IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
INTERIM APPLICATION (L) NO.7709 OF 2024
IN
TESTAMENTARY PETITION NO.3788 OF 2022

Jagjivandas Shamji Suchak
since deceased, through his legal
heirs
Nileshbhai Chandrachantbhai Suchak … Applicant
in the matter of
Induben Jethalal Nagrecha … Petitioner

Jagjivandas Samji Suchak … Deceased

Mr. Rahul Arora for Applicant.
Mr. Priyanka Kothari i/by Ms. Vinali Bhaidkar, for Petitioner in TP No.3799 of 2022.

CORAM: N.J.JAMADAR, J.

DATE : 29 AUGUST 2024

ORDER :

1. The applicant, who claims to be the legal heir of Jagjivandas Shamji Suchak (deceased) has preferred this application to implead him as a party Respondent to this Petition and also direct the Petitioner to serve citation on the applicant in terms of the order dated 23 October 2023.

2. Induben Jethalal Nagrecha, the Petitioner has preferred TP No.3788 of 2022 for the grant of Letters of Administration to the property and credits of the

deceased with the assertion that the deceased passed away on 1 May 2021 at Mumbai. At the time of his death, he had a fixed place of abode at Mumbai. The deceased died intestate. Despite diligent search, no testamentary writing or Will has been found. The parents of the deceased predeceased him. Wife of the deceased also predeceased him. The deceased died issueless. The deceased had, thus, left behind Class II heirs, particulars of whom are furnished in the table at paragraph 5 of the Petition, including the petitioner, who is the daughter of Purshotam Suchak, a predeceased brother of the deceased.

3. By an order dated 23 October 2023, the Officer on Special Duty with the Testamentary Department, inter alia, directed to serve citation on the non-consenting legal heirs of the deceased.

4. The applicant has preferred this application with the assertion that the Petitioner has approached the Court with unclean hands. Relevant and material facts have been deliberately and mischievously suppressed. The applicant is a legal heir of the deceased. The Petitioner, despite being fully cognizant of the fact that the applicant has been impleaded as a legal representative of the deceased in RAE Suit No.1673 of 2012, has maliciously withheld the said information from the Court and professed to prosecute the Petition without disclosing that the applicant is one of the legal heirs of the deceased. Hence,

this Application to implead him as party Respondent to this Petition and also a direction to the Petitioner to serve the citation on the Applicant.

5. An affidavit in reply has been filed on behalf of the Petitioner. It is categorically asserted that the children of the siblings of the deceased, who predeceased the deceased, are not entitled to a share in the estate of the deceased as heirs. Thus, the children of such predeceased children of the siblings of the deceased become agnates and cognates of the deceased. Such agnates and cognates fall in the category lower than the class II heirs, and in accordance with the provisions contained in Section 8 of the Hindu Succession Act, 1956, agnates and cognates are not entitled to inherit the estate of a male Hindu in the presence of the heirs in Class II of the Schedule.

6. The Petitioner avers, the applicant is a son of Chandrakant Suchak, who was the son of Purshotam Suchak, brother of the deceased. However, since Chandrakant Suchak predeceased the deceased, the children of Chandrakant do not become Class II heirs. Therefore, merely on the strength of the order of impleadment in RAE Suit No.1673 of 2012, instituted under the Maharashtra Rent Control Act, 1999, the applicant cannot claim a right to succeed to the estate of the deceased as the provisions contained in the Maharashtra Rent Control Act, 1999 cannot override the provisions of the Hindu Succession Act,

1956.

7. I have perused the averments in the application as well as Testamentary Petition, Interim Application and the affidavit in reply thereto. With the assistance of the learned Counsel for the parties, I have also perused the material on record, especially the family tree. By and large, there is no controversy over the *inter se* relationship between the Petitioner and the deceased and the applicant and the deceased. The controversy revolves around the question as to whether the applicant is entitled to be heard in the Petition for the Letters of Administration to the property and credits of the deceased ?

8. Mr. Arora, the learned Counsel for the Applicant, submitted that it is incontrovertible that the applicant is a legal heir and next of kin of the deceased. At this stage, the applicant is only seeking to be impleaded as a party Respondent and served with a citation. The question as to whether the applicant is entitled to succeed to the estate of the deceased, can be legitimately decided once the applicant is impleaded as a party Respondent.

