

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.**

CIVIL WRIT PETITION NO. 10947 OF 2022

Vijay Shivram Pathare,]
Age: 44 years, Occu: Agriculture,]
R/o. Karegaon, Tq. Shrirampur,]
Dist. Ahmednagar.].. Petitioner.

Versus

1. City Corporation Ltd,]
(A registered firm under the]
Indian Companies Act, 1956)917/19 A]
FC Road, Shivajinagar,]
Pune – 411 004]
Through its Managing Director –]
Shri. Anirudha Praddumna Deshpande,]
Age: 59 years, Occu: Business,]
R/o. Flat No.D 301, 1, Modibag,]
Ganeshkhind Road, Pune – 411 004.]
Through its Authorized Signatory –]
Shri. Ajit Prataprao Toradmal,]
Age: 47 years, Occu: Service,]
R/o. Uniq Enclave, D-10, Tupe Nagar,]
Malwadi Road, Hadapsar,]
Pune – 411 028.]
]
2. Dipak Shivram Pathare,]
Age: 48 years, Occu: Agriculture,]
R/o. Karegaon, Tq. Shrirampur,]
Dist. Ahmednagar.].. Respondents.

Mr. S.S. Thombre for the Petitioner.
Mr. Drupad S. Patil and Mr. Paresh B. Patil i/by Mr. Hemant P. Deshmukh
for respondent No.1.
Mr. Satyajit S. Bora for respondent No.2.

Coram : Sharmila U. Deshmukh, J.

Reserved on : March 1, 2023.

Pronounced on : March 28, 2023.

JUDGMENT :

1. By this petition, the petitioner challenges the order dated 8th August, 2022 passed in Civil Miscellaneous Application No.8 of 2021 rejecting the petitioner's application filed under Section 11 and Order-VII, Rule 11 of the Code of Civil Procedure, 1908.

2. Learned Counsel for respondent No.1 has tendered list of dates and events, which has not been disputed by the learned counsel for Petitioner, from which the following facts are discerned:

The property in question are lands bearing Survey No. 26/8+9+10 admeasuring 80-R and Survey No. 31/2/8 admeasuring 70-R. The said property was originally owned by one Pandu Piraji Lonkar. After his demise, the property devolved upon his five sons, namely, Ganpat, Shripatrao, Bahiroba, Maruti and Rambhau. Maruti instituted Regular Civil Suit No.19 of 1911 for partition of the ancestral property in which, a preliminary decree was drawn. After the death of Rambhau, the property devolved upon his daughters i.e Shantabai and Anjanabai Damdhare. In the final decree application in Regular Civil Suit No 19 of 1911, compromise terms came to be executed and 3/5th

share was given to the daughters of Rambhau. In the year 1987, the daughters of Rambhau, i.e. Shantabai and Anjanabai filed Regular Civil Suit No.1147 of 1987 for partition, which came to be decreed and said Shantabai and Anajabai were held entitled to 3/5th share. The decree was challenged upto the Apex Court and the Special Leave Petition came to be rejected in the year 2013.

3. In the interregnum, by Will dated 26th December, 2004, Anjanabai bequeathed the property in favour of respondent No.2 herein, i.e. Dipak Shivram Pathare. On 4th March, 2005 Anjanabai expired, leaving behind 4 sons and 2 daughters. On 28th March, 2005, Mutation Entry No.8362 was effected in the name of Respondent No.2 in the revenue records. On 3rd October, 2005, respondent No.2 executed a registered development agreement and power of attorney in favour of respondent No.1 herein, i.e. City Corporation Limited, for a total consideration of Rs.47 lakh. On 22nd November, 2013, sale-deed was executed between respondent No.1 and respondent No.2. On 2nd December, 2013, Mutation Entry No.12367 came to be effected in name of Respondent No 1 in the revenue records.

4. On 16th December, 2013, respondent No.2 filed Special Civil Suit No.1669 of 2013 against respondent no.1 seeking

cancellation of the development agreement, power of attorney and sale-deed. On 14th October, 2014, the application for temporary injunction came to be dismissed.

