

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
INTERIM APPLICATION NO. 2994 OF 2023
IN
TESTAMENTARY SUIT NO. 24 OF 2023
IN
TESTAMENTARY PETITION NO. 2599 OF 2022**

Neeta Harshkant Mehta ... Applicant/Caveator

In the matter between:

Nipun Navnit Mehta ... Plaintiff

vs.

Neeta Harshkant Mehta and others ... Defendants

and

Sreekant Surajmal Mehta @ Srikant Surajmal

Mehta @ Shreekant Surajmal Mehta

@ Shrikant Surajmal Mehta ... Deceased

Mr. P. V. Sathyanarayanan for applicant.

Mr. Vivek Kantawala a/w. Mr. Zain A. K. Najam-es-Sani, i/b. Zain A. K. Najam-es-Sani for original petitioner/plaintiff.

Ms. Smita Durve, i/b. Arshil Shah for defendant Nos.3, 4 and 5.

**CORAM : MANISH PITALE, J.
DATE : 07th DECEMBER, 2023**

P.C. :

. Heard learned counsel for the parties at length. The applicant/caveator has filed the present application. In the prayer clause of the application, at prayer clause (a), it is prayed that this Court may reject the plaint for want of jurisdiction, although the contents of the application and the contentions raised on behalf of the applicant, indicate that the

applicant/caveator is invoking Order VII Rule 10 of the Code of Civil Procedure, 1908, for return of the plaint.

2. The learned counsel appearing for the applicant submitted that in the present case, this Court cannot have jurisdiction to entertain the prayer made on behalf of the plaintiff/original petitioner, the original petition being a petition seeking probate in respect of Will dated 19.06.2011. It is contended that there is not a single immovable property of the deceased within the jurisdiction of this Court and that the reference made to only one property at Peddar Road at Mumbai, actually belongs to a partnership firm registered at Madras, now Chennai, of which the deceased was one of the partners. Reliance is placed on Section 19(2)(g) of the Partnership Act, 1932, to contend that the deceased, as a partner of the partnership firm, could not have transferred the aforesaid immovable property or dealt with it in any manner, much less bequeathed it by way of the said Will.

3. On this basis, it was submitted that since not even a single immovable property is within the jurisdiction of this Court, the original probate petition itself could not be entertained by this Court. It is submitted that the petition itself ought not have been numbered, in the light of the fact that this Court had no jurisdiction to entertain the same.

4. In that context, the learned counsel appearing for the applicant placed reliance on the provisions of the Indian Succession Act, 1925, particularly Section 57 read with Section 300 thereof. By referring to the said sections, it was submitted that a proper interpretation of the same would show that for this Court to entertain the original probate petition from which the instant suit arises, the immovable property ought to be situated within the

jurisdiction of this Court. In that context, reliance was also placed on the judgment of Andhra Pradesh High Court in the case of *Gangavath Lalu v/s. Gangavathi Tulsi* AIR 2001 AP 326.

5. Certain documents were tendered across the bar on behalf of the applicant, including copy of a certificate said to have been issued by the co-operative housing society at Peddar Road, wherein the immovable property in question is located, to contend that the said document alongwith its annexures, clearly show that the said immovable property at Peddar Road belongs to the partnership firm, thereby falsifying the claim of the petitioner that the deceased had 1/3rd ownership in the said property. On this basis, it was submitted that the present application deserves to be allowed.

6. On the other hand, the learned counsel for the plaintiff/original petitioner relied upon Sections 270 and 271 of the Indian Succession Act, 1925, to contend that so long as any movable or immovable property of the deceased is located in the jurisdiction of this Court, there is no question of want of jurisdiction. Specific reliance is placed on order dated 18.07.2018 passed by a learned Single Judge of this Court in Chamber Summons No.21 of 2018 in Testamentary Suit No.88 of 2008 (**Mahesh N. Bhat v/s. Mark Uppaluri**). It is submitted that in the said case, when a bank account of the deceased was found to be in the jurisdiction of this Court, it was held that there was no question of lack of jurisdiction. In that regard, the learned counsel appearing for the plaintiff also relied upon schedule to the probate petition, indicating at least two bank accounts of the deceased within the jurisdiction of this Court. It was further submitted that in any case, the contentions raised on behalf of the applicant would be a matter for trial. On this basis, it was submitted that the application deserved to be dismissed.

