

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO. 119 OF 2023
WITH
INTERIM APPLICATION (LODGING) NO. 5455 OF 2023
IN
TESTAMENTARY PETITION NO. 563 OF 2021**

Minoo Nadirsha Anklesaria ... Petitioner/Applicant

In the matter between:

Shernavaz Sam Jijina and others ... Orig. Petitioners

Sam Burjorji Jijina and another ... Deceased

Mr. Akshay R. Pai a/w. Mr. Atharva Sane, Mr. Rushikesh Naik and Mr. Varad Jadhav, i/b. Amogh Khadye for petitioner in MPT/119/2023 and applicant in IAL/5455/2023.

Mr. G. B. Pawar for petitioners in TP/563/2021.

**CORAM : MANISH PITALE, J.
DATE : 25th OCTOBER, 2023**

P.C. :

. By this miscellaneous petition, the petitioner is seeking revocation of issuance of grant of letters of administration by this Court on 24.09.2021.

2. The short ground on which the present petitioner seeks revocation is that in the original testamentary petition bearing No.563 of 2021, a false and incorrect statement was made in paragraph No.5, to the effect that parents of both the deceased have pre-deceased them.

3. The original testamentary petition was filed for grant of letters of administration in respect of deceased Sam Burjorji Jijina and his wife Shirin

Sam Jijina, by the petitioners i.e. respondents in the present miscellaneous petition, being their children.

4. In paragraph No.5 of the said petition, the details of the original petitioners were stated and as noted hereinabove, a specific statement was made “Parents of both the deceased have pre-deceased them”.

5. The petitioner in this miscellaneous petition is the father of one of the deceased i.e. Shirin Sam Jijina. It is stated in the miscellaneous petition that the respondents herein i.e. the original petitioners in the testamentary petition, were aware about the fact that the petitioner in this miscellaneous petition, being the father of the said Shirin Sam Jijina, was very much alive. In fact, it is stated that he is about 92 years old.

6. Reference is made to certain documents filed alongwith this miscellaneous petition, to indicate that the respondents herein were very much aware about the fact that the petitioner herein was indeed alive and that therefore, the aforementioned statement made in paragraph No.5 of the original testamentary petition, was palpably false.

7. In response to the present miscellaneous petition, an affidavit in reply has been filed wherein the respondents have merely stated that due to inadvertence, the aforesaid statement was made in the original testamentary petition, to the effect that parents of both the deceased had pre-deceased them.

8. The learned counsel appearing for the petitioner in the miscellaneous petition further relied upon Section 51(2) of the Indian Succession Act, 1925 pertaining to special rules for Parsi intestates, to contend that as per law, the

petitioner in this miscellaneous petition, being the father of the deceased daughter Shirin Sam Jijina, is indeed entitled to a share in her estate. He submits that therefore, this Court may be pleased to allow the present miscellaneous petition.

9. Learned counsel appearing for the respondents relied upon the contents of the reply affidavit, reiterating that it was only due to inadvertence that the aforesaid statement was made in paragraph No.5 of the original testamentary petition. It was further submitted that such inadvertent mistake occurred because of the fact that a joint petition was filed in respect of both the deceased i.e. parents of the respondents herein and that the same ought not to be treated as ground for revocation of grant of letters of administration.

10. It was further submitted that in terms of a specific stand taken at Exhibit B to the reply affidavit, indicating distribution of properties of Parsi intestates, it would be evident that petitioner in the miscellaneous petition would have no share in the estate of his deceased daughter. On this basis, it was submitted that the present petition ought not to be entertained.

11. This Court has appreciated the rival contentions, in the light of the material available on record. Perusal of the original testamentary petition shows that at paragraph No.5 thereof, a specific assertion has been made that parents of both the deceased have pre-deceased them, thereby indicating that parents of Sam Burjorji Jijina as well as wife Shirin Sam Jijina, had pre-deceased them.

12. The reply affidavit placed on record in the present miscellaneous petition on behalf of the respondents, does not deny the fact that the

petitioner herein is alive and he is indeed the father of one of the deceased i.e. Shirin Sam Jijina. Thus, the statement made in paragraph No.5 of the original testamentary petition is factually incorrect and can be said to be false. It is only on this sole ground that this Court is inclined to allow the present petition seeking revocation of issuance of grant of letters of administration.

13. The learned counsel appearing for the petitioner in this miscellaneous petition is justified in invoking Section 263 (b) and (c) of the Indian Succession Act, 1925, which provides for revocation of such a grant, if it is demonstrated that the same has been granted on the basis of an untrue allegation of a fact or a false assertion in a testamentary petition seeking grant of letters of administration.

14. As regards the contention sought to be raised on behalf of the respondents about the manner in which distribution of estate of deceased Shirin Sam Jijina would take place under Parsi law, it would be open for the respondents to argue the same upon revival of the original testamentary petition. As noted hereinabove, the present miscellaneous petition is being allowed only because a factually incorrect/untrue/false statement was made at paragraph No.5 in the original testamentary petition, when the grant was issued.

15. This Court is further informed that an application bearing Interim Application (Lodging) No.5455 of 2023 has been moved on behalf of the petitioner herein, seeking a preliminary enquiry under Section 340 of Code of Criminal Procedure, 1973, read with the relevant provisions of the Indian Penal Code, 1860. The said application would be taken up for consideration

with the original testamentary petition upon its restoration. The contentions of the rival parties in that regard are kept open and this Court does not express any opinion in that regard.

16. In view of the above, the miscellaneous petition is allowed in terms of prayer clause (a) and consequently, the grant issued in favour of the respondents dated 24.09.2021 is revoked. Testamentary Petition No.563 of 2021 stands revived for consideration. The petitioner herein would be at liberty to take such steps as advised in respect of Testamentary Petition No.563 of 2021.

17. The proceedings in Testamentary Petition No.563 of 2021 are expedited.

(MANISH PITALE, J.)

Priya Kambli