



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

MISC. PETITION NO. 407 OF 2025
IN
TESTAMENTARY PETITION NO. 816 OF 2017

Abhay Asharfilal Gupta and Others

...Petitioners

Versus

Vijay Asharfilal Gupta

...Respondent

*Mr. Hemant Ghadigaonkar, Mr. Om Gandhi for Petitioner/Applicants.
Mr. Aseem Naphade, Ms. Deepanjali Mishra i/b Mr. Ajit M. Rajgole for
Respondent.*

Coram : Sharmila U. Deshmukh, J.

Date : 7th January, 2026.

P. C. :

1. The Miscellaneous Petition has been filed seeking revocation of Letters of Administration with Will annexed granted on 22nd April, 2019 in respect of estate of deceased Bimladevi Gupta, who is the mother of the Applicants and the Respondents. The deceased Bimladevi had 8 children- 4 sons and 4 daughters and the present Application has been preferred by five children of the deceased.

2. The Petitioners came with a case that though the Consent Affidavits have been filed in the Testamentary Petition, the same was obtained by the Respondent by committing fraud upon the Petitioners

and by taking disadvantage of knowledge of English language. It is stated that the Petitioners were not aware of the contents of the document at the time of signing of Consent Affidavits which were not interpreted by the notary. There was certain litigation pending with National Textile Corporation Limited and the impression given by the Respondent is that after the demise of the deceased, certain documents are required to be filed with the authorities. The Will is stated to be a forged document as Bimladevi was not conversant with English language and did not understand the contents of the document. It is further stated that the deceased was admitted to Hope Nursing Home at Grant Road on 24th January, 2014 and subsequently, she was transferred to Nair Hospital on 5th February, 2014 and on the same date, she had expired. It is stated that during the quarrel in the month of July, 2022 between the Petitioner No. 1 and Respondent, the Respondent, for the first time, disclosed the order dated 22nd April, 2019 passed by the Prothonotary and Senior Master about the grant being issued in favor of Respondent. It is only in the month of April, 2023 when the Petitioner approached the present Advocate, the Petitioner became aware of obtaining of grant of letters of administration with Will annexed.

3. An Affidavit-in-reply has been filed by Respondent contending that the Petition is time-barred as the Petition has been filed after

expiry of three years from the grant of letters of administration dated 22nd April, 2019. It is further stated that the except Petitioner No. 4, all other Petitioners have signed the Petition in English and the Consent Affidavits were signed in English except Petitioner No. 4. It is further stated that Petitioner No. 2 has completed her graduation from University of Mumbai in Commerce and is working in Yes Bank, Dindoshi branch as CPA Executive in the Loan Department. It is denied that the deceased was hospitalized in Hope Nursing Home at Grant Road and was transferred to Nair Hospital on 5th February, 2014 on account of deteriorating health. It is stated that the deceased was physically and mentally fit during the execution of the said Will.

4. Mr. Ghadigaonkar, learned counsel appearing for Petitioner would point out the pleadings in the Petition to contend that the Consent Affidavits have been obtained by fraud by creating impression that the documents are required for the purpose of litigation, pending with National Textile Corporation Limited. He submits that in the Reply Affidavit, it was accepted that the litigation is pending with the National Textile Corporation Limited. He would further submit that except one of the Petitioners, i.e. Pooja Gupta, the other Petitioners are not aware of the English language as they have studied in Hindi medium language. He would submit that the attesting witnesses have filed Affidavits in the present proceedings stating the Affidavits were

obtained by Respondent by committing fraud and without permitting them to read the contents therein. He would further submit that the deceased was hospitalized on 24th January, 2014 and the alleged Will has been executed on 29th January, 2014.

5. Mr. Naphade, learned counsel for Respondent would submit that the Testamentary Petition was filed in the year 2017, the consent affidavits were filed in the year 2017 and the present Petition has been filed in 2023 alleging that the consent affidavits have been obtained by fraud. He would further point out that except Petitioner No. 4, the other Petitioners have signed the consent affidavit in English language. He submits that it is not the case of the Petitioners that they are not conversant with English language and the contention is about lack of knowledge. He would further submit that Pooja Gupta, who is one of the Petitioners is graduate and is serving in Yes Bank which fact has not been denied in the rejoinder. He would submit that the medical reports placed on record would show that the deceased was admitted to the hospital on 5th February, 2014 and she expired on same day. He would further submit that it is settled position that when a document has been signed by a party, there is a presumption that the party has read the document properly, understood it and only then, he has affixed the signature therein drawing support from the decision in the case of ***Haripada Roy alias Haripada Gokulbihari Roy (deceased) Raana***

Haripada Roy vs. Subhash Chander Rewari¹. He would submit that insofar as the affidavits of attesting witnesses are concerned, the attesting witnesses have not said that they have not signed the Affidavits and vague allegation is made as regards fraud. He would further submit that the consent affidavit was filed by all the legal heirs and some of the legal heirs have signed in hindi language and have stood by their respective consent affidavit.

