate namely Bhima Sadan building, Byculla, Mumbai, which has two buildings consisting of 6 residential units and 12 commercial units. She has submitted that the Plaintiff is usurping rent, licence fees and security deposit from the premises and shops in the said Bhima Sadan building. She has referred to certain correspondence addressed in March 2019 upon the demise of the Applicant's father who is also the husband of the Plaintiff. The correspondence is addressed by the Plaintiff's son-Kaustubh Bhalinge to BEST seeking transfer of electric meters of units of Bhima Sadan building and security deposit in the Plaintiff's favour. The correspondence is also signed by the Plaintiff and the Plaintiff and her son Kaustubh Bhalinge claiming to be the landlord in

respect of the said Bhima Sadan building. The Plaintiff has further addressed correspondence to BEST stating that the Bhima Sadan premises were in the name of her husband and that she is sole legal heir of the said premises. Ms. Agrawal has submitted that Mahesh Bhalinge passed away interstate, leaving behind 4 legal heirs of which the Plaintiff being the son of the Mahesh Bhalinge is one of the legal heirs. However, the Plaintiff alongwith Kaustubh Bhalinge by choosing to refer to themselves as owner/landlord of the said premises and the said building are acting to the detriment of the legal heirs of the deceased as well as the legal heirs of the son of the deceased, Mahesh Bhalinge, who passed away interstate.

10. Ms. Agrawal has further referred to rent receipts in respect of the premises of Bhima Sadan which shows that the Plaintiff and Kaustubh Bhalinge claiming themselves to be the landlord are collecting rent from the tenants.

11. Ms. Agrawal has also referred to a prior order passed by this Court on 26th October 2021, when this Court had recorded a workable arrangement by which one of the licensees of Shop Nos.5, 6 and 7 of the Bhima Sadan building namely Deccan Merchant Bank agreed to deposit license fee with the Prothonotary and Senior

Master of this Court till further orders passed in the captioned Testamentary Suit. Inspite of this order, the Plaintiff and Kaustubh Bhalinge are collecting the license fees from the units of the said building and hence appointment of administrator is necessary pending the captioned Testamentary Suit in order for an account of license fees collected by them which should be deposited in this Court.

12. Ms. Agrawal has referred to instances of which she claims amounts to siphoning of monies by the Plaintiff from the deceased's Bank Account. In his context, she has referred to the loan which had been taken by the Plaintiff and the Plaintiff's husband Mahesh Bhalinge in 2010 from Chola mandalam Bank, which was being repaid by utilizing license fees received from the Deccan Merchant Bank, licensee of Shop No.5, 6 and 7 in Bhima Sadan building. This license fee of Rs.1,00,000/- per month since inception was being deposited by Deccan Merchant Bank into the joint account of the Plaintiff and Mahesh Bhalinge and being used to pay monthly installment towards repayment of the loan of Rs.1,08,737/-. This is evident from the Banks statements for the period of August 2017 to December 2017 which is annexed at

Exhibit-A to the Affidavit-in-rejoinder filed in the present Interim Application. The Bank statements show partial re-payment of the loan from the licence fees received.

13. Ms. Agrawal has further submitted that upon the passing away of Mahesh Bhalinge in January 2019, the Plaintiff stopped repaying the loan installments and instead there is siphoning of the license fee into a personal account of her daughter, Payoshnee Jadhav in an amount of Rs.1,00,000/- on 27th February 2019 and Rs.85,000/- on 2nd March 2019. As a result of non re-payment of the loan amount, one of the Applicant's Flat T-11 in Sankul Building in Pune was attached and sold by the creditor, which the Applicant was using as his residence after being removed from his house at Bhima Sadan after his father's demise.

14. Ms. Agrawal has further referred to the acts of the Plaintiff in executing leave and licence agreement on 20th November 2019 in favour of the licensee in respect of Shop No.1 of Bhima Sadan by representing herself as the owner of the premises, being the purported sole beneficiary of the deceased. She has also referred to the proceedings in the Small Causes Court viz. Suit No.482 of 2022 filed by the Plaintiff during the pendency of the present

Interim Application, which seeks eviction of tenant from Shop No.4 of the said Bhima Sadan Building and handing over the same to the Plaintiff. In the plaint filed in the said Suit, statement is made that the Plaintiff is the owner of the Suit plot of land. There is no mention of the Letters of Administration Petitions which are pending adjudication before this Court.

