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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY & INTESTATE JURISDICTION

TESTAMENTARY SUIT NO.11 OF 1999
IN
TESTAMENTARY PETITION NO.985 OF 1998

Sadanand R. Bandekar	...Plaintiff
V/s.	
Shailaja N. Waingankar	...Defendant

Mr.Gauraj Shah i/b Kanga & Co. for the Plaintiff.

Mr.Ganesh Dhonde i/b Mr.Mahesh Dhuri for the Defendant.

CORAM : R.D. DHANUKA, J.
DATE : 27TH JUNE, 2017.

P.C. :-

1. The original petitioner – Sushila Ramchandra Bandekar had filed Testamentary Petition (985 of 1998) *inter-alia* praying for probate in respect of the photocopy of the Will of the deceased Ramchandra dated 15th October, 1976. The citations were served upon the heirs and next of kin according to Hindu Succession Act upon the persons whose names were disclosed in paragraph 9 of the petition.

2. Pursuant to the service of the said citations, the caveat was filed by one of the legal heir – Mrs.Shailaja, daughter of the deceased Ramchandra Bandekar.

3. This Court framed issues on 23rd August, 2010, which are as under :

- 1). Whether the last Will and Testament of the deceased Ramchandra Bandekar was validly executed ?
- 2). Whether the deceased was in sound state of mind at the time of execution of the Will ?

4. Both the parties led oral as well as documentary evidence before this Court.

5. Today the matter is on board for hearing and final disposal of the suit.

6. Learned counsel appearing for the defendant, on instructions states that though his client had led oral evidence and had disputed the execution of the alleged Will, his client does not propose to press any objection about the execution of the alleged Will. He however invited my attention to the objections raised in respect of one of the properties of the deceased and more particularly in paragraphs 2 to 4 of the affidavit in support of the caveat filed on 25th February, 1999. It is submitted by the learned counsel that the said property described in paragraphs 2 to 4 of the affidavit in support of the caveat is not disclosed in the schedule of the property disclosed in the testamentary petition. It is submitted that the said deceased during his life time had already transferred the said

property in favour of the caveator.

7. In view of the fact that the caveator does not dispute the execution of the Will now, the plaintiff is entitled to grant of probate on the basis of the photocopy of the Will dated 15th October, 1976 of late Ramchandra Bandekar. The defendant withdraws all other allegations made in support of the caveat insofar as execution of the Will is concerned.

8. Insofar as the issue in respect of the title of one of the property described in paragraphs 2 to 4 of the affidavit in support of the caveat is concerned, the Testamentary Court does not decide the dispute in respect of the title of the deceased and the same can be decided in appropriate proceedings, if filed by any of the parties. It is made clear that this Court has not expressed any views about the title in respect of the said property whether of the testator or of the caveator and the said issue can be decided in an independent proceedings, as may be filed by the parties.

9. The issue nos.1 and 2 are accordingly answered in affirmative. I therefore, pass the following order :-

a). Testamentary Suit No.11 of 1999 is decreed as prayed. The office is directed to issue the probate in favour of the petitioner on the basis of the photocopy of Will and Testament dated 15th October, 1976 of late Ramchandra Bandekar expeditiously.

b). It is clarified that this Court has not expressed any views in respect of the title of the property described in paragraph 2 to 4 of the affidavit in support of the caveat dated 24th February, 1999 and the said issue is kept open.

c). No order as to costs.

(R.D. DHANUKA, J.)