



2026:DHC:2211



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 17th MARCH, 2026

IN THE MATTER OF:

+ **TEST.CAS. 2/2026 & I.A. 1453/2026, I.A. 1961/2026**

PADMAJA KUMARI PARMAR

.....Petitioner

Through: Mr. Arvind Nigam, Sr. Adv., Mr. Abhishek Malhotra, Sr. Adv., Ms. Anuradha Dutt, Adv., Mr. Chaitanya Kaushik, Adv., Ms. Suman Yadav, Adv., Mr. Kunal Dutt, Adv., Mr. Raghav Dutt, Adv., Mr. Avinash K. Singh, Adv., Ms. Seema Mehta, Adv., Mr. Saurabh Pal, Adv., Ms. Vidhi Uppal, Adv., Mr. Kartikay Dutta, Adv, Ms. Anukriti Trivedi, Adv.

versus

LAKSHYARAJ SINGH MEWAR AND ORS.

.....Respondents

Through: Mr. Rajiv Nayar, Mr. Dayan Krishnan, Mr. Darpan Wadhwa, Senior Advocates with Mr. C Rashmikan, Mr. Mahesh Agarwal, Mr. Rishi Agrawala, Mr. Rohan Dakshini, Mr. Varad Nath, Ms. Jay Sanklecha, Mr. Pratham Vir Agarwal, Ms. Anuja Bhansali, Ms. Urvi Gupte, Mr. Nilay Gupta, Mr. Prabhav Bahuguna, Mr. Shreedhar Kale, Ms. Muskan Sethi, Adv.
Mr. Sandeep Sethi, Sr. Adv., Mr. Arun Kathpalia, Sr. Adv., Ms. Bani Brar, Adv., Ms. Shreya Sethi, Adv., Ms. Tahira Kathpalia, Adv. for Respondent No. 2



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Mr. Jatinder Kumar Sethi and Mr. Rahul Chaudhary, Advs. for the Applicant.

Mr. Parijat Sinha, Mr. Anil Mishra, Mr. Rudra Dutta, Ms. Kashvi Dutta, Ms. Priyal Jain, Mr. Anuj Mishra, Mr. Dev, Advs. for the Applicant

Mr. Mrigraj Singh Rathore, Mr. Jitendra Kumar Sethi, Mr. Rahul Choudhary, Mr. Rakesh Karela, Advocates for the Applicant.

Mr. Jatinder Kumar Sethi with Mr. Rahul Choudhary, Advocates for Applicants in IA Nos. 1452 and 1453 of 2026

+ **TEST.CAS. 4/2026 & I.A. 1452/2026, I.A. 1959/2026, I.A. 1960/2026, I.A. 3941/2026, I.A. 3942/2026**

SHRI LAKSHYARAJ SINGH MEWAR

.....Petitioner

Through: Mr. Rajiv Nayar, Mr. Dayan Krishnan, Mr. Darpan Wadhwa, Senior Advocates with Mr. C Rashmikan, Mr. Mahesh Agarwal, Mr. Rishi Agrawala, Mr. Rohan Dakshini, Mr. Varad Nath, Ms. Jay Sanklecha, Mr. Pratham Vir Agarwal, Ms. Anuja bhansali, Ms. Urvi Gupte, Mr. Nilay Gupta, Mr. Prabhav Bahuguna, Mr. Shreedhar Kale, Ms. Muskan Sethi, Advs. for R-1

versus

STATE OF RAJASTHAN & ORS.

.....Respondent

Through: Mr. Suhail Dutt, Sr. Adv., Ms. Anuradha Dutt, Adv., Mr. Chaitanya



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Kaushik, Adv., Ms. Suman Yadav, Adv., Mr. Kunal Dutt, Adv., Mr. Raghav Dutt, Adv., Mr. Avinash K. Singh, Adv., Ms. Seema Mehta, Adv. Mr. Saurabh Pal, Adv., Ms. Vidhi Uppal, Adv., Mr. Azhar Alam, Adv. for R-2.

Mr. Sandeep Sethi, Sr. Adv., Mr. Arun Kathpalia, Sr. Adv., Ms. Bani Brar, Adv., Ms. Shreya Sethi, Adv., Ms. Tahira Kathpalia, Adv. for Respondent No. 3

Mr. Jatinder Kumar Sethi and Mr. Rahul Chaudhary, Adv. for the Applicant.

Mr. Parijat Sinha, Mr. Rudra Dutta, Ms. Kashvi Dutta, Ms. Priyal Jain, Mr. Anuj Mishra, Mr. Dev Sharma, Advocates for the Applicant.

Mr. Mrigraj Singh Rathore, Mr. Jitendra Kumar Sethi, Mr. Rahul Choudhary, Mr. Rakesh Karela, Advocates for the Applicant.

Mr. Jatinder Kumar Sethi with Mr. Rahul Choudhary, Advocates for Applicants in IA Nos. 1452 and 1453 of 2026

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

TEST.CAS. 2/2026

1. TEST.CAS. 2/2026 has been filed by the Petitioner under Section 278 of the Indian Succession Act, 1925 (*hereinafter referred to as 'the Indian Succession Act'*) for grant of Letters of Administration to the Petitioner to administer the estate left behind by Mr. Arvind Singh Mewar (*hereinafter*



referred to as ‘the deceased or the testator’), who passed away on 16.03.2025 at Udaipur. The present Petition was originally filed in the High Court of Judicature at Bombay and was numbered as (Testamentary and Intestate Jurisdiction) Petition No. 5773 of 2025.

2. It is stated that the deceased was survived by four Class I legal heirs, namely (i) Padmaja Kumari Parmar (Petitioner herein), who is the daughter of the deceased; (ii) Bhargavi Kumari Mewar (Respondent No.2 herein), who is the other daughter of the deceased; (iii) Lakshyaraj Singh Mewar (Respondent No.1 herein), who is the son of the deceased; and (iv) Vijayraj Kumari Mewar (Respondent No.3 herein), who is the wife of the deceased. Each of the heirs is stated to be entitled to an equal one-fourth ($1/4^{\text{th}}$) share in the estate of the deceased upon intestate succession.

3. The Petitioner further states that the estate of the deceased consists of numerous assets and properties, details of which have been set out in the Petition and are not being stated here as they are not relevant at this juncture.

4. The Petitioner states that she is seeking Letters of Administration in intestacy as she is unaware of any valid testamentary writing executed by the deceased. However, in paragraph No.11 of the plaint she also states that although two documents have been represented as testamentary writings, neither of them constitute a legally valid Will capable of governing the estate of the deceased and accordingly, the estate of the deceased must devolve under the provisions of the Hindu Succession Act, 1956.

5. One of the purported testamentary instrument as mentioned in the Petition is a testamentary writing dated 07.02.2025 (*hereinafter referred to as ‘the testamentary writing or the Will’*), executed by the deceased approximately four weeks before his death. The Petitioner challenges the



authenticity and validity of this alleged testamentary writing. She contends that it is extremely doubtful whether such a document was ever genuinely executed by the deceased. It is further alleged that at the time when the alleged document was said to have been executed, the deceased was *non compos mentis*, i.e. not of sound mind, and was suffering from severe mental and physical infirmities, failing eyesight, and general frailty. She further alleges that the deceased had been rendered largely *incommunicado* and kept under constant surveillance by the Respondent No.1, and that the testamentary writing dated 07.02.2025 appears to have been procured through undue influence.

6. At paragraph No.13, the Petition sets out in detail the suspicious circumstances surrounding the alleged testamentary writing dated 07.02.2025. The Petitioner asserts that the signature appearing on the document does not match the known signatures of the deceased and therefore, the said testamentary writing could not have possibly been executed by the deceased. She further states that the signatures do not correspond with those appearing on earlier instruments such as the General Power of Attorney (“**GPA**”) dated 28.07.2023 or the Letter of Authority (“**LOA**”) dated 22.12.2022, which are relied upon for comparison. The Petition also points out that the ‘endorsement of execution’ of the alleged testamentary writing does not contain the photograph of the deceased, suggesting that the deceased was not present at the time the said document was executed. Another irregularity highlighted by the Petitioner is that the thumb impression appearing in the ‘endorsement of execution’ is completely misplaced. According to the Petitioner, this indicates that even if the deceased was compelled to execute the document, he was unable to locate



the designated space for the impression because of his severe visual impairment and incapacity. The Petitioner further asserts that even assuming the signatures were genuine, the deceased was mentally incapacitated and therefore incapable of executing a valid testamentary instrument, rendering the alleged writing *void*.

7. The Petitioner has elaborated on the deteriorating medical condition of the deceased to support her assertion that he lacked testamentary capacity. It is stated that the deceased was suffering from multiple serious ailments including chronic kidney disease, acute kidney injury, severe ocular conditions causing near blindness, hypothyroidism, hypertension and diabetes. His eyesight had deteriorated to the extent that he had no perception of light in one eye and extremely limited vision in the other, meeting the threshold of legal blindness. It is the case of the Petitioner that she had to announce herself while meeting him because he could not recognize people due to his impaired vision.

8. According to the Petitioner, the health of the deceased had been deteriorating progressively since around 2019, with the onset of serious neurological and psychiatric conditions including Parkinson's disease, epilepsy, dementia, schizophrenia, anxiety disorder, nerve damage and other neurological impairments. These illnesses allegedly caused significant cognitive impairment affecting his ability to think clearly, exercise judgment and comprehend his surroundings. According to the Petitioner, the deceased's mobility and communication were restricted. Further, he was deprived of access to a mobile phone from early 2022 onwards on the pretext of eyesight issues, and his interactions with friends and acquaintances were limited. It is stated that cameras were allegedly installed



in the bedroom and other areas of the deceased, and his conversations were monitored. The Petitioner asserts that this environment created a situation in which the deceased became dependent on the Respondent No.1 for physical and emotional support, thereby enabling undue influence to be exerted upon him.