15. Ms. Agrawal has further referred to certain stalls at Agricultural Produce Market Committee (APMC), Vashi, New Mumbai and in respect of which the APMC has addressed correspondence on 22nd January 2021 and 16th February 2021 stating that the Plaintiff has not informed the APMC regarding the change of ownership of the stalls upon the demise of the deceased and to whom the stalls belong to and neither the Plaintiff nor the Applicant have not submitted that their inheritance rights certificate in their favour. It has been stated that in light of the family disputes, the stalls were ordered to be closed unless a proposal regarding the use of the stalls was submitted. The Applicant has been informed that the Plaintiff has been running business from the stalls and receiving income from the same, which also requires to be accounted for and deposited in the estate account

for the benefit of the beneficiaries upon final adjudication of the Testamentary Suit. She has also submitted that the Plaintiff by the correspondence dated 4th February 2021 made a false statement to APMC that the Plaintiff is the sole beneficiary of the entire property.

16. Ms. Agrawal in support of her submission stated that an administrator is required to be appointed by this Court under Section 427 of the Indian Succession Act, 1925 has referred to certain decisions of this Court. She has referred to the decision of this Court in the case of **Inderjeet Singh Amardeep Singh Chadha Vs. Davinder Kaur Amardeep Singh Chadha (2019) 4 Bom CR 340**. In the said decision, the division bench of this Court had considered the appointment of an administrator pendente lite and held that the Testamentary Court in considering whether the administrator pendente lite is to be appointed is required to be satisfied as to the necessity of such appointment. The object for appointment of administrator pendente lite by a Testamentary Court is to ensure that the estate of the testator is effectively managed and securely preserved for the benefits of the person who are reluctantly found to be entitled to succeed to it. This broad object subsumes in its fold a situation wherein it is brought on record that the act to conduct of a

person in possession of the estate on the testator are detrimental to the protection and preservation of the estate. Two limitations, which the provision namely Section 247 of the Indian Succession Act, 1925, expressly puts on the power to the administrator pendente lite is that (i). he has no right to distribute the estate and (ii). he is subject to the immediate control of the Court and shall act under its direction. In that case, there was strong material to indicate that the Appellant had been taken out money from the income of M/s. Hotel Amardeep and utilizing the same for meeting his personal obligations. There was material to indicate that the Respondents were sought to be divested of all immovable properties and they were tried to be settled upon first wife and the daughter of the Appellant. It is in this context that the division bench of this Court had upheld the decision of the Single Judge in drawing an inference that the appointment of an administrator pendente lite was expedient.

17. Ms. Agrawal has also referred to the decision of this Court in the case of **Pandurang Shamrao Laud and others Vs. Dwarkadas Kalliandas and others AIR 1933 Bom 342**, in support of her contention that the administrator pendente lite is necessary to

be appointed for protection of the estate of the deceased and such appointment can be made by the Testamentary Court in a bonafide dispute pending, touching the validity of the Will of the deceased. This Court is required to be satisfied as per the necessity of such an administration and fitness of the proposed administration as well as being satisfied that it is just and proper under the circumstances of the case to appoint an administrator before subjecting the estate to the cost of such administration. It is necessary for the Court to consider whether there is an executor who is appointed in the Will of the deceased and whose appointment is not questioned and who can discharge the functions of an administrator. In that case, the appointment of the executor was questioned because the Will itself was challenged on various grounds. In that view of the matter, this Court considered that there shall be an appointment of administrator pendente lite. She has submitted that in the present case as well there is a bonafide dispute pending touching the validity of the Will of the deceased for which the Petition for Letters of Administration has been filed by the Plaintiff. The executor appointed under the Will is being the Applicant's wife Dr. Priyanka Bhalinge and the Plaintiff's son-in-law Dr. Abhishek Jadhav have not accepted the appointment and it is the Plaintiff herself who has

taken up the role of administrator of the estate which is being administered by her to her benefit to the exclusion of the parties who may ultimately succeed in the Testamentary Suit.

18. Thus, this court has taken a consistent view that the appointment of administrator pendente lite is necessary;

19. Ms. Agrawal has also referred to the decision of Calcutta High Court in the case of **Nirod Barani Debi Vs. Chamatkarini Debi AIR 1915 Cal 565**, wherein the Calcutta High Court had considered two counter-cases before the Court which questioned the genuineness and validity of the Will had to be determined in the first instance. The Calcutta High Court held that it would be necessary to consider temporary order in pass, so as not to defeat the ultimate order which the Court is competent to make and by which temporary order an administrator pendente lite may be appointed. The conduct of the Respondents had expressed an intention to deal with the movable properties in the hands of the Respondents for payment of debts. In view of the facts stated in Affidavit, the Court held that it was manifest that the estate stands in need of immediate administration. The District Judge was accordingly directed to forthwith to appoint an administrator pendente lite.

