

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
TESTAMENTARY SUIT NO. 8 OF 2006
IN
TESTAMENTARY PETITION NO. 291 OF 2005**

VASUNDHARA MADHUKAR JOSHI,

Adult Indian Hindu Inhabitant of Mumbai,
Residing at Flat No. 09, Radhakrishna
Building, Old Ramchandra Bhuvan, Ganesh
Gawade Road, Mulund (West), Mumbai:
400080.

...

Plaintiff

~ VERSUS ~

1. VIVEK VASANT JOSHI

Adult Hindu Inhabitant of Mumbai,
Residing at 17, Radhakrishna, Old
Ramchandra Bhuvan, Ganesh Gawade
Road, Mulund (West), Mumbai:
400080.

2. MADHAVI SATISH KANHERE

Adult Hindu Inhabitant of Mumbai,
Residing at 2, Radhakrishna, Old
Ramchandra Bhuvan, Ganesh Gawade

Road, Mulund (West), Mumbai:
400080.

3. RAJANI ASHOK DEODHAR

Adult Hindu Inhabitant of Mumbai,
Residing at Shubhecha Co-operative
Housing Society Limited, 3rd Floor,
Naupada, Thane.

4. VIJAY SHANTARAM BHAMRE

Adult Hindu Inhabitant of Mumbai,
Opposite Petrol Pump, Mahsanul,
Nashik, District Nashik.

**5. VRUSHALI SHANTARAM
BHAMRE**

Adult Hindu Inhabitant of Mumbai,
1948, Samata Nagar Housing Colony,
Satpura Road, Dist. Nashik: 422007. ... Defendants

APPEARANCES

FOR THE PLAINTIFF	Ms Seema Sarnaik <i>a/w Mr Ameya Tamhane i/b Seema Sarnaik, for the Plaintiff.</i>
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FOR THE DEFENDANTS	Mr BG Saraf <i>i/b N.D. Bandiwadekar, for the Defendants Nos. 1 & 2.</i>
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CORAM : **G.S.Patel, J.**
JUDGMENT RESERVED ON : **22nd June 2018**
JUDGMENT PRONOUNCED ON : **14th December 2018**
JUDGMENT:

1. This judgment disposes of both the Testamentary Suit and the Testamentary Petition. The Suit is for probate to the Will dated 10th October 1975 (“**Will**”) of one Radhabai Balkrishna Joshi (“**Radhabai**”; “**the testatrix**”; “**the deceased**”). Radhabai died in Mumbai on 3rd February 1976 at the age of 76. She owned an immovable property, a building named “Radhakrishna”, situated in Mulund (West), Mumbai. This building was under construction at the time of her death. The construction was completed in 1976. Radhakrishna was built adjacent to ‘Ramchandra Bhuvan’, Radhabai’s old house, situated on the same plot of land. These properties are of undoubted value and seem to be the cause of this dispute.

2. The Plaintiff, Vasundhara Madhukar Joshi (“**Vasundhara**”), is Radhabai’s daughter-in-law. According to Vasundhara, Radhabai left a Will dated 10th October 1975. Mukund Balkrishna Joshi (“**Mukund**”), Radhabai’s son, was the first executor named in the Will. He died on 13th June 1992. Vasundhara is now the sole executrix of the Will, and she seeks probate to it.

3. Radhabai was married to Balkrishna Joshi (“**Balkrishna**”). He died on 4th April 1958. They had eight children — five

daughters and three sons. Of the eight, we are concerned with four children and their families. The Plaintiff, who propounds the Will, is Vasundhara, the wife of Radhabai's son, Madhukar Balkrishna Joshi ("**Madhukar**"). The opposition to the Will comes from some of Radhabai's grandchildren, i.e. from the children of Vasant Balkrishna Joshi ("**Vasant**"), Sushila Shantaram Bhamre ("**Sushila**"), and Shakuntala Vinayak Gondhalekar ("**Shakuntala**"). The table below shows the relationship of the defendants with the testatrix.

