

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

**MISCELLANEOUS PETITION NO.201 OF 2025
WITH
INTERIM APPLICATION (L) NO.15329 OF 2024
WITH
INTERIM APPLICATION (L) NO.27310 OF 2025
WITH
INTERIM APPLICATION (L) NO.7260 OF 2024
IN
TESTAMENTARY PETITION NO.1963 OF 2016**

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Samir Nidhir Dutta

...Petitioner

Versus

Subir Nidhir Dutta and Others

...Respondents

*Mr. Veer Kankaria, for the Petitioner.
Ms. Priti Shah, for the Respondents.*

**CORAM : SHARMILA U. DESHMUKH
RESERVED ON : JANUARY 06, 2026
PRONOUNCED ON : JANUARY 13, 2026**

JUDGMENT:

1. The Miscellaneous Petition has been filed under Section 263 of Indian Succession Act, 1925 (for short **"Succession Act"**) seeking revocation for Probate granted on 8th March, 2024 in respect of alleged Will of one Nidhir Kalimohan Dutta, who expired on 26th December, 2002.

2. The Petitioner and the Respondent are siblings being sons of the deceased. Shorn of unnecessary details, the facts of the case are that the present Petitioner had propounded a Will dated 17th November, 2001 of the deceased Nidhir for grant of Probate by Testamentary Petition No. 489 of 2004. The present Respondent filed Caveat, which was dismissed on 10th March, 2005 and Probate was granted on 21st July, 2005. The Respondent filed Miscellaneous Petition No 10 of 2006 seeking revocation of the Probate granted in respect of the Will dated 17th November, 2001. The revocation was sought on the ground of non service of the notice of probate petition personally on the Respondent herein. The Court noted that the Caveat was dismissed for non filing of the Affidavit in support of the Caveat. The Court held that the Petitioner had entered appearance and filed Caveat much before being personally served and there is no reason to revoke the Probate, and, dismissed the Miscellaneous Petition vide order dated 22nd September, 2006.

3. An Appeal came to be filed before the Hon'ble Division Bench of this Court bearing Appeal No. 59 of 2007 which was dismissed vide order dated 21st February, 2007. The Respondent approached the Hon'ble Apex Court by way of Special Leave Petition No. 11728 of 2007 which was dismissed by order dated 19th September, 2008.

4. During the pendency of the proceedings, the Petitioner had filed Special Civil Suit No. 2465 of 2007 before the Civil Court seeking relief of declaration and injunction which was contested by the Respondent. During the hearing, the Respondent produced the alleged Will dated 10th January, 2008 and the trial Court came to a finding that the Will is incomplete as some paragraphs are missing and no explanation is provided by the Respondent. The suit was decreed in favour of the Plaintiff on 21st March, 1996, which is subject matter of pending Appeal before this Court.

5. On 10th October, 2016, the Respondent filed Testamentary Petition No. 1963 of 2016 propounding Will dated 10th January, 2002 of the deceased Nidhir Dutta. The Petitioner herein was served with the citation and filed Caveat bearing CTSL No. 366 of 2017 which was delayed by a period of 4 days. The sisters of the Petitioner also filed their respective Caveats. The caveats filed by the Petitioner and his sisters were rejected for non-removal of office objection. Vide order dated 22nd January, 2024 the Additional Prothonotary and Senior Master directed issuance of Probate leading to filing of the present Petition.

6. The Respondent's response is that the Petitioner had failed to

avail the opportunity of contesting the Petition and at a belated stage has come to challenge the validity of Will dated 10th January, 2002. The Petitioner's Petition was allowed on technical ground as the caveat filed by the Respondent was not supported by an Affidavit. The grant of Probate of subsequent Will inherently annuls the first Probate.

