

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO. 394 OF 2024
IN
TESTAMENTARY PETITION NO. 1515 OF 2016

- 1) Pranita Vijay Mahadik, age 62 years,]
Occupation- Housewife, Indian Inhabitant]
of Mumbai]
- 2) Manish Vijay Mahadik, age 36 years,]
Occupation-Service, Indian Inhabitant of]
Mumbai]
- 3) Rohit Vijay Mahadik, age 30 years,]
Occupation-Service, Indian Inhabitant of]
Mumbai, all residing at B0305, Zohara]
Aghadi Co-operative Housing Society,]
opposite Clara's College, Yari Road,]
Andheri West, Mumbai – 400061.] **...Petitioners**

Versus

- 1) Roshni Ravi Chandla, age 30 years,]
Occupation Self-employed, Hindu Indian]
Inhabitant of Mumbai residing at Room No. 1]
Kavale House, Yari Road, Opp. Sammer Apt.]
Versova Andheri West, Mumbai 400 061,]
being the granddaughter of the deceased]
(i.e. the daughter of late Shri Ravi Raghunath]
Singh Chandla and granddaughter of]
Raghunath Singh Chandla)] **...Respondent**

Mr. Pareshtar Parakh, for the Petitioners.

Mr. Kanhaiya S. Yadav a/w Mr. S. K. Mishra, Ms. Anu C. Kaladharan, for
the Respondent/Original Petitioner.

CORAM : SHARMILA U. DESHMUKH
RESERVED ON : February 13th, 2026
PRONOUNCED ON : February 26th, 2026

JUDGMENT:

1. Miscellaneous Petition has been filed under Section 263 of the

Indian Succession Act, 1925 (for short "**Succession Act**") seeking revocation of the Letters of Administration granted on 11th December, 2018 in the Testamentary Petition No. 1515 of 2016 to the Respondent.

2. The deceased was one Raghunath Singh Chandla who expired in Punjab on or about 23rd November, 2000. The deceased was married to Sushila Raghunath Chandla and had two sons and one daughter i.e. Ravi, Mangal and Mrs. Sunita Shaikh. Sushila was previously married to one Balkrishna Mahadik and had begotten a son Vijay Mahadik from her first marriage. Upon the death of Balkrishna Mahadik, Sushila remarried the deceased and was residing along with her son Vijay with the deceased. Vijay Mahadik expired on 2nd December, 2018. Petitioner No. 1 herein is the wife of Vijay and Petitioner No. 2 and 3 are the sons of Vijay. Sushila Raghunath Chandla pre-deceased the deceased.

3. The Respondent who is the daughter of Ravi and grand daughter of the deceased filed Testamentary Petition No. 1515 of 2016 seeking Letters of Administration in respect of the property and credits of the deceased Raghunath Chandla on ground of intestacy. The Petition pleaded that the legal heirs of the deceased were Ravi, Mangal and Sunita, that Ravi had expired in the year 2014 leaving behind his wife Shubhadra and children Roshan and Roshni i.e. Petitioner in Testamentary Petition No. 1515 of 2016. The youngest son of the deceased, Mangal, expired on 14th June, 2013 and during his lifetime

had converted to Muslim by embracing Islam religion and his heirs are disqualified under Section 26 of the Hindu Succession Act, 1956. The Petition cited the heirs of deceased Ravi and the daughter. The grant was obtained on 11th December, 2018

4. The Miscellaneous Petition accepts that the present Petitioners are legal heirs of Vijay Mahadik, who was begotten from the first marriage of Sushila. It is pleaded that the deceased and Sushila were joint owners of Flat no. B/1 Versova, Andheri West, which is included in the schedule of assets to the testamentary petition. It was pleaded that the deceased had filed nomination dated 9th May, 1997 with the society nominating all the 4 children of the deceased. The nominees including the said Late Vijay Mahadik had addressed communication to the Society to transfer the said flat in name of the four nominees. In response to the request by the Petitioners for transfer of flat in their name, the Society informed them about the grant obtained by the Respondent. The Petitioners have in their possession the Will of the deceased dated 7th February, 1997. The Petitioners are legal heirs of the deceased and the Respondent has concealed the fact that the Petitioners have equal share in the estate of the deceased. Hence, the Petition came to be filed for revocation of the grant.

