

Ajay

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

**MISC. PETITION NO. 105 OF 2021
WITH
TESTAMENTARY PETITION NO. 2651 OF 2019**

Sadanand Janardhan Waingankar	.. Missing Person
Sumati Janardhan Waingankar	.. Deceased
Mohan Ramchandra Waingankar	.. Petitioner

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- Mr. Laukik Palekar a/w. Ashish Verma, Advocate for Petitioner.
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CORAM : MILIND N. JADHAV, J.
DATE : AUGUST 04, 2023.

P.C.:

- 1.** Heard Mr. Palekar, learned Advocate for Petitioner.
- 2.** This is a set of two Petitions. The principal Petition is Testamentary Petition No.2651 of 2019 which is filed for issuance of grant i.e. the probate of the last Will and Testament of the deceased Smt. Sumati Janardhan Waingankar. The names and details of the legal heirs are given in paragraph No.4 of the Misc. Petition. This Petition is filed by the Executor.
- 3.** Consent Affidavits of the legal heirs / legatees who are also beneficiaries under the said Will are appended at page Nos.43(C) to 43(J) of the Testamentary Petition. Affidavit of attesting witness is at page No.41 of the Testamentary Petition.

4. Mr. Palekar would submit that one of the legatee namely Sadanand Janardhan Waingankar who is the missing son of the deceased is not before the Court and in that view of the matter, Misc. Petition No.105 of 2021 has been filed for seeking a declaration under Section 108 of the Indian Evidence Act, 1872 declaring Sadanand Janardhan Waingankar as presumed to be dead since he has been missing from the year 1987. I have perused the pleadings in Misc. Petition No.105 of 2021 and annexures appended to the Petition. Copy of the Will of the mother itself states that the said Sadanand Janardhan Waingankar has been missing and she has bequeathed a sum of Rs.5,000/- to him.

5. Averments are to the effect that Sadanand Janardhan Waingankar has left the family house of the deceased since 1987 after having a quarrel with his family members. Further averments are to the effect that adequate attempts have been made by the family member to search him, but have failed.

6. In the facts and circumstances of the present case, I am satisfied that adequate material is presented on record to invoke Section 108 of the Evidence Act. Misc. Petition No.105 of 2021 stands allowed and disposed of in terms of prayer clause 'b' subject to the following two conditions:

- (i) Petitioner shall issue publication / proclamation in two

local newspapers adequately giving the details of the missing person and call for any claims within a period of two weeks from the date of publication.

(ii) Once the publication / proclamation is made an appropriate Affidavit of service shall be filed by the Petitioner with respect to the response received.

7. Testamentary Department is directed to consider the Affidavit of service by the Petitioner as adequate service on the said missing person Sadanand Janardhan Waingankar and thereafter issue the grant in Testamentary Petition No.2651 of 2019.

8. The Testamentary Petition seeks issuance of grant. The only objection that remains to comply is dispensation of requisition issued by the Department regarding missing Sadanand Janardhan Waingankar. I have perused the Petition. It is directed that once the order passed in Misc. Petition No.105 of 2021 is complied, the Department is directed to consider issuance of grant to the Petitioner. The principal Petition is filed for issuance of grant in respect of the deceased Sumati Waingankar.

9. Mr. Palekar would submit that the Affidavits of the attesting witnesses, consent Affidavits of the consenting legal heirs apart from the said missing Sadanand Janardhan Waingankar, administration bond, Affidavit of oath have been filed in Testamentary Petition No.2651 of 2019. He would submit that pendency of Misc. Petition

No.105 of 2021 was the only outstanding requirement in the principal Petition.

10. There can be no impediment in allowing the present Testamentary Petition, subject to the Petitioner satisfying all other compliances in accordance with law and as directed above.

11. Misc. Petition No.105 of 2021 is disposed.

12. Testamentary Petition No.2651 of 2019 is disposed subject to compliance of this order.

[MILIND N. JADHAV, J.]

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