7. Learned counsel for the Petitioner would submit that the Petitioner had propounded the Will of the deceased dated 17th November, 2001, which was probated by this Court and the revocation proceedings were dismissed right up to the Hon'ble Apex Court. He submits that as probate was already granted, the Respondent could not have propounded the Will of 10th January, 2002 during the subsistence of the Probate in favour of the Petitioner. He would submit that the City Civil Court has made specific observation that the Will produced by the Respondent is suspicious. He submits that in the Testamentary Petition No. 1963 of 2016 filed by the Respondent, which was opposed by the Petitioner and the sisters by filing caveats came to be dismissed for non prosecution. He submits the Respondent has suppressed the fact of dismissal of the revocation application in the testamentary petition. He would further point out that the Will propounded by the Respondent is suspicious as there is discrepancy in the paragraph numbering as page No. 3 of the Will starts with the paragraph No. 6 without

earlier paragraphs being numbered. In support, he relies upon the following decisions :-

(1) **Smt. Rukmani Devi and Ors. vs. Narendra Lal Gupta**¹

(2) **H. Venkatachala Iyengar vs. B.N.Thimmajamma & Ors.**²

8. *Per contra*, learned counsel for the Respondent submits that there is no suppression of facts as paragraph No. 11 of the Testamentary Petition No. 1963 of 2016 clearly mentions about the earlier Testamentary Petition being filed by the Petitioner and the grant of Probate which came to be allowed on technical ground as the Caveat filed by the Respondent is not supported by the affidavit. She would submit that there is no suppression of dismissal of the revocation application as this Court had directed the Registry to issue citation vide order dated 22nd September, 2017 after considering the submissions canvassed as regards the earlier revocation application being dismissed. She would further submit that though an opportunity was given to the Petitioner to oppose the Petition by service of citation, the Petitioner did not take timely steps for removal of office objection failing which the Caveat came to be dismissed and the Probate was granted to the Respondent in accordance with the procedure of law. She would submit that in event this Court holds in favour of the Petitioner, liberty may be

1 (1985) 1 SCC 144.

2 1958 SCC OnLine SC 31.

granted to the Respondent to take out appropriate proceeding for revocation of the Petitioner's Probate.

9. In rejoinder, learned counsel for the Petitioner opposes the prayer seeking liberty and submits that the Will itself is surrounded by suspicious circumstances and has been propounded after a period of almost 14 years from the execution.

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

11. The facts are mostly undisputed and the issue which begs determination is whether there exists a just cause for revocation of the Probate granted in respect of the Will dated 10th January, 2002 to the Respondent.

12. The Will dated 17th November, 2001 of deceased Nidhir Dutta was probated on 21st July, 2005. The application filed by the Respondent seeking revocation of the probate granted on 21st July, 2005 was rejected right up to the Hon'ble Apex Court. It is well settled that grant of probate is judgment in rem and is conclusive of validity of the Will till it is revoked. Section 273 of Succession Act provides that the grant shall effect over all the property and estate, movable or immovable of the

deceased. The grant of Probate in favour of the Respondent has led to a position that the estate of the deceased is governed by two sets of testamentary dispositions. The grant of probate of subsequent Will in respect of the same properties of the deceased without the earlier grant being revoked would run contrary to the statutory scheme of the Succession Act.

13. Chapter 26 of the Bombay High Court (Original Side) Rules (in short "the Rules") governs the testamentary and Intestate jurisdiction. The rules set out the procedure to be followed for grant of Probate of Letters of Administration. Rule 382 provides that the application for Probate / Letters of Administration/ Succession certificate made for the first time after lapse of three years from the death of the deceased, the reasons for the delay shall be explained in the Petition and upon the explanation being unsatisfactory, the Prothonotary and Senior Master may require such further proof of alleged cause of delay as he may deem fit.

14. In the present case, the Respondent has propounded a Will of the year 2002 by filing a Petition after a lapse of 14 years, in the year 2016. The explanation for the delay as set out in paragraph 11 states that the Petitioner was not aware of the Will dated 10th January, 2002 executed

by the deceased and that somewhere in the month of May and June, 2013, the mother of the Petitioner gave the original Will dated 10th January, 2002 to the Petitioner and the Petitioner was unaware of the requirement of the obtaining Probate of the Will.