5. In parallel proceedings, the Petitioner challenged the Mutation Entry No.8362 recording the name of Respondent No.2 by way of RTS Appeal No.126 of 2016, on the basis of Will dated 17th February, 2005 executed by Anjanabai in favour of the petitioner. The Sub-Divisional Officer dismissed the RTS Appeal on 29th August, 2016, which came to be challenged by the petitioner before the Additional Collector. On 26th December, 2016, the appeal of petitioner came to be allowed and Mutation Entry No.13580 was effected in favour of the petitioner. Respondent No.1 was not a party to this revenue proceeding and there was no challenge to the Mutation Entry No.12367 whereby the name of respondent No.1 was recorded in the 7/12 extract. After obtaining knowledge of the order dated 26th December, 2016 passed by the Additional Collector, respondent No.1 filed Revision No.157 of 2017 before the Divisional Commissioner, which came to be allowed and Mutation Entry No.13580 recording the name of Petitioner in revenue records was cancelled.

6. On 1st August, 2017, respondent No.1 filed Regular Civil

Suit No. 1275 of 2017 challenging the Will dated 17th February, 2005 propounded by the Petitioner. The application for temporary injunction came to be allowed on 23rd January, 2018 restraining the petitioner from creating third party rights and disturbing the possession of respondent No.1 over the suit property.

7. On 19th November, 2018, the petitioner filed MCA No.2 of 2019, seeking probate of the alleged Will dated 17th February, 2005, which came to be allowed and the probate was granted on 17th June, 2019.

8. After the grant of probate, the petitioner challenged the order of Divisional Commissioner dated 25th June, 2018 before the Hon'ble Minister, which came to be dismissed by the order dated 17th March, 2021 as against which the petitioner has preferred the Writ Petitions in this Court and the same are pending.

9. On 2nd June, 2020, respondent No.1 filed an application being Application No.12 of 2020, for condonation of delay caused in filing the application for revocation of the probate issued in favour of the petitioner, which came to be allowed and the application came to be registered as Miscellaneous Civil Application No.8 of 2021. In the

meantime, on 10th November, 2021 the application bearing MCA No.2 of 2019 of respondent No.2 seeking revocation of probate granted in favour of the petitioner came to be rejected.

10. In MCA No.8 of 2021 filed by Respondent No.1, the petitioner filed an application under Section 11 and Order-VII Rule 11 of Code of Civil Procedure, 1908 which came to be rejected giving rise to the present petition.

11. Heard Mr. S.S. Thombre, learned counsel for the Petitioner, Mr. Drupad S. Patil, learned counsel for Respondent No.1 and Mr. Satyajit Bora, learned counsel for Respondent No.2.

12. Learned counsel for the petitioner submits that respondent No.1 has adopted wait and watch attitude and moved its application, being MCA No.8 of 2021, after the rejection of Respondent No.2's application for revocation. He would contend that the rights of Anjanabai in the suit property came to be crystallized only in the year 2016 after the dismissal of curative petitions by the Apex Court and thereafter application for probate was filed by Petitioner. He would further submit that in the application seeking grant of probate, paper publication was effected and no objection

was raised either by respondent No.1 and respondent No.2. He has invited the attention of this Court to the findings of the Civil Judge (S.D) in MCA No 2 of 2019 rejecting the application filed by Respondent No.2 for revocation of probate. He would further submit that the probate proceedings do not deal with the question of title and the right of Respondent No.1 will be adjudicated in the civil suit filed by Respondent No.1.

