

Sharayu Khot.

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

MISCELLANEOUS PETITION NO. 144 OF 2021

IN

TESTAMENTARY PETITION NO. 1133 OF 2007

Krishnanath alias Krishnakant Shivling ...Petitioner
Sakhare

Versus

Ramesh Shivling Sakhare ...Respondent

WITH

TESTAMENTARY PETITION NO. 734 OF 2021

WITH

TESTAMENTARY SUIT NO. 53 OF 2011

IN

TESTAMENTARY PETITION NO. 705 OF 2007

WITH

THIRD PARTY APPLICATION FOR CC (L) NO. 10371 OF 2021

IN

TESTAMENTARY SUIT NO. 53 OF 2011

WITH

TESTAMENTARY SUIT NO. 54 OF 2011

IN

TESTAMENTARY PETITION NO. 825 OF 2008

WITH

TESTAMENTARY SUIT NO. 52 OF 2012

IN

TESTAMENTARY PETITION NO. 336 OF 2005

Mr. Atul Damle, Senior Advocate a/w Mr. Ram Upadhyay, Mr. Santosh Dube, Mr. Vedraj Pal i/by Law Competere Consultus for the Petitioner.

Mr. S.S. Lanke for the Respondent.

CORAM : R.I. CHAGLA J

DATE : 27 October 2021

ORDER :

1. Heard learned Counsel for the parties.

2. By the present Miscellaneous Petition, the Petitioner is seeking revocation of the Probate dated 3rd May 2011 under Section 263 of Indian Succession Act, 1925 issued in the name of the Respondent Ramesh Shivling Sakhare in respect of the suit premises bearing Survey No. 200, Hissa No. 1, admeasuring 7 acres 39 Gunthas at Village Bhandup, Mumbai - Agra Road, within the registration district and sub-district of Bombay City and Bombay suburban.

3. Having considered the averments in the Miscellaneous Petition, and particularly, where it has been averred that the Respondent had obtained Probate order dated

3rd May 2011 of this Court on the basis of fraud and fabricated documents such as adoption deed and the will as well as without serving citations on the heirs of the deceased which included the Petitioner and by virtue which the Respondent has illegally obtained rights in respect of the said immovable property, the matter would require to be proved by way of evidence.

4. Further, the Petitioner had relied upon the orders passed by this Court in the Probate Petition No. 1133 of 2007 including order dated 26th September 2008 by which this Court had recorded that the Petitioner is the only surviving son of the deceased Shivling Sakhare.

5. The Respondent has sought time to file Affidavit in Reply to the Miscellaneous Petition, considering that only Reply which is filed, is by the Constituted Attorney of the Respondent, one Sahebrao Gangadhar Kadam dated 28th August 2021.

6. The Respondent shall file his Affidavit in Reply to

the Miscellaneous Petition within a period of four weeks from the date of this order and shall be served on the Petitioner in advance.

7. Miscellaneous Petition No. 144 of 2021 is kept for directions on 2nd December 2021.

8. The *ad-interim* relief granted by this Court in terms of clause (g) in the Miscellaneous Petition shall continue till further orders.

[R.I. CHAGLA J.]