9. It is stated that the medical records of the deceased reveal that due to the deteriorating health of the deceased, he had to be airlifted to Mumbai for medical treatment in January 2022, where he was hospitalized and treated again in April 2022. Material on record further indicates that the deceased suffered from visual disturbances, confusion and disorientation with respect to time, place and persons. It is stated that the deceased was under the delusion that the walls in his room were moving and that construction work was being carried out while he was sleeping. It is stated that even though the deceased could not walk, he would say that he was walking around the Palace and would concoct various imaginary incidents. It is stated that the monologues and utterances by the deceased were vague and meaningless and this unusual behaviour of the deceased was a matter of concern to the family. It is stated that the deceased was also under psychiatric care and was prescribed anti-psychotic and anti-depressant medications. It is stated that the attending psychiatrist, Dr. Ashit Sheth, issued a letter dated 14.05.2022 noting that the deceased was experiencing hallucinations and progressive neurobehavioral changes and was unable to take appropriate decisions regarding financial or legal matters. The Petitioner further states that due to the declining health and eyesight of the deceased, a GPA dated 28.07.2023 was executed in favour of the Respondent No.1, primarily to enable him to handle litigation and administrative matters on behalf of the deceased. The



GPA dated 28.07.2023 records the deceased's deteriorating health condition and states that the deceased was suffering from chronic clonidine toxicity, acute kidney injury apart from chronic kidney disease, bilateral eye exposure keratitis and left eye glaucomatous disc, extensive central retinal artery occlusion (CRA), vision fallen in the right eye with no perception of light and the left eye vision down to 3/60 which is the threshold for legal blindness, hypothyroidism, hypertension and diabetes mellitus type II.

10. It is further stated that the purported testamentary writing dated 07.02.2025 is suspicious because it disinherits the daughters and the ailing widow of the deceased and leaves the estate exclusively to the son of the deceased, i.e. Respondent No.1. According to the Petitioner, such a disposition is inconsistent with the nature and temperament of the deceased, who had maintained a close relationship with his daughters and wife. It is therefore alleged that if any such document was executed, it has been done as a result of coercion, undue influence, or manipulation by the Respondent No.1.

11. In addition to the disputed document dated 07.02.2025, the Petitioner also states that she became aware in August 2025 of another purported testamentary writing dated 21.04.2015. However, no original of this document has been produced and no person has sought probate of the same. The Petitioner therefore reserves her right to challenge the validity of such a document, if it is ever propounded.

12. It is, therefore, the case of the Petitioner that the Petitioner's father has died intestate. In these circumstances, the Petitioner approached the High Court of Judicature at Bombay, seeking the grant of Letters of Administration under Section 278 of the Indian Succession Act to



administer the estate of the deceased on behalf of all the Class I heirs, namely the widow, the two daughters, and the son of the deceased. In the said Petition it was also prayed that the grant of Letters of Administration should have effect throughout India, since the assets of the deceased are located not only in Maharashtra but also in Rajasthan and other parts of the country.

13. The said Petition was filed on 30.09.2025. Notice in the said Petition was issued on 13.11.2025 and the Respondent No.1 herein was directed to file Affidavit-in-Reply before the next date of hearing, i.e. 28.11.2025. It is stated that on the next date of hearing, the Respondent No.1 herein sought some time to file Affidavit-in-Reply to the Petition as well as to the Application for appointment of interim administrator *pendente lite* and the matter was adjourned to 12.12.2025. It is stated that Affidavit-in-Reply was filed by Respondent No.1 on 08.12.2025.

14. At this juncture, it is pertinent to mention that on 06.12.2025, the brother of the Petitioner, i.e. the Respondent No.1 herein, also filed a Testamentary Petition before the High Court of Rajasthan at Jodhpur, under Section 276 of the Indian Succession Act seeking issuance of Letters of Administration with the Will annexed in respect of the Will dated 07.02.2025 claiming that as the universal legatee under the Will he is entitled to administer the estate and manage the assets of the deceased in accordance with the testamentary writing dated 07.02.2025. The Petition was numbered as Testamentary Petition No.1 of 2025 in the High Court of Rajasthan at Jodhpur (Testamentary and Intestate Jurisdiction). In the said Petition, Respondent No.1 herein has stated that the deceased passed away on 16.03.2025 at City Palace, Udaipur. It is stated that at the time of his



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death, the deceased was survived by four Class-I legal heirs: Vijayraj Kumari Mewar (wife of the deceased, i.e. Respondent No.3 herein), Lakshyaraj Singh Mewar (son of the deceased, i.e. Respondent No.1 herein), Bhargavi Kumari Mewar (elder daughter of the deceased, i.e. Respondent No.2 herein), and Padmaja Kumari Parmar (younger daughter of the deceased, i.e. the Petitioner herein). It is stated that the wife and son of the deceased are residents of City Palace, Udaipur, while the elder daughter resides at The Bagh, Nadra Nai, Udaipur and the Petitioner herein, who is the younger daughter of the deceased, resides partly in the United States of America and also maintains an address at City Palace, Udaipur.

15. In the Petition filed by the brother of the Petitioner, i.e. the Respondent No.1 herein, it is stated that during his lifetime, the deceased was engaged in managing various family properties and charitable institutions associated with the Mewar Royal Estate. It is further stated that apart from movable and immovable properties owned by him, the deceased also held positions in several trusts connected with the family legacy and charitable activities. According to the Respondent No.1, the deceased executed his last Will and Testament on 07.02.2025, which was written on a stamp paper and duly registered before the Sub-Registrar-I, Udaipur under serial number 202501102002870. The said Will is stated to have been executed in the presence of two attesting witnesses, namely Mr. Anwarul Ghani and Mr. Laxman Singh Karnot. The Respondent No.1 further asserts that through this Will, the deceased bequeathed all his self-acquired movable and immovable properties exclusively in his favour, thereby making him the universal legatee and successor of the estate.

16. Respondent No.1 further states that the Will was drafted after



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discussions held with the deceased in July 2024 at Udaipur and was prepared by Advocate Puneet Jain, now a Senior Advocate, after which it was finalised and read over to the deceased before its execution. It is stated that the Will was thereafter registered on 07.02.2025, and the deceased executed it after understanding its contents and in the presence of witnesses and the Sub-Registrar. It is also claimed that prior to the execution of the Will, the deceased was examined by his family doctor Dr. Shailendra Singh, who certified that the deceased was of sound mind and capable of understanding the nature and consequences of executing a Will.

17. According to the Respondent No.1, the deceased had reposed complete trust and confidence in him and had already entrusted him with the management of family properties and trust activities during his lifetime by executing a registered GPA dated 28.07.2023 in his favour, thereby authorising him to manage properties and affairs on his behalf. In the said Petition, the Respondent No.1 herein claims that he discharged the responsibilities to the satisfaction of the deceased and he was also nominated in several bank accounts and DeMAT accounts by the deceased. According to the Respondent No.1, the deceased was satisfied with his services and even issued a Letter of Appreciation dated 22.07.2024 acknowledging the manner in which he was managing the estate. Respondent No.1 further contends that during the lifetime of the deceased, certain shares of companies had been transferred to the daughters and they had also been appointed as directors in some companies. However, with a view to avoid future disputes regarding the estate, the deceased requested both daughters to transfer the shares back to him and resign from the directorships. It is stated that both daughters complied with the request and executed gift deeds



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dated 28.08.2024, 29.08.2024 and 21.12.2024, returning the shares to the deceased and resigning from their positions as Directors through letters dated 20.12.2024 and 04.01.2025.

18. It is further stated by the Respondent No.1 that after the execution of the Will, the deceased passed away approximately five weeks later on 16.03.2025. Respondent No.1 claims to have continued managing the properties as the universal legatee and successor under the Will after the death of the deceased. According to him, certain bank accounts including one at Bank of Baroda, Excelsior Branch, Mumbai, and another at HSBC, Mumbai, have already been transferred in his favour on the basis of the Will dated 07.02.2025.

19. In the said Petition, the Respondent No.1 herein has disclosed about the Petition filed by his sister, i.e. the Petitioner herein, before the High Court of Judicature at Bombay seeking the grant of Letters of Administration to administer the estate of the deceased. It is stated that her sister, i.e. the Petitioner herein, has filed the Petition without making him or any other member of the family a party to the said proceedings.

20. Respondent No.1 herein filed Transfer Petition No(s). 3626/2025 before the Apex Court, seeking transfer of his Petition under Section 276 of the Indian Succession Act from High Court of Rajasthan at Jodhpur to the High Court of Judicature at Bombay. The Petitioner herein also filed Transfer Petition No(s). 3625/2025 before the Apex Court, seeking transfer of her Testamentary Petition from the High Court of Judicature at Bombay to High Court of Rajasthan at Jodhpur. The Apex Court, *vide* Order dated 18.12.2025, transferred both the Petitions to this Court by passing the following Order:



“4. During the course of the hearing and upon a suggestion being made by this Court, learned Senior Counsel for the parties fairly agreed that all the proceedings pending between the parties be transferred to the High Court of Delhi. In view of such a fair stand having been taken by the parties, we dispose of both the Transfer Petitions in the following terms:

(i) Testamentary Petition No.5773/2025, pending before the High Court of Bombay, is ordered to be transferred to the High Court of Delhi;

(ii) Testamentary Case No.1/2025, pending before the High Court of Rajasthan (Jodhpur Bench) is also ordered to be transferred to the High Court of Delhi;

(iii) Both the above-stated petitions shall be tagged and heard together; and

(iv) If there is any other litigation pending between the parties, liberty is granted to them to seek transfer thereof also to the High Court of Delhi.”

