

SHEPHALI

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 142 OF 2016
IN
TESTAMENTARY SUIT NO. 91 OF 2009
IN
TESTAMENTARY PETITION NO. 1028 OF 2008**

Suresh Sunderdas Harpalani & Another	...Plaintiffs
<i>Versus</i>	
Dayal Sunderdas Harpalani & Others	...Defendants
<i>And</i>	
Nanki Varandani & Another	...Applicants

Mr. P.K. Pandey, i/b Harideep Singh, for the Applicants
Mr. Rajesh Singh, for the Plaintiffs.

CORAM: G.S. PATEL, J
DATED: 29th August 2016

PC:-

1. Heard.

2. This is an application by one Nanki Varandani and one Laxmi Rawtani, seeking leave to withdraw their Consent Affidavits filed along with this Petition. The Petition seeks probate to a Will dated 18th November 2000 of one Sunderdas Mulchand Harpalani. The two Applicants are the deceased's married daughters. One of them,

Laxmi, lives in Vashi. The other, Nanki was, at the relevant time, living overseas in U.S.A.

3. The case in the Affidavit in Support of this Notice of Motion is that the original Plaintiff No. 1, Suresh Sunderdas Harpalani, the two Applicants' brother, obtained the Applicants' signatures on the Consent Affidavits by 'emotional pressure' or coercion, and by misrepresenting that he required those Affidavits to effect an equal distribution of the deceased's estate amongst his heirs, including the two Applicants.

4. One factor is to be born in mind that the probate Petition is renumbered as a Suit. It is being contested by others. Mr. Pandey says that this is sufficient reason to allow the Notice of Motion and to permit the Applicants to contest the probate Petition as well.

5. However, on behalf of the Plaintiff, Mr. Singh submits that this is not the point. The allegations on which this Notice of Motion proceeds are indeed grave, and they are made not only against the original Plaintiff but they are also, in effect, directed against officers of this Court. There is also demonstrable suppression by the Applicants.

6. Paragraphs 5 to 8 of the Affidavit in Support of this Notice of Motion give the impression that the original Plaintiff obtained the Applicants' signatures either in blank or on some notarised document. It is not explicitly stated in this Affidavit in Support that both Consent Affidavits were made before an Associate of this

Court. Laxmi affirmed her Affidavit on 20th August 2008. Nanki affirmed her Consent Affidavit on 17th October 2008. As far as I can tell, both were affirmed before the same Associate of this court. Mr. Pandey for the Applicants seems to contend that the Associate was misled into believing that the Affidavits were being executed voluntarily. He insists that both Applicants — on two different dates separated by about three months — were put under immense emotional pressure to make a false representation to our Court Associate that they were executing these Affidavits of their own volition.

7. There is no such averment in the Affidavit in Support of this Notice of Motion.

8. That, however, is not all. On behalf of the Plaintiffs, it is pointed out that in fact Nanki, the 1st Applicant, had previously forwarded a Consent Affidavit that was notarised before a Notary Public in the County of Santa Clara in the State of California on 2nd September 2008. A copy is at pages 23 and 24 of the Affidavit in Reply. This US-notarised Affidavit could not be filed or accepted in this court, which is why Nanki attended this Court to affirm a fresh Consent Affidavit of 17th October 2008. The response to this in the Affidavit in Rejoinder and across the Bar is that Nanki denies ever executing a Consent Affidavit before a US Notary.

9. The Applicants' case is much too far-fetched. I do not see how Nanki can deny having affirmed an Affidavit before a Notary Public in California. This is hardly likely to have been forged, and if

it was, Nanki seems to have taken no steps in that behalf. Indeed, her subsequent conduct in this Court is in conformity with her having sworn an Affidavit before a Notary in California. Both Affidavits are entirely consistent. In fact, the draft Affidavit was sent to Nanki in the US by email. She downloaded it, printed it and affirmed it before a Notary. All of this is set out in the Affidavit in Reply. There is no effective answer to any of this. There is nothing at all to demonstrate any kind of coercion or pressure when affirming these Consent Affidavits before an Associate of this Court. There is insufficient material on which to grant this kind of Notice of Motion. The particulars of fraud and misrepresentation are altogether lacking.

10. The Notice of Motion is dismissed. There will be no order as to costs.

(G. S. PATEL, J.)