20. Ms. Agrawal has accordingly submitted that in the facts of the present case, it is necessary to grant the relief sought for in the Interim Application, which is for appointment of an administrator pendente lite under Section 247 of the Indian Succession Act, 1925.

21. Mr. Kini, learned counsel for the Plaintiff has vehemently opposed the relief sought for in the Interim Application by contending that the contested Will of the deceased-Manik Balinge was a Will by which the deceased had bequeathed the entire estate to the Plaintiff. He has submitted that from the averments in the Interim Application itself, the Applicant has disputed certain properties belonging to the estate of the deceased and has claimed that these properties belonged to the Applicant's father and by virtue of which, the Applicant has claimed a share in these properties.

22. Mr. Kini has submitted that it is well settled that the Testamentary Court/Probate Court cannot consider questions of title to properties and/or whether the properties form part of the estate of the deceased. He has in this context relied upon the

decision of this Court in the case of **Rupali Mehta Vs. Tina Narinder Sain Mehta (2006) 6 Mh.L.J. 786**, wherein, this Court had considered a case where Notice of Motion had been taken out by the Plaintiff seeking appointment of Court Receiver as also interim orders in relation to the property. This Court had upon a perusal of Section 247 of the Indian Succession Act held that the Testamentary Court while making an order for appointment of administrator does not decide what is the property left behind by the deceased and does not make an order in relation to the property. He has further relied upon the decision of this Court in the case of **Rakesh Ramesh Vashi and another Vs. Rakesh Ramesh Vashi and others - 2019 SCC Online Bom 4953**, wherein this Court had considered an Application for appointment of administrator and in that case, it was considered that the Applicant had accepted the contents of the Will and had no quarrel with the Will. The grievance is to the manner in which the executor had conducted himself. He has submitted that where there is an issue as to the properties belonging to the estate of the deceased, an Application for appointment of an administrator cannot be entertained by the Court.

23. Mr. Kini has further relied upon the decision of Patna High Court in the case of **Kashi Nath Singh Vs. Dulhin G. Kuer : 1941 SCC online Pat 285**, wherein it was held that in an Application for probate of a Will, the sole question that arises is whether or not the Will is a true one. He has submitted that in the present case, the Applicant is seeking a determination of what is the property left behind by the deceased and pursuant to such Application, the appointment of Administrator is being sought.

24. Mr. Kini has accordingly submitted that there is no merit in the Application for Appointment of an Administrator and that the Application accordingly be rejected.

25. Having considered the submissions, in my view Section 247 which provides for Administration pendente lite makes it clear that the Court may appoint an administrator of the estate of such deceased person pending any Suit for grant of letters of administration as in the present case and the administrator appointed of the estate of the deceased person shall have rights and powers of general administrator, other than right of distributing such estate. Every such administrator shall be subject to the immediate control of this Court and shall act under its direction. It

is clear from the provision that where a Suit for grant of Letters of Administration is being contested, this Court in order to protect the estate of the deceased and particularly where the executor appointed in the contested Will of the deceased has not accepted the appointment, an administrator is required to be appointed. This is more so where the Plaintiff who claims to be the sole beneficiary under the contested Will is herself benefiting out of the estate by taking upon herself to administer the estate and thereupon acting in detriment to parties to the Testamentary Suit who may ultimately succeed in the Suit to the beneficial rights of the estate of the deceased and by which time the estate will be dissipated and there will be nothing left to enjoy.

26. It is necessary to consider that in the present case, the Applicant has contested the Will of the deceased which is the subject matter of the Testamentary Suit and has in fact taken out Petition for Letters of Administration in respect of a much earlier Will which was executed by the deceased on 11th July 2001 when compared to contested Will executed on 24th April 2017. The Plaintiff claims to be the sole beneficiary under the contested Will but till the validity of the Will is determined by the Testamentary Court, the Plaintiff

cannot be allowed to deal with the estate of the deceased in a manner which she thinks fit and which is detrimental to the other legal heirs of the deceased.

