

SHEPHALI

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
TESTAMENTARY PETITION NO. 388 OF 2016**

Vimal Seetaram Gavaskar	...Petitioner
<i>And</i>	
Seetaram Jagannath Gavaskar	...Deceased

Mr. Suneel Mogre, *for the Petitioner.*

CORAM: G.S. PATEL, J
DATED: 30th June 2016

PC:-

1. Not on board. Mentioned. Taken on board.

2. I passed an order on 1st April 2016 on being told that “the only surviving attesting witness to the Will” had passed away. This statement appears to be incorrect. I am informed by the Registry that in fact there is only one attesting witness to the Will. Even the Petition says so in so many words. The name of that attesting witness was Mr. B.N. Kamath. The Petition itself says that the Will was witnessed by Mr. B.N. Kamath who passed away on 18th July 2011.

3. I now find from the Petition that there is an Affidavit on record of one Mr. Ramesh Seetaram Gavaskar affirmed on 30th

March 2016. Mr. Ramesh Gavaskar claims to have been present at the time of execution of the Will, when, according to him, Mr. Kamath attested the same. Mr. Gavaskar does not say that he himself signed the Will. He does not say that any other witness signed the Will either.

4. The consequence is that this Will cannot be said to have been duly executed. Section 63(c) of the Succession Act, 1925 is extremely clear. It says that the Will shall be attested by “two or more witnesses”. This threshold mandatory requirement is not met. Any Will that requires to be proved in its solemn form must have the signatures of at least two attesting witnesses.

5. In consequence, the order dated 1st April 2016 is recalled.

6. At this stage, Mr. Mogre seeks leave to withdraw to withdraw the Petition with liberty to file fresh Petition for Letters of Administration (not a Petition for Letters of Administration with Will annexed). Leave granted with liberty as prayed.

7. Given that the estate of the deceased will remain the same, the court fees paid on this Petition shall be adjusted against the court fees payable on a fresh Petition for Letters of Administration.

(G. S. PATEL, J.)