Defendant No.	Name	Relationship with Radhabai
Defendant No. 1	Vivek	Grandson – son of a son (Vasant)
Defendant No. 2	Madhavi (Vrishali)	Grand-daughter – daughter of a son (Vasant)
Defendant No. 3	Rajani	Grand-daughter – daughter of a deceased daughter (Shakuntala)
Defendant No. 4	Vijay	Grandson – son of a deceased daughter (Sushila)
Defendant No. 5	Vrushali (since deceased)	Grand-daughter – daughter of a deceased daughter (Sushila)

4. The Will in question, a copy of which is marked in Evidence as "Exhibit A", is a typed document in Marathi.¹ It was registered on 7 April 1976 and numbered as 1279 of 1975. Radhabai is said to have affixed her left-hand thumb impression against the execution clause. To the left of her thumb impression are the signatures of the two attesting witnesses, one Tapidas Sanghavi ("**Sanghavi**") and one Amarnath Shridhar ("**Shridhar**"). Both have since passed away. In the Will,

¹ Compilation, *pp.* 6–17. All references are to the record as recompiled.

Radhabai states that both Ramchandra Bhuvan, the old house, and the new, Radhakrishna, are her self-acquired property. Radhakrishna is nearing completion. The Will makes no bequest to Madhukar, or to Radhabai's daughters and their legal heirs.² She bequeaths the ground floor and the first floor of the new building, and also the entire old building, Ramchandra Bhuvan, including the garage to Vasundhara; the second floor and half the portion on the western side on the third floor of the new building to Mukund; and the entire fourth floor and the remaining half portion on the eastern side on the third floor of the new building to Vasant. However, Vasant was to have only a life interest in the immovable property and not the right to sell it unless he obtained his son Vivek's consent.

5. The Petition for probate was filed on 30th December 2004. Citations were duly served. On 28th October 2005, Vivek Vasant Joshi ("**Vivek**") and Madhavi Satish Kanhere ("**Madhavi**") filed separate caveats to oppose the Probate Petition.³ On 7th November 2005, they filed Affidavits in Support of their Caveats; these are identical.

6. In their Affidavits, Vivek and Madhavi take many grounds of opposition. They dispute the due execution of the Will. They allege that the Will was forged and fabricated; that the thumb impression on the Will was not that of Radhabai; that the Will was procured under undue influence, fraud or coercion from

2 Recompiled record, Paragraph 8, *p.* 12.

3 Vivek's Caveat and Affidavit in Support of Caveat, *pp.* 55-62; Madhavi's Caveat and Affidavit in Support of Caveat, *pp.* 63-70.

Sanghavi or Shridhar or both for the benefit of Mukund and Vasundhara; that Radhabai was not of sound and disposing state of mind; that the Will was prepared under suspicious circumstances because it excluded their mother Smeeta Vasant Joshi; that the Will was unnatural in its exclusion of some of Radhabai's children. They allege that the land belonged to Balkrishna; Radhabai was only an heir of the deceased along with her children. They allege that the property Radhabai purported to distribute were not her self-acquired property and thus were not hers to bequeath. Finally, they allege that there is an unexplained delay in seeking probate, and that the petition is barred by the law of limitation.

7. Vijay Shantaram Bhamre (“**Vijay**”) and Vrushali Shantaram Bhamre (“**Vrushali**”) filed a joint caveat and an Affidavit in Support of the Caveat on 25th October 2005.⁴ In this Affidavit, they took nearly the same objections as Vivek and Madhavi. Here it is said that the property belonged to Balkrishna, and after he died, it devolved upon Radhabai and their eight children in accordance with the laws of intestacy. Anjum Nadeem Sheikh, Vrushali's daughter, entered a caveat and an Affidavit in Support of the Caveat on 12th April 2013 after Vrushali's death.⁵ She adopted the Affidavit of Vrushali and Vijay.

8. Rajni Ashok Deodhar, granddaughter of the deceased (“**Rajni**”), filed a caveat and an Affidavit in Support of the

4 Recompiled record, *pp.* 71–77.

5 Original R&P, Volume A. (The caveat and Affidavit are not page numbered).

Caveat on 3rd July 2006.⁶ She raised similar objections to Vivek and Madhavi.

9. On Caveats being filed, the Petition was renumbered as Suit No. 8 of 2006.

10. On 4th November 2009, SC Dharmadhikari J, framed issues in the present proceedings.⁷ My findings as against each of these issues are as follows:

Sr. No.	Issue	Findings
1	Whether the Plaintiff proves that the writing at Exhibit – A to the Petition is the Last Will and Testament of the deceased, Radhabai Balkrishna Joshi, as alleged in Paragraph 3 of the Petition/Plaint?	In the affirmative.
2	Whether the Plaintiff proves that the said alleged Will was duly executed on 10th October 1975 as alleged in Paragraph 4 of the petition/ plaint?	In the affirmative.
3	Whether the Plaintiff is entitled to the grant of probate as claimed?	In the affirmative.
4	What Order?	As per the final order.