21. The matters came up for hearing before this Court on 12.01.2026. The Petition filed by the Petitioner in Bombay, on transfer to this Court was numbered as TEST.CAS. 2/2026 and the Petition filed by the Respondent No.1 herein, on transfer to this Court was numbered as TEST.CAS. 4/2026. On 12.01.2026 learned Senior Counsel for the Petitioner in TEST.CAS. 4/2026 sought some time to file the Memo of Parties and for other compliances in accordance with the Delhi High Court (Original Side) Rules, 2018. Memo of Parties in both the cases were filed. On the next date of hearing, i.e. on 20.01.2026, learned Senior Counsel appearing for the Respondent No.1 in the present case raised a preliminary objection that the



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present Petition i.e. TEST.CAS. 2/2026, which has been filed by the Petitioner under Section 278 of the Indian Succession Act for grant of Letters of Administration without the Will but disclosing the presence of Will dated 07.02.2025, is not maintainable in law. Arguments on the maintainability of the present Petition were advanced by both the sides and the matter was reserved on 17.02.2026 to consider the maintainability of the present Petition.

22. The said Order was taken up before the Apex Court by filing SLP (C) No.10536/2026. The Apex Court vide Order dated 23.02.2026 dismissed the said SLP by passing the following order:-

“We have heard learned senior counsel for the petitioner(s) at a considerable length. We do not find any adverse order(s) passed by the High Court in relation to prayer for appointment of an Administrator/Oath Commissioner for the purpose of making inventories. It seems that an application to this effect is still pending consideration before the High Court.

3. That being so, we dispose of these Special Leave Petitions with liberty to the petitioner (s) to plead the cause of urgency before the High Court and seek an appropriate interim protection with reference to the pending prayers.

4. It is clarified that the observations made hereinabove and/or the order that may be passed by the High Court shall be without prejudice to the outcome of the issue re: maintainability of the suit.”

23. Within three days of the said Order, the Petitioner herein filed an Application being I.A. No. 5379/2026 in the present case, seeking the



following reliefs:

“a) list the present proceedings alongwith pending applications as expeditiously as this Hon'ble Court deems appropriate;

b) pass such further order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

24. The said Application was numbered and came up for hearing on 26.02.2026, wherein this Court had adjourned the hearing on the said Application till 18.03.2026, so that the judgment could be pronounced on the aspect whether the present Petition is maintainable or not.

25. On a pointed query by this Court as to whether the present petition seeking grant of Letters of Administration on intestacy, despite disclosure of the Will dated 07.02.2025, is maintainable in its present form, or whether the Petitioner ought to seek a declaration regarding the invalidity of the said Will, learned Senior Counsel for the Petitioner submits that such a prayer for declaration is not mandatory. He places reliance on the Judgment passed by the Division Bench of this Court in Lalitkumar vs. Sunita & Ors., **2025 SCC OnLine Del 4904**, judgment passed by the Bombay High Court in Sambhaji Vishnu Kharat vs. Sarjerao Kharat, **2020 SCC OnLine Bom 427**, and the judgment passed by the Apex Court in Venigalla Koteswaramma vs. Malam Pati Suryamba & Ors., **(2021) 4 SCC 246**, to contend that the burden of proving the Will lies upon the propounder and not upon the person disputing it. He states that the onus to disprove the Will cannot be placed on the Petitioner herein on the first instance and the Petitioner does not have to seek a decree of declaration for declaring the Will as *void*. He states that



once the Petitioner has disputed the Will in her pleadings, it is for the Respondent No.1 to either obtain Probate of the same or to prove the same in the Suit if the Respondent No.1 intended to rely on the Will and the Petition as framed claiming that the Testator has died in the state of intestacy, is maintainable under Section 278 of the Indian Succession Act.

26. Learned Senior Counsel for the Petitioner further contends that mere execution of the Will is not sufficient and the Will must be an operative Will. He places reliance on Section 3(g) of the Hindu Succession Act which defines intestacy to state that if the Will is void or incapable of taking effect, it should be deemed that the Testator has died intestate. Learned Senior Counsel for the Petitioner places reliance on the Judgment of the Apex Court in Angurbala Mullick vs. Debabrata Mullick, 1951 SCC 420 & Parmanand Ahuja vs. Satyadev Ahuja, 1972 ILR Delhi 682, to contend that before a Court of law can determine whether a male Hindu has died intestate or not, it will have to determine whether or not he has, as a matter of law, left a valid Will which can be acted upon, and in accordance with which the properties can devolve upon the successors of the deceased. He, therefore, states that the present Petition, as framed, is maintainable. He submits that Respondent No. 1 is at liberty to propound the alleged Will and establish its validity in the present proceedings, which were instituted at an earlier point of time. It is contended that the pendency of any rival testamentary claim does not preclude this Court from continuing with the present Petition. Accordingly, he prays that this Court may proceed with the adjudication of the present Petition and, in the interim, appoint an administrator *pendente lite* of the estate pending final determination of the testamentary issues.

27. *Per contra*, learned Senior Counsel appearing for the Respondent



No.1 contends that the present Petition is not maintainable in law. He places reliance on Sections 218, 232, 276 and 278 of the Indian Succession Act to contend that once the existence of a Will is discovered, any grant of Letters of Administration on the footing of intestacy under Section 278 would necessarily stand liable for revocation under Section 263 of the Indian Succession Act. It is submitted that in such circumstances, a petition seeking Letters of Administration without the Will annexed cannot be permitted to continue, particularly when a separate proceeding has already been instituted seeking Letters of Administration with the Will annexed under Section 276 of the Indian Succession Act in relation to the same estate. Learned Senior Counsel further contends that a Petition under Sections 218 and 278 founded on intestacy, while simultaneously acknowledging the existence of a testamentary document, is contrary to the scheme of the Indian Succession Act and is therefore liable to be rejected at the very threshold. It is urged that once a Will has surfaced, the estate cannot be treated as intestate until the validity of the Will is adjudicated in accordance with the provisions of the Indian Succession Act. It is further submitted that questions relating to the due execution, genuineness or validity of the Will fall exclusively within the jurisdiction of a testamentary court in proceedings for grant of probate or for Letters of Administration with the Will annexed, and cannot be adjudicated in proceedings instituted on the basis of intestacy. Learned Senior Counsel emphasises that proceedings for probate or for grant of Letters of Administration with the Will annexed operate in *rem*, and the final determination therein conclusively establishes the validity or otherwise of the Will as against the world at large. Accordingly, it is contended that such issues cannot be incidentally examined in a Petition seeking Letters of



Administration without the Will annexed, where the very foundation of the proceeding is the assertion of intestacy, despite the acknowledged existence of a testamentary instrument.

28. Learned Senior Counsel appearing for the Respondent No.1 also states that the Petition as filed by the Petitioner herein before the High Court of Judicature at Bombay, is completely contrary to the Bombay High Court (Original Side) Rules, 1980. He has drawn the attention of this Court to Rule 376 contained in Chapter XXVI of the Bombay High Court (Original Side) Rules, 1980 which deals with Testamentary and intestate Jurisdiction to state that an application for letters of administration in cases where the deceased has died intestate shall be made by a Petition and that the Petition shall be in Form No. 103 with such variations as the circumstances of each case may require and shall be accompanied by the administrator's oath which is in Form No. 104. He states that Form No.103, which gives the Proforma of a petition for Letters of Administration, states that the Petition requires a specific averment that the deceased died intestate and that due and diligent search has been made for a Will but none has been found and Form No.104, which is the format for administrator's oath, states that it has to be solemnly affirmed that the deceased died without leaving a Will. He, therefore, states that the Petition, as filed by the Petitioner before the High Court of Judicature at Bombay, is not in accordance with the Form as mentioned in the Bombay High Court (Original Side) Rules, 1980 and, therefore, the Petition must be returned back.

29. Challenging the averments made by the learned Senior Counsel for the Respondent No.1, learned Senior Counsel appearing for the Petitioner states that reliance placed by the learned Senior Counsel on Section 232 of



the Indian Succession Act is misplaced and erroneous, as Section 232 of the Indian Succession Act only enables a universal or residuary legatee to file for Letters of Administration with the Will annexed, where the Will has to be proved. He states that in the present case, it is the case of the Petitioner that the deceased has died intestate and the so-called Will is not a valid Will in accordance with law and, therefore, this argument cannot affect the maintainability of the present Petition and that the present Petition would have to be considered as framed and it is for the Respondent No.1 to prove the correctness or otherwise of the Will in the present Petition, which has been filed in prior point of time. He further submits that Section 240 of the Indian Succession Act expressly enables the Court to grant Letters of Administration even in circumstances where it is asserted that a Will had been executed by the testator, but the same is not presently forthcoming or traceable. It is contended that, until such time as the alleged Will surfaces and is duly proved in accordance with law, the estate cannot remain un-administered, and therefore, the Court is empowered to grant Letters of Administration for the preservation and management of the estate pending proof or production of the testamentary instrument. Learned Senior Counsel appearing for the Petitioner states that the Testamentary Petition filed by Respondent No.1 before the High Court of Rajasthan at Jodhpur, under Section 276 of the Indian Succession Act, seeking issuance of Letters of Administration with the Will annexed, was filed at a later point of time and the correctness or otherwise of the Testamentary instrument, i.e. the Will, will be decided in the present Petition, which was filed prior to the filing of the Testamentary Petition before the High Court of Judicature for Rajasthan at Jodhpur.