7. Having heard the learned counsel for the rival parties, this Court is of the opinion that even if the position of law, as canvassed on behalf of the applicant, is to be accepted for the sake of arguments, it is based on a factual framework, the basis of which is an assertion that the immovable property at Peddar Road in Mumbai, belongs to the partnership firm and that the deceased could not have claimed $1/3^{\text{rd}}$ ownership share in the said property.

8. A perusal of the Will, of which probate is sought in the present proceedings, shows that the deceased has claimed in more places than one that he owned $1/3^{\text{rd}}$ share in the aforesaid immovable property at Peddar Road, within the jurisdiction of this Court. As opposed to this, the applicant has asserted that the said immovable property is a property of the partnership firm registered at Madras, now Chennai. On this basis, it is submitted that the statement made in the schedule to the original probate petition at item No.1, is a false statement, inasmuch as it is claimed that the deceased had $1/3^{\text{rd}}$ ownership share in the said immovable property.

9. This Court is of the opinion that only after a finding is rendered on facts in favour of the applicant, that the position of law, as canvassed on behalf of the applicant, can come into operation, to indicate that this Court may not have jurisdiction. This is, of course, subject to a finding that the position of law canvassed on behalf of the applicant, is acceptable to this Court.

10. But, before going into the said debate, it is necessary to appreciate that to render a factual finding on the said aspect of the matter, the proceedings will have to go to trial. On the one hand is a statement in the

Will at various places about the deceased having 1/3rd share in the immovable property at Peddar Road in Mumbai, on the basis of which statements are made in the original probate petition and the schedule annexed thereto, and on the other hand is an assertion of the applicant that the said immovable property belongs to the partnership firm. Tendering of a purported certificate issued by the co-operative housing society in which the immovable property is located, to support the assertion made on behalf of the applicant, cannot be the basis for this Court to reach a factual finding at this stage, as regards the jurisdiction of this Court. It would obviously be a matter for trial and an opportunity would have to be granted to the parties to lead evidence on this aspect of the matter.

11. This Court, by an order dated 13.06.2023, framed four issues, but there is no issue framed on the jurisdiction of this Court. The order shows that the issues were framed in the presence of the advocates for the rival parties, although the learned counsel for the applicant/caveator claims that he was not present in the Court. This Court shall go by the record and it is the fact that the order dated 13.06.2023 shows the presence of the advocate for the caveator.

12. Be that as it may, since the aspect of jurisdiction goes to the very root of the matter, it would be appropriate that an additional issue, as regards jurisdiction, is framed for consideration alongwith the issues framed in the order dated 13.06.2023. This would give an opportunity to the rival parties to lead evidence on the aspects highlighted by the applicant in the present application, so that the question of jurisdiction is put to rest.

13. In view of the above, the present application is dismissed.

14. In the light of the observations made hereinabove, the following additional issued is framed:

“(iii-a) Whether this Court has jurisdiction to entertain the probate petition from which the instant suit arises?”

15. It is pertinent to note that in paragraph Nos.6 and 7 of the order dated 13.06.2023, this Court gave consequential directions upon framing of issues.

16. Learned counsel for the plaintiff submits that paragraph No.6 directing filing of affidavits in lieu of evidence and compilation of documents, has been complied with. But, the record does not reflect the same. The learned counsel for the defendants/caveators also submits that he was not served with the copies of the affidavits.

17. Office to verify and report to this Court.

18. List for directions on 03.01.2024.

(MANISH PITALE, J.)

Priya Kambli