

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO. 213 OF 2023
IN
TESTAMENTARY PETITION NO. 1652 OF 2018**

Rohini Deendas Sanil	...	Petitioner
vs.		
Asha Vasantkumar Anchan	...	Respondent/Orig. Petitioner
and		
Sarojini Babu Sanil	...	Deceased

Mr. Nitesh Acharya for petitioner.

Mr. Prabhu Velar for respondent/original petitioner.

**CORAM : MANISH PITALE, J.
DATE : 09th NOVEMBER, 2023**

P.C. :

1. By this miscellaneous petition, the petitioner is seeking revocation of probate granted on 03.08.2022.

2. The petitioner herein is one of the daughters of the deceased. It is submitted that the respondent i.e. the original petitioner in Testamentary Petition No.1652 of 2018 deliberately gave wrong address of the petitioner herein and kept her in dark about the probate proceeding, as a consequence of which the petitioner herein could not contest the probate petition.

3. It is submitted that the deceased had five daughters and one son. The petitioner herein claims that she herself and the surviving son of the deceased, were not properly served in the probate petition and that the probate was obtained behind the back of the petitioner.

4. The respondent was served and she has appeared through counsel.

5. The learned counsel for the respondent could not convince this Court that in the original probate proceedings, the petitioner herein was properly served. Obviously, the probate was obtained behind the back of the petitioner. There is no dispute about the fact that the petitioner is one of the daughters of the deceased and that she was entitled to be served before the probate was granted by this Court. On this sole ground, the present miscellaneous petition deserves to be allowed.

6. Learned counsel for the petitioner further sought to make submission with regard to the doubtful nature of the will propounded by the respondent. But, the submissions in that regard can certainly be made in the original testamentary petition, which shall stand revived in view of the order passed today.

7. In view of the above, the miscellaneous petition is allowed in terms of prayer clause (a). As a consequence, the probate granted on 03.08.2022 is revoked and cancelled.

8. The original Testamentary Petition No.1652 of 2018 shall be taken up for reconsideration. The petitioner therein i.e. the respondent in this miscellaneous petition, is directed to take appropriate steps to serve citation on the petitioner as well as the surviving son of the deceased, in accordance with law.

9. The department shall proceed further in the matter.

10. Needless to say, in the light of the fact that the miscellaneous petition is allowed and the probate has been revoked and cancelled, the original grant shall be surrendered by the petitioner at the earliest and in any case, within two weeks from today.

(MANISH PITALE, J.)