30. Learned Senior Counsel appearing for the Petitioner also contends that the argument of the learned Senior Counsel for the Respondent No.1 that the Petition, as filed before the High Court of Judicature at Bombay, is not in the prescribed format, is without any basis. He submits that in paragraph 11 of the present Petition, the Petitioner has expressly stated that she has knowledge of two alleged testamentary writings, though she disputes their validity and contends that no valid Will exists in law. He further submits that Rule 376 of the Bombay High Court (Original Side) Rules, 1980 provides that a Testamentary Petition may be filed in Form No. 103 with such variations as the circumstances of each case may require. According to him, the scope of such permissible variation is wide enough to encompass situations like the present, where the Petitioner does not accept the existence or validity of the alleged Will. It is therefore contended that, even in a case where a testamentary instrument is alleged but is disputed or treated as *non-est* in the eyes of law, the Petitioner is entitled to institute the present Petition by asserting intestacy, leaving it open to the propounder of the alleged Will to establish its validity in appropriate proceedings. He also states that Forms cannot over-ride the provisions of the statute. He submits that the Petitioner has approached the Court with clean hands, having candidly disclosed her knowledge of a purported Will dated 07.02.2025, and having also placed on record a copy of the said document, which was received from Respondent No. 1 through WhatsApp. It is the specific case of the Petitioner that no valid testamentary disposition exists in law, and that the alleged Will is surrounded by suspicious circumstances and is therefore invalid and unenforceable. On this basis, it is contended that the present Petition, as framed on the footing of intestacy, is maintainable in law



notwithstanding the existence of the disputed testamentary document. He further submits that, in any event, the Petition was duly scrutinised, numbered and notice was issued by the High Court of Judicature at Bombay, and therefore, the contention advanced by learned Senior Counsel for Respondent No. 1 that the Petition was not in conformity with the Bombay High Court (Original Side) Rules, 1980, is untenable and liable to be rejected.

31. Learned Senior Counsel for the Petitioner places reliance on Section 3(g) of the Hindu Succession Act which defines intestacy and state that a person is deemed to die intestate in respect of property of which he or she has not made a testamentary disposition capable of taking effect. He states that the allegations in the Petition are of such nature which conclusively points out that the Testator had died intestate as he was not capable of executing a valid Will. He further submits that upon Transfer Petitions being preferred, the Apex Court was pleased to transfer both testamentary proceedings to this Court and directed that they be heard and decided together. It is contended that such direction was issued in view of the fact that both parties are seeking grant of Letters of Administration in respect of the same estate, *albeit* on different foundations - one with the Will annexed and the other on the footing of intestacy. Accordingly, it is submitted that since the question of the validity and due execution of the alleged Will is a common and central issue arising in both Petitions, and the subject-matter of administration pertains to the same estate of the deceased, the proceedings are liable to be heard and tried conjointly to avoid conflicting findings and multiplicity of litigation.

32. Heard the learned Senior Counsels for the parties and perused the



material on record.

33. It is well settled that proceedings for grant of probate or Letters of Administration under the Indian Succession Act are proceedings in *rem* and fall within the exclusive jurisdiction of the testamentary court. However, this does not imply a total exclusion of the jurisdiction of civil courts under Section 9 of the Code of Civil Procedure, 1908. Civil courts continue to retain jurisdiction in matters relating to declaration of title, construction of Wills, and other proprietary disputes arising out of succession. The bar operates only to the limited extent that the validity and due execution of a Will, for the purpose of grant or refusal of Probate or Letters of Administration, must be adjudicated in accordance with the scheme of the Indian Succession Act.

34. Before this Court proceeds to analyse the rival contentions, it is necessary to reproduce the following provisions of the Indian Succession Act :

“2. Definitions.

In this Act, unless there is anything repugnant in the subject or context,--

(a) administrator means a person appointed by competent authority to administer the estate of a deceased person when there is no executor;

(f) probate means the copy of a will certified under the seal of a court of competent jurisdiction with a grant of administration to the estate of the testator;

(h) will means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death.



Section 218. *To whom administration may be granted, where deceased is a Hindu, Muhammadan, Buddhist, Sikh, Jaina or exempted person.—(1) If the deceased has died intestate and was a Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.*

(2) When several such persons apply for such administration, it shall be in the discretion of the Court to grant it to any one or more of them.

(3) When no such person applies, it may be granted to a creditor of the deceased.

Section 227. *Effect of probate.—Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.*

Section 232. *Grant of administration to universal or residuary legatees.—When—*

(a) the deceased has made a will, but has not appointed an executor, or

(b) the deceased has appointed an executor who is legally incapable or refuses to act, or who has died before the testator or before he has proved the will, or



(c) the executor dies after having proved the will, but before he has administered all the estate of the deceased,

an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

Section 240. *Administration until will produced.—Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it is produced.*

Section 263. *Revocation or annulment for just cause.—The grant of probate or letters of administration may be revoked or annulled for just cause.*

Explanation.—Just cause shall be deemed to exist where—

(a) the proceedings to obtain the grant were defective in substance; or

(b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or

(c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in



ignorance or inadvertently; or

(d) the grant has become useless and inoperative through circumstances; or

(e) the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.

Illustrations

(i) The Court by which the grant was made had no jurisdiction.

(ii) The grant was made without citing parties who ought to have been cited.

(iii) The will of which probate was obtained was forged or revoked.

(iv) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(v) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(vi) Since probate was granted, a later will has been discovered.

(vii) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the will.



(viii) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.

Section 273. *Conclusiveness of probate or letters of administration.—Probate or letters of administration shall have effect over all the property and estate, movable or immovable, of the deceased, throughout the State in which the same is or are granted; and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors, paying their debts and all persons delivering up such property to the person to whom such probate or letters of administration have been granted:*

Provided that probates and letters of administration granted—

(a) by a High Court, or

(b) by a District Judge, where the deceased at the time of his death had a fixed place of abode situate within the jurisdiction of such Judge, and such Judge certifies that the value of the property and estate affected beyond the limits of the State does not exceed ten thousand rupees,

shall, unless otherwise directed by the grant, have like effect throughout the other States.

The proviso to this section shall apply in India after the separation of Burma and Aden from India to probates and letters of administration granted in Burma and Aden before the date of the separation, or after that



date in proceedings which were pending at that date.

The proviso shall also apply in India after the separation of Pakistan from India to probates and letters of administration granted before the date of the separation, or after that date in proceedings pending at that date, in any of the territories which on that date constituted Pakistan.

Section 276. *Petition for probate.—(1) Application for probate or for letters of administration, with the will annexed, shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will or, in the cases mentioned in Sections 237, 238 and 239, a copy, draft, or statement of the contents thereof, annexed, and stating—*

- (a) the time of the testator's death,*
 - (b) that the writing annexed is his last will and testament,*
 - (c) that it was duly executed,*
 - (d) the amount of assets which are likely to come to the petitioner's hand, and*
 - (e) when the application is for probate, that the petitioner is the executor named in the will.*
- (2) In addition to these particulars, the petition shall further state,—*

- (a) when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode, or had some property, situate within the*



jurisdiction of the Judge; and

(b) when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

(3) Where the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another State, the petition shall further state the amount of such assets in each State and the District Judges within whose jurisdiction such assets are situate.

Section 278. *Petition for letters of administration.—(1) Application for letters of administration shall be made by petition distinctly written as aforesaid and stating—*

(a) the time and place of the deceased's death;

(b) the family or other relatives of the deceased and their respective residences;

(c) the right in which the petitioner claims;

(d) the amount of assets which are likely to come to the petitioner's hands;

(e) when the application is to the District Judge, and that deceased at the time of his death had fixed a place of abode, or had some property, situate within the jurisdiction of the Judge; and

(f) when the application is to the District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.



(2) Where the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another State the petition shall further state the amount of such assets in each State and the District Judges within whose jurisdiction such assets are situate.

Section 295. *Procedure in contentious cases.—In any case before the District Judge in which there is contention, the proceeding shall take, as nearly as may be, the form of a regular suit, according to the provisions of the Code of Civil Procedure, 1908, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who has appeared to oppose the grant shall be the defendant.”*

35. Section 218 of the Indian Succession Act provides that if the deceased has died intestate, then administration of his estate may be granted to any person who, according to the rules for the distribution of the estate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate and if there are more than one person who apply for such administration, then it shall be in the discretion of the Court to grant the Letters of Administration to any one or more of them.

36. Section 232 of the Indian Succession Act provides when the deceased has made a Will, but has not appointed an executor, or the deceased has appointed an executor who is legally incapable or refuses to act, or who has died before the testator or before he has proved the Will, or the executor dies after having proved the Will, but before he has administered all the estate of the deceased, then an universal or a residuary legatee may be admitted to



prove the Will, and letters of administration with the Will annexed may be granted to such a person/persons of the whole estate, or of so much thereof as may be un-administered.

37. Section 247 of the Indian Succession Act, which deals with administration of the estate pending litigation, provides that pending any Suit touching the validity of the Will of a deceased person or for obtaining or revoking any Probate or any grant of Letters of Administration, the Court may appoint an administrator and such a person shall take control of the estate subject to the directions of the Court.

38. Section 263 of the Indian Succession Act gives the circumstances where the grant of Probate or Letters of Administration may be revoked or annulled. Illustration (v) of Section 263 provides that even if a Letters of Administration is granted to a person as if the deceased has died intestate, but if the Will is later on discovered then such Letters of Administration can be revoked.

39. Section 273 of the Indian Succession Act provides that the Probate or Letters of Administration shall have effect over all the property and estate throughout the State in which the same is or are granted and is conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him and, therefore, the grant of probate or Letters of Administration is in *rem*.

40. Section 276 of the Indian Succession Act deals with the Petition for probate or for Letters of Administration, with the Will annexed. Section 276 gives the particulars which have to be given along with the Petition and the documents which have to be produced.

41. Section 278 of the Indian Succession Act deals with grant of Letters



of Administration where there is no Will attached.

