

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
INTERIM APPLICATION NO. 2057 OF OF 2024
IN
MISCELLANEOUS PETITION NO. 8620 OF 2024
IN
TESTAMENTARY PETITION NO. 639 OF 2022

Shireen Dinshaw Mistry & Ors ...Applicants

IN THE MATTER BETWEEN

Shireen Dinshaw Mistry & Ors ...Petitioners

Versus

Bilkish Yunus Namakala ...Respondent

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Mr Aspi Chinoy, Senior Advocate, with Shanay Shah, Soniya

*Putta , Apporv Karekar & Souparnika, i/b M/s. Solomon & Co, for
the Applicants/Petitioners.*

**Mr Abdul Basit Kudalkar, with Neha Bhosale & Laveena Tejawani, i/b
NDB Law, for the Respondent.**

CORAM: ARIF S. DOCTOR, J

RESERVED ON: 5TH FEBRUARY 2025

PRONOUNCED ON: 10TH FEBRUARY 2025

PC:-

1. The captioned Interim Application is on board for hearing.

2. Mr. Chinoy, Learned Counsel appearing on behalf of the Applicant submits that the Applicant has been compelled to file the captioned Miscellaneous Petition seeking revocation of the grant of Letters of Administration (with Will annexed), which has been fraudulently obtained by the Respondent in respect of the estate of one Lady Jena Duggan (Lady Jena). He submits that the Respondent herein had filed Testamentary Petition No. 639 of 2022 (“the said Testamentary Petition”) on the basis of an ex facie fraudulent Will alleged to be that of Lady Jena as also by making patently false statements in the said Testamentary Petition. Mr Chinoy pointed out that this Court had therefore by a detailed ad-interim order dated 24th July 2024, granted the Applicant ad-interim relief in terms of prayer clauses (a) and (c) of the Interim Application, which read as follows.

“(a) that the grant of Letters of Administration dated 3rd June 2022 of the Will and Testament dated 4th April 1993 of the late Lady Jena Duggan issued to the Respondent Bilkish Yunus Namakwala in Testamentary Petition No.639 of 2022 be revoked and annulled;

(c) that pending hearing and final disposal of this Petition.

i. the Respondent be restrained from taking any steps on or acting on the basis of the said Letters of Administration dated 3rd June 2022 of the purported Will and Testament dated 4th April 1993 of the said Lady Jena Duggan

granted in Testamentary Petition No.639 of 2022;

- ii. the Respondent be directed to deposit the original Letters of Administration dated 3rd June 2022 in Court;*
- iii. The Respondent be restrained from taking any steps or action on the basis of or in furtherance of the purported Deed of Transfer dated 17th June 2022 and be restrained from in any manner directly or indirectly dealing with, any of the properties and assets of the Lady Jena Duggan including the Lawnside property described in Exhibit "B" hereto or creating or purporting to creating any third party rights therein or any part thereof."*

3. Mr. Chinoy today in addition to the aforesaid reliefs submits that, it is imperative that interim relief also be granted in terms of prayer clause (b) of the Interim Application as also certain consequential directions so as to ensure that the fraud perpetrated by the Respondent does not visit further consequences upon the estate of the late Lady Jena. Mr. Kudalkar, Learned Counsel appearing on behalf of the Respondent submits that he has no instructions. He however does not oppose the Interim Application from being heard nor does he seek time. It is thus that the Interim Application is taken up for hearing.

4. Mr. Chinoy then in support of the additional reliefs prayed for, pointed out that Lady passed away on 2nd September 1993 leaving behind her last Will and Testament dated 4th April 1993 (“Lady Jena’s Will”). He submitted that Lady Jena’s Will bore the docket of M/s. Kanga & Co, a well-known firm of Advocates & Solicitors and was attested by eminent jurist Mr. Nani A. Palkhivala and one Ms. Roshan Master.

5. He pointed out that Lady Jena had by her said Will bequeathed her entire estate consisting of her all movable and immovable property which included a bungalow situated at Malabar Hill, Mumbai called Lawnside (“the said property”) to her grandson one Dr. Feroze Duggan (“Feroze”) alone. He submitted that the Lady Jena’s Will was subjected to contest by one Jean Duggan (“Jean”), who was the wife of Nusly Duggan, the predeceased son of Lady Jena. He pointed out that this Court had on 3rd August 2011 granted probate to Feroze in respect of Lady Jena’s Will and that the Appeal from the order granting probate was dismissed as was the Special Leave Petition, filed from the order dismissing the Appeal. Mr. Chinoy then pointed out that the Order granting probate as also the Order passed in Appeal *inter alia* recorded that (a) Lady Jena had the benefit of the best legal acumen to draft the said Will (b) that Lady Jena’s Will was drafted by M/s Kanga & Co who were Lady Jena’s attorneys of choice and (c) that Lady Jena personally

knew Mr. Nani Palkhivala as also Ms. Roshan Master, both of whom had attested the said Will.

