

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 1734 OF 2024
IN
FIRST APPEAL NO. 202 OF 2024**

Shri Nilesh Shantilal Seth

.. Appellant

Versus

Smt. Leena Jerome alias Sanjay Vaz & Ors.

.. Respondents

Mr. Nitin V. Gangal a/w. Mr. Ashok Kadam and Ms. Prapti Karkera i/b. Ms. Namita Mestry, Advocate for the applicant.

Mr. Omkar Paranjape, Advocate for the respondents through VC.

CORAM : KISHORE C. SANT, J.

DATED : 23.02.2024

PC :-

01. Heard learned Advocates for the parties. The Trial Court by way of the impugned judgment and order had revoked the probate granted in favour of the appellant on the ground that the procedure adopted for probate was defective in substance. The learned Advocate for the applicant submits that in-fact the respondents claimed their right on the basis of adoption. The concept of adoption is not applicable so far as the Christian Personal Law is concerned and there is no question of adoption. It is submitted that under the

Juvenile Justice Act, personal law does not come in to play. There is no case made out that there was order under the Juvenile Justice Act or under the Guardians and Wards Act and as such the adoption cannot be recognized under law. He, thus, submits that there was no question of the respondents having any right or acquiring any right in the property under the Will. The probate was rightly granted in favour of present applicant. The learned Trial Court committed mistake by entertaining the application for revocation of Will at the instance of present respondents.

02. The learned Advocate for the respondents submits that in the present proceedings the question of validity or otherwise of adoption cannot be gone into. Interest was shown in the property of the respondents. The Court has clearly observed that there was defect in substance in the procedure while allowing the probate application on the basis of the Will. This Court finds that arguable questions are made out. To balance the equities, it would be necessary to stay the effect and execution of the impugned order to the extent of properties mentioned in Schedule 1 to 4 in the Will dated 26.03.1998 executed by Patricia Vaz. Hence, following order :-

ORDER

- (i) The interim application is partly allowed.
- (ii) There shall be stay to the effect and execution of the impugned order to the extent of properties described in Schedule 1 to 4 of the Will dated 26.03.1998 belonging to Patricia Vaz.
- (iii) The interim application stands disposed off.

[KISHORE C. SANT,J.]