42. It is now trite law that the questions regarding grant of Probate of a will or grant of Letters of Administration with or without a will are determined exclusively by a Testamentary Court in a proceeding for grant of Probate or Letters of Administration with the Will annexed and in accordance with the provisions of the Indian Succession Act. The Apex Court in Chiranjilal Shrilal Goenka v. Jasjit Singh, (1993) 2 SCC 507, while holding that probate proceedings shall be conducted by a probate court in a manner prescribed in the Indian Succession Act, has observed as under:

“15. In Ishwardeo Narain Singh v. Smt Kamta Devi [(1953) 1 SCC 295 : AIR 1954 SC 280] this Court held that the court of probate is only concerned with the question as to whether the document put forward as the last will and testament of a deceased person was duly executed and attested in accordance with law and whether at the time of such execution the testator had sound disposing mind. The question whether a particular bequest is good or bad is not within the purview of the probate court. Therefore the only issue in a probate proceedings relates to the genuineness and due execution of the will and the court itself is under duty to determine it and preserve the original will in its custody. The Succession Act is a self-contained code insofar as the question of making an application for probate, grant or refusal of probate or an appeal carried against the decision of the probate court. This is clearly manifested in the fascicule of the provisions of the Act. The probate proceedings shall be conducted by the probate court in the manner prescribed in the Act and in no other ways. The grant of probate with a copy of the will annexed establishes conclusively as to the appointment of the executor and the valid execution of the will. Thus it does no more than establish the



factum of the will and the legal character of the executor. Probate court does not decide any question of title or of the existence of the property itself.

16. The grant of a probate by court of competent jurisdiction is in the nature of a proceeding in rem. So long as the order remains in force it is conclusive as to the due execution and validity of the will unless it is duly revoked as per law. It binds not only upon all the parties made before the court but also upon all other persons in all proceedings arising out of the will or claims under or connected therewith. The decision of the probate court, therefore, is the judgment in rem. The probate granted by the competent court is conclusive of the validity of the will until it is revoked and no evidence can be admitted to impeach it except in a proceeding taken for revoking the probate. In Sheoparsan Singh v. Ramnandan Prasad Narayan Singh [ILR (1916) 43 Cal 694 : AIR 1916 PC 78 : 43 IA 91] the Judicial Committee was to consider whether the will which had been affirmed by a court of competent jurisdiction, would not be impugned in a court exercising original jurisdiction (civil court) in suit to declare the grant of probate illegal etc. The Privy Council held that the civil court has no jurisdiction to impugn the grant of probate by the court of competent jurisdiction. In that case the subordinate court of Muzafarbad was held to have had no jurisdiction to question the validity of the probate granted by the Calcutta High Court. In Narbheram Jivram Purohit v. Jevallabh Harjivan [AIR 1933 Bom 469 : 35 BLR 998 : 147 IC 362] probate was granted by the High Court exercising probate jurisdiction. A civil suit on the original side was filed seeking apart from questioning the probate, also other reliefs. The High Court held that when a probate was granted, it operates upon the whole estate and establishes the will from the death of the testator. Probate is conclusive



evidence not only of the factum, but also of the validity of the will and after the probate has been granted, it is incumbent of a person who wants to have the will declared null and void, to have the probate revoked before proceeding further. That could be done only before the probate court and not on the original side of the High Court. When a request was made to transfer the suit to the probate court, the learned Judge declined to grant the relief and stayed the proceeding on the original side. Thus it is conclusive that the court of probate alone had jurisdiction and is competent to grant probate to the will annexed to the petition in the manner prescribed under the Succession Act. That court alone is competent to deal with the probate proceedings and to grant or refuse probate of the annexed will. It should keep the original will in its custody. The probate thus granted is conclusive unless it is revoked. It is a judgment in rem.

17. We agree with Mr Chidambaram that the applicant had consented to refer the dispute for arbitration of dispute in the pending probate proceedings, but consent cannot confer jurisdiction nor an estoppel against statute. The other legatees in the will were not parties to it. In *A.R. Antulay v. R.S. Nayak* [(1988) 2 SCC 602 : 1988 SCC (Cri) 372] when a Constitution Bench directed the High Court Judge to try the offences under the Prevention of Corruption Act with which the petitioner therein was charged and the trial was being proceeded with, he questioned by way of writ petition the jurisdiction of this Court to give such a direction. A Bench of seven judges per majority construed the meaning of the word 'jurisdiction'. Mukharji, J. as he then was, speaking per himself, Oza and Natarajan, JJ. held that the power to create or enlarge jurisdiction is legislative in character. So also the power to confer a right of appeal or to take away a right of appeal. The Parliament alone can do it by law



and no court, whether superior or inferior or both combined, can enlarge the jurisdiction of a court and divest a person of his rights of appeal or revision. Ranganath Mishra, J. as he then was, held that jurisdiction comes solely from the law of the land and cannot be exercised otherwise. In this country, jurisdiction can be exercised only when provided for either in the Constitution or in the laws made by the legislature. Jurisdiction is thus the authority or power of the court to deal with a matter and make an order carrying binding force in the facts. Oza, J. supplementing the question held that the jurisdiction to try a case could only be conferred by law enacted by the legislature. The Supreme Court could not confer jurisdiction if it does not exist in law. Ray, J. held that the Court cannot confer a jurisdiction on itself which is not provided in the law. In the dissenting opinion Venkatachaliah, J., as he then was, lay down that the expression jurisdiction or prior determination is a “verbal coat of many colours”. In the case of a tribunal, an error of law might become not merely an error in jurisdiction but might partake of the character of an error of jurisdiction. But, otherwise, jurisdiction is a ‘legal shelter’ and a power to bind despite a possible error in the decision. The existence of jurisdiction does not depend on the correctness of its exercise. The authority to decide embodies a privilege to bind despite error, a privilege which is inherent in and indispensable to every judicial function. The characteristic attribute of a judicial act is that it binds whether it be right or it be wrong. Thus this Court laid down as an authoritative proposition of law that the jurisdiction could be conferred by statute and this Court cannot confer jurisdiction or an authority on a tribunal. In that case this Court held that Constitution Bench has no power to give direction contrary to Criminal Law Amendment Act, 1952. The direction per majority was held to be void.



18. *It is settled law that a decree passed by a court without jurisdiction on the subject-matter or on the grounds on which the decree made which goes to the root of its jurisdiction or lacks inherent jurisdiction is a coram non judice. A decree passed by such a court is a nullity and is non est. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the very authority of the court to pass decree which cannot be cured by consent or waiver of the party. In Bahadur Singh v. Muni Subrat Dass [(1969) 2 SCR 432] an eviction petition was filed under the Rent Control Act on the ground of nuisance. The dispute was referred to arbitration. An award was made directing the tenant to run the workshop up to a specified time and thereafter to remove the machinery and to deliver vacant possession to the landlord. The award was signed by the arbitrators, the tenant and the landlord. It was filed in the court. A judgment and decree were passed in terms of the award. On expiry of the time and when the tenant did not remove the machinery nor delivered vacant possession, execution was levied under Delhi and Ajmer Rent Control Act. It was held that a decree passed in contravention of Delhi and Ajmer Rent Control Act was void and the landlord could not execute the decree. The same view was reiterated in Kaushalya Devi (Smt) v. K.L. Bansal [(1969) 1 SCC 59 : AIR 1970 SC 838] . In Ferozi Lal Jain v. Man Mal [(1970) 3 SCC 181 : AIR 1970 SC 794] a compromise dehors grounds for eviction was arrived at between the parties under Section 13 of the Delhi and Ajmer Rent Control Act. A decree in terms thereof was passed. The possession was not delivered and execution was laid. It was held that the decree was nullity and, therefore, the tenant could not be evicted. In Sushil Kumar Mehta v. Gobind Ram Bohra (dead)*



through his Lrs. [(1990) 1 SCC 193 : JT 1989 (Suppl) SC 329] the civil court decreed eviction but the building was governed by Haryana Urban (Control of Rent and Eviction) Act (11 of 1973). It was held that the decree was without jurisdiction and its nullity can be raised in execution. In *Union of India v. Ajit Mehta and Associates*, Pune [AIR 1990 Bom 45 : (1989) 3 Bom CR 535] a Division Bench to which Sawant, J. as he then was, a member was to consider whether the validity of the award could be questioned on jurisdictional issue under Section 30 of the Arbitration Act. The Division Bench held that Clause 70 of the contract provided that the Chief Engineer shall appoint an engineer officer to be sole arbitrator and unless both parties agree in writing such a reference shall not take place until after completion of the works or termination or determination of the contract. Pursuant to this contract under Section 8 of the Act, an arbitrator was appointed and award was made. Its validity was questioned under Section 30 thereof. The Division Bench considering the scope of Sections 8 and 20(4) of the Act and on review of the case-law held that Section 8 cannot be invoked for appointment of an arbitrator unilaterally but Section 20(4) of the Act can be availed of in such circumstances. Therefore, the very appointment of the arbitrator without consent of both parties was held void being without jurisdiction. The arbitrator so appointed inherently lacked jurisdiction and hence the award made by such arbitrator is non est. In *Ghellabhai* case [ILR 21 Bom 336] Sir C. Farran, Kt., C.J. of Bombay High Court held that the probate court alone is to determine whether probate of an alleged will shall issue to the executor named in it and that the executor has no power to refer the question of execution of will to arbitration. It was also held that the executor having propounded a will and applied for probate, a caveat was filed denying the execution of the alleged will, and



the matter was duly registered as a suit, the executor and the caveatrix subsequently cannot refer the dispute to arbitration, signing a submission paper, but such an award made pursuant thereto was held to be without jurisdiction.

