



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
INTERIM APPLICATION NO.2057 OF 2024
IN
MISC. PETITION (L) NO.18260 OF 2024
IN
TESTAMENTARY PETITION NO.639 OF 2022**

Shireen Dinshaw Mistry and Ors.	...	Applicants/Petitioners
versus		
Bilkish Yunus Namakwala	...	Respondent
Lady Jena Jamshedji Duggan		
alias Jina Jamshedji Dagan	...	Deceased

Mr. Aspi Chinoy, Sr. Advocate with Mr. Shanay Shah, Mr. J.S.Solomon, Mr. Apoorv Karekar, Ms. Souparnika i/by M/s. Solomon and Co., for Petitioners/Applicants.
Mr. Zubin Behramkamdin, Sr. Advocate with Mr. Karan Bhosale, Ms. Saveena Tejwani, Mr. Abdul Basit Kudalkar i/by NDB Law for Respondent.

CORAM: N.J.JAMADAR, J.

DATE : 24 JULY 2024

P.C.

1. Heard the learned Counsel for the parties.
2. This Petition is filed, inter alia, for revocation and annulment of the grant of Letters of Administration dated 3 June 2022 of the alleged Will and Testament dated 6 April 1993 of late Lady Jena Jamshedji Duggan, issued to the Respondent-Petitioner in TP No.639 of 2022 and cancellation of the transfer of Lawnside property – estate of the deceased by the Respondent in the capacity of the Administrator under the Deed of Transfer dated 17 June 2022 in her favour as a

beneficiary.

3. The Petitioners have moved this Interim Application seeking, inter alia, to restrain the Respondent from taking any steps or acting on the basis of the said Letters of Administration, to direct her to deposit the original Letters of Administration dated 3 June 2022 in this Court and also restrain her from taking any steps or action on the basis of and in furtherance of the purported deed of transfer dated 17 June 2022 or in any manner directly or indirectly dealing with, encumbering or disposing of any of the properties and estate of Lady Jena, including the Lawnside property described in Exhibit B to the Petition or creating or purporting to create any third party rights therein or any part thereof.

4. Mr. Chinoy, learned Senior Advocate for the Applicants moves for ad-interim reliefs. Mr. Chinoy urged that TP No.639 of 2022 was filed on the strength of an ex-facie forged and fabricated document purported to be the Will and Testament of lady Jena dated 6 April 1993. It was urged that, in fact, lady Jena had executed her last Will and Testament on 4 April 1993 and Dr. Feroze Duggan, the grand son of lady Jena had filed TP No.156 of 1994 for Probate, and, eventually, after a contest by Jean Duggan, Probate came to be granted in TS No.78 of 1994, which was confirmed in Appeal by the Appeal Bench by an order dated 27 October 1996 with the alteration that instead of Probate, Letters of Administration be granted. SLP preferred by Jean Duggan was dismissed by the Supreme Court on 13 January 2017. Dr. Feroze expired

on 13 January 2022 leaving behind a Will dated 30 December 1994, under which the Petitioners herein have been appointed as Executors and the Petitioners have filed TP No.4292 of 2023 for grant of Probate of the Will of Dr. Feroze. Thus, the purported will dated 6 April 1993 propounded by the beneficiary after almost 30 years of the death of lady Jena was with a view to usurp the estate of the deceased.

5. Secondly, Mr. Chinoy would urge, the Respondent obtained the Letters of Administration by suppressing the fact that there were legal heirs of the deceased lady Jena. In fact, the said statement was contrary to the assertion in paragraph No.7 of the TP No.639 of 2022, wherein it was asserted that all cash and jewelleries were already bequeathed to the children and grandchildren of the deceased during her lifetime. An endeavour was made to wriggle out of the positive mis-representation by filing an affidavit on 8 August 2022, post grant of Letters of Administration, that there was a mistake in making a statement that the deceased was not survived by any legal heirs. It was asserted that the legal heirs had given NOC.