9. Laying emphasis on the fact that the applicant has already been impleaded as a party Defendant in RAE Suit No.1673 of 2012 instituted against the deceased, Mr. Arora would urge that no prejudice is likely to be caused to the Petitioner by the impleadment of the applicant as a party Respondent. Mr.

Arora placed a strong reliance on the provisions contained in Rule 397 of the Bombay High Court (Original Side) Rules, 1980. It was urged that the issue of notice to all the heirs and next of kin of the deceased is mandatory. Therefore, the resistance to the impleadment of the applicant as a party Respondent is wholly misconceived.

10. In opposition to this, Ms. Kothari, the learned Counsel for the Petitioner, submitted that neither the Petition suffers from any suppression of fact, as alleged, nor the Petitioner can be accused of making a false representation. Ms. Kothari invited attention of the Court to paragraph 5 of the Petition, wherein the Petitioner has furnished the details not only of the siblings of the deceased, but also the children of those siblings. Special emphasis was laid on the averments in paragraph 8 under the caption "legal heirs of the siblings of the deceased", wherein the Petitioner has asserted that Purshotam Suchak was the brother of the deceased. Apart from the Petitioner Induben, Purshotam had four children, namely, Chandrakant, Ramnikbhai, Kanaiyalal and Anilaben. Except the Petitioner, other four children of Purshotam predeceased the deceased. Nilesh, the applicant, being the son of Chandrakant, the predeceased son of Purshotam Suchak, has no caveatable interest, submitted Ms. Kothari.

11. Inviting attention of the Court to the provisions contained in Section 8

read with the Schedule, especially the enumeration of Class II heirs therein, Ms. Kothari submitted that the applicant falls in the category of agnates which stands at the third degree in the order of succession under clause (c) of Section 8 of the Hindu Succession Act, 1956. Ms. Kothari further submitted that reliance on the order passed by the Court of Small Causes to implead the applicant as a party Defendant in the Suit instituted against the Deceased, is of no assistance to the applicant. It was submitted that the provisions contained in clause (d) of Section 7(15) of the Maharashtra Rent Control Act, 1999 have no bearing on the entitlement to succession in case of intestacy. Ms. Kothari placed reliance on a Division Bench judgment of this Court in the case of **Urmi Deepak Kadia V/s. State of Maharashtra**[1] wherein it was enunciated that nothing in clause (d) of Section 7(15) of the MRC Act, interferes with rules of succession enacted by the Hindu Succession Act, 1956.

12. Chapter IV of the Indian Succession Act, contains a fasciculus of the provisions under the heading "of the Practice in Granting and Revoking Probates and Letters of Administration". Section 283 of the Indian Succession Act, 1925, inter alia, provides that in all cases, the District Judge or District Delegate may, if he thinks proper – inter alia, issue citation calling upon all

1 MANU/MH/1915/2015

persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration. This expression 'all persons claiming to have any interest' refers to a caveatable interest.

13. A caveatable interest denotes the interest in the estate of the deceased which may be affected by the grant of Probate or Letters of Administration, as the case may be. By its very nature, the existence or otherwise of a caveatable interest, would depend upon the facts of a given case. Whether the grant of Probate or Letters of Administration would prejudice the right of the caveator, would be the barometer on which the existence of a caveatable interest can be tested. For that purpose, the law governing intestate succession qua the deceased also needs to be kept in view. If the caveator is likely to succeed in case of intestacy, the existence of caveatable interest can hardly be put in contest.

14. A profitable reference, in this context, can be made to a decision of the Supreme Court in the case of ***Krishna Kumar Birla V/s. Rajendra Singh Lodha and Ors.***[2] wherein the Supreme Court, after an elaborate analysis of the provisions and precedents, culled out the propositions as under :

2 (2008) 4 Supreme Court Cases 300.

84. Section 283 of the 1925 Act confers a discretion upon the court to invite some persons to watch the proceedings. Who are they? They must have an interest in the estate of the deceased. Those who pray for joining the proceeding cannot do so despite saying that they had no interest in the estate of the deceased. They must be persons who have an interest in the estate left by the deceased. An interest may be a wide one but such an interest must not be one which would not *(sic)* have the effect of destroying the estate of the testator itself. Filing of a suit is contemplated inter alia in a case where a question relating to the succession of an estate arises.

85. We may, by way of example notice that a testator might have entered into an agreement of sale entitling the vendee to file a suit for specific performance of contract. On the basis thereof, however, a caveatable interest is not created, as such an agreement would be binding both on the executor, if the probate is granted, and on the heirs and legal representatives of the deceased, if the same is refused.