11. The Plaintiff led the evidence of Vasundhara, the Plaintiff (PW1), and BJ Sarpotdar (as PW2), an Advocate and scribe of the Will (“**Sarpotdar**”). The Defendants led the evidence of Vivek (as DW1), Vrushali (as DW2) and Vijay (as DW4). Neither side

6 Original R&P, Volume A. (The caveat and Affidavit are not page numbered).

7 At *pp.* 78–79.

adduced evidence of any handwriting or a forensic expert. There is also an Affidavit of Dr Khandekar (“**Dr Khandekar**”).⁸ There is no evidence on record of the two attesting witnesses as both had passed away.

12. With regard to the documentary evidence, not many documents were led in evidence by both sides. The Plaintiffs have preferred to rely upon the Will which is marked as Exhibit “A”. The Defendants rely on Property Register Cards. I will refer to the documents to the extent necessary while discussing the evidence. Not all of these documents are relevant to prove the due execution of the Will.

13. I have heard Ms Sarnaik for the Plaintiff and Mr Saraf for the Defendants Nos. 1 and 2.

14. There seems to be only one composite issue, i.e. the due execution and attestation of the Will and the testamentary capacity of the testatrix. It is well settled that the primary burden of proving the Will in its solemn form is on the Plaintiff.

15. In *H Venkatachala Iyengar v BN Thimmajamma and Ors.*,⁹ the Supreme Court of India said:

“20. ... Unlike other documents the will speaks from the death of the testator, and so, when it is propounded or produced before a court, the testator who has already departed the world cannot say whether it is his will or

8 Original R&P, pp. 26–30.

9 AIR 1959 SC 443.

not; and this aspect naturally introduces an element of solemnity in the decision of the question as to whether the document propounded is provided to be the last will and testament of the departed testator. Even so, in dealing with proof of wills the court will start on the same enquiry as in the case of the proof of documents. **The propounder would be called upon to show by satisfactory evidence that the will was signed by the testator, that the testator at the relevant time was in a sound and disposing state of mind, that he understood the nature and effect of the dispositions and put his signature to the document of his own free will.** Ordinarily when the evidence adduced in support of the will is disinterested, satisfactory and sufficient to prove the sound and disposing state of the testator's mind and his signature as required by law, courts would be justified in making a finding in favour of the propounder. In other words, the onus on the propounder can be taken to be discharged on proof of the essential facts just indicated.

21. There may, however, be cases in which the execution of the will may be surrounded by suspicious circumstances. The alleged signature of the testator may be very shaky and doubtful and evidence in support of the propounder's case that the signature in question is the signature of the testator may not remove the doubt created by the appearance of the signature; the condition of the testator's mind may appear to be very feeble and debilitated; and evidence adduced may not succeed in removing the legitimate doubt as to the mental capacity of the testator; the dispositions made in the will may appear to be unnatural, improbable or unfair in the light of relevant circumstances; or, the will may otherwise indicate that the said dispositions may not be the result of the testator's free will and mind. In

such cases the court would naturally expect that all legitimate suspicions should be completely removed before the document is accepted as the last will of the testator. The presence of such suspicious circumstances naturally tends to make the initial onus very heavy; and, unless it is satisfactorily discharged, courts would be reluctant to treat the document as the last will of the testator. **It is true that, if a caveat is filed alleging the exercise of undue influence, fraud or coercion in respect of the execution of the will propounded, such pleas may have to be proved by the caveators; but, even without such pleas circumstances may raise a doubt as to whether the testator was acting of his own free will in executing the will, and in such circumstances, it would be a part of the initial onus to remove any such legitimate doubts in the matter."**

(Emphasis added)

16. This means that the Plaintiff must prove the testamentary capacity, due execution and attestation of the Will in the manner required by Section 59 and Section 63 of the Indian Succession Act, 1925. The testatrix must be an adult of sound mind. She must be shown to have made the Will without fraud, coercion or importunity as might take away her free agency.¹⁰ She must be shown to have signed the Will with the intention to make a valid Will. In addition, the Will must be attested by at least two witnesses and each witness must sign the Will in the presence of the testatrix, but not necessarily in the presence of each other.¹¹

10 Section 61 of the Indian Succession Act, 1925.

11 Section 63(c) of the Indian Succession Act, 1925.

17. As to the actual execution, we have the evidence of the Plaintiff, Vasundhara, PW1; and Sarpotdar, PW2. Each of them filed an Affidavit in lieu of Examination-in-Chief and were cross-examined.

