

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

MISCELLANEOUS PETITION NO.14 OF 2024
IN
TESTAMENTARY PETITION NO.1114 OF 2018

Rukhsana Rangwala (since deceased through legal ...Petitioners
heir Mahera Rangwala)

Versus

Abbasi Nuruddin Rangwala and Others

...Respondents

VISHAL
SUBHASH
PAREKAR

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*Mr. Sanjiv Sawant a/w. Mr. Heramb Kadam and Mr. Malhar Bageshwar, for
the Petitioners.*

*Mr. Rohan Sawant a/w. Mr. Aagam Mehta i/b. Mr. Omar Khaiyam Shaikh,
for Respondent Nos. 1 to 3.*

CORAM : **SHARMILA U. DESHMUKH**
RESERVED ON : **JANUARY 14, 2026**
PRONOUNCED ON : **JANUARY 27, 2026**

ORDER :

1. The present Petition seeks revocation of grant of Probate of the Will dated 2nd June, 2005 of the deceased Tehmina Nuruddin Rangwala who expired on or about 19th March, 2010.

PLEADINGS :

2. The Petition has been preferred by the widow (since deceased) and daughter of Saifuddin - pre-deceased son of Tehmina. It is pleaded that the Petitioners are the legal heirs of the deceased Tehmina and

probate has been granted without notice to the Petitioners. The deceased Tehmina died intestate and the Petitioners being the legal heirs of the pre-deceased son Saifuddin are entitled to equal share in the property. The MOU of the year 2015 executed by the Petitioners , the Respondent Nos 1 to 3 with third party developer states that the deceased Tehmina died intestate. It is stated that the Respondents have suppressed the fact of the execution of the MOU as well as other proceedings pertaining to the estate of the deceased Tehmina and has obtained Probate. The Petitioner have been deprived of the legal rights in the subject property on the basis of the alleged Will which is not a genuine document.

3. The alleged Will is forged and fabricated as the signature of the deceased on the alleged Will is in English and the deceased was not conversant with English. The beneficiary under the Will is one Habib Bismilla Khan, Respondent No. 4 who is not the related to the family of deceased Tehmina. The grant mentions the religion of the deceased as Sunni Muslim whereas the parties are Bori Muslim (Shia Muslim) governed by the Mohammedan Law and Shia Muslim can bequeath his/her property only with the consent of all legal heirs. In the present case, the consent of the Petitioners was not obtained by the deceased Tehmina.

4. The reply affidavit of Respondent Nos 1 to 3 contends that the Petitioners are not the legal heirs of the deceased Tehmina and do not have caveatable interest in the estate of the deceased by relying upon the principles of Mohammedan Law. It is further stated that the Will is executed in conformity with the principles of Mohammedan Law as the legal heirs who are the Respondent Nos. 1 to 3 have been named as executors of the Will and as the Petition was filed by the legal heirs by obtaining Probate, the consent is evident. It is stated that the Probate has already been acted upon and Deed of Transfer has been executed by virtue of which Respondent No. 4 has become the owner of the property. It is stated that the Petitioners being remote lineal descendants of the deceased are not entitled to succeed even on intestacy. It is stated that there is *bonafide* mistake in mentioning Sunni Muslim in the Probate instead of Shia Muslim, for which corrective measures will be adopted. It is stated that at the time of execution of MOU, the existence of the Will was not within the knowledge of the Respondents. It is stated that after entering into MOU, the third party paid part consideration and simultaneously started encroaching upon the property pursuant to which the MOU was terminated and civil proceedings were filed which are pending. It is stated that the deceased was conversant with English language and no document has been produced by the Petitioners to show different signature of the

deceased or that the signature on the Will is false and fabricated.

SUBMISSIONS:

5. Mr. Rohan Sawant, learned counsel for Respondent Nos. 1 to 3 raised a preliminary objection of maintainability of the Petition in the absence of any caveatable interest of the Petitioners. He points out the relevant principles of Mohammedan Law to contend that the Petitioners who are the widow and daughter of pre-deceased son of the deceased Tehmina gets excluded by reason of survival of Respondent Nos 1 to 3, who are the children of the deceased Tehmina. He submits that even on intestacy the Petitioners would not be entitled to succeed and it is settled position of law that a party having no caveatable interest cannot maintain caveat and the revocation cannot be considered at the instance of the Petitioners. In support, he relies upon the following decisions:

(i) Hameed Jaffar Ahmed Ibrahim Mandeel vs. Farhat Mehdi Mandil and Ors.¹

(ii) Moolla Cassim bin Moolla Ahmed vs. Moolla Abdul Rahim & Ors.²

(iii) Jumma Masjid, Mercara vs. Kodimaniandra Deviah and Ors.³

1 2016(3) Mh.L.J.483.