86. The propositions of law which in our considered view may be applied in a case of this nature are :

(i) To sustain a caveat, a caveatable interest must be shown.

(ii) The test required to be applied is: does the claim of grant of probate prejudice his right because it defeats some other line of succession in terms whereof the caveator asserted his right.

(iii) It is a fundamental nature of a probate proceeding that whatever would be the interest of the testator, the same must be accepted and the rules laid down therein must be followed. The logical corollary whereof would be that any person questioning the existence of title in respect of the estate or capacity of the testator to dispose of the property by Will on ground outside the law of succession would be a

> stranger to the probate proceeding inasmuch as none of such rights can effectively be adjudicated therein.
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> ……..
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> 89. While determining the said question, the law governing the intestate succession must also be kept in mind. The right of the reversioner or even the doctrine of "spes successionis" will have no application for determining the issue in a case of this nature.
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> …….
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> 103. What would be caveatable interest would, thus, depend upon the fact situation obtaining in each case. No hard and fast rule, as such, can be laid down. We have merely made attempts to lay down certain broad legal principles.
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> ……...
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> 135. It is too far fetched a submission that a person having a remote family connection or as an agnate is entitled to file a caveat. A reversioner or an agnate or a family member can maintain a caveat only when there is a possibility of his inheritance of the property in the event the probate of the Will is not granted. If there are heirs intestate who are alive, entertaining of a caveat on the part of another family member or a reversioner or an agnate or cognate would never arise." (emphasis supplied)

15. A conjoint reading of the propositions culled out in clauses (ii) and (iii) of paragraph 86 spells out the test which is to be applied to ascertain the existence of a caveatable interest, namely, the Caveator ought to be in a position to show that if the grant of Probate or Letters of Administration is made it will defeat

his claim of succession or inheritance to the estate of the deceased for the reason that it defeats some other line of succession. If the Caveator is likely to inherit a very small part of the estate of the deceased in the event the Probate or Letters of Administration, as the case may be, is not granted, it can be said that the Caveator has a caveatable interest.

16. Rule 397(1) of the Bombay High Court (Original Side) Rules, 1980 reads as under :

> "R.397. Notice of next-of-kin – (1) In all applications for probate, letters of administration and succession Certificate, notice of the application shall be given to all the heirs and next-of-kin of the deceased mentioned in the petition except to those whose consent has been filed in the proceedings."

17. Mr. Arora, learned Counsel for the Applicant, made a strenuous effort to expand the scope of Rule 397(1) to mean that all the heirs and next-of-kin of the deceased are entitled to a notice in a petition for Letters of Administration. Such an expansive construction of Rule 397 is not warranted as the entitlement to participate in the proceedings ought to be judged on the anvil of the provisions contained in Section 283 of the Indian Succession Act, 1925. The

court is required to pose unto itself a question as to whether such next-of-kin has any interest in the estate of the deceased to come and see the proceedings before the grant of Letters of Administration. Therein arises the necessity of an inquiry as to the existence of a caveatable interest.

18. The submission of Mr. Arora that all the heirs and next-of-kin of the deceased, by howsoever remotest degree they may be related to the deceased, are entitled to be heard, does not merit acceptance in view of the clear and explicit enunciation by the Supreme Court in the case of **Krishna Kumar Birla V/s. Rajendra Singh Lodha and Ors. (supra).** In paragraph 135 (extracted above), the Supreme Court in terms enunciated that it is too far fetched a submission that a person having a remote family connection or as an agnate is entitled to file a caveat. A reversioner or an agnate or a family member can maintain a caveat only when there is possibility of his inheritance of the property, in the event Probate is not granted. If there are heirs of the intestate who are alive, the question of entertaining of a caveat at the instance of another family member or a reversioner or an agnate or cognate would never arise.

19. Indisputably, Mr.Chandrakant Suchak, the father of the applicant and the brother of the Petitioner Induben, passed away during the lifetime of the deceased. In the Schedule, under Class II only the surviving sons of the

predeceased brother or sister of the deceased male, are entitled to succeed under Entry IV. The applicant being the son of predeceased son of the brother of the deceased does not fall under any of the entries under Class II.

