

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO. 409 OF 2023**

Mansukhlal Nandlal Sheth	...	Petitioner
vs.		
Ankit Anil Agarwal and others	...	Respondents

**IN
TESTAMENTARY PETITION NO. 2895 OF 2019**

Mr. Vinay Kanodia for petitioner.

Mr. Anil Agarwal for respondent No.1.

Ms. Sonal a/w. Mr. Aditya Kavale, i/b. Zohaiir & Co. for respondent No.2.

**CORAM : MANISH PITALE, J.
DATE : 01st APRIL, 2024**

P.C. :

. Heard learned counsel for the parties. By this miscellaneous petition, the executor of the subject Will, in respect of which probate was granted by this Court on 30.06.2023, seeks an authority to sell an immovable property i.e. Flat No.35, Ameeta Building, 7th floor, General Jagannath Bhosle Marg, Opp. Sachivalaya, Mumbai-400021, alongwith car parking space. Ancillary directions in that regard are also sought by the petitioner.

2. The petitioner, as the executor administering the estate of the deceased in terms of the probate granted by this Court, invoked Section 307 read with Section 211 of the Indian Succession Act, 1925 (hereinafter referred to as the Succession Act), to claim that he is entitled to approach this Court for such a direction of disposing off the aforesaid flat, so that the

proceeds thereof can be divided amongst the three beneficiaries under the Will i.e. respondent Nos.1 to 3 herein. While respondent No.1 has supported the prayers made in the present petition, the respondent Nos.2 has opposed the same and in that regard, reply affidavit has been filed alongwith documents on behalf of respondent No.2.

3. The learned counsel appearing for the petitioner (executor) submits that in terms of Section 307 read with Section 211 of the Succession Act, in order to ensure that the intent of the testator is duly satisfied, this Court ought to grant permission to sell the aforesaid flat and to distribute the proceeds thereof amongst respondent Nos.1 to 3, who are the beneficiaries under the subject Will, being the grandsons of the testator. In that regard, the learned counsel for the petitioner referred to the relevant portion of the subject Will dated 15.05.1998. He submitted that a proper interpretation of the relevant portion of the aforesaid Will sufficiently demonstrates that the prayers made in the present petition ought to be granted, particularly because there are no restrictions in the subject Will as to the manner in which the executor has to deal with the aforesaid flat.

4. He relied upon a number of judgments in support of his contention, including judgment of the Supreme Court in the case of *K. Leelavathy Bai and others vs. P. V. Gangadharan and others* (judgment and order dated 17.03.1999) and judgments of this Court in the cases of *Mohamed Salman Noorani vs. Smt. Radhika Bhargava and others* (judgment and order dated 25.06.2014 passed in Appeal No.239 of 2014) and *Harban Singh Ochani vs. Devendra Bahadur Singh* (judgment and order dated 31.03.2023 passed in Interim Application No.3559 of 2022 in Testamentary Petition No.1905 of 2018).

5. He submitted that in the event this Court does not grant the prayers made in the present petition, it may lead to a situation where the executor will not be satisfying the intent of the testator as per the subject Will. It is claimed that respondent Nos.1 and 3 have approached the executor, claiming their share in the said flat.

6. The learned counsel appearing for the the contesting respondent No.2 submits that a proper reading of the Will would show that the executor, having written to the society in which the flat is located, on 03.07.2023, for transmission of ownership rights of the said flat in the name of all the three beneficiaries under the said Will i.e. respondent Nos.1 to 3, demonstrates the assent of the testator to the legacy. It is submitted that the executor has duly performed his role under the subject Will, upon the probate being granted and therefore, there is no necessity for the executor to sell the aforesaid flat. It is brought to the notice of this Court that the respondent No.2 alongwith his parents and family, are residing in the said flat. It is submitted that upon appropriate steps being taken with regard to the transmission of the ownership rights in the said flat in favour of all the three respondents, they can work out their own remedies in accordance with law. According to the learned counsel for respondent No.2, the executor, in the facts and circumstances of the present case, cannot rely upon Section 307 read with Section 211 of the Succession Act, to insist upon sale of the said flat for disbursal of proceeds thereof equally in favour of all the three respondents. The learned counsel for respondent No.2 has relied upon judgment of Allahabad High Court in the case of *Saryooparin Pathshala Samiti vs. District Judge, Allahabad* (ILR Vol. LIII. Page 422), in support of the aforesaid contention.