2 1905 SCC OnLine PC 17.

3 1962 SCC OnLine SC 157.

6. Mr. Sanjiv Sawant, learned counsel for the Petitioners would submit that the citation was deliberately attempted to be served at wrong address in Mumbai and it was to the knowledge of Respondent Nos. 1 to 3 that the Petitioners were residing at Pune at that time. He submits that the probate has been obtained by fraud as the deceased was described as Sunni Muslim instead of Shia Muslim. He would further point out the MOU executed in the year 2015 to contend that in the MOU the Petitioners were included as party of first part and it is stated that the deceased Tehmina had died intestate. He would submit that the affidavit cum declaration was executed on the same date stating that the Petitioners and Respondent Nos. 1 to 3 are the owners of the subject property and re-affirming the MOU. He submits that in the documents executed by the Respondent Nos. 1 to 3, the intestacy of Tehmina has been asserted.

7. He would submit that the Will is a suspicious document as the Will has been signed by the deceased Tehmina in English language despite being illiterate and there is no mention in the alleged Will about the Petitioners or why they have been left out drawing support from the decision of the Hon'ble Apex Court in the case of **Gurdial Singh (Dead) through Lrss vs. Jagir Kaur (Dead) and Anr.**⁴. He submits that the Hon'ble Apex Court has held that non mention of the first

⁴ Civil Appeal Nos. 3509-3510/2010 Dt.17/07/2025.

Respondent or the reasons for her disinheritance in the Will, is an eloquent reminder that the free disposition of the testator was vitiated by undue influence of the Appellant. He submits that under the Will, the beneficiary is Respondent No. 4 who is complete stranger to family, which raises doubt about the authenticity of the Will.

8. He would submit that even assuming that the Petitioners have no caveatable interest, as the Will has been obtained by fraud, this Court can *suo motu* revoke the grant relying on the decision of **Peter John D'Souza and Ors. vs. Armstrong Joseph D'Souza**⁵. He would further submit that under Rule 88 of the principles of Mohammedan law, in the first of the classes, sub clause (ii) speaks of children and other lineal descendant and Petitioner No. 2 being the grant child is entitled to succeed. In support, he relies upon following decisions:

(1) **Romeo Anacleto D'Souza vs. Edgar Havlock D'Souza**⁶

(2) **Dinesh Madhukar Parshetye vs. Abhay Shridhar Shetye**⁷

(3) **Serafine Joseph Godinho and Ors. vs. Fatima Godinho**⁸

9. In rejoinder, Mr. Rohan Sawant would submit that in the decision of the **Peter John D'Souza** (supra) after the Letters of Administration

⁵ MPT No.69 of 2012 Dt. 28-03-2014.

⁶ 2014 (3) Mh.L.J. 816.

⁷ 2023 (2) ALL MR 551.

⁸ MPT No. 57/2017 Dt. 03-11-2025.

was granted, a Will was discovered by reason of which the Petitioner was held to have interest in the property. He submits that the reliance on MOU would amount to contractual dispute and it is explained in the affidavit in reply that at the time of execution of MOU, the Will was not within the knowledge of the Petitioner.

10. Rival contentions now fall for determination.

11. The Petition seeks revocation of probate of the Will of deceased Tehmina under Section 263 of Succession Act which provides for revocation or annulment for just cause. The explanation to Section 263 of Succession Act sets out the eventualities when just cause shall be deemed to exist. The Court thus has wide power to order revocation for just cause.

12. A preliminary objection of maintainability has been raised by Mr. Rohan Sawant as the Petitioners are not the legal heirs of the deceased and would not be entitled to succeed even on intestacy. Under Section 283 of the Indian Succession Act, 1925, the citation is required to be issued calling upon the persons claiming to have any interest in the estate of the deceased to come and see the proceedings before grant of Probate or Letters of Administration. The expression used in Section

283 necessarily refers to a caveatable interest. The question which first and foremost arises for consideration is whether the Petitioners can be said to have a caveatable interest.