27. I have considered the acts of the Plaintiff in dealing with the estate of the deceased. The Plaintiff has dealt with the property belonging to the estate of the deceased namely the premises and shops of the Bhima Sadan which is apparent from the correspondence exchange with the BSE and in which the Plaintiff has referred to herself as sole legal heir of the premises and sought to transfer the electricity meter of the units of the Bhima Sadan in her favour. Further, I have also considered the conduct of the Plaintiff with respect to the collection of rent/licence fee in respect of the premises in Bhima Sadan which the Plaintiff and other son Kaustubh Bhalinge have been collecting from the tenants and without accounting for the same. Further, the loan which had been taken by the Plaintiff and her husband Mahesh Bhalinge, which prior to the demise of Mahesh Bhalinge was being repaid out of the licence fees received from the licensee namely Deccan Merchant Bank, after the demise of the Plaintiff's husband Mahesh Bhalinge in January 2019 has been appropriated to the account of the Plaintiff's

daughter Payoshnee Jadhav. Further, I have considered that the Plaintiff has dealt with the three stalls at Agricultural Produce Market Committee (APMC), Vashi, New Mumbai by claiming that the Plaintiff was a sole beneficiary of the entire property. All these acts of dealing with the estate of the deceased by the Plaintiff works to the detriment of the other legal heirs of the deceased, including the contesting parties to the captioned Testamentary Suit.

28. The decisions of this Court relied upon by Ms. Agrawal, namely Inderjeet Singh Amardeep Singh Chadha Vs. Davinder Kaur Amardeep Singh Chadha (supra) and Pandurang Shamrao Laud and others Vs. Dwarkadas Kalliandas and others (supra) are cases where the Will of the deceased was being contested and where one of the parties dealt with the estate of the deceased, detrimental to the interest of the contesting parties. In view thereof, this Court considered it necessary to appoint an administrator, with the limitation on the power i.e. (i). the administrator has no right to distribute the estate and (ii). he is subject to the immediate control of the Court and shall act under its directions.

29. The decision of the Calcutta High Court in the case of Nirod Barani Debi Vs. Chamatkarini Debi (supra) has considered the

ample authority of the Court, either in exercise of statutory powers as a Testamentary Court or in exercise of inherent jurisdiction to make such temporary orders of appointment of an administrator pendente lite, particularly where one of the parties has expressed an intention to deal with the properties in her hands and by virtue of which the estate required immediate administration.

30. The aforementioned decisions relied upon by Mr. Kini are cases, where there were disputes with regard to the properties forming part of the estate and relief sought for in that context. Further, in Rakesh Ramesh Vashi (supra), this Court had considered a case where the Applicant had accepted the contents of the Will and the grievance was with regard to the manner in which the executor had conducted himself. This Court found that that no case was made out for appointment of administrator as the Applicant had himself benefited from the bequest. In the present case, the Applicant has restricted the relief to appointment of administrator pendente lite and the validity of the Will has been contested. Ms. Agrawal has infact submitted that disputes with regard to the properties forming part of the estate cannot be adjudicated by the Testamentary Court and for which separate proceedings, if required, shall be taken out.

The sole question to be determined by the Testamentary Court in an Application for grant of letters of administration with Will is whether or not the Will is a true one.

31. Thus, taking an over all view of the matter as well as acts of the Plaintiff in dealing with the estate of the deceased, it is appropriate in the facts and circumstances of the present case to exercise power as Testamentary Court under Section 247 of the Indian Succession Act, 1925, by appointing an administrator pendente lite. Hence, the following order is passed:-

- (i). The Prothonotary and Senior Master of this Court is directed to nominate an Officer of this Court who shall be appointed as an Administrator pendente lite to administer the estate of the deceased Manik Namdeo Bhalinge which estate includes Bank Accounts, outstandings, book debts, papers, vouchers and documents of the deceased as well as the other movable and immovable properties of the estate including the power to collect rent.
- (ii). The Prothonotary and Senior Master of this Court shall nominate such Officer within a period of two

weeks from the date of this order.

- (iii). Accordingly, the Interim Application is made absolute in terms of prayer clause (d).
- (iv). The Interim Application shall be placed for compliance on 19th August 2022 at 2.30 p.m.
- (v). After passing of the order, the learned counsel appearing for the Applicant has applied for a stay of the order.
- (vi). In my view, considering the above findings as well as the findings that the Plaintiff was dealing with the estate of the deceased to detriment of the contesting parties in the captioned Testamentary Suit, stay of this order cannot be granted.
- (vii). This Interim Application No.1940 of 2019 is being rejected.

(R. I. CHAGLA, J.)