5. Learned counsel for the Petitioners would submit that the Petitioners are the legal heirs of Vijay, who was the step son of the

deceased. He would submit that the Petitioners were not served with the citation and there is suppression of material fact as regards the last Will of the deceased. He would further submit that Vijay has been acknowledged as the legal heir of the deceased in the nomination form as well as the communication to the Secretary of the flat at Andheri, and therefore, the Petitioners have caveatable interest. He would further point out that under the Will of the deceased executed on 7th February, 1997, the deceased has bequeathed the sale proceeds from the said flat amongst all the children including Vijay. He submits that under Section 263 of the Indian Succession Act, 1925, upon a subsequent Will being discovered, the grant is liable to be revoked. He would submit that in the revocation proceedings, this Court cannot go into the issue of genuineness of the Will which will have to be tested in probate proceedings. In support he relies upon the following decisions :

(i) Gopinath Sunderlal vs Chunnilal Sunderlal And Anr.¹

(ii) Ashok Singhal vs State NCT of Delhi²

(iii) Mr. Bomi Pirojshaw Sachinwala vs Dr. Cyrus S. Badshah And Ors.³

6. *Per contra*, learned counsel for the Respondent would submit that the said Petitioners are the legal heirs of Vijay, who is not the biological son of the deceased and under the provisions of Hindu Succession Act, 1956, a step son does not fall within the definition of son and is not

1 AIR 1953 Nagpur 316

2 AIR Online 2021 Del 71

3 MPT No. 45 of 2008 in TP No. 707 of 2007 decided on 8th October, 2008.

entitled to inherit the estate of the deceased as legal heir. He submits that in view thereof, the Petitioners have no locus to challenge the grant of Letters of Administration. He would further submit that the copy of the document claimed to be a Will by the deceased served upon the Respondent does not bear the signature of the testator, however, bears the signature of the attesting witness for which there is no explanation and shows that it is forged and fabricated document. He would further submit that the Petitioners have failed to file Petition for Probate of the alleged Will. He submits that the nomination form is forged and fabricated document. He submits that there is no pleading in the Petition as to when the Will was discovered by the Petitioner and why the said Will has not been probated for more than 18 years. He would submit that the alleged letter addressed to the society in the year 2014 makes no mention of the alleged Will which would have found place, in event, the Will was in existence. He submits that this Court in the case of ***Prakash P. Bambardekar vs Avinash Vishvanath Ajgaonkar***⁴ has refused revocation by considering the fact that there was no explanation for the gross delay in claiming any right under the Will. He submits that for the purpose of considering whether any just cause exist for revocation, this Court can examine the conduct of the Petitioner. In support he relies upon the following decisions :

(i) Prakash P. Bambardekar vs Avinash Vishvanath

⁴ 2013 (5) Mh.L.J 399

Ajgaonkar(supra)

(ii) Nalini Navin Bhagwati And Ors. vs Chandravadan M. Mehta⁵

7. In rejoinder, learned counsel for the Petitioner submits that it is pleaded in the Petition that since the year 1997, the Will is in their possession. He submits that being legal heir of the deceased, Vijay had the *locus standi*. He submits that there is suppression of material fact by not disclosing that Sushila was the joint owner of the property. He submits that the grant has been obtained fraudulently by failing to disclose the existence of the Will and claiming grant on the ground of intestacy.

8. I have considered the submission and perused the record.

9. The revocation has been sought on the ground that the Respondent has concealed material facts and obtained Letters of Administration by fraud (a) by suppressing that the deceased has left a Will (b) that the Petitioners have not been cited (c) there is non disclosure about the nomination form executed in favour of all children including the Vijay and communication with the Society and (d) non-disclosure of joint ownership of Sushila.

10. Dealing first with the question of issuance of citation to the Petitioner, it is not disputed that the Petitioners are the legal heirs of Vijay, who was the son begotten from the first marriage of Sushila with

⁵ (1997) 9 SCC 689

one Balkrishna Mahadik. The Petitioners claim that Vijay was the legal heir of the deceased and was entitled to be cited. The provisions of Section 8 of the Hindu Succession Act, 1956, governs the general rules of succession in case of males and provides that the property of male dying intestate shall devolve firstly upon Class I heirs and in event of no class I heir, upon Class II heirs and so on as per the Schedule. As per the Schedule, Class I heirs includes the son and daughter. Vijay is the step son of the deceased. The rights of the step son in the context of Section 8 of Hindu Succession Act, 1956 was considered in ***Vansh Bahadur Sabhajeet Yadav vs Dudhnath Kallu Yadav***⁶, where it is categorically held that the expression “son” appearing in the Hindu Succession Act does not include a step son. As such Vijay does not fall within Class I heir as per the schedule and would not acquire any right, title and interest in the estate of the deceased on intestacy and neither the Petitioners, and hence they were not entitled to be cited. Even though it is claimed that Sushila had 50% right in the subject flat, the Plaintiff’s themselves rely on nomination form of deceased, which nomination could be done only by owner of the flat. It was necessary to show real interest in order to claim right to estate of deceased. The nomination does not create any special rule of succession overriding the laws of succession.