13. Learned Counsel for the Petitioner would further submit that applying the principles of constructive *res-judicata*, Respondent No.1's application is not maintainable as it claims through Respondent No.2. He has invited the attention of the Court to the averments in Civil M.A. No.8 of 2021 and would further contend that the application does not disclose any cause of action. He relies upon the following decisions:

- (i) ***Sunil Gupta v. Kiran Girhotra and Ors. [AIR 2008 SC 140]***
- (ii) ***Kanwarji Singh Dhillon v. Hardy Singh Dhillon [AIR 2008 SC 306];***
- (iii) ***Daulat Ram v. Sodha [AIR 2005 SC 233];***
- (iv) ***Crystal Developers v. Asha Lata Ghosh [AIR 2004 SC 4980];***
- (v) ***Asbeer Reuben Samson v. Eillah Solomon [AIR 1991 Bom 148];***
- (vi) ***Beni Chand v. Kamla Kunwar [(1976) 4 SCC 554];***
- (vii) ***Ravindra Nath Agarwal v. Yogendra Nath Agarwal [AIR 2021 SC3156];***
- (viii) ***Saroja v. Chinnuswamy [AIR 2007 SC 3067];***

(ix) *Ratnaprabha v. Kisan [AIR 2015 Bom 280].*

14. *Per contra*, learned counsel for respondent No.1 submits that Respondent No.1 had purchased the subject property prior to the filing of application for probate by the Petitioner and as such the respondent No.1 was required to be cited in probate proceedings. He points out that the mutation entry in revenue records stands in the name of respondent No.1. He would further submit that the petitioner was party to RCS No.1275 of 2017 filed by respondent No.1, and was aware that Respondent No.1 had acquired an interest in the property. He would further submit that all these facts were suppressed by the petitioner in the application for grant of probate. He has taken this Court through the application for probate filed by the petitioner, which shows that no heirs were cited and only paper publication was issued. As regards the submission that probate proceeding does not deal with the issue of title, he submits that an application for grant of probate is a proceeding *in rem* and as such binds respondent No.1 as well. He would further submit that in RCS No.1275 of 2017, the Petitioner had taken a contrary stand that the remedy of Respondent No.1 is to file for revocation for probate. He would further submit that the provisions of Order-VII Rule-11 and Section 11 of the CPC, 1908 do not apply, inasmuch as these

proceedings are not in the nature of suit. He relies upon the following decisions:-

- (i) Seth Beni Chand v. Kamla Kunwar [(1976) 4 SCC 554];**
- (ii) Manibhai Amaidas Patel v. Dayabhai Amaidas [(2005) 12 SCC 154];**
- (iii) Nalini Navin Bhagwati v. Chandravadan M. Mehta [(1997) 9 SCC 689];**
- (iv) Balasaheb v. Lalasaheb [2022 (2) Mh.LJ.85]**
- (v) Basanti Devi v. Raviprakash Ramprasad Jaiswal [(2008) 1 SCC 267].**

15. Considered the rival submissions of the parties. Perused the proceedings with the assistance of learned counsel for the parties.

16. The submissions of learned counsel for the petitioner can be broadly summarized as under:

(a) The application for revocation does not disclose any cause of action and as such is liable to be rejected under the provisions of Order-VII Rule-11(a) of CPC, 1908.

(b) The application is barred by principle of constructive *res-judicata* inasmuch Respondent No.1 claims through Respondent No.2 and Respondent No 2's application for revocation was dismissed.

(c) Probate proceedings do not decide the issue of title, which is required to be adjudicated in the civil suit filed by Respondent No 1.

17. Submission (a) and (b) above are based on the provisions

of the Code of Civil Procedure, 1908, which according to the learned counsel for Respondent No.1 have no application to the revocation proceedings. I would firstly deal with the decision relied upon by the learned counsel for Respondent No.1 in support of his submission that the application under Order-VII Rule-11 itself is not maintainable. He relies upon the decision of Apex Court in the case of ***Nalini Navin Bhagwati (supra)***. The challenge in that case arose out of decision directing the application to be treated as suit filed under Section 295 of the Indian Succession Act, 1925. The Apex Court, after analysing the provisions of Section 295 of the Indian Succession Act, 1925 held that an application to revoke the probate or letter of administration would be treated as miscellaneous application and may be disposed of on a fact situation in an appropriate case either summarily or after recording evidence.