18. I will first deal with the evidence of PW2, Sarpotdar since he is the scribe of the Will and also participated in the execution of the Will. In his Affidavit in lieu of Examination-in-Chief,¹² Sarpotdar states that Radhabai often sought legal advice from him. In 1975, Radhabai orally instructed him to prepare a Will. On 10th October 1975, Sarpotdar brought the Will to her house at Ramchandra Bhuvan. He read out the Will to Radhabai.¹³ The Will was executed in the presence of four people: the two attesting witnesses, Sanghavi and Shridhar, Dr Khandekar and himself.¹⁴

19. In his Affidavit of Evidence, Sarpotdar identifies the signatures on the Will as those of the attesting witnesses.¹⁵ He then states that an officer from the Sub-Registrar's office was also present at Radhabai's residence to obtain Radhabai's thumb impression for the purpose of registering the Will.¹⁶ Far from being shaken, Sarpotdar's evidence is fortified under cross-examination. When asked whether Radhabai was bedridden when he met her to take instructions to draft the Will, he answered:

12 Recompiled record, *pp.* 138-170.

13 Recompiled record, paragraph 4, *p.* 141.

14 Recompiled record, Paragraph 4, *p.* 141.

15 Recompiled record, Paragraph 5, *p.* 143.

16 Recompiled record, Paragraph 7, *p.* 145.

“She was not bedridden but she was moving in the house.”¹⁷ This is important because it is part of the Defendants’ case that Radhabai was completely bedridden and consequently, was in no position to execute a Will. Sarpotdar then stated that Radhabai was mentally and physically fit at the time of giving those instructions, though both hands were shaking.¹⁸ This was supported by Dr Khandekar who declared her to be of sound mind, and makes a note of this in his own handwriting in the Will.

20. Vasundhara’s Affidavit of Evidence describes these events in a similar sequence.¹⁹ She stated that Radhabai affixed her thumb impression to the Will in her presence²⁰ and that both the attesting witnesses signed at the foot of the Will, at Radhabai’s request.²¹ Under cross-examination, Vasundhara stated that she was in the room at the time of the execution, though intermittently — for serving tea or for ‘other purposes’.²² There is no evidence to contradict this testimony. Vasundhara admitted that she saw only one of the attesting witnesses — Sanghavi — sign the Will.²³ This is sufficient. The progression of events is more or less the same in each testimony. The evidence led by the defence does nothing to shake these events.

17 Recompiled record, Qn. 34, *p.* 156.

18 Recompiled record, Qn. 40, *p.* 157.

19 Recompiled record, *p.* 80.

20 Recompiled record, paragraph 4, *p.* 84.

21 Recompiled record, paragraph 5, *p.* 84.

22 Recompiled record, Qn. 27, *p.* 118.

23 Recompiled record, Qn. 36, *p.* 119.

21. The only reasoning put forward by the Defendants is this: Vivek (DW1) in his Affidavit in lieu of Examination-in-Chief states that Radhabai was well educated, and that the Will bears a thumb impression instead of a signature is in itself, suspicious.²⁴ He states that the testatrix did not possess the necessary testamentary capacity to execute the Will. The reason for this lack of testamentary capacity, he states, is Radhabai's old age.²⁵ This is insufficient proof. Old age, ordinarily and by itself, does not prevent the making and execution of a Will — quite often, it accelerates the process. He alleges that the Will in question is “false, forged and fabricated, and has been contrived with the design to benefit Mukund and Vasundhara”.²⁶

22. Vivek's cross-examination worsens his case; it reflects that he is unaware of the particulars of his own case. There is a glaring contradiction in Vivek's own testimony on two different occasions. First, in his Affidavit in Support of the Caveat, Vivek alleges that Radhabai's thumb impression has been obtained by fraud or undue influence or coercion by Mukund and Vasundhara.²⁷ However, in his cross-examination, he says he is unaware that Mukund was appointed as an executor of the Will.²⁸ He is also unaware that Vasundhara is the alternate executor of the Will.²⁹ Second, so far as the Will is concerned, he cannot tell

24 Recompiled record, paragraphs 5 and 8, *p.* 173.

25 Recompiled record, paragraph 10, *p.* 173.

26 Recompiled record, paragraph 12, *p.* 174.

27 Recompiled record, paragraph 15, *p.* 60.

28 Recompiled record, Qn. 22, *p.* 184.

29 Recompiled record, Qn. 57, *p.* 190.

whether the Will is registered,³⁰ or which language the Will is written in,³¹ although he claims he can read and understand Marathi.³² He does not know whether Vasant acted upon the Will, even though he has been occupying the floors allotted to him under the Will.

