

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION**

**NOTICE OF MOTION NO. 89 OF 2017
IN
TESTAMENTARY SUIT NO. 83 OF 2015
IN
TESTAMENTARY PETITION NO. 261 OF 2014**

Rajesh Jagdishlal Lakhanpal

...Petitioner

Vs.

Rajnesh Pathak

...Defendant

Ms.Nisha Mehra for Applicant/Plaintiff.

Mr.Ravi Gadagkar I/b. Usha Gadagkar for Respondent in NM and Defendant in Petition.

CORAM : S.C. GUPTE, J.

DATE : 31 OCTOBER 2017

P.C. :

Heard learned Counsel for the parties.

2 The present notice of motion seeks a decree on admission of probate of a last will and testament. The deceased is the father-in-law of the Plaintiff and father of the Defendant. The present application for a decree of probate is on the basis of an admission made in a separate proceeding between the parties before the Delhi High Court through the Defendant's Counsel. In an order passed on 1 September 2016 in CS(OS) No.722/2014 and I.A. 22740/2014, 4601/2014 and 4602/2014, a learned Single Judge of Delhi High Court has recorded the statement of learned Counsel of the Defendant herein(Plaintiff before the Delhi High Court) that the Defendant herein has duly accepted the execution of the will dated 2

February 2013 by late Chamanlal Pathak. In fact, in the Delhi suit, Counsel for Defendant Nos.1 and 2 therein (two daughters of the deceased Chamanlal Pathak) stated before the court that his clients were not laying any claim to any part of the property for which a declaration was sought in the Delhi suit, which was the subject matter of the will of the deceased Chamanlal Pathak, father of the parties, on the condition that the Plaintiff (the Defendant herein) be called upon to state that he was not disputing the legality or validity of the will. Based on this statement, learned Counsel for the Defendant herein had made the statement of his client referred to above. In other words, based on the admission that the will was duly and validly executed by the deceased Chamanlal Pathak, relief was obtained by the Defendant herein in the Delhi suit. Learned Counsel for the Defendant rightly and fairly does not dispute this position or seek to detract from the admission made before the Delhi High Court.

3 Learned Counsel for the Defendant, however, raises certain contentions regarding purported suspicious circumstances in connection with the will of Mrs.Nirmala Pathak, wife of the deceased Chamanlal Pathak, mother-in-law and mother, respectively, of the Plaintiff and the Defendant herein. Learned Counsel submits that since deceased Chamanlal was one of the witnesses to the will of Nirmala Pathak, both the suits need to be heard together. In the first place, we are not concerned in the present suit with the will of the deceased mother of the Defendant. If there is any suspicious circumstance in connection with that will, it has no implication insofar as the present testamentary suit is concerned. Learned Counsel also seeks to make certain submissions concerning an undertaking to be obtained from the Plaintiff herein for relinquishment of a share of the Defendant's son coming to him under the will of the deceased Chamanlal.

Again as a Probate Court, this court is not concerned with the effect of the bequest made under the will to be probated or the steps to be taken by the parties in pursuance of the bequest. It is not for the Probate Court to obtain any such undertaking.

4 The notice of motion is accordingly made absolute in terms of prayer clause (a). The testamentary suit is disposed of in the above terms.

(S.C. GUPTE, J.)