

Sharayu.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
TESTAMENTARY SUIT NO. 108 OF 2015
IN
TESTAMENTARY PETITION NO. 65 OF 2015**

Mr. Vispi Bomi Gandevia	...Plaintiff
<i>Versus</i>	
Elavia Bapsy Kersi & Ors.	...Defendants

Mr. Anil Lulla, for the Plaintiff.
Mr. Aditya Thakkar, i/b M/s. Mulla & Mulla, for the Defendants.

CORAM: G.S. PATEL, J
DATED: 23rd September 2015

PC:-

1. Chamber Summons No. 80 of 2015 in this matter was dismissed on 21st September 2015. As pointed out in that order, the present Suit No. 108 of 2015 in Testamentary Petition No. 65 of 2015 seeks Probate of a Will dated 20th January 1977 of one Kaikhusru Ratanji Sudder. However, on 24th March 1986 Probate was granted to another Will dated 15th May 1977 (i.e., a later Will) of the deceased in Testamentary Petition No. 283 of 1979. That Probate has not yet been revoked. It is Probate granted to a later

Will. This present Petition and Suit are, therefore, not maintainable so long as that Probate remains outstanding.

2. Mr. Lulla undertakes to file Vakalatnama on behalf of the Plaintiff on or before 1st October 2015. The Suit and Petition are dismissed. The Petitioner is at liberty to file suitable proceedings in relation to the Probate already granted, if he be so advised.

3. All rights and contentions including of the Defendants in the present Suit are expressly kept open, including in particular the contention that this Petition having been dismissed, an application for revocation is not entertained.

4. A notarised copy of the Probate already granted and tendered by Mr. Thakkar is taken on file.

(G. S. PATEL, J.)

CERTIFICATE

"Certified to be true and correct copy of the original signed Judgment/Order."