

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

MISCELLANEOUS PETITION NO. 276 OF 2023
IN
TESTAMENTARY PETITION NO. 558 OF 2016

Tarun Panwar s/o Dharamvir Singh

...Petitioner

Versus

Smt. Kumund Deepak Vaidya

...Respondent

- Ms. Sarita Yadav i/b Bhagwan Mishra, for Petitioner.
- Mr. Birendra Saraf, Senior Counsel a/w Mr. Samit Shukla, Ms. Shivani Khanwalkar i/b DSK Legal, for Respondent.

CORAM : MANISH PITALE, J

DATE : 04th JANUARY, 2024.

P. C. :

1. Heard learned counsel for the parties.
2. By this petition, the petitioner is seeking revocation of Letters of Administration with Will granted by this Court on 29th August, 2016.
3. It is the case of the petitioner that sufficient grounds are made out for revocation of the aforesaid grant.
4. The learned counsel for the petitioner relies upon an agreement said to have been executed between the deceased and the petitioner in respect of the immovable property at Dehradun (Uttarakhand). It is submitted that the deceased had filed Civil Suit No. 460 of 2014 before the Court of Civil Judge Senior Division,

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Dehradun, in respect of the said immovable property, which is pending. It is further the case of the petitioner that he is in possession of the said immovable property and despite being aware of the said facts and circumstances, the aforesaid property was included in the petition filed by the respondent herein for grant of Letters of Administration with Will.

5. Attention of this Court was further invited to an order dated 29th July, 2022, passed by the said Court at Dehradun, whereby one of the issues framed in the aforesaid suit was struck off and a reference was made to the grant of Letters of Administration with Will by this Court. On this basis, it was submitted that the grant ought to be revoked as the respondent could not have included the said immovable property as subject matter of the original petition.

6. The learned Senior Counsel appearing for the respondent submitted that since the petitioner is claiming interest adverse to that of the testator, in respect of which the aforesaid litigation is pending, the very maintainability of the present petition is called into question. He submits that issuance of Letters of Administration with Will in favour of the respondent only means that she has entered into the shoes of the deceased and the consequence thereof would follow in respect of the aforesaid immovable property located in Dehradun. The learned senior counsel places reliance on judgment of this Court

in the case of *Ashokkumar Krishnakumar Shukla alias Munna Vs. Mohammed Rafiq Haji Usman Momin*¹, to contend that even in a situation where a third party had filed a caveat in a probate proceeding, this Court held that the caveat could not be maintained and proceeded to decide the matter. It is submitted that in the present case, the petitioner has miserably failed to demonstrate as to on what basis the present petition for revocation of grant could be maintained. It is submitted that this Court exercising testamentary jurisdiction cannot go into the dispute sought to be raised by the petitioner with respect to the said immovable property.

7. This Court has considered the rival submissions in the light of the material on record. The petitioner is concerned with an immovable property at Dehradun and he claims to be in possession thereof, in respect of which the said suit filed by the deceased is pending before the competent Court at Dehradun.

8. Even if the said Court at Dehradun passed the aforesaid order dated 29th July, 2022, while the striking of one of the issues and also referred to the Letters of Administration with Will granted by this Court, that in itself could not give to rise to a cause of action for the petitioner to approach this Court to seek revocation of the grant. The petitioner would obviously be at liberty to take such steps as

1 2014 (2) Mh.L.J. 135

available in law in the context of the said order. The petitioner is also at liberty to pursue his remedies in respect of the said pending suit before the competent Court at Dehradun. The petitioner has not been able to demonstrate as to how he could knock the doors of this Court to seek revocation of the grant issued in favour of the respondent, for the simple reason that this court exercising testamentary jurisdiction cannot go into the question sought to be raised on behalf of the petitioner. In fact, it is obvious that the petitioner claims an interest adverse to that of the deceased and on this ground alone, the present petition can be held to be not maintainable.

9. In view of the above, the petition is dismissed, as not maintainable. The petitioner would be at liberty to pursue the proceedings in the aforesaid pending suit i.e. Civil Suit No. 460 of 2014, before the Court of the Civil Judge Senior Division, Dehradun and to take appropriate steps in the matter, as may be advised.

(MANISH PITALE, J.)