6. Mr. Chinoy would urge, had true facts been disclosed, this Court would not have granted Letters of Administration in TP No.639 of 2022 treating it as an uncontested Petition. Since legal heirs were deliberately not disclosed in the Petition, no citations were issued, and, eventually, the Petition came to be allowed as an uncontested Petition. If viewed in the backdrop of the Will of lady Jena, which was attested by late Nani A. Palkhiwalla and Roshan Master, as attesting witnesses, and the

dispute as to legality and validity of the said Will attained finality in the Supreme Court, the endeavour of the Respondent to surreptitiously usurp the assets of the deceased by setting up a Will purportedly executed two days after the said Will dated 4 April 1993 can only be said to be fraudulent. The Petitioners became aware of the grant of Letters of Administration only upon being intimated by the Court Receiver who has been appointed in Suit No.4847 of 1995 filed by Dr. Feroze Duggan. As the Respondent has got executed an instrument in her favour on the strength of the said grant, it is necessary to grant ad-interim relief to protect the property, urged Mr. Chinoy

7. Mr. Behramkamdin, learned Senior Advocate for the Respondent, submitted that there is no case for grant of the ad-interim relief without providing an opportunity to the Respondent to put in her reply. It was submitted that the Petitioners were aware of the grant of the Letters of Administration in TP No.689 of 2002 and the transfer of the property under the Instrument of Transfer dated 17 June 2022, in the year 2023 itself. The Petitioners made no efforts to seek ad-interim relief with expedition. Therefore, the Respondent deserves an opportunity to put in her reply. Secondly, inviting attention of the Court to the prayers in the Testamentary Petition as well as Interim Application, Mr. Behramkamdin would urge that the testamentary Court cannot pass any interim order as it is not concerned with the title to the property which is the subject matter of the Testamentary Petition.

8. Reliance was placed on the decisions of this Court in the cases of **Rupali Mehta V/s. Smt. Tina Narinder Sain Mehta**¹ and **Ramchandra Ganpatrao Hande @ Handege V/s. Vithalrao Hande and Ors.**² It was further submitted that since the Lawnside property is *custodia legis*, there is no basis for the apprehension that the property would be damaged or lost. Thus, the Petitioners do not deserve any ad-interim relief.

9. I have perused the averments in the Petition and the Interim Application. It seems that the Respondent had propounded a Will which was purportedly executed two days after the Will dated 4 April 1993 in respect of which Letters of Administration were granted by a judgment and order dated 27 October 2016 by the Appeal Court. The circumstances in which the said Will was executed and attested and the contest to which it was subjected to right upto the Supreme Court, prima facie, lends credence to the submission of Mr. Chinoy. In contrast, the Respondent seems to have propounded a Will of the deceased after about 30 years. The only explanation in the Petition regarding the delay was that while taking a search at home the Respondent had found the Will of the deceased, recently.

10. To add to this, there are contradictory statements in the Petition regarding the legal heirs of the deceased. At one place, it was averred that the jewellerys and cash were already bequeathed to the children and grandchildren during

1 2006(6) Mh.L.J. 786

2 2011(4) Mh.L.J. 50

the life time of the deceased and, at another place, it was averred that there were no legal heirs of the deceased. What exacerbates the situation is the fact that post grant, on 8 August 2022, a statement was made on an affidavit that there was a mistake in asserting that the deceased had not left behind any legal heir. The omission was also sought to be covered up by asserting that the legal heirs of the deceased had given NOC. Had the Respondent mentioned in the Petition that the deceased had left behind legal heirs and furnished their particulars, this Court probably would not have treated the Petition as an uncontested Petition and issued the grant. The order passed by the concerned Officer explicitly records that since it was stated in the Petition that the deceased left no other heir and next of kin, it was treated as an uncontested Petition.

11. Under Section 263 of the Indian Succession Act, 1925, the grant of probate or letters of administration may be revoked or annulled for a just cause. Clause (b) of the Explanation provides that just cause shall be deemed to exist where the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case. Illustration (ii) of the just cause is, where the grant was made without citing parties who ought to have been cited.

12. It is true, in a Testamentary Petition, the Court is not concerned with the title to the property. However, in the case at hand, if ad-interim relief is not granted, there is an imminent possibility of the assets of the deceased being lost or

third party rights being created therein. The fact that the property is *custodia legis* may not, in itself, ensure that the Respondent who is armed with the grant and the Instrument of transfer dated 17 June 2022, would not create third party rights in the subject property. Balance of convenience heavily tilts in favour of the Petitioners. In the event, ad-interim relief is not granted, the Petitioners would suffer an irreparable loss. I am, therefore, inclined to grant ad-interim relief in terms of prayer clauses (a) and (c) of the Application.

13. Thus, there shall be ad-interim reliefs in terms of prayer clauses (a) and (c) of the Application till the next date.

14. The Respondent is at liberty to file an affidavit in reply and serve its copy on the Petitioners within four weeks.

15. Rejoinder, if any, be filed within a period of two weeks thereafter.

16. Stand over to 28 August 2024.

(N.J.JAMADAR, J.)