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

7. The Petitioners seek revocation of letters of administration with Will annexed on the ground that the consent affidavit of the Petitioners who are the legal heirs of the deceased as well as the affidavits of the attesting witnesses have been obtained by fraud. The pleading is that the consent affidavit has been obtained by taking disadvantage about the knowledge of English language. It is not disputed that Petitioner No. 2-Pooja Gupta is a graduate and is working in Yes Bank as CPA Executive. It is, therefore, difficult to accept that the Petitioner No. 2 was not aware of the contents of the affidavit that the same pertains to obtaining of Letters of administration in respect of the Will of the deceased. There is no specific averment pleaded by the Petitioners individually and general statement has been made that the consent has been obtained by taking disadvantage about their

1 2014(2) Mh. L.J. 234.

knowledge of English language. Merely because the other Petitioners have studied in Hindi medium, it cannot be accepted that they were unaware of the contents of the Consent Affidavit. The present Petition has been signed by all Petitioners except Petitioner No. 4 in English language. The pleadings in the Petition is in English language and is not shown to have been interpreted to the other Petitioners who claim lack of English knowledge. When the Petitioners come with specific case of fraud by reason of lack of knowledge of english language, it is surprising that they have not bothered to get the contents of the present Petition interpreted in hindi language. In such circumstances, it cannot be accepted that the Petitioners except Petitioner No. 4 was unaware of the contents of consent affidavit.

8. Perusal of the consent affidavit would indicate that the contents therein makes specific reference to the Will of the deceased and grant of no objection to the letters of administration with Will annexed. The first page of the consent affidavit as annexed to the Affidavit-in-Reply of the Respondent shows the cause-title being for the purpose of obtaining letters of administration with Will annexed in respect of the deceased-Bimla Devi and makes a specific reference to the testamentary jurisdiction of this Court. It belies reason that considering the contents of the consent affidavit, an impression can be given that the same is in respect of certain litigation pending with

National Textile Corporation Limited. Further, the consent affidavit has been signed by all the legal heirs who are eight in number and the other three legal heirs have stood by their Consent Affidavit.

9. In so far as the affidavits of attesting witnesses are concerned, the affidavit does not speak about not having signed the affidavit and the contention is of fraud. There is no specific pleading as the nature of fraud practiced upon the attesting witnesses. The Petitioners have failed to make out any case of fraud to justify revocation of the grant.

10. Reliance has been rightly placed on the decision of this Court in the case of ***Haripada Roy vs. Subhash Chander Rewari*** (supra) where in identical situation, the parties sought to dispute the consent affidavit filed in that case to support the grant of Probate, and thereafter, was sought to be disputed which has been negated by the learned Single Judge for this Court. The learned Single Judge considered the decisions of the Hon'ble Apex Court in the case of ***Bihar State Electricity Board, Patna vs M/s. Green Rubber Industries***² and ***M/s. Grasim Industries Ltd. vs. M/s. Agarwal Steel***³ to hold that when person signs the document there is a presumption unless there is a proof of fraud that he has read the document and understood it and only then affixed his signature thereon, otherwise, no signature or document can ever be accepted. This principle is in consonance with

2 (1990) 1 SCC 731.

3 AIR 2010 SC (Supp) 291.

the legal sanctity which is annexed to the affidavit which is filed and accepted by the Court. In the present case, after having signed the consent affidavit in the year 2017, it is only by reason of a dispute which arose in the month of July 2022 and as stated in paragraph 12, it appears that the present petition has been filed.

11. In light of above, I do not find any just cause for revocation of Letters of Administration.

12. Resultantly, Petition fails and stands dismissed.

13. Needless to clarify that the observations of this Court are only in the context of considering the issue as regards any ground be made out for the purpose of revocation of grant of letters of administration and would not affect any other proceedings which may be instituted by the Petitioners for seeking any right in respect of the property of the deceased.

[Sharmila U. Deshmukh, J.]