18. In my reading of the decision, before the Apex Court, the issue of applicability of the provisions of Code of Civil Procedure, 1908 was not under consideration. The Apex Court was dealing with a fact situation wherein an application was filed to revoke the probate and prayer was made to convert the application into a regular suit. It will be worthwhile to note that the Apex Court has observed in paragraph 7 that the application to revoke the probate or letter of

administration thus may be disposed of by the District Judge either summarily or in a given situation where it requires proof of the facts by adducing evidence by the parties by recording such evidence as is adduced by the parties. In my opinion, the decision of Apex Court is not an authority for the proposition that the provisions of Code of Civil Procedure, 1908 are not applicable to an application for revocation.

19. In this context the provisions of Section 141 of Code of Civil Procedure, 1908 (for short "CPC") is required to be noted which reads thus :

***"141. Miscellaneous proceedings-.** The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.*

[Explanation.— In this section, the expression "proceedings" includes proceedings under Order IX, but does not include any proceedings under article 226 of the Constitution.]

20. In this context, it would be appropriate to refer to the decision of the apex Court in ***Thrity Sam Shroff vs Shiraz Byramji Anklesaria [2007(2) Bomb CR 560]***, wherein this Court, in paragraph 11, has held thus :

"Undoubtedly, [section 295](#) of the said Act is in relation to

procedure that is to be followed in respect of probate proceedings, once the same becomes contentious. The petitioner for the probate becomes the plaintiff whereas the person who opposes the grant of probate becomes the defendant and the proceedings proceed in the form of a regular suit according to the Code of Civil Procedure. The provision of law, however, nowhere states that the proceeding for grant of probate would be a suit under the Code of Civil Procedure. The framers of law, on the contrary, have cautiously used the expression "take, as nearly as may be, the form of a regular suit according to the provision of Code of Civil Procedure". Firstly, it is not stated to be a suit under the Code of Civil Procedure. Secondly, it is specifically stated that the proceedings should take the "form of a regular suit". Thirdly, it is specified to take the form of a suit "as nearly as may be" and not even fullfledged form of a suit. If the intention of framers of law was to give the character of a suit under the Code of Civil Procedure to such proceeding, then there was no need to incorporate all those expressions in [Section 295](#) and it would have been sufficient to specify the proceeding to be a suit under the Code of Civil Procedure. Instead, the framers have specifically clarified that the proceeding shall merely take the form of a suit according to the Code of Civil Procedure and that too as nearly as possible, meaning thereby that though the proceeding is not a suit within the meaning of the said expression under the Code of Civil Procedure, yet the provisions of the Code of Civil Procedure, to the extent they are not inconsistent with those of the said Act, may be followed bearing in mind the limited jurisdiction and function of the probate Court. We are fortified in taking this view by plethora of decisions, including those of the Apex Court."

. This Court in the context of section 295 of the Indian Succession Act, 1925 held that though proceeding is not a suit within the meaning of the said expression under the CPC, yet the provisions

of CPC, to the extent they are not inconsistent with those of the Indian Succession Act, 1925, may be followed bearing in mind the limited jurisdiction of probate Court.

21. Learned counsel for respondent no.1 has not pointed any provision of the Indian Succession Act, 1925 barring the applicability of CPC to the proceedings filed to revoke the probate or letters of administration.

. Apart from relying upon the decision of the Apex Court cited above, learned Counsel for Respondent No.1 has not advanced any other submission which will indicate that the provisions of Order-VII, Rule-11 of the CPC, 1908 are inconsistent with the provisions of the Indian Succession Act, 1925. As indicated above, in my opinion, the decision of the Apex Court cited above is not an authority for the proposition advanced by Respondent No.1, and considering the decision in ***Thrity Sam Shroff (supra)***, I am unable to accept the submission that the application filed by the Petitioner was not maintainable.

