

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

INTERIM APPLICATION NO. 2250 OF 2021

IN

TESTAMENTARY PETITION NO. 1500 OF 2017

Bhagwan Udharam Parwani ...Applicant

In the matter of

Mr. Udharam Amumal Parwani ...Deceased

Bhagwan Udharam Parwani ...Petitioner

Mr. Sachin Y. Kanoujia i/b. Mr. Sunilkumar J. Kanoujia for Applicant/Org.
Petitioner.

CORAM : ARIF S. DOCTOR, J.

DATE : 7th FEBRUARY, 2023

P.C. :

1. The present Interim Application seeks rejection of the Affidavit dated 25th February, 2018 of one Mrs. Poonam Hiranand Gehani which has been filed in the Testamentary Petition.

2. Learned Counsel submits the Testamentary Petition No. 1500 of 2017 has been filed seeking Letters of Administration to the properties and credits of one

Mr. Udham Amumal Parwani (deceased). The Petitioner in the Testamentary Petition is one of the son of the deceased. He submits that the Affidavit that has been filed in the Testamentary Petition is by one of the daughters of the deceased. The learned Counsel for the Petitioner does not dispute that the Mrs. Poonam Gehani is entitled to 1/5th share of the estate of the deceased. He however submits that Mrs. Poonam Gehani has simply filed an Affidavit in the Testamentary Department without any caveat in the requisite form. He submits that therefore the Testamentary Petition is not being proceeded with. He submits that despite recognizing the right of the Mrs. Poonam Gehani of the 1/5th share, she would be entitled to in accordance with the provision of the Hindu Succession Act, 1956, she has neither filed a consent Affidavit nor has withdrawn the present affidavit that has been filed by her.

3. He submits that notice of today's hearing has also been given to Mrs. Poonam Gehani despite which she fails to appear either in person or through Advocate.

4. I have heard learned Counsel for the Applicant and perused the copy of

the said Interim Application as also the Testamentary Petition. I find that there is nothing on record to show that Mrs. Poonam has taken any steps whatsoever, for filing the caveat in the proper format. The filing of the affidavit is simply to put in the Department works for the the grant of the letters of Administration. There is no reason why the Testamentary Petition should be proceeded with.

5. In light thereof the Interim Application is allowed in term of prayer clause (a) which reads as under:

a) This Hon'ble Court be pleased to reject the Affidavit dated 25.02.2018 fo Mrs. Poonam Hiranand Gehani and direct the office of this Hon'ble Court to issue the Letters of Administration as prayed by me in the above Petition after compliace of necessary requisitions.

6. Interim Application is accordingly disposed of

7. Office to proceed with the issuance of the grant subject to all compliance's and requisitions beings made by the Applicant.

(ARIF S. DOCTOR, J)