

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9110 OF 2024

Abha Dastane-Rao	...Petitioner
V/S	
Prabhakar Deolankar & Ors.	Respondents

**WITH
WRIT PETITION NO.8066 OF 2024**

Dr. Shubhada Mithilesh & Anr. through their POA	
Dinesh D. Barve	...Petitioners
V/S	
Prabhakar Deolankar & Ors.	Respondents

Ms. Abha Dastane-Rao, *Petitioner-in-person in WP 9110 of 2024 and for Respondent No.33-in person in WP 8066 of 2024.*

Mr. P.M. Arjunwadkar with Mr. Shivram A. Gawade and Mr. Hitendra Gandhi i/b Mr. Hemant Ghadigaonkar *for Petitioner in WP 8066 of 2024 and for Respondent Nos.33 and 34 in WP 9110 of 2024.*

Mr. S.N. Chandrachood *for Respondent No.1 in both Petitions.*

Mr. Pramod Pawar, *for Respondent No.35 in both Petitions.*

**CORAM: SANDEEP V. MARNE, J.
DATE : 18 JULY 2025.**

P.C.:

1. These Petitions challenge order dated 14 July 2023 passed by the learned District Judge, Pune dismissing Miscellaneous

Civil Appeal No.519 of 2012 and confirming the order dated 29 November 2012 passed by the learned Trial Judge by which the Application for temporary injunction filed at Exhibit-5 came to be dismissed. Petitioners have also challenged order dated 27 February 2024 passed by the learned District Judge dismissing Review Application No.7 of 2023 by which a review of the order dated 14 July 2023 was sought.

2. Brief facts leading to the filing of the present Petitions are that one Dr. Narayan Ganesh Dastane passed away on 26 April 2006. The contesting Respondents contend that he had executed a Will and accordingly Mr. Prabhakar Deolankar an executor of the alleged Will filed Miscellaneous Application No.359 of 2006 to obtain probate in respect of the said Will. The probate was initially issued on 18 June 2007 and the final probate was thereafter issued on 14 December 2007. The Appellants before the District Court, who are also Petitioners before me are aggrieved by grant of probate on 14 December 2007 as they believe that the Will is a forged document. Accordingly Miscellaneous Application No.21 of 2008 has been filed under Section 263 of the Indian Succession Act seeking revocation of the probate. In that Application, temporary injunction was sought by filing application at Exhibit-5 to restrain the executor from acting as executor of the alleged Will and from encashing the securities of the deceased and from distributing the assets and securities already encashed amongst beneficiaries. An

ad-interim injunction was granted by the learned Trial Judge on 3 January 2008 by which the executor was restrained from acting on the probate granted on 14 December 2007. It appears that the said *ad-interim* injunction dated 3 January 2008 continued during pendency of the Application at Exhibit-5.

3. The Application for temporary injunction at Exhibit-5 came to be rejected by the learned Trial Judge by order dated 29 November 2012. It appears that an Application at Exhibit-212 was filed seeking continuation of the *ad-interim* injunction during Appeal period and by order dated 21 December 2012, the learned Trial Judge stayed the order on Exhibit-5 till 15 January 2013. It appears that on the same day the Petitioners also moved the learned District Judge, who also passed a separate order on 21 December 2012 directing non-creation of third party interest in the suit property till Respondents' appearance in the Appeal. It appears that the said order of not creating third party interest in the suit property continued during pendency of the Miscellaneous Civil Appeal No.519 of 2012. By order dated 14 July 2023 the learned District Judge has proceeded to dismiss Miscellaneous Civil Appeal No.519 of 2012 and has confirmed the order of the learned Trial Judge dated 29 November 2012. An Application seeking review of the order dated 14 July 2023 has met the fate of dismissal by an order passed on 27 February 2024. Orders passed by the learned District Judge on 14 July 2023 and 27 February 2024 are subject matter of challenge in the present Petitions.

4. I have heard Mr. Arjunwadkar, the learned counsel appearing for the Petitioner in Writ Petition No.8066 of 2024 and the Petitioner-in-person appearing in Writ Petition No.9110 of 2024. I have also heard Mr. Chandrachud, the learned counsel appearing for Respondent No.1-executor and Mr. Pawar, the learned counsel appearing for Respondent No.35.

