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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTE JURISDICTION
TESTAMENTARY SUIT NO. 210 OF 2015
IN
TESTAMENTARY PETITION NO. 1385 OF 2015

Savitri Devi Kabra ...Plaintiff
Versus
Mrs. Kiran Gaurishankar Jhawar and others ...Defendants

Mr. Karl Tamboly, *with Shaheda Madraswala and Aditi Bhansali i/b*
Bharucha and Partners for the Plaintiff.
Mr. Snehal Shah, *with Rohan Rajadyaksha and Niket Jani i/b Vigil*
Juris for Defendants.

CORAM: G.S. PATEL, J
DATED: 26th September 2016

PC:-

1. P.W.1 is still under examination in chief. I have had to put a stop to this trial. There are very many things that have gone totally and utterly wrong with this matter. To begin with, I find that there is a wholly improper verification of this Petition. It was done before a notary, one Mr. R.R. Sharma. The verification clause has critical blanks in it: it does not specify which of the paragraphs are true to the Petitioner's knowledge and which are on information and belief. There are blanks left for these paragraphs. These were never filled in. The Petition was lodged and taken on file by the Court's registry with these blanks. Merely because the so-called verification (which

is no verification at all) was purported to be done before a Notary the matter has been admitted to file and allowed to proceed.

2. I understand that our rules permit notarisation of Affidavits (which includes pleadings) for convenience of parties. Rule 379 says that such Petitions in testimony matters are to be verified as in the manner prescribed for Plaints. Rule 44 says that Plaints have to be verified before an officer of the Court in Mumbai and elsewhere in India before an officer indicated by Section 139 of the Code of Civil Procedure 1908. Rule 196 permits Affidavits to be sworn before an officer referred to Rule 197 in Mumbai and elsewhere in India before a person mentioned in Section 139 of the CPC. Section 139 of the CPC allows for an affirmation before notaries. Rule 209 says the word Affidavit is to include a Complaint, Written Statement, Petition or any document required to be sworn. I am told there is an amendment that allows such notarization even in Mumbai. It is on account of this that Affidavits and Petitions are being affirmed before notaries.

3. I believe this is a matter that needs to be addressed on the administrative side in some suitable manner to ensure the proper notarization of affidavits and pleadings. The Registry should not be bound to accept improperly verified pleadings merely because these have been signed before a notary. A system needs to be instituted to require checking for proper verification, affirmation, interpretation, etc. In a case such as this, where the verification clause is incomplete, the Registry ought to have taken an objection and at the very least have had the matter placed for directions.

4. There are two other problems. Paragraph 3 of the Petition says that a photocopy of the original Will is annexed at Exhibit 'B'. This appears to be incorrect. Exhibit 'B' is again a photocopy of what appears to be a notarised copy. It bears a notarial stamp of one Mr. Shamrao Deshmukh, Advocate and Notary, and the rubber stamp 'True Copy' at the top. This is not to be found in the original Will. Therefore, what is annexed to the Petition is not a photocopy of the Will, but a photocopy of a notarised photocopy of the Will. When it comes to proof of documents required to be attested these are significant issues, and are not trivial. The identity of the document sought to be proved is all-important. Indeed, in law, these are all separate documents and one cannot be substituted for the other. It is for this reason, *inter alia*, that the Succession Act, 1925, makes separate provisions for probate or proof of a Will and probate or proof of a copy of a Will.

5. It is evident, therefore, that with a statement like this in paragraph 3 the absence of a proper verification assumes even greater importance.

6. Finally, I find that there is a practice in the Registry of allowing amendments to cure objections, and these orders are granted by endorsements on praecipe. This practice should stop. These are, after all, orders, and the Registrar or Officer concerned must pass an order, not just make an endorsement, and this order must be uploaded. This is required so that there is a complete record maintained of the orders passed in various matters. In the present matter I find that there have been several amendments permitted at an initial stage to paragraph 8, the table below

paragraph 9 and to the schedule annexed to the Petition. There is a handwritten reverification in red ink. This reverification seems to have been done in Court. That reverification is of 14th September 2015 a few months after the date of the Petition, 31st July 2015.

7. Further, if this is so, I see no reason why the original Petition could not have been affirmed in Court instead of before a notary.

8. The Prothonotary and Senior Master is requested to take immediate note of this and to obtain suitable directions as to the issue of a practice note to the effect that no such amendments are to be permitted by mere endorsements on a praecipe but must be by an order that comes to be uploaded.

9. In the present case, the amendments seem to have been effected on a praecipe dated 10th September 2015. This amendment was allowed by a single endorsement on 10th September 2015. Mr. Shah says that that amended copy has not been served on the Advocates for the Defendants / Caveators.

10. In view of all this, Mr. Tamboly seeks leave to withdraw Petition with liberty to file a fresh Petition for probate. Leave granted with liberty as prayed.

11. In the circumstances, the Court Fees paid by the Petitioner on this Petition will be allowed to be adjusted in full against the Court Fees required to be paid on the fresh Petition that may be brought for proof of the same Will.

12. Mr. Shah points out, quite correctly, that in her examination in chief the witness has already given certain answers. These are required to be maintained as part of the record of this Petition. Copies of this transcript will be made available to both sides. What use is to be made of this, if any, is left for another date.

(G. S. PATEL, J.)