7. It is specifically stated that this Court may even direct the aforesaid society to take appropriate steps to transfer the right, title and interest of the said flat in the name of all the three respondents and that respondent No.2 cannot have any objection to the same.

8. The learned counsel appearing for respondent No.1 submits that if this Court peruses the draft deed of transfer forwarded by respondent No.2 in the context of the said flat, it would become evident that the stand of respondent No.1, in the facts and circumstances of the present case, is justified. It was brought to the notice of this Court that when the draft deed of transfer was transferred to respondent No.2, he returned the same with certain corrections, showing respondent Nos.1 and 2 as confirming parties to the deed of transfer, conceding that the right, title and interest of the said flat would be transferred in favour of all the three respondents, but a condition was added. It was specifically added that such transfer would be subject to respondent No.2 exclusively enjoying the possession of the said flat, since he is residing therein with his parents and his family. According to respondent No.1, this indicates that respondent No.2 is acting against the intent of the testator and in such circumstances, there is no option available to the executor, but to approach this Court for sale of the said flat, so that the proceeds thereof can be disbursed amongst all the three respondents. On this basis, it is submitted that the present petition ought to be allowed.

9. Having heard the learned counsel for the rival parties, this Court is of the opinion that a perusal of the contents of the Will is necessary to examine as to whether the prayers made in the present petition, can be granted. There is no dispute about the fact that the probate was granted on

30.06.2023 and that the executor has approached this Court on the strength of the aforesaid probate being granted in respect of the subject Will.

10. A perusal of the Will shows that after providing for the manner in which the movable and immovable properties of the testator would be dealt with, except the subject flat, it was stated in the Will as follows:

“After setting aside the aforesaid amount for charitable purposes, the remaining properties shall be divided in equal shares among my three sons namely DR. Mohan Agarwal, Mr. Anil Agarwal and Mr. Ramesh Agarwal and two married daughters namely Smt. Sumitra Banka and Smt. Asha Goyal if they survives my wife. After my death my wife Smt Ginidevi shall enjoy all the benefits and interest in the said residential flat situated at Amita building. After her death, all the rights, titles and interest in the said residential flat shall devolve and divided equally between my three grandsons namely (1) Master Amit Mohan Agarwal (2) Master Ankit Anil Agarwal and (3) Master Hardik Ramesh Agarwal.

In case my wife dies before me, in that case all my properties whether movable or immovable except residential flat at Amita Building, shall be consolidated and put together and a sum of Rs.20,00,000/- shall be set apart for charitable purpose under a trust in the name and style B. M. AGRAWAL CHARITABLE TRUST to be regulated under the Bombay Public Trust Act and balance amount shall be distributed as mentioned hereinbefore & residential flat at Amita Bldg. shall be devolve and transfer in favour of three grandsons namely (1) Master Amit Mohan Agarwal, (2) Master Ankit Anil Agarwal and (3) Master Hardik Ramesh Agarwal.”

11. It is the case of the executor in the present petition that a proper reading of the aforesaid portion of the Will mandates sale of flat and the proceeds thereof being divided equally amongst the three beneficiaries, being the grandsons of the deceased testator, who are respondent Nos.1 to 3 in the present petition.

12. This Court is unable to agree with the said interpretation of the executor, for the simple reason that the aforementioned portion of the Will brings out the intent of the testator of transferring the said flat in favour of his three grandsons i.e. the three respondents herein, after the death of his wife. It is an admitted position that the wife of the testator expired and thereafter, the probate proceedings were initiated, leading to grant of probate.

13. In these circumstances, on the strength of the probate granted by this Court, the executor was expected to act in a manner, so as to ensure that the right, title and interest pertaining to the said flat stands transferred in the name of the three beneficiaries i.e. respondent Nos.1 to 3 in the present petition. It is relevant to note that the schedule of properties pertaining to the probate petition included only the subject flat.

14. It is also an admitted fact that on 03.07.2023, the petitioner i.e. the executor wrote to the society, wherein the flat is located, through his advocate, for transmission of the right, title and interest of the subject flat in favour of the three beneficiaries i.e. respondent Nos.1 to 3 in the present petition. It is specifically stated therein that the executor is ready and willing to complete all the formalities for transfer of the said flat in the name of all the three beneficiaries.