13. The Petitioner No. 1 was the widow of pre-deceased son Saifuddin of the deceased Tehmina. It appears that during the pendency of the present proceedings, the Petitioner No. 1 expired and her name has been deleted. In so far as the Petitioner No. 2 is concerned, she is the daughter of the deceased Saifuddin and the grand daughter of deceased Tehmina. Though the Probate granted by this Court in Testamentary Petition No. 1114 of 2018 described the deceased Tehmina as Sunni Muslim, it is not disputed that the parties are Shia Muslim. In paragraph 5 of the present Petition, there is categorical averment by the Petitioners that all parties are Bori (Shia) Muslims. The factum of the Probate describing the deceased Tehmina as Sunni Muslim cannot be construed as misleading the Court unless it is shown that by describing the deceased as Sunni Muslim, Respondent Nos. 1 to 3 would have derived any benefit. Perusal of the Testamentary Petition shows that there is no averment in the Testamentary Petition that the deceased Tehmina was Sunni Muslim. It therefore, appears that the description of the deceased Tehmina as Sunni Muslim is clerical error which is capable of being corrected even post grant of Probate.

14. Having accepted by all the parties that the deceased Tehmina is Shia Muslim by applying the principles of Mohammedan Law applicable to Shia Muslims, it will have to be considered whether the Petitioners are legal heirs of the deceased entitled to be cited in the Testamentary Petition. Rule 87 under the Mulla's principles of Mohammedan Law, which is applicable to Shia Muslim states as under:-

87. Division of heirs. *The Shias divide heirs into two groups namely (1) heirs by consanguinity that is blood relations and (2) heirs by marriage that is husband and wife.*

88. Three classes of heirs by consanguinity: *(1) Heirs by consanguinity are divided into three classes, and each class is subdivided into two sections. These classes are respectively composed as follows:*

I(i) parent

(ii) children and other lineal descendants h.l.s.

II. (i) Grandparents h.h.s. (true as well as false)

(ii) brothers and sisters and their descendants h.l.s.

III. (i) Paternal, and (ii) Maternal uncles and aunts, of the deceased and of his parents and grandparents h.h.s., and their descendants h.l.s.

(2) Of these three classes of heirs, the first excludes the second from inheritance, and the second excludes the third. But the heirs of the two sections of each class succeed together, the nearer degree in each section excluding the more remote in that section.

15. The illustration from Mulla's principle of Mohammedan Law under Rule 88 reads as under:-

Illustrations

(a)...

(b)...

(c)...

(d) A Shia Mahomedan dies leaving (1) a father, (2) a mother, (3) a daughter, (4) a son's son, (5) a brother, and (6) a paternal uncle. Which of these relations are entitled to succeed?

Here the first four relations, belong to the first class of heirs, the fifth belongs to the second class, and the sixth

belongs to the third class. The fifth and sixth are therefore excluded from inheritance. The father and mother belong to the first section of Class I, and they are both equal in degree. The daughter and son's son belong to the second section, and of these two, the daughter being nearer in degree excludes the son's son.

16. Rule 96 governs the rules of succession amongst the heirs of the first of the class under Rule 88 and reads as under:-

96. Rules of succession among heirs of the first class:

"The persons who are first entitled to succeed to the estate of a deceased Shia Mahomedan are the heirs of the first class along with the husband or wife, if any. The first class of heirs comprises parents, children, grandchildren, and remoter lineal descendants of the deceased. The parents inherit together with children, and failing children, with grandchildren, failing grandchildren, with remoter lineal descendants of the deceased, the nearer excluding the more remote".

17. These rules of Mohammedan Law came up for consideration before the learned single Judge in the case of **Hameed Jafar** (supra). Upon conjoint reading of the relevant rules, the learned single Judge observed that as between the main classes, each superior class eliminates and excludes the following class. Thus, Class I comprising parents, children and other lineal descendants excludes from inheritance those in Class II, i.e., grandparents, brothers and sisters and their descendants. If there was any doubt about this, it is put to rest by Sn.97, which says that "if there are no heirs of the first class, the estate (minus the share of the husband or wife, if any), devolves upon the heirs of the second class.

18. The Court also relied upon illustration (d) of Rule 88 to hold in that case that the Petitioners and Respondent Nos. 5 to 15 therein cannot be said to have any caveatable interest. It held that it is only on failure of the children that the grandchildren stand in the place of respective parents and the inheritance according to the principles. The decision in the case of **Moolla Cassim** (supra) reiterated the well known principles of Mohammedan Law that if any children of the man dies before the opening of succession to his estate, leaving children behind, these grandchildren are entirely excluded from the inheritance by their uncles and aunts.

19. The above judicial pronouncements answers the question as regards the Petitioners being the legal heirs and next of kin of the deceased Tehmina. As the Petitioners stood excluded by reason of Respondent Nos. 1 and 3 who are the heirs falling in the first part of sub clause (ii) of Rule 88, the Petitioners were not entitled to be cited.

