



SHEPHALI

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
MISCELLANEOUS PETITION NO. 143 OF 2015
IN
TESTAMENTARY PETITION NO. 1386 OF 2012

Eric Braz D'Cruz & 9 Ors.	...Petitioner
<i>Versus</i>	
Raymond Rock Misquitta	...Respondent

Mr. Q. M. Ashfaq, *for the Applicant/Petitioner.*
Mrs. S. H. Rajazi, *i/b Amar Bhatt, for the Respondent.*

CORAM: G.S. PATEL, J.
DATED: 24th June 2016

PC:-

1. The Respondent in this Revocation Petition obtained Letters of Administration to the estate of one Cyril Paul Roque Misquitta. Mr. Ashfaq for the Petitioner draws my attention to the the elaborate family tree at Exhibit "A" at page 25. This shows that the deceased's father, Roque Misquitta, had three wives. The deceased was the son by the second wife. The Respondent is the son by the third wife. The deceased and the Respondent were thus step brothers.



2. The family tree also shows that the deceased had a sister, a daughter of Roque Misquitta's second wife. She has passed on, but she was survived by her children and grandchildren. There was also a daughter by the first wife; the present revocation Petitioners are her daughters.

3. Given that the deceased died on 6th October 1994 and this Petition was filed in 2012, by which time the first wife's daughter had died, it seems to me self-evident that the revocation Petitioner ought to have cited the the Petitioners and the others shown in the family tree as heirs in his Petition for Letters of Administration. Far from doing so, the Testamentary Petition makes a categorical statement that the Respondent is or was the *only* heir of the deceased. *Prima facie*, this appears to be entirely incorrect. It was on the basis of that incorrect assertion that no citations were ever served on any of the revocation Petitioners or the other persons shown in the family tree.

4. In the present Notice of Motion, the revocation Petitioners seek an order restraining the Respondent from acting upon the grant of Letters of Administration. This Motion has been served in February 2016. Till date there is no Affidavit in Reply. It is only now that a request is made for time to file an Affidavit in Reply. Even if time is granted, this cannot mean that the Respondent can continue to act under or utilise a grant obtained on these representations, especially given that the family tree is not disputed.



5. There will be an ad-interim injunction in terms of prayer clause (a).
6. Affidavit in Reply to be filed and served on or before 25th August 2016. Affidavit in Rejoinder, if any, to be filed and served on or before 25th November 2016.
7. List the Miscellaneous Petition for hearing and final disposal on 23rd December 2016 at 4.00 p.m.

(G. S. PATEL, J.)