19. *In Gopi Rai case [AIR 1930 All 840 : 1930 ALJ 1584 : 128 IC 817] Sulaiman, J. as he then was, speaking for the Division Bench held that the civil court has no jurisdiction to allow the dispute relating to the genuineness of a will in a probate proceedings pending before him to be referred to the arbitration of an arbitrator. He has got to be satisfied that the will is a genuine document before the order of granting probate is passed. He cannot delegate those functions to a private individual and decide the point through him. Similar was the view laid in Monmohini Guha case [ILR 31 Cal 357 : 8 CWN 197] , Sarda Kanta Das v. Gobinda Das [6 IC 912 : 12 CLJ 91] and Khela Wati v. Chet Ram Khub Ram [AIR 1952 Punj 67 : 1952 Bh LR Punj 80] . When the plea of estoppel was raised, Sulaiman, J. in Gopi Rai case [AIR 1930 All 840 : 1930 ALJ 1584 : 128 IC 817] held that “We cannot hold that there is any estoppel against Gopi Rai on this question of jurisdiction. That is a matter which we can take into account only when ordering costs”. The decision in Nalla Ramudamma v. Nalla Kasi Naidu [AIR 1945 Mad 269 : (1945) 1 MLJ 396 : ILR (1946) Mad 134] relied on by Shri Chidambaram does not help his clients. Therein the question was the matrimonial dispute. The arbitrator had decided at the request of the parties and a decree was passed. It was held that the dispute would come under Section 21 of the Arbitration Act. The question of jurisdiction was not raised therein. Equally the decision in Mt. Mahasunder Kuer v. Ram Ratan Prasad Sahi [AIR 1916 Pat 382 : 35 IC 416 : 1 PLW 370] is also of little assistance. The question of adoption, it was held,*



cannot be decided in the probate proceedings.

20. On a conspectus of the above legal scenario we conclude that the probate court has been conferred with exclusive jurisdiction to grant probate of the will of the deceased annexed to the petition (suit); on grant or refusal thereof, it has to preserve the original will produced before it. The grant of probate is final subject to appeal, if any, or revocation if made in terms of the provisions of the Succession Act. It is a judgment in rem and conclusive and binds not only the parties but also the entire world. The award deprives the parties of statutory right of appeal provided under Section 299. Thus the necessary conclusion is that the probate court alone has exclusive jurisdiction and the civil court on original side or the arbitrator does not get jurisdiction, even if consented to by the parties, to adjudicate upon the proof or validity of the will propounded by the executrix, the applicant. It is already seen that the executrix was nominated expressly in the will and is a legal representative entitled to represent the estate of the deceased but the heirs cannot get any probate before the probate court. They are entitled only to resist the claim of the executrix of the execution and genuineness of the will. The grant of probate gives the executrix the right to represent the estate of the deceased, the subject-matter in other proceedings. We make it clear that our exposition of law is only for the purpose of finding the jurisdiction of the arbitrator and not an expression of opinion on merits in the probate suit.”

(emphasis supplied)

43. Part IX of the Indian Succession Act deals with Probate, Letters of Administration and administration of assets of deceased. Section 217 of the Indian Succession Act specifically states that all grants of Probate and



Letters of Administration with the Will annexed and the administration of the assets of the deceased in cases of intestate succession shall be carried out in accordance with the provisions of Part IX of the Indian Succession Act.

44. The scheme of the Indian Succession Act distinguishes between cases of intestate succession and testamentary succession. Where a person dies intestate, the grant of Letters of Administration serves the purpose of enabling proper administration and preservation of the estate pending determination of rights of succession. In contrast, where a testamentary instrument is propounded, the court is required to examine the due execution and validity of such instrument in accordance with the statutory procedure.

45. At this juncture, it is pertinent to highlight the difference in language employed in Sections 276 and 278 of the Indian Succession Act. In an Application filed under Section 276 of the Indian Succession Act, which is an Application for grant of probate or Letters of Administration with a Will annexed needs the following averments:

“a) the time of the testator’s death,

b) that the writing annexed is his last Will and testament,

c) that it was duly executed,

d) the amount of assets which are likely to come to the petitioner’s hands, and

e) when the application is for probate, that the petitioner is the executor named in the Will.”

46. On the other hand, an Application under Section 278 of the Indian Succession Act which is for grant of Letters of Administration which applies



in a case of intestacy requires the following averments:

- “a) the time and place of the deceased’s death;*
- b) the family or other relatives of the deceased, and their respective residences;*
- c) the right in which the petitioner claims;*
- d) the amount of assets which are likely to come to the petitioner’s hands;*
- e) when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode, or had some property, situate within the jurisdiction of the Judge; and*
- f) when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.”*

47. Under Section 276 of the Indian Succession Act, the Applicant who is seeking Probate of the Will or an Applicant seeking Letters of Administration on the basis of the Will has to prove it in accordance with the requirements of the Indian Succession Act read with Indian Evidence Act, 1872 or Bharatiya Sakshya Adhiniyam, 2023 (“**BSA**”), as the case may be. Whereas, in an Application under Section 278 of the Indian Succession Act, the Applicant has to show in what capacity he is claiming to administer the estate of the deceased and how that Applicant is the most suitable to administer the assets of the deceased, till the assets are distributed in accordance with the succession law applicable to the parties.

48. It is well settled that in proceedings for grant of Letters of Administration, the Court is primarily concerned with determining whether the applicant is a fit and proper person to be entrusted with the



administration of the estate of the deceased till the estate is distributed to the legatee of the deceased in accordance with the applicable laws. Such proceedings are summary in nature, and therefore intricate or complex questions of title or proprietary rights are not ordinarily amenable to adjudication within the limited scope of such testamentary jurisdiction.

49. Since there is no Will produced in a Petition under Section 278 of the Indian Succession Act, there is no question of proving the Will under the said proceedings. The Will can be proved only in a Petition under Section 276 of the Indian Succession Act and not under Section 278 of the Indian Succession Act as the requirements of the ingredients applicable under Section 276 and 278 of the Indian Succession Act are different.

50. Further, Section 263 of the Indian Succession Act states that even if Letters of Administration is granted under Section 278 of the Indian Succession Act, it can be revoked or annulled for a 'just cause'. The explanation to Section 263 of the Indian Succession Act gives the instances where 'just cause' is deemed to exist. The illustrations under the said Section also give a fair idea as to under what all circumstances, powers under Section 263 of the Indian Succession Act can be invoked. As rightly stated by the learned Counsel for the Respondent No.1 that if a Letters of Administration stands granted under Section 278 of the Indian Succession Act, it can be revoked under Section 263 of the Indian Succession Act, when the Will surfaces. Thus, it can be discerned that if an Application for grant of Letters of Administration has been filed without a Will under Section 278 of the Indian Succession Act and during the pendency of such an Application, if an Application for Letters of Administration has been filed with a copy of the Will annexed thereto, in such case the validity of the Will



is ordinarily adjudicated in proceedings seeking probate or grant of Letters of Administration with the Will annexed.

51. A Co-ordinate Bench of this Court in Administrator General v. State, **2016 SCC OnLine Del 6407**, while dealing with the scope of proceedings under Indian Succession Act, has observed as under:

“58.

(B) Though in these proceedings Issue No. 3 aforesaid was framed but it is the settled position in law that the Court of probate is only concerned with the question, whether the document put forward as the last Will and testimony of the deceased person was duly executed and attested in accordance with law and whether at the time of such execution, the testator had sound disposing mind (see Ishwardeo Narain Singh v. Srimati Kamta Devi AIR 1954 SC 280). The same is the position in a proceeding seeking letters of administration. The Court in such proceedings also is concerned only with, whether the person seeking letters of administration is a fit person to be granted the letters of administration of the estate of the deceased (see Bai Parvatibai v. Rahunath Lakshman AIR 1941 Bom 60, Mahadeo Shankar Shinde v. Maruti Shankar Shinde AIR 2003 Bom 312 and Delhi Development Authority v. Vijaya C. Gurshaney (2003) 7 SCC 301). Neither of the said proceedings is concerned with, what was the estate of the deceased Smt. Dropadi Devi, whether the bequest is bad or not or amongst whom is the estate to be distributed. The Court in such proceedings does not enter into the question of title to the property. Reference in this regard can be made to Leelawati Singh v. State (1998) 75 DLT 694, Anjan Kumar Singhi v. Ranjan Kumar Singhi (2011) 126 DRJ 56 (DB), Ramchandra Ganpatrao Hande alias Handege v. Vithalrao Hande AIR 2011 Bom 136 and Ganesh Mohapatra v.



Udaynath Mohapatra. Such proceedings are summary in nature and complicated questions of title cannot be properly conducted in summary proceedings. The question whether the objectors are related to the deceased Smt. Dropadi Devi as agnate is a complicated question of relationship which could not have been properly adjudicated in these proceedings.”

(emphasis supplied)

52. In the present case, two parallel testamentary proceedings have been instituted in respect of the estate of the deceased. The first has been initiated by the Petitioner before the High Court of Judicature at Bombay, seeking grant of Letters of Administration on the ground of intestacy, i.e., without the Will being annexed. The second proceeding has been instituted by Respondent No. 1 before the High Court of Judicature for Rajasthan at Jodhpur, seeking grant of Letters of Administration with the Will annexed. In the said proceeding, it is asserted that it was the express wish of the testator/deceased that his estate be administered by Respondent No. 1, and the relief sought therein is founded upon the validity and due execution of the purported Will.

53. The short question that arises for consideration is whether the Petition filed by the Petitioner before the High Court of Judicature at Bombay seeking grant of Letters of Administration on the ground of intestacy is maintainable in circumstances where the Petitioner has herself acknowledged the existence of a Will, a copy whereof has been annexed to the Petition, can continue after a Will has surfaced and a Letters of Administration is being sought on the basis of that Will.

54. The Petitioner, while disputing the validity of the said testamentary



instrument, has contended that the testator/deceased lacked the requisite testamentary capacity owing to his alleged mental and physical condition, and that the purported Will is surrounded by suspicious circumstances, including the allegation that the deceased was under the complete control and influence of Respondent No. 1 at the relevant time, an issue which now can be considered in TEST.CAS. 4/2026. In the opinion of this Court, the above question must be answered in the negative.

55. The present petition proceeds on the premise that the alleged Will is invalid. However, the validity of a testamentary instrument is required to be adjudicated within appropriate proceedings in accordance with the statutory framework.

56. When a person dies intestate, Letters of Administration may be granted to a suitable person to administer the estate of the deceased until the property devolves upon the lawful heirs in accordance with law. However, where the deceased has left behind a Will, the testamentary instrument must be proved in the proceedings wherein it is propounded, and not in any collateral or parallel proceedings founded on intestacy.