20. Mr. Rohan Sawant would assail the very maintainability of the Petition on the ground of absence of cavetable interest. In the present case, the Petitioners have not rested their case only on the absence of citation, but has further alleged fraud by reason of forged and fabricated Will being propounded for the reason (i) Grant mentions the

religion of deceased as Sunni Muslim (ii) MOU of the year 2015 speaks of intestacy of deceased (iii) deceased was not conversant with English language and signature of the deceased on the Will is in English, and, (iv) bequest to stranger. In the case of **Peter D'Souza** (supra), the Petition was filed seeking revocation of the Letters of Administration under section 263(a), (b) and (c) as the party who had applied for grant of Letters of Administration suppressed existence of the Will of the deceased. The Court while accepting the settled position that the party who was no caveatable interest or even a slightest interest in the estate of deceased is not entitled to maintain a caveat held as under:

"In my view, Court can take cognizance of the allegation of fraud, fabrication or concealment even at the instance of a party who claims even a slightest interest in the property of the deceased. Once the allegation of fraud, fabrication or concealment is brought to the notice of the Court, which is alleged to have been committed by the opposite party for obtaining letters of administration from a Court, it becomes the duty of the Court to look into such allegation whether any grant of letters of administration is obtained by a party from the Court by practicing fraud, fabrication or concealment. The Court can take cognizance of such allegation suo moto and if it comes to the conclusion that the grant is obtained fraudulently or by making false suggestion or by concealment of such fact, it is duty of Court to set aside such grant."

21. The decision reiterates the well settled principle that a party is expected to approach the Court with clean hands. In the present case, it is now contended and rightly so, that under the principles of Mohammedan Law the Petitioners are not the legal heirs and next of kin of deceased. However, in the Testamentary Petition filed by the

Respondent Nos 1 to 3, the Petitioners were cited as legal heirs and next of kin of the deceased in paragraph 8 of the Testamentary Petition along with the Respondent Nos 1 to 3. The addresses of the Petitioners were stated as not known and it was pleaded that despite all efforts and inquiries to find out the address of the legal heirs who is the wife and daughter of Saifuddin, the address is not found. The Testamentary Petition was filed on 8th March, 2018. The order of Testamentary Registrar dated 9th October, 2019 in the testamentary petition while ordering service of citation upon the Petitioners through paper publication records the submission of the Advocate for Petitioners that Saifuddin had expired in the year 2007 and thereafter his wife and daughter have disappeared from the premises and the Petitioners are not aware of their residence. The order further records that the Petitioners had informed some of their relatives to ascertain whereabouts of the Petitioners, however, till date they do not have any information about them. Based on these submissions, the Petitioners were permitted to be served through paper publication and thereafter Petition proceeded for grant.

22. Rule 399 of the Bombay High Court (Original side) Rules, 1980 provides that the citation shall be served personally when possible by leaving a true copy of the citation with the party cited and taking

acknowledgment from the legal heirs. Rule 400 provides that the citation which cannot be personally served as required by Rule 399 shall be served by publishing the same in the local newspaper. The Respondent Nos 1 to 3 took recourse to Rule 400 and effected service of the citation upon the Petitioners through paper publication.

23. Rule 399 and 400 were considered by Co-ordinate Bench of this Court in the case of ***Lata Rajesh Shetty @ Latha Rajesh Shetty vs. Satish Surappa Poojari*** in Misc. Petition (L) No 34745 of 2023. In the facts of that case, the Petitioner therein, who was the sister in law of deceased was shown as one of the surviving heirs of the deceased in the Testamentary Petition filed by the Respondent therein. It was stated that her whereabouts were not known and she was served through paper publication. The Court held that the words used in Rule 400 are crucial because the description of the address of the person cited becomes the basis for identifying the local newspaper in which the publication of the citation can be directed by the Prothonotary and Senior Master and it is necessary for the Petitioners in Testamentary Petition to state at least the last known addresses of the person cited as the legal heir. It held that all attempts ought to have been made to find at least the last known address of the Petitioner and feigning ignorance of the whereabouts of the Petitioner, it can be said that the false

suggestion was made before this Court.

24. In the present case, though not required to be cited, the Petitioners were cited in the Testamentary Petition and for purpose of obtaining grant, recourse was taken to Rule 400 and service of citation was effected through paper publication. The Respondent Nos 1 to 3 obtained the grant by making false and incorrect statements on oath in the Petition and before the Testamentary Registrar by portraying that whereabouts of the Petitioners were not known as they had disappeared from the premises after death of Saifuddin in the year 2007. The Testamentary Petition states that the addresses of the Petitioners are not known, which Petition was filed in the year 2018. It is not disputed that the Memorandum of Understanding was executed by the Petitioners and the Respondent Nos 1 to 3 with third party developers on 31st December, 2015, which MOU states the addresses of the Petitioners as Snow White Co-operative Housing Society Ltd, 1st Floor, Flat No 04, 18th Road, Khar (West), Mumbai 4000 052. The addresses of the Petitioners was therefore to the knowledge of the Respondent Nos 1 to 3 at the time of filing of the Testamentary Petition and in order to avoid service of citation on the Petitioners, false statement was made on oath.