15. The delay is inordinate delay of about 14 years. The Petitioner had filed Petition seeking Probate of Will dated 17th November, 2001 in the year 2004 and the litigation as regards the revocation of probate reached right upto the Hon'ble Apex Court. The Petitioner and the Respondent's mother expired on 22nd July, 2013 and was alive at the time of probate of the earlier Will and during the subsistence of the revocation proceedings, and, it defies reason that the Will of the year 2002 would not have been handed by the mother to the Respondent at that point of time. Though it is sought to be contended that the Respondent was layman and not aware of requirement of obtaining probate, the said explanation was unacceptable considering that the grant of Probate of the Will of the year 2001 was contested by the Respondent right up to the Hon'ble Apex Court. Pertinently, the handing over of the Will of the year 2002 is strategically timed to one month before the death of mother of the parties in July, 2013.

16. Rule 382 of the Rules specifically enjoins the Prothonotary and

Senior Master to require such further proof of the cause of delay as he may deem fit. This was a perfect case where the Prothonotary and Senior Master ought to have required some further proof of alleged cause of delay.

17. There is another reason why the present Petition deserves to be allowed. In paragraph 11 of the Testamentary Petition No 1963 of 2016, the Respondent has pleaded about the earlier Testamentary Petition filed by the Petitioner in which the Probate was granted of the Will dated 17th November, 2001. The Respondent has suppressed the fact that the Respondent had sought revocation of Probate granted to the Petitioner which challenge has failed right up to Hon'ble Supreme Court. Rule 374 of the Rules governs the application for Probate and provides that the Petition shall be in Form 97 with such variations as circumstances of each case may require. The prescribing of particular format for filing of application for grant of Probate does not preclude the parties from setting out the facts which are material for the purpose of deciding the issue of grant of Probate. Though reliance has been placed on the order of 22nd September, 2017 passed by the learned single Judge of this Court in Testamentary Petition No. 1963 of 2016, the order merely directs the Registry to issue citation and nothing further. From the perusal of the said order, it appears that the

submissions were canvassed for the purpose of issuance of citation. At that point of time, there was no issue before the Court as regards the maintainability of the Testamentary Petition itself and the issue was only as regards the issuance of citation. No assistance can be drawn by the Respondent from the order dated 22nd September, 2017. The submissions canvassed before the Court for issuance of citation cannot replace the requirement of specific pleadings of material facts in the Petition.

18. In event there was discovery of subsequent Will, the proper course would be institution of proceedings for revocation of the earlier grant in view of discovery of later Will. The illustration to Section 263 gives an example of just cause where after the Probate is granted, later Will has been discovered. The remedy of the Respondent was thus to file for revocation of the Probate and not for probate of the later Will during the subsistence of the earlier grant. It is not necessary for this Court in these proceedings to go into the issue of validity of the Will dated 10th January, 2002 propounded by the Respondent and its genuineness will have to be tested in appropriate proceedings.

19. In light of the above discussion, there exists just cause for revocation of the Probate dated 8th March, 2024 granted to the

Respondent in respect of alleged Will dated 10th January, 2002. Miscellaneous Petition is allowed. The Probate granted by this Court on 8th March, 2024 in respect of the Will of the deceased Nidhir Kalimohan Dutta dated 10th January, 2002 is hereby revoked. The Respondent is directed to surrender the original Probate to the Prothonotary and Senior Master within a period of two weeks from today.

20. Though an objection has been raised to any liberty being granted to the Respondent, in view of the subsequent Will being discovered, the remedy is available as per law to the Respondent. It is open for the Respondent to take out an appropriate application, which will be dealt with on its own merits and in accordance with law. All right and contentions of both the parties in that respect are expressly kept open.

21. The Miscellaneous Petition is allowed. In view thereof, Interim Application (L) Nos. 15329 of 2024, 27310 of 2025 and 7260 of 2024 do not survive for consideration and stands disposed of.

(SHARMILA U. DESHMUKH, J.)

22. At this stage, request is made by the learned counsel appearing for the Respondents for extension of order of status quo which was passed on 8th May, 2024 in Interim Application (L) No. 15329 of 2024.

23. The order of status quo is extended for a period of four weeks from today.

(SHARMILA U. DESHMUKH, J.)