

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO. 310 OF 2022
IN
TESTAMENTARY PETITION NO. 800 OF 2022**

Sudha Sanjay Sawant
@ Sudha Ramchandra Parab and others ... Petitioners

In the matter between:

Anushka Arunoday Parab ... Orig. Petitioner

Arunoday Ramchandra Parab @ Arunoday R. Parab ... Deceased

Ms. Swati Sawant @ Shweta Redij for petitioners in MPT/310/2022.

Mr. Mandar V. Limaye a/w. Mr. Vaibhav P. Patankar, i/b. Patankar & Associates for petitioner in TP/800/2022.

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

P.C. :

1. By this miscellaneous petition, the petitioners, who are the sisters of the deceased, have approached this Court for revoking the grant of letters of administration in favour of the original petitioner in Testamentary Petition No.800 of 2022.

2. This Court had issued the grant of letters of administration on 14.11.2022.

3. The original grant was issued on the basis of an assertion made on behalf of the original petitioner i.e. Anushka Arunoday Parab that she was the legally wedded wife of the deceased.

4. The petitioners in the present petition submit that documents are placed on record with the present miscellaneous petition, indicating that as per the certificate of registration of marriage issued by the competent authority i.e. Registrar of Marriage, District Sindhudurg, the original petitioner before this Court, seeking grant of letters of administration, got married to the deceased on 20.03.2018.

5. The learned counsel appearing for the petitioners in this miscellaneous petition invited attention of this Court to the documents filed alongwith the present miscellaneous petition, showing that the decree of divorce, dissolving the marriage of the said original petitioner Anushka Arunoday Parab with Ketanbhai Maganbhai Bhimjiyani was passed on 05.04.2018. It is specifically contended that the aforesaid documents clearly indicate that the marriage between Anushka Arunoday Parab and the deceased was solemnized during the subsistence of her marriage with Ketanbhai Manganbhai Bhimjiyani.

6. In the reply affidavit filed on behalf of the original petitioner Anushka Arunoday Parab, documents are placed on record to indicate that the date of marriage in the certificate of registration of marriage i.e. 20.03.2018, was erroneously recorded, for the reason that the marriage was actually solemnized on 20.03.2019, which effectively takes the wind out of the main contention raised on behalf of the petitioners in the present miscellaneous petition. Reference is made to the application made to the Registrar of Marriage, District Sindhudurg, for correction of the date of marriage in the certificate of marriage registration.

7. In the rejoinder affidavit, the petitioners have placed on record documents received from the office of the Registrar of Marriage, District Sindhudurg under Right to Information Act, 2005, showing that in an

application filed jointly on behalf of Anushka Arunoday Parab and the deceased, the date of marriage was specifically stated as 20.03.2018 and this was reiterated in a joint affidavit filed before the Registrar of Marriages. Copies of the said documents have been filed alongwith the rejoinder affidavit.

8. While referring to the said documents, the learned counsel appearing for the petitioners in this miscellaneous petition submitted that the grant was obtained by suppressing material facts from this Court within the knowledge of the original petitioner Anushka Arunoday Parab and therefore, this Court may be pleased to allow the present miscellaneous petition.

9. On the other hand, the learned counsel appearing for Anushka Arunoday Parab submitted that the petitioners in this miscellaneous petition were aware about the stand of Anushka Arunoday Parab in proceedings before a competent Court, indicating that the correct date of marriage was 20.03.2019 and not 20.03.2018. It is further submitted that Anushka Arunoday Parab had even referred to filing and pendency of the original testamentary petition for grant of letters of administration, on the basis of her assertion that she was legally wedded wife of the deceased and that therefore, the petitioners before this Court in the present miscellaneous petition, being sisters of the deceased, could have appeared in the original testamentary petition to raise their objection in that regard. It is submitted that since they failed to do so, the present petition ought not to be entertained. It is further submitted that an application for correction of date in the certificate of marriage is pending before the Registrar of Marriage, District Sindhudurg and in that light, the present petition ought not be entertained.

10. This Court has heard the learned counsel for the rival parties in the backdrop of the material placed on record.

11. Although a copy of the application seeking correction of date in the certificate of marriage registration has indeed been placed on record, it is clear that such an application was moved on behalf of Anushka Arunoday Parab, after a specific objection in that regard was raised in another proceeding on behalf of the petitioners. It is also an admitted position that such an application is pending and that as on today, the certificate of marriage registration between the deceased and Anushka Arunoday Parab shows the date of marriage as 20.03.2018. It is also an admitted position that the divorce decree was indeed passed on 05.04.2018, in the context of the proceeding initiated by Anushka Arunoday Parab with her earlier husband Ketanbhai Maganbhai Bhimjiyani. The papers presently available on record support the specific contention raised on behalf of the petitioners in this miscellaneous petition.

12. The documents filed alongwith the rejoinder affidavit further support the contention raised in the present miscellaneous petition.

13. Mere pendency of the application seeking correction of date in the certificate of marriage registration, cannot be a ground to reject the present petition.

14. But, this Court is of the opinion that the material available on record does indicate that when the original petitioner in the testamentary petition approached this Court for grant of letters of administration, she was clearly aware about the objection being raised by the petitioners in the present

miscellaneous petition, as regards the very legality of the marriage and therefore, the petitioner in the original testamentary petition could not have suppressed the said aspect of the matter. It is only on this ground that this Court is inclined to allow the present miscellaneous petition.

15. Since the application for correction of date on the certificate of marriage registration is still pending before the competent authority i.e. Registrar of Marriage at District Sindhudurg, it would not be appropriate for this Court to comment on the said aspect of the matter. Nonetheless, sufficient ground is made out by the petitioners in the present miscellaneous petition to seek revocation of the grant issued in favour of the original petitioner in the testamentary petition i.e. Anushka Arunoday Parab. Suppression of relevant facts, well within the knowledge of the original petitioner Anushka Arunoday Parab, is the sole ground on which, this Court is allowing the present miscellaneous petition.

16. In view of the above, the present miscellaneous petition is allowed in terms of prayer clause (a). Accordingly, the grant issued on 14.11.2022, in favour of the original petitioner Anushka Arunoday Parab is revoked and the original petitioner is directed to deposit the original grant of letters of administration with the Prothonotary and Senior Master of this Court within two weeks from today.

17. Accordingly, Testamentary Petition No.800 of 2022 shall stand revived. The petitioners in this miscellaneous petition would be at liberty to take steps as advised in that regard.

(MANISH PITALE, J.)