5. Though detailed submissions are sought to be canvassed before me with regard to the correctness of the order passed by the learned Trial Judge on 29 November 2012 and by the learned District Judge on 14 July 2023 and 27 February 2024, the fact remains that the Miscellaneous Application No.21 of 2008 filed seeking revocation of the probate has been pending for the last 17 long years. As observed above, initially an *ad-interim* injunction was granted in favour of the Petitioners on 3 January 2008 by which the executor was restrained from acting on the probate dated 14 December 2007. However, the said *ad-interim* injunction apparently came to an end on 29 November 2012 when Application at Exhibit-5 came to be rejected. Thereafter what operated was the order passed by the learned District Judge on 21 December 2012, which merely restrained the Respondents in the Appeal from creating third party interest in the suit property till their appearance in the Appeal.

6. This interim order passed by the learned District Judge on 21 December 2012 restraining creation of third party interests in

the suit property has continued till 14 July 2023 when the Appeal came to be dismissed by the learned District Judge.

7. During the course of hearing of the present Petitions, Mr. Chandrachud has fairly submitted that he does not have any serious objection to continuation of the restraint order from creating third party interest in the suit property till decision of Miscellaneous Application No.21 of 2008. While Mr. Arjunwadkar is satisfied with such arrangement, the Petitioner-in-person has insisted that her Petition be decided on merits. She has complained that the monies have already passed hands in violation of the injunction orders and that they need to be brought back to the Court. In my view, if there has been any violation of order of injunction, Petitioner needs to take necessary steps in that regard. These Petitions merely question the correctness of orders passed by the Trial Court on Application at Exhibit-5 and by the District Court confirming the same. The issue of bringing back the money needs to be agitated separately.

8. The position that obtains as of today is that the initial *ad-interim* order granted by the learned Trial Judge restraining the executor from acting on the probate dated 14 December 2007 continued till 29 November 2012 and thereafter the order passed by the learned District Judge granting stay on creation of third party interest in the suit property has continued for next 11 long years upto 14 July 2023. In my view therefore, instead of

determining the correctness of the contentions raised by the Petitioners in the present Petition it is appropriate that Miscellaneous Application No.21 of 2008 filed seeking revocation of the probate is decided in an expeditious manner. It appears that in addition to Miscellaneous Application No.21 of 2008, another Application being Miscellaneous Application No.893 of 2015 is also being filed seeking revocation of the probate dated 14 December 2007. This Court is at pains to observe that the parties are litigating over the issue of interlocutory orders for the last 17 long years and in the process, decision of the Miscellaneous Application No.21 of 2008 has not progressed. It must be borne in mind that even if this Court was to decide the present Petitions on merits, the findings recorded by this Court would only be *prima facie* and would not bind the learned Trial Judge deciding Miscellaneous Application No.21 of 2008, and Miscellaneous Application No.893 of 2015. The main bone of contention between the parties is about the genuineness of the Will in question. The said issue needs to be decided in an expeditious manner rather than spending any further time on deciding the interlocutory Applications.

9. Since the learned counsel appearing for the executor has not raised any serious objection to continuation of the interim order passed by the District Judge on 21 December 2012, in my view, the said arrangement can be continued till Miscellaneous Application No.21 of 2008 and Miscellaneous Application No.893 of 2015 are decided.

10. Accordingly, I proceed to pass the following order:

i) The *ad-interim* order passed by the learned District Judge on 21 December 2012 in Miscellaneous Civil Appeal No.519 of 2012 shall continue to operate till final disposal of Miscellaneous Appeal Nos.21 of 2008 and 893 of 2015.

ii) The learned Trial Court is requested to expedite hearing of the Miscellaneous Application No.21 of 2008 and Miscellaneous Application No.893 of 2015 and shall make an endeavour to decide the same within a period of one year.

iii) In the event Petitioners believe that any order of *interim/ad-interim* injunction is breached by the Respondents, they would be at liberty to exercise their remedies *qua* such grievance.

iv) In the event Petitioners believe that any of the properties have already passed hands in breach of the order of *interim/ad-interim* injunction, the Petitioners would be at liberty to take recourse of such remedy as may be available in law.

v) All questions on merits between the parties are expressly kept open and the learned Trial Judge shall not get influenced by

any of the observations made by this Court in the present order while deciding Miscellaneous Application Nos.21 of 2008 and 893 of 2015 finally.

11. With the above direction, both the Writ Petitions are **disposed of.**

(SANDEEP V. MARNE, J.)

Digitally signed
by
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