

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL NO.65 OF 2024
IN
INTERIM APPLICATION (L) NO.20977 OF 2023
IN
TESTAMENTARY SUIT NO.5 OF 2005
IN
TESTAMENTARY PETITION NO.226 OF 2004
WITH
INTERIM APPLICATION NO.971 OF 2024**

Ruby Cyril D'souza & Ors.

.. Appellants

Versus

Smt. Cecilia Reynold D'souza & Ors.

.. Respondents

Mr. Nitin V. Gangal a/w. Namita Mestry & Prerna Shukla, *Advocates for the Appellants.*

**Mr. Raj Patel, Mr. Vinayak J. Phadake, Mr. Abhishek Khambekar i/b.
Mr. Vinayak J. Phadake, *Advocates for Org. Plaintiffs/Org.
Petitioners/Respondents.***

**CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.**

DATE: JUNE 27, 2024

P. C.

1. The above Appeal, raises a very interesting question of law. It is the interplay between Section 67 and Section 255 of the Indian Succession Act, 1925 and whether Testamentary Court can go into the said issue. The

above Appeal was admitted on 27th March 2024 and the learned Single Judge was requested to consider the prayer, if made by the Appellants, to defer the hearing of the Suit on the next date, on account of pendency of the Appeal.

2. Before the impugned order was passed, the Appellants before the learned Single Judge had requested for an additional issue to be framed and which is more particularly set out in paragraph 6 of the impugned order. For the sake of convenience, the issue is reproduced herein under:-

“Whether Letters of Administration with Will dated 16th April, 1994 annexed thereto can be granted to the Petitioners as the grant pursuant to the bequest made by the said Will is void under the latter part of Section 67 of the Indian Succession Act, 1925 constituting an exception to such grant under Section 255 of the said Act?”

3. The learned Single Judge was of the opinion that the question whether a bequest is void because of Section 67 is not something that the Testamentary Court can go into and that would not fall as an exception as contemplated under Section 255 of the said Act.

4. Considering that the above Appeal is admitted and now we are considering this issue, we are of the opinion that till the above appeal is heard, the learned Single Judge ought not to go on with the Suit, as the issue raised before us would have a serious bearing in the suit.

5. In this circumstances, we direct that Testamentary Suit No. 5 of 2005 shall not proceed till the above Appeal is heard.
6. Place the above Appeal for hearing and final disposal on 30th July 2024 at 2:30 pm.
7. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]