22. Having dealt with the issue of maintainability of application, it will now have to be considered whether the application

of Respondent No.1 is liable to be rejected under the provisions of Order VII Rule 11 of the CPC for non disclosure of cause of action. The provisions of Order VII Rule 11 (a) of CPC, read thus:-

"11. Rejection of plaint.- The plaint shall be rejected in the following cases :-

*(a) where it does not disclose a cause of action;
...."*

23. It is well settled by catena of decisions that while considering an application under Order-VII Rule-11 of CPC, the contents of the plaint/application are required to be examined. For that purpose, I have gone through the averments made in MCA No.8 of 2021. This application was filed by respondent No.1 under Section 263 of the Indian Succession Act, 1925, which provides for revocation or annulment for just cause. A bare perusal of this application shows that after setting out the entire history as well as the proceedings initiated and pending between the parties, respondent No.1, in paragraph 12, has averred that in the probate application No.1 of 2018, respondent No.1 or respondent No.2 have not been impleaded as parties and by suppressing material facts, and in particular the fact that for challenging the Will dated 17th February, 2005 respondent No.1 has initiated RCS No.1275 of 2017, the probate has been obtained. It is further averred in paragraph 13 that the petitioner was

aware of the fact that respondent No.1 was the owner of subject property and the proceedings were pending before the revenue authorities as well as the Civil Court and inspite thereof, without impleading respondent No.1 or respondent No.2, for the purpose of interfering with the ownership rights of respondent No.1 in the subject property, the application for probate was filed. The averments of the revocation application indicates that the cause of action for preferring the application is non-service of citation upon Respondent No.1 in the probate proceedings. This cause of action is backed by the factual aspect of purchase of the subject property from Respondent No.2 and the consequent pending litigation.

24. The provisions of Section 263 of the Indian Succession Act, 1925 contemplate revocation or annulment of probate for just cause, which cause is deemed to exist for the reasons set out in the Explanation to Section 263. Learned counsel for respondent no.1 has invited the attention of this Court to the Illustrations which are set out below Section 263 and in particular Illustration (ii) which reads as under :-

“(ii) The grant was made without citing parties who ought to have been cited”.

25. It is evident from the above Illustration that the provisions of Section 263 of the Indian Succession Act, 1925 can be invoked in a case where the grant has been made without citing the parties who ought to have been cited. In the present case, on 22nd December 2004, Anjanabai executed a Will in favour of Respondent No.2; after the death of Anjanabai on 4th March 2005, after giving notice to the legal heirs of Anjanabai, Mutation Entry No 8362 was effected to record the name of Respondent No.2. On 3.10.2005, development agreement was executed between Respondent No.1 and Respondent No.2 and on 22nd November 2013, Sale Deed was executed in favour of Respondent No.1 after making payment of the agreed consideration to Respondent No.2. On 2nd December 2013, Mutation Entry No.12367 was effected recording the name of Respondent No.1 in 7/12 extract. Litigation commenced between the Petitioner and Respondent No.2 in the year 2016 seeking to cancel the Mutation Entry No.12367. On 1st August 2017, Respondent No.1 filed RCS No.11275 of 2017 challenging the Will propounded by the Petitioner. It is evident from the above, that Respondent No.1 had long back acquired an interest in the subject property and the Petitioner was well aware of the same.

26. It will now have to be ascertained whether the

Respondent No.1 was entitled to be served with the citation in probate proceedings. The provisions pertaining to granting and revoking probates and letters of administration are contained in Chapter IV of the Indian Succession Act, 1925. Section 283 deals with the powers of District Judge and reads thus:

"283. Powers of District Judge.- (1) In all cases the District Judge or District Delegate may, if he thinks proper,--

- (a) examine the petitioner in person, upon oath;*
- (b) require further evidence of the due execution of the Will or the right of the petitioner to the letters of administration, as the case may be;*
- (c) issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.*

(2) The citation shall be fixed up in some conspicuous part of the courthouse, and also in the office of the Collector of the district and otherwise published or made known in such manner as the Judge or District Delegate issuing the same may direct.