6. Mr. Chinoy pointed out that over the last 30 years, the said property had been subject matter of various litigations. He submitted that Jean had also filed a Suit for administration of the estate of Lady Jena i.e. Suit No. 258 of 1996, in which the Court Receiver was appointed in respect of the said property and the physical possession of the said property was taken by the Court Receiver in the year 2001. He pointed out that Jean was, however, permitted to occupy certain portion of the said property until her death on 22nd November 2020, after which, the Court Receiver had also taken physical possession of the portion of the property occupied by Jean.

7. Mr. Chinoy then submitted that Feroze had passed away on 13th January 2022 leaving behind a Will dated 30th December 1994 (Feroze's Will) relating to his estate in India, of which the Petitioners were the executors and trustees. He pointed out that the Petitioners had thus filed Testamentary Petition No. 4292 of 2023 seeking probate in respect of Feroze's Will. Mr. Chinoy then submitted that it was only after the demise of Feroze, who he reiterated was the sole beneficiary under Lady Jena's Will, that the Applicants through certain

correspondence addressed by the Court Receiver, became aware that the Respondent and one Mr. Sebastian Siqueira had approached the office of the Assistant Assessor and Collector seeking transfer of their names in the Assessment Bills issued in respect of the said property. It was only thereafter, that the Applicants became aware of Testamentary Petition No. 639 of 2022 filed by the Respondent in which the Respondent had sought Letters of Administration in respect of the estate of Lady Jena on the basis of the alleged Will dated 4th April 1993, stated to be of Lady Jena.

8. Mr. Chinoy submitted that on obtaining a copy of the Testamentary Petition No. 639 of 2022 and perusing the alleged Will propounded therein, the Applicants immediately became aware that not only was the alleged Will propounded by the Respondent a fraudulent and got-up document but also became aware that the Respondent had in the Testamentary Petition made willful and deliberately false statements.

9. Mr. Chinoy then in support of his contention that the Testamentary Petition contained patently false statements, pointed out that on one hand, in paragraph 7 of the said Testamentary Petition it was stated that that certain bequests had been made to the

grandchildren of Lady Jena during her lifetime, while on the other hand, in paragraph 9 it was stated that Lady Jena did not have any legal heirs and that there were also no legal heirs of the Lady Jena's sons. He pointed out that it was on the basis of these false averments, no citations came to be issued.

10. Mr. Chinoy then took pains to point out that the alleged Will was dated 6th April 1993, which was only two days after the date on which Lady Jena had made her Will.

11. He also pointed out that the said Testamentary Petition was filed over 29 years after the death of Lady Jena and the delay in filing of the same was sought to be speciously explained in paragraph 12 thus as follows.

"That the delay, if any, in making the present Petition is on account of the facts that the Petitioner was ignorant and unaware of obtaining any legal representation. Recently, while taking search at home the Petitioner has found Will of the Deceased. Thereafter, the Petitioner made inquiries for the purpose of transfer of the property mentioned in the Will and now the Petitioner has been recently advised to obtain a legal representation. Hence, this Hon'ble Court, in the interest of justice, may condone the delay."

12. Mr Chinoy then invited my attention to the document propounded by the Respondent as being the last Will of Lady Jena Duggan and submitted that the same was *ex facie* and got up document. In support of his contention, he pointed out that (i) the document was not made by any Advocate or Solicitor (ii) the language of the Will was replete with grammatical errors and written in poor English and (iii) the alleged attesting witnesses were merely name as 'John' and 'Mary'. He submitted that the another most telling factor that the alleged Will was fraudulent and got up was that it to bequeath only the said property i.e. Lawnside to the Respondent who was not in any manner related to Lady Jena.

13. Mr Chinoy then submitted that as though a plain reading of the alleged Will was not enough to demonstrate that it was a got-up document, he pointed out that the Respondent had in the Affidavit in Reply filed to the present Interim Application taken a stand which was not to be found in Testamentary Petition No. 639 of 2022. He pointed out that the Respondent had in the Affidavit in Reply, *inter alia* taken a stand that (i) the Respondent had advanced a sum of Rs. 27 lakhs to Lady Jena in the year 1980 for a period of 10 years (ii) Lady Jena had executed a Deed of Mortgage dated 10th July 1980 by which Lawnside was given as security for repayment of the loan (iii) that since Lady

Jena was not in a position to repay the loan, she had by the alleged Will bequeathed the Lawnside to the Respondent and (iv) that Feroze and Jean had executed waived their rights in respect of Lawnside by consenting to the bequest in favour of the Respondent. He submitted that the contentions taken in the Affidavit in Reply were palpably false since (i) the Respondent's silence/inaction for 29 years from September 1993 up to the year 2022 remained unexplained (ii) Testamentary Petition No 639 of 2022 made no reference to any such mortgage or declarations issued by Feroze and/or Jean (iii) even the alleged mortgage was admittedly not registered and (iv) despite making requests for inspection of the alleged waiver by Feroze and Jean the Respondent had not offered inspection of the same.