25. It is immaterial in such background that the Petitioners were not the legal heirs as per the applicable law of succession and did not have any caveatable interest. The Petitioners are not total strangers and have been recognized as co-owners of the property by Respondent Nos. 1 to 3 themselves in the MOU executed in the year 2015. The issue travels further and what is required to be considered is whether the grant has been obtained by fraud by concealing material information from the Court. By feigning ignorance of whereabouts of Petitioners, deliberately false statements were made on oath. It was expected of the Respondent Nos. 1 to 3 Petitioners to plead and state the address of the Petitioners or at the least the last known address of the Petitioners and could have amended the Petition and pleaded and that the Petitioners are not the legal heirs as per the applicable law. Having mentioned the Petitioners as legal heirs, even incorrectly or inadvertently, the Respondent Nos 1 to 3 ought to have pleaded correct facts in the Testamentary Petition and before the Testamentary Registrar. It is evident that the Respondent Nos 1 to 3 obtained grant by suppression of material information and making false statements on oath, which cannot be countenanced. Fraud vitiates all acts. There was suppression of material facts *qua* the Petitioners, which demonstrates fraud committed on the Court while applying for grant. The Court cannot be mute spectator to act of fraud and permit the Respondents

to reap the benefits perpetrated by fraud on the specious ground of absence of caveatable interest.

26. There is another reason why the probate ought not have been granted. The Testamentary Petition propounded a Will of 2nd June, 2005 in the year 2018. Rule 382 of the Bombay High Court (Original Side) Rules, 1980, provides as under:-

Delay in application - In any case where an application for probate or letters of administration or succession certificate is made for the first time after the lapse of three years from the death of the deceased, the reason for the delay shall be explained in the petition. Should the explanation be unsatisfactory, the Prothonotary and Senior Master may require such further proof of the alleged cause of delay as he may deem fit.

The explanation provided for the delay of about 13 years in paragraph 11 of the Testamentary Petition reads as under:

"11. That after going through the old papers and documents and by diligent searches the will have been traced in cupboard a month prior to filing this petition, hence there is no delay in filling this petition, if there is any delay in filing the same is to be condoned."

27. The explanation tendered does not constitute any explanation much less a satisfactory explanation for delay of about 13 years. The assertions in the petition required further proof of alleged cause of delay and as the proceedings were non contentious, there has been a complete go-by to the Rules. The proceedings were non contentious for the reason that the Petitioners though cited were not served.

28. Considering the peculiar facts of the case, the bequests in the Will assumes significance. The Will bequeaths the property to a complete stranger and it is not denied that the beneficiary under the Will is stranger to the family. Though mere deprivation of heir does not render the Will invalid, the attending circumstance of no objection being raised by the Respondent Nos 1 to 3 and they themselves seek probate of the Will defies reasoning. The concomitant circumstances renders the Will suspicious and strengthens the need for caution in grant of probate. In **Manju Anil Aggarwal vs Rajeev Lalchand Goyal**⁹, this Court has held that it has to be kept in mind that this Court as testamentary Court is a Court of conscience and that contentions regarding suppression and falsehood indicating fraud committed on Court have to be considered seriously.

29. The revocation of grant cannot be considered on the sole criteria of absence of caveatable interest when fraud is demonstrated to have been played on the Court in obtaining the grant. This Court in **Peter John D'Souza** (supra) has specifically upheld the *suo moto* powers of the Court to take cognizance of the fraud at the instance of party having a slightest interest. The fraud committed having being brought to the notice of the Court, the Court is duty bound to set aside such grant.

9 2024 SCC OnLine Bom 1610.

30. In light of the above discussion, the Petition succeeds and the following order is passed.

ORDER

- (a) Miscellaneous Petition is allowed.
- (b) Probate granted by this Court in favour of the Respondent Nos 1 to 3 in Testamentary Petition No 1114 of 2018 is hereby quashed and set aside.
- (c) The Respondent Nos 1 to 3 are hereby directed to surrender the original Probate to the Office of Prothonotary and Senior Master of this Court within eight weeks from today.

(SHARMILA U. DESHMUKH, J.)