



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 4473 OF 2025

Kanchanlata Wd/o. Shailendra Singh,
Age : 55 Years, Occu. : Nil,
R/o. Gulmohar Kamptee Road,
Near Gogas Pump, Teka Naka,
Uppalwadi, Nagpur.

.... Petitioner

VERSUS

Dr. Sarosh Edulji Shroff,
Age : 85 Years, Occu. : Private,
R/o. Woodland Building,
Flat No.18-B-1, 67 Pedar Road,
Mumbai - 440 026.

.... Respondent

....
Advocate for Petitioner : Mr. P.S. Tiwari
Advocate for Respondent : Mr. R.P. Joshi
....

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE ON WHICH ARGUMENTS WERE HEARD : 19th NOVEMBER 2025
DATE ON WHICH JUDGMENT IS PRONOUNCED : 18th DECEMBER 2025

JUDGMENT :

1. Heard.
2. **Rule.** Rule is made returnable forthwith and by consent of learned Advocates appearing for the parties, the petition is taken up for final disposal.

3. The petitioner takes exception to the order dated 16.06.2025, passed by 19th Joint Civil Judge Senior Division, Nagpur, rejecting the preliminary objection raised by the petitioner at Exhibit 08, to the application filed under Section 263 of the Indian Succession Act, 1925 (for short, “the Act”), in the proceedings bearing MJC No.709 of 2024, filed by the respondent, seeking revocation of the probate.

4. The petitioner is the non-applicant in the proceedings under Section 263 of the Act, which is filed seeking revocation of probate, granted by the court vide order dated 29.08.2022, in respect of codicil dated 17.12.1999. The petitioner had appeared in the said proceedings and raised preliminary objection to the maintainability of proceedings, by raising several issues alleging failure on the part of the applicant (respondent herein) to file on record certain documents and suppression of facts. The respondent resisted the preliminary objection and by order dated 16.06.2025, the application/preliminary objection came to be rejected. The petitioner has challenged this order by way of instant petition.

5. Mr. P.S. Tiwari, learned Advocate for the petitioner submitted that the impugned order rejecting the preliminary objection is unsustainable in law since the trial court has failed to consider the

glaring defects and suppression of facts on the part of the respondent. He submitted that, in the application seeking revocation of probate, the applicant-respondent failed to place on record the document of codicil dated 17.12.1999 and suppressed the Will dated 08.01.1994. He also submitted that the details about the time when the respondent got knowledge about the Will dated 08.01.1994, are not stated in the application. He further submitted that, in view of the fact that the wife of the respondent viz. Mrs. Rashnavi Sarosh Shroff had raised challenge to the probate, which was withdrawn with liberty, the proceedings filed by the respondent are not maintainable. In support of his submissions, he placed reliance on the judgment of the Hon'ble Supreme Court in the case of *Mrs. Lynette Fernandes Vs. Mrs. Gertie Mathias since Deceased by Lrs.*, [AIR 2017 SC 5453] and submitted that the basic challenge raised by the respondent seeking revocation of probate is itself unsustainable. He also placed reliance upon the judgment of the Hon'ble Supreme Court in the case of *Amar Singh Vs. Union of India and Others*, [(2011) 7 SCC 69] and submitted that the proceedings initiated without full disclosure of the facts deserves to be dismissed at the threshold.

6. Per contra, Mr. R.P. Joshi, learned Advocate for the respondent, vehemently submitted that the preliminary objection

raised by the petitioner deserved to be rejected and supported the impugned order. He submitted that the trial court has given due consideration to each of the objection raised by the petitioner and there is no perversity in the impugned order. In support of his submissions, he placed reliance on the judgment of the Hon'ble Supreme Court in the case of *A. Shanmugam Vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandavana Paripalanai Sangam Represented By Its President and Others*, [(2012) 6 SCC 430], *V. Chandrasekaran and Another Vs. Administrative Officer and Others*, [(2012) 12 SCC 133] and *Vishnu Vardhan Alias Vishnu Pradhan Vs. State of Uttar Pradesh and Others*, [2025 SCC Online SC 1501].

7. While considering the rival contentions of the parties, it has to be seen that the points raised by way of preliminary objection pertains to non production of document of codicil dated 17.12.1999 and alleged suppression of facts with respect to Will dated 08.01.1994. As regards these issues raised by way of preliminary objection, the parties are very much aware about these documents and the non production of document of Will at the time of filing of the proceedings cannot render the proceedings as non maintainable. As such, the allegations of suppression of facts are also without any

basis. It has to be noted that the copy of codicil dated 17.12.1999 is placed on record and the objection for failure to produce on record the document of said Will cannot be considered to be vital to the extent of requiring the proceedings to be dismissed. Further, the objection about initiation of the proceedings by the wife of respondent is not vital, particularly by considering the fact that the codicil dated 17.12.1999 is in favour of the petitioner and he is entitled in his own right to challenge the probate proceedings.

8. A perusal of the impugned order shows that the trial court has given due consideration to each of the points raised by the petitioner and has specifically dealt with them. It has to be noted that there is a codicil dated 17.12.1999 in favour of the petitioner, with respect to which probate was granted in probate case No.15 of 2021, by order dated 29.08.2022. Further, a Will was executed in favour of the respondent on 08.01.1994, in respect of which a probate case was filed *vide* Probate Application No.26 of 2023. The contentions raised by the petitioner by filing preliminary objection alleging non production of document and suppression of facts are not at all substantiated by any material. It appears that, in spite of contesting the proceedings on merits before the trial court, the petitioner has raised preliminary objection to protract the litigation.

9. The contentions raised by the petitioner in the instant petition are, therefore, without any basis and are unsustainable. As stated above, the trial court has given due consideration to the relevant factual and legal aspects and there is no perversity with the impugned order. The position of law laid down in the judgments relied upon by the learned Advocates is not disputed. However, the controversy involved in the instant petition is with respect to the preliminary objection raised by the petitioner related to the factual aspects to the matter. The judgments relied upon by the learned Advocate for the petitioner laying down the principles of law cannot be of any assistance while considering the peculiar facts based on the alleged preliminary objection.

10. In view of the above mentioned factual and legal aspects, no interference is warranted with the impugned order. Therefore, the writ petition is dismissed with no order as to costs. Rule stands discharged.

[PRAFULLA S. KHUBALKAR]
JUDGE

asd