

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

SAYALI
DEEPAK
UPASANI

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MISCELLANEOUS PETITION NO. 566 OF 2025
IN
TESTAMENTARY PETITION NO. 232 OF 2015

Aarti Balkrishna Tandel

... Petitioner

Versus

Murtimant Balkrishna Tandel

... Respondent

Ms. Vaishali Gore, for the Petitioner

*Mr. Brijesh Upadhyay i/b Vaibhav R. Shah with Ms. Chaitali M. Tandel,
for the Respondent.*

CORAM : SHARMILA U. DESHMUKH, J.

DATE : DECEMBER 18, 2025

P. C. :

1. Heard.

2. The Miscellaneous Petition has been preferred seeking revocation of the probate dated 08th January 2019 granted to the Respondent in respect of the Will of the deceased dated 11th October, 1991.

3. Learned Counsel appearing for the Petitioner submits that the property mentioned in the Will is ancestral property in which the Petitioner had a right. She further submits that due to default on part of her Advocate, the Caveat could not be filed and an

opportunity ought to be given to contest the probate proceedings.

4. Learned Counsel appearing for the Respondent submits that upon service of citation, the caveat was filed, however, the affidavit in support of the caveat was not filed. He submits that no grounds are made out for revocation of probate under Section 263 of the Indian Succession Act, 1925.

5. I have considered the submissions and perused the record.

6. Section 263 of the Indian Succession Act, 1925 provides for revocation of the grant of probate for just cause and the explanation provides that just cause shall be deemed to exist in the eventualities which are set out in clauses (a) to (e) to the said explanation. In order to come within the ambit of Section 263 of the Indian Succession Act, 1925, it is necessary for the Petitioner to make out a case which would fall within the expression "just cause" as envisaged by Section 263 of the Indian Succession Act, 1925. Against the background of the statutory provision, if the pleadings and submissions canvassed are considered, it is not disputed that citation was duly served upon the Petitioner. It is due to default on part of her Advocate, according to her, that resulted in the non-filing of the affidavit in support of the caveat. It is also not disputed that the caveat had been duly filed and it was only the affidavit which was not filed. Hence, it is not case of any concealment of

material facts or fraud or non-service of citation by the Respondent while securing the grant of probate. The grounds set out in the Petition does not constitute just cause for revocation.

7. The other ground canvassed by the learned Counsel for the Petitioner is that the property bequeathed by the Will is ancestral property. In effect, the said submission is premised on the testamentary capacity of the testator to bequeath the said property. It is well settled that in testamentary proceedings, this Court cannot go into the issue of title to the property, the nature thereof or even the existence and all that is to be considered is the genuineness and authenticity of the Will. It is open for the Petitioner to adopt appropriate civil proceedings in respect of rights claimed in the ancestral property.

8. In light of the above, no case has been made out under Section 263 of the Indian Succession Act for revocation of the probate dated 08th January 2019.

9. Resultantly, the Petition fails and stands dismissed.

[SHARMILA U. DESHMUKH, J.]