(3) Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of a District Judge in another State, the District Judge issuing the same shall cause a copy of the citation to be sent to such other District Judge, who shall publish the same in the same manner as if it were a citation issued by himself, and shall certify such publication to the District Judge who issued the citation".

27. Section 283 of the Indian Succession Act, 1925 provides

that in all cases, the District Judge or District Delegate *may*, if he thinks proper issue citations calling upon all persons claiming to have interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration. The provision indicates that a discretion is vested in the District Judge in the matter of issue of citations. However the discretion has to be exercised judiciously to ensure that all parties interested in the estate are given an opportunity to contest the probate, if so desired. In the present case, the application for probate specifically states that there are other legal heirs of Anjanabai, however, the application does not set out the names and addresses of the legal heirs. In such situation, in my opinion, the District Judge ought to have directed the issuance of special citations on the legal heirs of deceased Anjanabai. The Petitioner, in spite of being aware that Respondent No.1 had long back acquired interest in the estate, failed to cite Respondent No.1 in the probate proceedings. In this context it will be apposite to refer to the decision of Apex Court in ***Manju Puri vs Rajiv Singh Hanspal [(2020) 19 SCC 127]*** wherein the apex Court has, in paragraph 32, held thus :

*“32. A plain reading of [Section 283](#) makes it clear that by the use of word ‘**may**’ a discretion has been conferred on the District Judge to issue citations calling upon all persons claiming to have any interest in the estate of the deceased. Although, it is true that there is*

discretion vested to issue citation or not but such discretion has to be exercised with proper care.....”

28. The Apex Court has held that although there is a discretion vested in the learned District Judge as regards the issuance of citations to the individual heir, the discretion is to be judicially exercised. In the present case, the application for grant of probate specifically states that there are other legal heirs, however, there is no special citation issued to the legal heirs and the citation has been published in the newspaper, which learned counsel for respondent No.1 disputes does not have wide circulation. For our purpose, it is not required to go into the issue whether the said newspaper was having the wide circulation or not, but suffice it to state that as the application for grant of probate itself sets out that there are other legal heirs of the deceased testatrix, in my opinion, it was necessary to issue the special citation to the legal heirs, which has not been done in the present case. If such a course would have been adopted by the District Judge, Respondent No.1 probably would have acquired knowledge about the probate proceedings and could have opposed the grant of probate.

29. Respondent No.1, being the purchaser of subject

property, had acquired an interest in the testatrix's estate and as such was entitled to citation. It is well settled that any interest, however slight, is sufficient to entitle a party to oppose a testamentary document. In my opinion, a transferee from an heir after acquiring interest in the estate by reason of sale is entitled to be cited, when a Will is sought to be propounded in opposition to its interest. As no citation was issued to Respondent No.1, the same forms the basis for the application for revocation of probate and the application sets out the manner in which the interest was acquired in the estate entitling Respondent No.1 to citation in the probate proceedings. Considering the averments, the application sets out the cause of action for preferring the application and hence the submission of learned counsel for the Petitioner that the application does not disclose cause of action and is, therefore, is required to be dismissed under the provisions of Order VII, Rule 11(a) of CPC, 1908, is liable to be rejected.

30. The second submission of learned counsel for the petitioner is that the application for revocation is barred by the principle of *res-judicata* inasmuch as respondent No.1 claims through respondent No.2, whose application for revocation of probate came to be dismissed and as such the second application by respondent

No.1 is barred. At this stage, it would be necessary to again refer to the provisions of Section 263 of the Indian Succession Act, 1925 and Illustration (ii) thereof which states that a revocation can be sought on the ground that parties, who ought to have been cited in the probate proceedings, have not been cited as such. The question is : can the decision on Respondent No.2's application for revocation bind the Respondent No.1. If Respondent No.1 is entitled to be cited independently in the probate proceedings, in my view, the answer to the question is emphatic "no" for the reasons stated hereinafter.