20. In view of the order of succession provided in Section 8 of the Act, 1956, the estate would fall on the agnates if there are no heirs falling under Class I and II. As there are heirs of the deceased who fall in Class II, the applicant is not entitled to succeed to the estate of the deceased in case of intestacy. Therefore, the applicant has no caveatable interest.

21. The submission based on the impleadment of the applicant as the legal representative of the deceased in an eviction suit instituted against the deceased before the Court of Small Causes, also does not sustain the claim of the applicant for impleadment in the instant Petition. Reliance placed by Ms. Kothari on the judgment of Division Bench of this Court in the case of **Urmi Deepak Kadia V/s. State of Maharashtra (supra)**, appears to be on all the four with the facts of the case at hand. In the said Petition, a declaration was sought that to the extent section 7(15)(d) of the Maharashtra Rent Control Act, 1999 provides protection to the family member, who was residing with the deceased tenant, at the time of his death, even though such family member is not a heir of the deceased tenant, deprives the heir of the deceased tenant of his

right and status under the Hindu Succession Act, 1956 and, therefore, the Act 1999 was inconsistent with the Hindu Succession Act, 956, a Central legislation. The Division Bench ruled that there was no conflict in the two provisions. The observations of the Division Bench in paragraph Nos.17 and 18 are material and, hence, extracted below :

> "17. Therefore, there appears to be no conflict in the two provisions. The HS Act amends and codifies the law relating to succession amongst Hindus and therefore the overriding effect given to by Section 4(1)(b) over other law in force immediately before commencement of the HS Act relating to intestate succession amongst Hindus, that law ceased to apply insofar as it is inconsistent with any other provisions contained in the HS Act. The reliance placed on this clause by Mr. Thakkar is entirely misplaced. Once we understand the controversy in the above manner, then, we do not see how we can apply the mandate of Article 254 of the Constitution of India. That Article has no application.
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> 18. We have already held that nothing in clause (d) of section 7(15) of the MRC Act interferes with the rule of succession enacted by the HS Act. That definition of the term 'tenant' has been inserted to mean any person by whom or on whose account rent is payable for any

premises and includes firstly such person who is a tenant or who is a deemed tenant or who is a sub-tenant as permitted under a contract or by the permission or consent of the landlord or who has derived title under a tenant or to whom interest in premises has been assigned or transferred as permitted by virtue of or under the provisions of any of the repealed Acts. Secondly, it includes a person who is deemed to be a tenant under section 25 of the MRC Act or a person to whom interest in premises has been assigned or transferred as permitted under section 26 of the MRC Act and finally, in relation to any premises when the tenant dies, whether the death occurred before or after the commencement of this Act, any member of the tenant's family, who, when the premises are let for residence, is residing or when the premises are let for education, business, trade or storage, is using the premises for any such purpose with the tenant at the time of his death or in the absence of such member, any heir of the deceased tenant, as may be decided, in the absence of agreement, by the Court, will step in. If there was any intention to interfere with the law of succession and the rule laid down thereunder, the words "any heir of the deceased tenant" would not have been appearing in the definition at all. We also find that the definition read in its entirety reveals as to how the tenant means any person by

> whom or on whose account rent is payable for any premises and includes, after the death of the tenant, a member of the tenant's family. It is not as if only a right is created by this provision in the member of the family residing with the tenant or carrying on business with him but there is a duty and obligation while permitting the member of the family to step in after the tenant's demise and that is to pay rent and other charges for the premises in terms of the MRC Act and also to abide by it so far as the matters covered by it. Therefore, we do not find that there is any substance in the contentions of the learned Counsel appearing for the Petitioner."

22. It is imperative to note the definition of tenant under Section 7(15) is an inclusive and technical definition. It does not contain a closed category of persons who can be said to be a 'tenant' for the purposes of the said Act, 1999. After the demise of the tenant, the tenancy devolves on any member of tenant's family who satisfies the qualification depending upon the purpose of the tenancy. "Any member of the tenant's family" is a wide term and may include persons who do not fall within the closed list of heirs according to the law which governs the succession to the estate of the deceased tenant.

23. In view of the aforesaid position in law, the mere fact that the applicant

has been impleaded as a party Defendant in RAE eviction Suit in the capacity of the legal representative of the deceased, does not entitle the applicant to seek impleadment in the Testamentary Petition for the grant of Letters of Administration, sans a caveatable interest. The application, therefore, deserves to be rejected.

24. Hence, the Application stands rejected.

(N.J.JAMADAR, J.)