

Santosh

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

TESTAMENTARY PETITION NO. 3855 OF 2024

1. Mr. Ganesh Shantaram Surve
2. Mr. Sushant Shantaram Surve
3. Mrs. Nisha Mangesh Chavan
4. Mrs. Neeta Shailendra Ghag ...Petitioners

Ravindra Narayan Surve ...Deceased

Mr. V. N. Mishra, for the Petitioners.

CORAM: N. J. JAMADAR, J.

DATED : 4th OCTOBER, 2024

PC:-

1. Heard the learned Counsel for the petitioner.
2. This Petition is filed for Letters of Administration to the property and credits of Ravindra Narayan Surve. The petitioner No.1 has filed the petition for himself and also in the capacity of the power of attorney of petitioner Nos.2 to 4 as their Constituted Attorney.
3. On 4th May, 2024, the Department has raised an objection that Petitioner No.1 Mr. Ganesh Shantaram Surve, who has filed the Petition for himself as well as in the capacity of the constituted attorney of Petitioner Nos.2 to 4, cannot be granted a limited grant in the capacity of the constituted attorney of

petitioner Nos.2 to 4 as Petitioner No.1 is entitled for general grant in his own right. Reference is made to the provisions contained in Section 243 of the Indian Succession Act, 1925 and Rule 418 of the Bombay High Court (Original Side) Rules, 1980.

4. Rule 418 of the Bombay High Court (Original Side) Rules, 1980, reads as under :

“**Rule 418.** Limited grant not to be issued to person entitled to general grant – Unless otherwise ordered by the Judge in Chambers, a limited grant shall not be issued to a person who is entitled to a general grant of administration to the property of the deceased.”

5. Rule 418 governs the situation where a person entitled to the general grant seeks a limited grant. *Ex-facie*, Rule 418 does not cover a case where a person, who is entitled to general grant, files a petition for himself and also for other heirs in the capacity of the latter's constituted attorney. The prohibition is also not absolute. The Judge in Chambers is empowered to allow even a limited grant being issued to a person who is entitled to a general grant of administration to the property of the deceased.

6. Evidently, Petitioner No.1 has filed and verified the Petition for himself and also in the capacity of the constituted attorney for Petitioner Nos.2 to 4. The Power of Attorney executed by Petitioner Nos.2 to 4 in favour of Petitioner No.1 contains full

authorization. In a sense, Petitioner Nos.2 to 4 have agreed to be bound by the actions and decisions of Petitioner No.1. Even otherwise, Petitioner No.1 is seeking Letters of Administration in his individual capacity as well.

7. Therefore, neither Section 243 of the Indian Succession Act, 1925, nor Rule 418 of the Bombay High Court (Original Side) Rules, 1980 constitutes an impediment in granting Letters of Administration to Petitioner No.1 in his individual capacity and also as a constituted attorney of Petitioner Nos.2 to 4.

8. Office objection dated 4th May, 2024 thus stands dispensed with.

9. Department to now proceed with the Petition and, if all the requirements are fulfilled, issue grant in favour of the Petitioners as expeditiously as possible, in accordance with law.

[N. J. JAMADAR, J.]