31. In the case of ***S. Bhaskaran S. Ganga Devi v. R. Loganathan [(2007) 6 M.LJ 290]***, the Madras High Court has in paragraph 12, 13 and 14 held as under :

"12. All persons who are entitled to contest a Will may apply for revocation of the grant. Persons seeking to revoke grant of probate or of Letters of Administration must prove that they have an interest in the estate of the deceased sufficient to entitle them. An interest acquired subsequent to the death of the Testator by a purchaser or a mortgagee of a part of the estate of the deceased is sufficient to seek revocation of the grant.

13. The question as to who is entitled to file an application under [Section 263](#) of the Indian Succession Act has been the subject matter of several decisions of various High Courts. In Muddun Mohun Sircar v. Kali Churn Dey [1892 ILR Cal. 37], the applicant was a purchaser from two sons of the deceased. It was held that purchase from such heir is a person claiming to have an interest in the estate of the deceased within the meaning of Section 69

of the Probate and [Administration Act](#), and is entitled to apply for revocation of the probate of the Will so set up.

14. Observing that a purchaser of properties from heirs of a deceased person has a *locus standi* to apply for revocation of Letters of Administration of a Will said to have been executed by the deceased, in [Lalit Mohan Bhattacharjee v. Navadip Chandra Kaparia](#) [1901 ILR Cal. 587], the Court has held thus:

[T]he only question submitted for our decision is, whether the applicant had any *locus standi* to apply for revocation of these Letters of Administration. I think he had. He stood virtually in the shoes of the two sons, who claimed to be the heirs, and who had dealt with the property, as the sole owners of it. The applicant was the purchaser from the heirs, and, if the heirs could have applied for revocation of the Letters of Administration, I do not see why the purchaser could not do so, he being in the same position as they were. He was not in a position of an ordinary creditor, but he was the purchaser from the heirs. I think, therefore, that, if the heirs were entitled to sue for revocation of the Letters of Administration, the purchaser from them had a *locus standi* to make a similar application.....”.

32. Applying the aforesaid law to the facts of the present case, it is clear that respondent No.1, who is the purchaser of subject property from respondent No.2, who at the relevant time was the beneficiary under the Will of the year 2004, has sufficient interest to sustain the caveat inasmuch as the subsequent Will of 2005 displaces the right of respondent No.1. Respondent No.1 being the purchaser, steps into the shoes of vendor legatee, and as such is entitled to seek revocation of probate.

33. The contention of learned counsel for petitioner is that respondent No.1 has no independent right as he claims through respondent No.2. In the present case, Respondent No.1 had acquired interest in the estate prior to the application for grant of probate by the Petitioner. The transfer by sale was not transfer *pendente lite*. As observed above, Respondent No.1 had already acquired an interest in the subject property and was entitled to be cited in the probate proceedings. If Respondent No.1 was entitled to be cited in probate proceedings, in my opinion, Respondent No.1 was entitled to independently maintain an application for revocation of probate. Accepting the submission of learned counsel for the Petitioner, would lead to a proposition that the purchaser from vendor legatee although has a right to be cited in probate proceedings and enter caveat, has no independent right to maintain proceedings to revoke the probate or letters of administration. The judicial pronouncements stated above have held that the purchaser from a vendor legatee is entitled to citation, to enter caveat, and to seek revocation of probate or letters of administration. As such, all rights available to the legal heir accrues independently to the purchaser from the vendor legatee as the transfer is not transfer *pendente lite*, and that being so, the rejection of Respondent No 2's application does not bind

Respondent No.1.

34. The third submission raised by the learned counsel for the petitioner is that the probate proceedings do not decide the issue of title which is required to be adjudicated by the Civil Court in the civil suit filed by respondent No.1. There is no quarrel with the said proposition.

