

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

MISC. PETITION (L) NO.17063 OF 2021

Sunita Kanu Mody & Ors. ...Petitioners
V/S
Neeta Vijay Vora Nee Gita Dhirajlal Mody & Ors. ...Respondents

Mr. B. G. Saraf i/by Mr. Gaurang C. Jhaveri for Petitioners.

**CORAM : R. I. CHAGLA, J.
DATED : 26th OCTOBER, 2021.**

P.C.

Heard learned counsel for the Petitioners.

2. By this Petition, the Petitioners are seeking issuance of Subpoena as per form No.113 of the High Court O.S. Rules upon the Respondents to direct them to deposit the Original Will dated 17th October 1993 being last Will No.5234 of the deceased Mukta D. Mody and the death certificate alongwith the original MOU dated 29th May 2004.

3. The Petitioners have stated that the said deceased died leaving behind her last Will and testament bearing No.5234 dated

17th October 1993. The said will is attested by the Notary Public of Colombo. As per the information and knowledge of the Petitioners, the said Will No.5234 dated 17th October 1993 and the original death certificate of the deceased is in the possession of the Respondents. The Petitioners also relying on the Memorandum of Understanding (for short “MOU”) dated 29th May 2004 executed at Colombo and which is at Exhibit-B to the Petition. It is stated that as per the said MOU dated 29th May 2004, in particular clause No.9 thereof that the said deceased had executed her last Will and Testament dated 17th October 1993 alongwith her late husband Dhirajlal Khimchand Mody and both the Wills are attested by Mr. D. B. Jayaratne, a Notary Public at Colombo; bearing Nos.5233 for Dhirajlal K. Mody and 5234 for Mukta D. Mody.

4. Insofar as the said Will bearing No.5233 is concerned, Respondent No.2 has filed a Testamentary Petition before the District Judge, Colombo and the probate has been issued on 18th October 1999 by the District Judge Colombo and upon power-of-attorney granted in favour of Respondent No.1, Petition for letters of

administration with authenticated copy of the Will has been filed by Respondent No.1 before this Court bearing No.2736 of 2018 for the adjudication of the Indian Assets.

5. The Petitioners have stated that they desires to initiate appropriate proceedings in respect of the estate of the deceased Mukta D. Mody and require for that purpose the Original Will dated 17th October 1993 bearing No.5234 as endorsed and recorded in the MOU dated 29th May 2004.

6. The learned counsel for the Petitioners states that the Respondents are required to be served with notice in to deposit the Original Will bearing No.5234 of the deceased dated 17th October 1993 and the death certificate alongwith original MOU dated 29th May 2004. In addition, Office of Sheriff of Mumbai be directed to issue notice of the above proceedings on the Respondents.

7. In view of the averments made in the Petition and considering that the Petitioners desire to initial appropriate proceedings in respect of the estate of the deceased and for which

they require Original Will bearing No.5234 dated 17th October 1993 of the said deceased Mukta D. Mody, as well as the death certificate and original MOU dated 29th May 2004. It would be appropriate to issue notice on the Respondents, returnable on 26th November 2021. In addition, the office of Sheriff of Mumbai is directed to serve notice of the proceedings on the Respondents by email. The Miscellaneous Petition (L) No.17063 of 2021 is adjourned to 26th November 2021.

(R. I. CHAGLA, J.)