15. This Court is of the opinion that having taken the aforesaid step, the executor has indeed undertaken the step necessary to fulfill the intent of the testator in the subject Will. The said request made to the society, must lead to the right, title and interest in the subject flat being transferred in favour of

all the three beneficiaries i.e. respondent Nos.1 to 3 before this Court. It appears that the society, in turn, has responded by asking for certain documents to be provided by the executor, so that the transmission of right, title and interest in the said flat can be transferred in favour of all the three beneficiaries.

16. It appears that during the course of documents being prepared in the context of transmission of such right, title and interest in the subject flat, certain communications and documents were exchanged between the parties. One of such documents is a draft deed of transfer proposed by respondent No.2. The same is annexed to the reply affidavit of respondent No.2. The contents thereof do indicate that respondent No.2 appears to be insisting upon adding a condition, subject to which, the right, title and interest of the subject flat would be transferred in favour of all the three beneficiaries. The apprehension expressed on behalf of respondent No.1 cannot be said to be without any basis, considering the proposed deed of transfer on behalf of respondent No.2.

17. Nonetheless, the question is whether the executor, in such facts and circumstances, can approach this Court for sale of flat and distribution of proceeds thereof in favour of all the three beneficiaries. This Court is of the opinion that since the subject Will does not show the intent of the testator for sale of flat and distribution of proceeds thereof in favour of all the three beneficiaries, even if the aforesaid apprehension is expressed by respondent No.1, that in itself cannot be a ground for pressing for the prayers made in the present petition. The apprehension expressed on behalf of respondent No.1 can be taken care of by issuing directions in the facts and circumstances of the present case.

18. But, even if the provision of law, as canvassed on behalf of the petitioner, by relying upon judgment of Supreme Court, in the case of **K. Leelavathy Bai and others vs. P. V. Gangadharan and others** and judgments of this Court in the cases of **Mohamed Salman Noorani vs. Smt. Radhika Bhargava and others** and **Harban Singh Ochani vs. Devendra Bahadur Singh**, is to be taken into consideration, no case is made out for granting the prayers made in the present petition. There can be no dispute about the powers available to an executor under Section 307 read with Section 211 of the Succession Act. But, such powers are necessarily to be exercised by the executor in the fact and circumstances of each individual case. The substratum for exercising the power is the said Will, in respect of which the probate is granted by the Court. The intent of the testator is to be taken to its logical end. The contents of the Will, in the present case, indicate that the intent of the testator requires that the right, title and interest in the subject flat inures to the benefit of all the three beneficiaries. There is nothing to indicate that the flat is to be sold and the proceeds thereof are to be distributed amongst respondent Nos.1 to 3. As noted hereinabove, the petitioner had already initiated steps to ensure that the right, title and interest in respect of the said flat, is transferred to all the three beneficiaries. Therefore, reliance on the aforesaid judgments cannot be of any assistance to the petitioner.

19. On the other hand, the judgment of the Allahabad High Court in the case of **Saryooparin Pathshala Samiti vs. District Judge, Allahabad**, upon which the learned counsel for respondent No.2 has placed reliance, indicates that the Court does not have jurisdiction to pass orders of sale under Section 307 of the Succession Act, so long as the bequeath under the subject Will, has been taken to its logical end.

20. In the present case, the executor has already initiated the necessary steps, by approaching the society for transmission of the right, title and interest in the aforesaid flat in favour of all the three beneficiaries. Therefore, no case is made out for granting the prayers in the present petition.

21. It is made clear that while this Court is not granting the prayers made in the present petition, the executor will be entitled to follow-up the communication dated 03.07.2023 addressed on his behalf to the concerned society, for transmission of right, title and interest in favour of all the three beneficiaries i.e. respondents before this Court. The society shall act in accordance with law, so that the transmission of right, title and interest in the subject flat in favour of all the three beneficiaries, is ensured. None of the respondents will be entitled to claim that such transmission of rights can be subject to any condition that they may wish to impose on such transfer.

22. Subject to the aforesaid observation, the present miscellaneous petition is dismissed.

(MANISH PITALE, J.)

Priya Kambli