35. As indicated above, it has been observed that respondent No.1 is entitled to maintain an application for revocation of probate independently of respondent no.2. I find considerable force in the submission of the learned counsel for respondent No.1 that in the civil suit, the issue of validity of Will will not be gone into and as the Will in question affects the interest of respondent no.1, the appropriate remedy for respondent No.1 is filing of an application for revocation of probate. While adjudicating the civil suit, Civil Court will conduct an inquiry, if any, into the ownership of property i.e., the issue of title and not about the validity of the Will, which falls within the exclusive jurisdiction of the Court dealing with the probate proceedings. In the present case, there is no dispute as far as the title of testatrix is concerned, but the entire dispute is whether the Will propounded by the petitioner is a valid Will. The interest of Respondent No.1 stems

from the sale of the subject property by respondent No.2 claiming on the basis of the earlier Will of the year 2004 which created a bequest in favour of respondent no.2. It also needs to be noted that in the civil proceedings, the petitioner had opposed the proceedings on the ground that the appropriate remedy for respondent No.1 is to file an application for revocation of the probate. It appears that the petitioner is blowing hot and cold at the same time. Be that as it may. There is no debate on the issue that the probate proceedings do not decide the issue of title, however, in the present case, it is not the issue of ownership of property, which is at dispute, rather it is the validity of the Will which will affect the rights of respondent no.1. It is an admitted position that Anjanabai was the owner of subject property. The controversy is as regards validity of the Will dated 17th February 2005. In RCS No.1275 of 2017, the Civil Court cannot adjudicate the issue of validity of Will and the probate proceedings being *in rem*, the Will dated 17th February 2005, if not challenged, will affect the rights of respondent No.1. In my opinion, considering the facts of the case, the appropriate remedy of respondent no.1 is to file for revocation of the probate, which has been done in the present case.

36. As regards the decisions, which are cited by learned

counsel for the petitioner; in the case of ***Sunil Gupta (supra)***, the issue was as regards the citation to be issued to the transferee. However, the said case does not assist the petitioner inasmuch as in the facts of the case, the transferee was a transferee of the property during the pendency of proceedings and as such, it was held by the Apex Court that the the transferee of the property during the pendency of proceedings, is not a necessary party.

37. As regards the decision in the case of ***Kanwarjit Singh Dhillon (supra)***, the decision was relied upon to support the submission of the petitioner that the issue of title is required to be adjudicated in the civil suit. It cannot be disputed that the grant of probate cannot be decisive for declaration of title as held by the Apex Court in the case of ***Kanwarjit Singh Dhillon (supra)***, however in the present case the validity of the Will is being questioned by Respondent No.1.

38. As regards the decision in the case of ***Ratnaprabha (supra)***, the decision is for the proposition that the probate Court should not decide who are the persons beneficially interested in the estate and the mootable question is whether the power of Testator to bequeath the property is good or bad according to law. It is not within

the domain/purview of the probate Court to examine complicated wider issues of title which are required to be determined by competent Civil Court. In my opinion, the decision does not assist the case of the petitioner, inasmuch as the said decision holds that the one who questions the right, title and interest of the Testator to dispose of the suit property cannot avoid the forum of the competent civil Court. In the present case, from the application for revocation it appears that there is no dispute as regards the validity of the right, title and interest of the Testator but rather the validity of the Will propounded by the petitioner.

39. Although learned counsel for the petitioner has tendered a compilation of decisions consisting of 9 decisions, only the decision referred to above were pressed into service by the learned counsel for the petitioner.

40. On the other hand, learned counsel for respondent no.1 has relied upon the decision in ***Manibhai (supra)***, to substantiate the proposition that it is necessary to cite parties who would otherwise have an interest in the succession to estate of deceased which would naturally include all the heirs of the deceased. This decision is squarely applicable to the facts of the present case. Similarly, the decision in

Basanti Devi (supra), in which it has been held that the application for grant of probate is a proceeding *in rem* and the judgment being *in rem*, a person, who is aggrieved thereby and having had no knowledge about the proceedings and proper citations having not been made, is entitled to file an application for revocation of probate on such grounds as may be available to him. In my opinion, the decisions which have been relied upon by the learned counsel for respondent no.1 are squarely applicable to the facts of the present case.

41. For the reasons stated above, there is no merit in the petition. The writ petition stands dismissed.

[SHARMILA U. DESHMUKH, J.]