14. Mr Chinoy then pointed out that the Respondent had based on the Letters of Administration executed a Deed of Transfer dated 17th June 2022, pursuant to which the name of the Respondent was entered in the Property Card of Lawnside on 31st January 2024. He submitted that the Respondent had also entered into a Memorandum of Understanding dated 26th September 2023 (Exhibit 'K' to the Affidavit in Reply) with one Vicky Uday Ramchandani for a consideration of Rs. 25 crores and, thereafter had entered into a supplemental Memorandum of Understanding dated 3rd January 2024 (Exhibit 'L' to

the Affidavit in Reply) with the said Ramchandani recording that from 26th September 2023 till January 2024 an amount of Rs. 3,50,00.000/- had been paid to the Respondent. It was thus he submitted that it was imperative for this Court also to grant interim relief in terms of prayer clause (b) as also a direction the documents annexed as Exhibits “K” and “L” to the Affidavit in Reply of the Respondent are not further acted upon. He submits that if these reliefs were is not granted to the Applicant, then there was an imminent likelihood of Lady Jena’s estate being subjected to further litigation on account of the fraudulent acts of the Respondent.

15. After having heard Mr Chinoy as also having the benefit of the detailed ad-interim order dated 24th July 2024, I find that a case for granting further relief in terms of prayer clause (b) of the Interim Application has been made out. The facts of the present case make *ex facie* clear that an egregious fraud has been perpetrated by the Respondent not only on the estate of the Lady Jena but also on this Court. The fact that Respondent has today chosen not to advance any submissions, albeit represented by Counsel, only amplifies my view. Mr Chinoy has demonstrated how the Respondent has and is misusing the grant of Letters of Administration by *inter alia* attempting to change the status of the said property as also deal with the same. Hence in my view

it necessary to also grant interim relief in terms of prayer clause (b) since the purported Deed of Transfer is a consequence of the fraud played by the Respondent on this Court as are the execution of the said Agreements which are annexed as Exhibit 'K' and 'L' to the Affidavit in Reply. I thus find that Mr. Chinoy is entirely justified in seeking additional directions that the Agreements at Exhibit 'K' and 'L' to the Affidavit in Reply shall not be further acted upon... Thus, it is necessary so as to protect the estate of Lady Jena from any further litigation/s claim it may face on account of these Agreements, that I find that it is necessary to direct that no further steps be taken under the said Agreements annexed as Exhibits 'K' and 'L' to the Respondent's Affidavit in Reply to the Interim Application. Hence, I pass the following Order:

ORDER

- (a) The Interim Application is allowed in terms of prayer clauses (a) to (c), which read thus:

“(a) that the grant of Letters of Administration dated 3rd June 2022 of the Will and Testament dated 4th April 1993 of the late Lady Jena Duggan issued to the Respondent Bilkish Yunus Namakwala in

Testamentary Petition No.639 of 2022 be revoked and annulled;

(b) that the purported Transfer of the Lawnside property by the Respondent as Administrator under the Letters of Administration dated 3rd June 2022 by Deed of Transfer dated 17th June 2022 executed by the Respondent in favour of the Respondent be also annulled and cancelled;

(c) that pending hearing and final disposal of this Petition.

i. the Respondent be restrained from taking any steps on or acting on the basis of the said Letters of Administration dated 3rd June 2022 of the purported Will and Testament dated 4th April 1993 of the said Lady Jena Duggan granted in Testamentary Petition No.639 of 2022;

ii. the Respondent be directed to deposit the original Letters of Administration dated 3rd June 2022 in Court;

iii. The Respondent be restrained from taking any steps or action on the basis of or in furtherance of the purported Deed of Transfer dated 17th June 2022 and be restrained from in any manner directly or indirectly dealing with, any of the properties and assets of the Lady Jena Duggan including the Lawnside property

described in Exhibit "B" hereto or creating or purporting to creating any third party rights therein or any part thereof."

- (b) The Original Letters of Administration to be deposited with the Testamentary Registrar of this Court within a period of two weeks from the date on which a copy of this Order being uploaded.
- (c) The Agreements annexed as Exhibit 'L' and 'K' to the Affidavit in Reply of the Respondent shall not be further acted upon, insofar as they pertain to the estate of Lady Duggan or the property known as *Lawnside* situated at Harkness Road (J Mehta) Road, Opposite Elizabeth Nursing, Malabar Hill, Mumbai 400 006.
- (d) The Interim Application is disposed of accordingly in the aforesaid terms.

(ARIF S. DOCTOR, J)