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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
TESTAMENTARY AND INTESTATE JURISDICTION  
TESTAMENTARY SUIT NO. 56 OF 1996  
IN  
TESTAMENTARY PETITION NO. 79 OF 1995**

**JAYANT VASANT KHANDEKAR**

Residing at A-1-4, Ganesh Bhavan, S.B. Marg,  
Mahim, Mumbai 400 016

...Plaintiff

*versus*

**DEEPALI DILIP PUROHIT,**

Residing at Silver Arch, 1765-E, Rajarampuri,  
Kolapur 416 008

...Defendant

**Mr. Vishal C. Ghosalkar, for the Plaintiff.**  
**None for the Defendant.**

**CORAM: G.S. PATEL, J**  
**DATED: 18th August 2016**

**PC:-**

1. Heard Mr. Ghosalkar for the Plaintiff. None for the Defendant.
2. The Petitioner seeks probate to a Will dated 14th November 1993 of one Vasant Govind Khandekar who died in Mumbai on 9th December 1993. The Petitioner is one of the deceased's sons. The deceased was survived by his wife, Indumati, and four children, two

sons and two daughters. The elder son is the Petitioner, Jayant. The younger son, Rajan, has consented, as has the elder daughter Priti Sunil Purandare (her married name). The only opposition comes from the younger daughter, Deepali Dilip Purohit (also her married name).

3. Before I proceed further, I must note that at some point between 2013 and 2014, the Defendant appears to have given up the contest altogether. On 23rd July 2013, Mr. Ghosalkar for the Plaintiff applied to the Court (R.D. Dhanuka, J.) in Notice of Motion No. 218 of 2012 seeking that the cross-examination on behalf of the Defendant of the Plaintiff's witnesses be closed. Dhanuka J noted in considerable detail the various dates taken for cross-examination, as well as the submission before him that there was a continual delay and non-cooperation from the Defendant and her Advocate. He also noted that it was clear that the Defendant and her Advocate had copies of the Affidavits of Evidence of three witnesses as early as 11th April 2012. Meetings scheduled thereafter were cancelled. The Plaintiff's Advocate thereafter repeatedly sought that fresh dates be set. There was no reply to these requests. There was no Affidavit in Reply to the Notice of Motion before Dhanuka J either. This Notice of Motion was allowed and the cross-examination was closed. On 26th June 2014, Kathawalla J noted that even after notice the Defendant's Advocate did not appear. He directed notice to be given to the Defendant. This was done. On 15th July 2015, I restored the Defendant's Notice of Motion No. 155 of 2014 (by an order made that very day in Notice of Motion No. 53 of 2015 for restoration). I heard Mr. Jaywant for the Defendant. In that Notice of Motion, the Defendant sought a recall of Mr. Justice

Dhanuka's order dated 23rd July 2013 (to which I have referred earlier). The only reason given was that the Defendant was not present on that date. I quoted Dhanuka J's order in full and found that there was no explanation for the delay of over a year in filing that Notice of Motion. The Defendant only said she had various ailments, back pain and had to keep shifting her address. Of any of this, I found no satisfactory supporting material. Noting that Dhanuka J's order was not unreasoned, and that the application before me amounted to sitting in appeal over it, I dismissed the Notice of Motion of recall. There is no Appeal against that order. The matter was ultimately set down for final hearing on the board that was notified for today a week ago.

4. None appears for the Defendant.

5. The Will in question is attested by two witnesses, one Dattatray Hari Kale and one Joseph Lawrence Alvares. They filed Affidavits supporting the Petition but both died before their evidence could be taken.

6. In Clause (1) of the Will, the Testator listed various immovable properties. These include a flat and agricultural land in Vasai, which were bequeathed to the Petitioner. The second property was at Medha, Taluka Roha, District Raigad, which was bequeathed to the second son, Rajan. It was also said that the testator was a partner in a partnership firm Indo Enterprises. His share and interest in the firm were left to his widow. The movable properties were divided between various legatees, including his

children and grandchildren. It is true that the Petitioner and his family seem to have received a large amount of the legacies.

7. The Caveat filed by the Defendant raises various issues *inter alia* questioning the deceased's testamentary capacity and alleging fraud, misrepresentation and coercion. It was on this basis that issues were framed on 19th January 2011 (R.S. Dalvi, J.). These are set out below, with my findings against each:

| Sr. No. | Issues                                                                                            | Findings            |
|---------|---------------------------------------------------------------------------------------------------|---------------------|
| 1.      | Whether the last Will and Testament of the deceased Vasant Govind Khandekar was validly executed? | In the Affirmative. |
| 2.      | Whether the Will of the deceased was fabricated, forged and bogus?                                | In the Negative.    |
| 3       | What relief, if any, is the Plaintiff entitled to?                                                | As per final order. |

8. The Plaintiff led his own evidence. He also led the evidence of one Pooja Purushottam Gothoskar, the daughter of Dr. Balkrishna Shankar Jawadekar who had issued a medical certificate appended to the Will. The Plaintiff also led the evidence of the sons of the two attesting witnesses affirming their respective fathers' signatures. In addition, the Plaintiff's sister Priti Sunil Purandare also filed her Affidavit of Evidence. The Defendant only cross-examined the Plaintiff. She failed to cross-examine any of the other witnesses.

9. At this stage, I must note one curious but telling circumstance, *viz.*, that the deceased's wife Indumati had herself

made a Will. Probate was obtained of that Will in Testamentary Petition No. 90 of 1996. This document was led in evidence. This Will by Smt. Indumati in terms says that she and her husband, the present Testator, had between them decided the manner of division of the estate and that both had made Wills accordingly. Indumati's Will proceeded without opposition including from the present Defendant. Mr. Ghosaklar's submission that the Defendant must be deemed therefore to have accepted the correctness of the present Will is not entirely without substance. His case, however, rests on a far surer foundation.

10. I have, with his assistance, considered the cross-examination of the Plaintiff's witness. It does not disturb the Plaintiff's testimony at all. There is no dispute that the Plaintiff was a cancer patient. There is also no dispute that he had conditions, though not serious, of diabetes and hypertension as well. These do not rob the testator of his testamentary capacity. Other than this, there is no cross-examination at all. In fact, in the answers in cross-examination the Plaintiff refutes the suggestions put to him and asserts that his father was perfectly sound at and around the time of making of the Will.

11. It is not insignificant either that the Plaintiff's other siblings have not challenged this Will. This is another circumstance that must be taken into account because it can hardly be said that the Will is unnatural.

12. As to the issue of the Will being fabricated, the burden of proof lay squarely on the Defendant. Without any proof being adduced, the second issue must be answered in the negative.

13. The first issue resolves itself into two components. One of these is of the deceased's testamentary capacity. That has been established and has not been dislodged in any way. The second is as to the actual execution of the Will. Here again, we find that the Testator has signed and so have the two attesting witnesses. All their signatures are sufficiently identified. There is also the Affidavit, uncontroverted, of the daughter of the medical professional who certified the Testator's testamentary capacity.

14. Having regard to all these circumstances, I find that there is no substance to the challenge. The Suit is decreed. Probate is to be issued at the earliest.

15. All concerned to act on an authenticated copy of this order.

**(G. S. PATEL, J.)**