57. In the opinion of this Court, once a Petition seeking Letters of Administration with the Will annexed has been instituted, the question of the due execution, genuineness and validity of the Will must be adjudicated within those proceedings, wherein the testamentary instrument is propounded. The Will cannot be proved or disproved in proceedings instituted on the basis of intestacy, i.e. in a Petition seeking Letters of Administration without the Will annexed.

58. Although the Will does not name an executor, the Respondent No. 1, being the universal legatee under the alleged Will, is competent in law to



propound and prove the Will. Consequently, the present Petition, as framed i.e. seeking grant of Letters of Administration without seeking any declaratory relief regarding the invalidity of the Will cannot be entertained, particularly when another testamentary proceeding has already been instituted in respect of the same estate with the Will annexed. The mere assertion that a testamentary instrument is invalid does not render the estate intestate, since intestacy arises only upon failure to establish a valid testamentary disposition.

59. As stated earlier, this Court may derive guidance from Section 263 of the Indian Succession Act, which provides that a grant of probate or Letters of Administration may be revoked or annulled for “just cause.” The explanation appended to the said provision enumerates circumstances in which ‘just cause’ shall be deemed to exist. In particular, explanation (d) to the said provision contemplates situations where the grant has become useless and inoperative due to subsequent events, or where it has been obtained fraudulently by false suggestion or by concealment of material facts. Further, Illustration (v) to Section 263 exemplifies a case where Letters of Administration as granted on the footing that the deceased died intestate, but a Will is subsequently discovered. In such circumstances, the earlier grant is liable to be revoked upon due proof of the Will.

60. Applying the said statutory analogy to the present case, it follows that if a grant of Letters of Administration made on the premise of intestacy is liable to be revoked upon the subsequent proof of a Will, no useful purpose would be served in permitting parallel continuation of proceedings founded on intestacy, particularly when another testamentary proceeding has already been instituted for the same estate on the basis of the alleged Will. The



legislative scheme thus militates against the continuation of proceedings premised on intestacy where the existence and validity of a Will is the subject matter of adjudication in contemporaneous testamentary proceedings. The illustration relating to discovery of a Will after grant on intestacy underscores the legislative intent to avoid multiplicity of inconsistent grants. This statutory principle reinforces the need for careful judicial scrutiny where competing testamentary claims are pending, so as to ensure that administration of the estate proceeds in a coherent and legally sustainable manner.

61. Further, the judgments relied upon by learned Senior Counsel for the Petitioner, in support of the contention that a specific prayer for declaration is not mandatory, are distinguishable on facts. In Lalitkumar (*supra*), the proceedings arose out of a suit for partition, wherein the defendants sought to rely upon a Will to defeat the claim of the Plaintiff. Although the Plaintiff therein asserted that the Will was *void ab initio*, no formal relief seeking a declaration to that effect had been prayed. In that context, the Division Bench held that the onus of proving the Will rested upon the party propounding it, namely the Defendant. In such circumstances, the burden of proving the Will rested upon the party propounding it. Testamentary proceedings under the Indian Succession Act stand on a different footing, as they are specifically designed for adjudication of the validity of testamentary instruments. Consequently, while the principle relating to burden of proof remains relevant, the procedural context in which such burden is to be discharged differs materially.

62. Similarly, the Judgment in Sambhaji Vishnu Kharat (*supra*) & Venigalla Koteswaramma (*supra*) arose in the context of suits for partition



wherein a Will surfaced during the course of proceedings, and were not proceedings instituted under the Indian Succession Act. As observed earlier, the proof or disproof of a testamentary instrument must be undertaken strictly in accordance with the provisions of the Indian Succession Act, which governs the grant of Probate or Letters of Administration, both in cases of testamentary succession as well as intestacy.

63. In view of the aforementioned judgments, the contention advanced by learned Senior Counsel for the Petitioner that the Will can be proved in the present Petition, which has been instituted without the Will annexed and on the premise of intestacy, cannot be accepted. The validity of the Will can be adjudicated only in the Petition filed by Respondent No. 1, wherein the testamentary instrument has been placed on record.

64. Since a testamentary instrument can be proved only in accordance with the provisions of the Indian Succession Act, the grant of probate or Letters of Administration with the Will annexed is the statutory mechanism for determining the due execution and validity of a Will. However, a decree declaring a Will to be invalid, void, or vitiated by suspicious circumstances can be granted only by a competent civil court in appropriate proceedings instituted for that purpose.

65. In such cases, a person alleging that the Will is bad in law or unenforceable must seek declaratory relief by way of a civil Suit, and not through proceedings under the Indian Succession Act, which are confined to the limited question of grant or refusal of probate or Letters of Administration. The Indian Succession Act does not contemplate initiation of independent proceedings solely for obtaining a declaration regarding the invalidity of a Will. Further, such relief must be sought in a properly



constituted civil action.

66. Consequently, while a Will may ultimately be proved or disproved in testamentary proceedings, a substantive declaration as to its invalidity at the instance of a party alleging infirmity can only be adjudicated in a civil Suit, and not within the summary framework of proceedings under the Indian Succession Act.

67. A co-ordinate Bench of the Bombay High Court in Bindia Kriplani v. Naresh Nathulal Pal, **2018 SCC OnLine Bom 2005**, while dealing with two Petitions, one for grant of probate of a Will and the other for grant of Letters of Administration without annexing the Will, for the very same estate, held as under:

“2. It seems that Balakrishna died leaving a Will dated 28th September 2010. His executors, one Rakesh Kumar Jhunjunwala and Bindia Kripalani sought Probate to that Will. In his Will, Balakrishna said that his daughter, Urvashi, unmarried, was unable to look after herself. The Will said that she suffered from severe mental health conditions. She was the sole legatee of his entire estate. The Will placed the responsibility on the executors : if two doctors certified to Urvashi's capability, the executors and trustees of Balakrishna's estate and Will would hand over the corpus of his estate and all accretions to her. The Testamentary trust would thus then end. Urvashi herself filed a Testamentary Petition No. 1645 of 2013 seeking Letters of Administration without Will annexed claiming to be the sole heir and therefore solely entitled to her father's, Balakrishna's, estate.

3. The two matters were listed together on 13th October 2014 when, and I say this with great responsibility, matters took an exceedingly strange turn. Neither Petition was contested. Neither Petition



was being tried. There were no Defendants. There were no caveats. No issues had been framed. The learned Single Judge thought it fit to consider which of these two claims, i.e. the one for Probate or the one for Letters of Administration as on intestacy should be preferred. Urvashi was subjected to a medical examination under some previous orders and those reports were read into the matter by the Court. Then the Court put some questions to Urvashi. She was given some stationery and made to write out some material. On this the Court came to the conclusion that she was a person of truth as also a person in knowledge of the estate of the deceased; and that her firmness in wanting to deal with properties herself was brought out 'loud and clear' before the Court. As both Petitions covered the same estate, they seemed to have been jurisprudentially telescoped in a manner that I think is not only completely impermissible but renders vulnerable the order itself as being per incuriam and contrary to the provisions of the Indian Succession Act, 1925 (not one of which is noted in the order). To begin with Section 213 provides that no right as an executor or legatee can be established in any Court of Justice unless a Court of competent jurisdiction has granted probate of the Will under which the right is claimed or granted. Section 218 provides for persons to whom administration may be granted on intestacy. Section 222 provides for grant of probate only to executor appointed under the Will. Thus, if Urvashi wanted to contest the Will — and she undoubtedly had a caveatable interest — she ought to have filed (or been allowed to file) a caveat to oppose the Probate Petition. Indeed, on the Court's finding that she was 'capable' and a 'person of truth', this was the only option available to the Court. Instead, the Court summarily dismissed the Probate Petition on the ground that since the executors did not claim any part of the estate therefore the Probate Petition would stand



dismissed. Letters of Administration were thus directed to be issued to Urvashi.

4. There are very many things in this order that in my view simply could not have been done. A Will disrupts the normal line of succession; otherwise we would have no need for it. The fact that it did not in this case is irrelevant. **In the scheme of the Succession Act, Probate is accorded a preferential status, for this very reason. Further, title passes through the executor. It is the duty of the executor to apply for Probate of the Will of which he or she is appointed as such. Letters of Administration simpliciter proceed on the basis of intestacy, i.e. that there is no Will. Where there is a contest between a Petition for Probate or Petition for Letters of Administration, the Petition for Letters of Administration cannot be decided nor can a grant be issued unless the Petition for Probate is dismissed, i.e., the Will is not 'proved in its solemn form'. This may happen on default or after trial; that makes no difference. A Probate Petition blocks a petition for Letters of Administration. On its own the Probate Petition in question would have proceeded departmentally to a grant, since none opposed it. Under no circumstances therefore, until the Testamentary Petition for Probate was disposed of in accordance with law, could the Petition for Letters of Administration have been taken up; and since the Probate Petition was bound to result in a grant, the Testamentary Petition for Letters of Administration had to be dismissed as a matter of routine course. It was emphatically not for the Court to decide which of the two petitions should be 'preferred'. The testamentary court has no such discretion at all. It was for the deceased who made the Will to decide how and in what circumstances his estate would devolve. The role of the Court was to ensure that Probate was granted to that Will in the manner required by law**



upon Probate being sought.”

(emphasis supplied)

This Court is in agreement with the above observations.