11. The other ground for revocation is existence of the alleged Will dated 7th February, 1997 of the deceased relying upon illustration (v) to

⁶ 2018 SCC online Bom 153

Section 263 of Succession Act of Will being discovered after administration is granted to the estate of the deceased. The provisions of Section 263 of Succession Act permits revocation for just cause. The copy of the Will dated 7th February, 1987 which is served upon the Respondent does not bear the signature of the deceased and contains only the signatures of attesting witnesses. In Court records, the Will contains the signature of testator as well as of the attesting witnesses. There is no explanation tendered as to how the attesting witnesses signed the Will prior to the signature of the testator even in the draft Will. To overcome the said obstacle, the contention raised is that while considering the issue of due execution of Will, the Court is not concerned with the draft of the Will. The same will hold true where probate is sought of the final Will and drafts are produced in support of testator's intention to make testamentary disposition. The same will not apply where revocation is sought by propounding a Will. There may be several drafts of the Will, however, it is the signatures of attesting witnesses prior to signing of Will by testator, which creates a doubt about genuineness of the Will propounded.

12. The alleged Will is stated to have been executed by the deceased in the year 1997 and is in Petitioner's possession since then. No steps have been taken by Vijay or Petitioners to obtain probate of the Will for about 18 years. As the Will was always in possession of the Petitioners,

it is not a case of subsequent discovery of Will. Despite being in possession of the Will since the year 1997, there is no mention of the Will in the communication dated 11th November, 2014 addressed to the Chairman/Secretary of the co-operative housing society by the children of the deceased as well as by Vijay that there is a Will of the deceased which gives them right to the estate of the deceased. The communication seeks right in the flat by virtue of nomination. In the communication dated 25th October, 2018, there is reference to letters dated 18th June, 2016 and 3rd September, 2016 addressed by Vijay's Advocate to the Society stating that in those letters there is mention about the Will of the deceased. The pleading in paragraph 22 of the present Petition refers to the letters of 18th June, 2016 and 3rd September, 2016 but the letters are not produced, though all other communications have been produced. It is also incomprehensible that Vijay was addressing legal notices to the Society but had not been advised by his Advocate to apply for probate of the Will of the year 1997.

13. The Petitioners have alleged suppression of fact regarding to the nomination and communication to the society in respect of the flat of the deceased. It is well settled that the testamentary court is not concerned with the question of title to the estate and the issue as regards nomination etc are outside the purview of the testamentary

court. The petition was filed in accordance with the framed Rules and there is no suppression of facts which were material for purpose of grant.

14. The grant can be revoked for just cause and the illustration to Section 263 speaks of discovery of Will subsequent to the grant of administration. The present case is not a case of discovery of Will but of creation of Will to seek revocation of grant. The proceedings are clearly lacking in bonafides and no right accrues to the Petitioners to seek revocation on the ground of suppression of facts or discovery of Will. In my view, it is the expression "just cause" used in Section 263 of Succession Act, which assumes significance. The propounding of Will *ipso facto* does not result in revoking of grant and the Court is required to consider whether there is just case.

15. Dealing with the decisions cited in support of revocation, in ***Gopinath Sunderlal vs Chunnilal Sunderlal & Anr (supra)***, the proceedings arose out of contest of probate of Will. The probate proceedings were converted into suit and evidence was led. The drafts of the Will were produced by plaintiff in support of his case and in that context, the Hon'ble Division Bench held that the Court is not concerned with drafts so much as the Will itself. The factual scenario is distinguishable as in the present case, the draft of Will is already signed by the attesting witnesses without the testator having affixed his

signature, which raises a suspicion about due execution of the Will.

16. The decision in ***Ashok Singhal vs State of NCT of Delhi (supra)*** cited has no relevance to the present case for revocation of grant. The case was of grant in non contentious matter and irrelevant to facts herein.

17. In ***Bomi Pirojshaw Sachinwala vs Dr. Cyrus S. Badshah & Ors (supra)***, the Co-ordinate Bench was considering the issue of revocation of grant on ground of suppression of Will by the Respondent while obtaining the grant of letters of administration. The Will was registered by which large portion of estate was settled upon Trust. It was pointed out to the Court that the Respondent therein made reference to Will of the deceased. The argument canvassed against revocation were in respect of bequests made in the Will, which were not considered by the Court and the Court held that just cause was made out for revocation. The decision is clearly distinguishable on facts as in that case there was registered Will and acknowledged by the Respondent therein in his affidavit filed in legal proceedings.

18. In light of the above, I find any just cause for revocation of grant as there is no concealment of material facts and the proceedings lack bonafides. Resultantly, Petition fails and stands dismissed.

(SHARMILA U. DESHMUKH, J.)