

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

**TESTAMENTARY PETITION NO. 1265 OF 2018**

Harshit Narendra Mehta ... Petitioner

Darayus Cawasha Balsara alias  
Darayus Cawasha Balsara ... Deceased

**WITH  
TESTAMENTARY PETITION NO. 2641 OF 2019**

Ashubhai Kranaji Rabari ... Petitioner

Darayus Cawasha Balsara alias  
Darayus Cawasha Balsara ... Deceased

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Mr. Rishikesh Soni a/w Nikita Lad i/by Ashok Purohit & Co. for  
the Petitioner in TP/1265/2018.

Mr. Hrushi Narvekar i/by P. B. Gole for the Petitioner in  
TP/2641/2019.

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**CORAM: MANISH PITALE, J.  
DATE : 3<sup>rd</sup> APRIL 2024**

**P.C. :**

. These two probate petitions are filed in the context of two  
Will deeds said to have been executed by the deceased person. In  
this case, the deceased was one Darayus Cawasha Balsara alias  
Darayus Cawasha Balsara. In Testamentary Petition No.1265 of  
2018, the original petitioner filed a petition on the basis of being  
executor of Will dated 17<sup>th</sup> July 2015, said to have been executed  
by the deceased. Testamentary Petition No. 2641 of 2019 was filed

for grant of probate of the subsequent Will said to have been executed by the deceased on 4<sup>th</sup> April 2016. It is undisputed that the testator died on 25<sup>th</sup> October 2016.

2. It is significant that in the Testamentary Petition No. 2641 of 2019, seeking probate of the subsequent Will, no caveat has been filed. The petitioner in Testamentary Petition No. 1265 of 2018, propounding the earlier Will, has not taken any steps with regard to the aforesaid petition filed for grant of probate of the subsequent Will.

3. In the face of such admitted facts, the learned counsel appearing for the petitioner in Testamentary petition No. 2641 of 2019 relied upon Section 70 of the Indian Succession Act, 1925 (hereinafter referred to as 'Succession Act'), to submit that execution of the subsequent Will dated 4<sup>th</sup> April 2016 resulted in revocation of the earlier Will dated 17<sup>th</sup> July 2015, even if it was to be accepted that the testator had executed the aforesaid earlier Will dated 17<sup>th</sup> July 2015. He relied upon the aforesaid provision and in support thereof, on the judgment of the Supreme Court in the case of *Badrilal v/s. Suresh & Ors., (2021) 18 SCC 129*, particularly, paragraph 12 thereof. In the said judgment, the Supreme Court has taken note of the fact that revocation of a Will occurs under Section 70 of the Succession Act by various modes, one of which is by execution of another Will or Codicil. The learned counsel for the petitioner in Testamentary Petition No.

2641 of 2019 further relied upon the judgment of the Madras High Court in the case of ***Kasthuri Bai v/s. V. Ashok Kumar, 2017 SCC OnLine Mad 11563***, to contend that even if the subsequent Will does not specifically refer to and revoke an earlier Will, the fact that the Will is executed subsequently, is enough to revoke the earlier Will.

4. Thereupon, the learned counsel further referred to the contents of the Will dated 4<sup>th</sup> April 2016 to contend that earlier Wills and Codicils were specifically revoked and cancelled by the testator. He further submits that the two attesting witnesses to the Will dated 4<sup>th</sup> April 2016 have given their affidavits and the same are filed along with the petition, thereby specifying the requirement of Section 63 of the Succession Act and in support thereof, reliance is placed on a judgment of the Supreme Court in the case of ***Meena Pradhan & Ors. v/s. Kamla Pradhan & Anr.*** (Judgment and Order dated 21<sup>st</sup> September 2023, passed by the Supreme Court in Civil Appeal No. 3351 of 2014). On this basis, he submitted that this Court may allow the petition and issue appropriate directions to the department for grant of probate in respect of subsequent Will dated 4<sup>th</sup> April 2016.

5. The learned counsel appearing for the petitioner in Testamentary Petition No. 1265 of 2018 submits that the said probate petition is filed in the context of Will dated 17<sup>th</sup> July 2015, executed by the deceased testator. He submitted that the

factual position could not be denied that the said Will dated 17<sup>th</sup> July 2015 was prior to the Will dated 4<sup>th</sup> April 2016 in respect of which Testamentary Petition No. 2641 of 2019 has been filed. He fairly stated that the effect of Section 70 of the Succession Act could not be disputed in the facts and circumstances of the present case and that therefore, appropriate orders can be passed by this Court.

6. A perusal of Section 70 of the Succession Act shows that execution of the subsequent Will has the effect of revoking a prior Will of the testator. It is also not necessary that the subsequent Will must specifically revoke the earlier Will. In any case, the Will dated 4<sup>th</sup> April 2016 of the deceased testator specifically declares that all Wills and Codicils previously executed by the testator stand revoked. It is also an admitted position that the deceased died a bachelor. The contents of the Will dated 4<sup>th</sup> April 2016 show that according to the deceased testator, since he had no family member and the petitioner had taken good care of the testator during his lifetime, like his own son, through natural love and affection, he was bequeathing all his properties in favour of the petitioner in Testamentary Petition No. 2641 of 2019.

7. This Court has perused the affidavits of both the attesting witnesses of the Will dated 4<sup>th</sup> April 2016. They satisfy the requirements of law. There is no contest in respect of the petition, as no caveat has been filed. Therefore, it is an uncontested

petition, which deserves to be allowed.

8. Accordingly, the petition is allowed in terms of the prayer made therein.

9. The department shall take consequential steps for issuance of grant.

10. The effect of Testamentary Petition No. 2641 of 2019 being allowed, which pertains to the subsequent Will dated 4<sup>th</sup> April 2016, is that the Testamentary Petition No. 1265 of 2018 propounding the earlier Will dated 17<sup>th</sup> July 2015, will have to be dismissed. Accordingly, it is dismissed.

**MANISH PITALE, J.**