68. Further, the Apex Court in Chiranjilal Shrilal Goenka (*supra*) has observed as under:

“13. Section 276 provides the procedure to obtain probate, namely, — (1) application for probate ... with the will annexed, shall be made by a petition distinctly written in English ... with the will or copy, as the case may be, stating the particulars and the details mentioned in clauses (a) to (e) and further details provided in sub-sections (2) and (3), the mention of the details whereof are not material for the purpose of this case. The petition shall be verified in the manner prescribed under Section 280 and also further to be verified by at least one of the witnesses to the will in the manner and to the effect specified therein. The Caveator is entitled to object to its grant by operation of Section 284 When it is contested Section 295 directs that probate proceedings shall take, as nearly as may be, the form of a regular suit, according to the provisions of CPC and the petitioner for probate ... shall be the plaintiff and the person who had appeared to oppose the grant shall be the defendant. Section 217 expressly provides that save as otherwise provided by this Act or by any other law for the time being in force, all grants of probate ... with the will annexed ... shall be made or carried out, as the case may be, in accordance with the provisions of Part IX. Section 222 declares that (1) Probate shall be granted only to an executor appointed by the will. (2) The appointment may be expressed or by necessary implication Section 223 prohibits grant of probates to the persons specified therein. Section 224 gives power to appoint several executors. Section 227 declares the effect of probate thus: “Probate of a will when granted establishes the



will from the death of the testator, and renders valid all intermediate acts of the executor as such.” Section 248 envisages grant of probate for special purposes, namely, “if an executor is appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and if he should appoint an attorney ... with the will annexed, shall be limited accordingly”.”

69. Applying the above-said observations to the facts of the present case wherein Letters of Administration has been sought on the premise as if the testator has died intestate, this Court is of the opinion that the present proceedings cannot proceed further.

70. Yet another co-ordinate Bench of the Bombay High Court in Peter John D'Souza v. Armstrong Joseph D'Souza, **2014 SCC OnLine Bom 436**, while dealing with a Petition under Section 263 of the Indian Succession Act for setting aside the Letters of Administration as the Will surfaced after grant of Letters of Administration, has observed as under:

“5. In paragraph 3 of the said petition, the respondent has averred that the said deceased died intestate and due and diligence search had been made for a Will but none had been found. On the premise that the said deceased died intestate and had not executed a Will, the respondent, who is the grandson of the said deceased, in the said petition prayed for letters of administration in respect of the estate of the said deceased. There was no opposition to the said petition. This Court accordingly issued a grant, i.e. the letters of administration in favour of the respondent in respect of the said deceased on 31-3-2011.

16. In catena of decisions of the Supreme Court and



this Court, it is held that a party who has no caveatable interest or even a slightest interest in the property of the deceased and a party who claims interest adverse to the interest of the deceased testator cannot maintain a caveat. The Testamentary Court does not decide the title in respect of the property of a deceased. But insofar as the claim of the petitioners that they have interest in some of the properties which were the subject-matter of the petition for letters of administration and those letters of administration could not have been granted is concerned, in my view, this Court cannot decide such an issue of title in this petition for revocation nor has decided the issue of title in the petition filed for letters of administration by the respondent. Such issues can be adjudicated by a Civil Court.

17. *Be that as it may, in view of the fact that it is not in dispute that the deceased had left a Will in the year 1966, such fact is not having been disputed at least today by the respondent, whether such grant issued by this Court on the premise that the said deceased died intestate can be revoked suo motu or not?*

18. *On a conjoint reading of 'just cause' described in Clauses (b) and (c) of section 263 of the Act, it is clear that if a grant is obtained fraudulently by making a false suggestion or by concealing from this Court something material to the case or the grant is obtained by means of an untrue allegation of fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently, such grant can be revoked on such just cause described in the explanation to section 263.*

19. *Even if the argument of Mr. Kumbhakoni, learned senior counsel is considered that on the date of filing*



of the petition for letters of administration, the respondent was not aware of any such Will left by the deceased testator and thus such statement came to be made in the petition for letters of administration is accepted, in view of the fact that there is no dispute that the said deceased left a Will and/or the same is discovered subsequently, such grant is liable to be revoked under section 263(b) and (c) of the Act. A conjoint reading of Illustrations (v) and (vi) to section 263 of the Act makes it clear that even after the administration of the estate, if the Will is discovered subsequently, such grant is liable to be revoked.

21. In my view, the whole premise of obtaining the letters of administration was that the deceased died intestate and had not left any Will and on that ground the petition for letters of administration came to be filed. If the petitioners would have disclosed the existence of the Will of the said deceased, such petition for letters of administration on the premise that the deceased died intestate would not have been even maintainable. In my view, the respondent has suppressed the existence of the Will of the deceased and has made false statement in the petition. In any event, in view of the discovery of the Will, grant deserves to be revoked on that ground also.”

(emphasis supplied)

71. In similar circumstances as the present case, a co-ordinate Bench of Karnataka High Court in M.A.I. Kovoov v. Thomas IPE Kovoov (Jr.), **2016 SCC OnLine Kar 8631**, while dealing with two Petitions for grant of Letters of Administration - one on the ground that the testator has passed away without a Will and the other that a Will has surfaced later on, after quoting various provisions has held as under:



“16. In view of the aforesaid legal provisions and the rival contentions raised by both sides, this Court is of the opinion that the present petition under Section 278 for grant of letter of administration to the petitioner deserves to be rejected but at the same time, these proceedings are not required to be converted into a regular trial for grant of probate to the respondents who have produced the unregistered Will of the deceased dated 4-1-2011 through Ms. Reena Puri. The reasons are as follows:

*Section 278 of the Act, as stated above, deals only with the grant of letter of administration in the case of intestate succession provided in Part V of the Act of 1925, whereas Part VI of the Act deals with testamentary succession. The present is not a case where Letters of Administration is sought with a copy of Will annexed, but the petitioner has come with a clear case that the deceased Elizabeth had died intestate. Annexure-B Will annexed by the petitioner is not the basis for claiming Letters of Administration but more to lay a challenge to it in advance, which was quite irrelevant while filing a petition under Section 278 of the Act. But when a contention is raised against a petition under Section 278 of the Act with a original but unregistered Will of the deceased produced before the Court, the provisions of Part v providing for intestate succession becomes inapplicable. The petitioner had filed this petition under Section 278 of the Act based on her right of share in the estate of the deceased on the basis of Section 47 of the Act which provides for an intestate death and the person concerned who died has left neither any lenial descendants nor father nor mother but such a right of share in the estate itself cannot be claimed by seeking a Letters of Administration under Section 278 of the Act. **The moment a Will of the deceased is brought before the Court, there are two options before the Court : (I)***



either to allow the person producing the said Will to prove the same and obtain a probate in respect of the said Will by converting the proceeding into a regular trial in accordance with the provisions of CPC as provided under Section 295 of the Act quoted above; or (II) dismiss the petition under Section 278 of the Act for grant of letter of administration of estate of deceased dying intestate and leave the parties free to claim their share in the estate of the deceased either by way of a partition suit or by proving the Will in appropriate proceedings. This Court would adopt the second option, as this petition cannot be converted into a trial of a civil suit, which is a matter of original jurisdiction before a District Court.”

(emphasis supplied)

72. It is pertinent to mention that Section 295 of the Indian Succession Act also assumes critical significance in the present case. The provision mandates that where a testamentary proceeding becomes contentious, the same shall take, as nearly as may be, the form of a regular civil suit. The legislative intent underlying this provision is to ensure that disputes relating to the due execution, genuineness and validity of a testamentary instrument are adjudicated in a structured adversarial framework, with full opportunity to the parties to lead evidence. Once such contentious proceedings are instituted, the adjudication of testamentary validity must ordinarily be confined to those proceedings alone, so as to avoid parallel and potentially conflicting determinations concerning the same estate.

73. In the present case, Respondent No.1 has already instituted proceedings propounding the alleged Will. In the present Petition, the Petitioner alleges that at the relevant time, the deceased was suffering from serious medical conditions affecting his physical and cognitive faculties and



was therefore not competent to execute a valid testamentary instrument. The dispute regarding the validity of the said Will, has thus assumed a contentious character within the meaning of Section 295 of the Indian Succession Act. Consequently, the statutory scheme contemplates that the issue of testamentary validity be adjudicated in the said proceedings, which are required to proceed in the nature of a civil suit. Permitting adjudication of the same issue in parallel proceedings founded on intestacy would run contrary to the legislative scheme and may result in inconsistent findings.

74. The only surviving question that remains for consideration in the present Petition is whether the proceedings ought to be kept in complete abeyance pending final adjudication of the Petition filed by Respondent No.1, namely TEST.CAS. 4/2026. In the opinion of this Court, no useful purpose would be served by keeping the present Petition in abeyance until the testamentary proceedings in TEST.CAS. 4/2026 is finally decided, for the reason that the Court is vested with powers under Sections 247 and 263 of the Indian Succession Act, to appoint an administrator *pendente lite* for the management and preservation of the estate during the pendency of testamentary proceedings.

75. In the proceedings in TEST.CAS. 4/2026, Respondent No.1 will be required to propound and prove the alleged Will in accordance with law. In the event that Respondent No.1 succeeds in establishing the due execution and validity of the Will, Letters of Administration with the Will annexed would be granted in his favour. Conversely, if Respondent No. 1 fails to prove the Will, the administrator appointed by this Court may continue to administer the estate of the deceased, at least until appropriate civil proceedings, such as a suit for partition for determination of the respective



shares of the parties, are instituted and decided.

76. In the opinion of this Court, no cause of action subsists in TEST.CAS. 2/2026 after filing of Letters of Administration with Will. All the contentions raised in TEST.CAS. 2/2026 can be dealt with in TEST.CAS. 4/2026, including the appointment of an interim administrator till the Will propounded by the Petitioner in TEST.CAS. 4/2026 is proved.

77. Accordingly, the present Petition is dismissed. Pending applications, if any, also stands dismissed.

78. Liberty is, however, granted to the Petitioner to raise the very same grounds and contentions urged in the present Petition regarding the suspicious circumstances surrounding the Will by filing an appropriate Reply in TEST.CAS. 4/2026, wherein the issues concerning the validity and proof of the alleged Will are to be adjudicated.

TEST.CAS. 4/2026

79. List on 04.05.2026 before the Joint Registrar for further proceedings.

SUBRAMONIUM PRASAD, J

MARCH 17, 2026

Rahul/JR