23. Vivek and Vrushali in their Affidavit of Evidence contend that the testatrix was not physically or mentally fit to execute the Will. Vrushali says that far from being able to write or even put her own thumb impression to the document, Radhabai was hospitalized and in coma in October/November 1975.³³ The burden to show lack of testamentary capacity was on the Defendants once the Plaintiff had discharged the initial onus. They failed to make out a case in this regard. There is no evidence about the failing health of the testatrix. If Radhabai was in coma — or if she was too ill to give instructions or execute a Will — medical records indicating so should have been brought on record. This has not been done. The Defendants' contention is that Radhabai was old, "totally bedridden" and "totally unfit" to execute the Will.³⁴ However, and notably, in his cross-examination, Vivek admits that he did not produce any medical papers of Radhabai.³⁵

30 Recompiled record, Qn. 76, *p.* 193.

31 Recompiled record, Qn. 77, *p.* 193.

32 Recompiled record, Qn. 78, *p.* 193.

33 Recompiled record, paragraph 6, *pp.* 199-200.

34 Recompiled record, paragraph 10, *p.* 173; paragraph 16, *p.* 69.

35 Recompiled record, Qn. 67, *p.* 192.

24. Being completely bedridden in itself does not indicate a lack of testamentary capacity; and even this claim by the Defendants is assailed by the Plaintiff's witnesses. When put to Vasundhara that Radhabai was totally bedridden and mentally and physically unfit to execute the Will, she denies the statement.³⁶ When asked if Radhabai was bedridden when he met Radhabai to take instructions to prepare her Will, Sarpotdar answers: "She was not bedridden but she was moving in the house."³⁷

25. The next averment of the Defendants is that of lack of free agency of the testatrix. Free agency is a strict requirement of Section 61 of the Indian Succession Act, 1925. The Defendants have placed no particulars on record to prove that Radhabai's Will was obtained against her free will, fraudulently or under coercion. All we have are bare allegations that the Will was executed to benefit Mukund and Vasundhara. Firstly, the Defendants suggest that the use of a thumb impression instead of a signature renders the Will "highly surprising, unbelievable and improbable."³⁸ Secondly, the Defendants have each mentioned the love and affection the testatrix had for all her children and grandchildren. The claim is that Radhabai never treated her children differently.³⁹ There is no reason, according to the Defendants, for which Radhabai would exclude any of her children. Finally, the cross-examination of the Plaintiff's

36 Recompiled record, Qn. 27, p. 133.

37 Recompiled record, Qn. 34, p. 156.

38 Recompiled record, paragraph 8, p. 173.

39 Recompiled record, paragraph 9, p. 173; paragraph 15, p. 60; paragraph 14, p. 68.

witnesses reveals a question about one of the persons present during execution — Dr Khandekar. Dealt with summarily, Dr Khandekar was not the family doctor of the Joshi family. This slight anomaly was not probed by the Defendants. In my view, Dr Khandekar not being the usual family doctor does not, in the absence of any other peculiar circumstances, arouse suspicion.

26. Dr Khandekar's Affidavit is nearly identical to Sarpotdar and Vasundhara's Evidence Affidavits.⁴⁰ His Affidavit only bolsters the Plaintiff's case. He has put his signature to the document and in his own handwriting recorded that Radhabai was physically fit and of sound mind.

27. In fact, as regard to the thumb impression, Radhabai was careful enough to mention her ripe age, for this is not an unusual departure from the norm of putting a signature. On the contrary, it suggests that the deceased very much knew of her own mind.

28. It is well settled that a Will by definition disrupts the natural line of succession.⁴¹ All five Defendants undoubtedly have a caveatable interest, being the children and the grandchildren of the deceased. Addressing the claim of Radhabai's love for all her children and the exclusion of some of them makes no difference to the case. The Court while assessing a Will must only assess the circumstances or context surrounding execution, which may render it suspicious or unnatural in that regard. Radhabai has

40 Original R&P, Volume A, pp. 26-30.

41 *Rabindra Nath Mukherjee and Another v Panchanan Banerjee (dead) by LR. & Ors.*, AIR 1995 SC 1684.

bequeathed her entire property to Mukund, Vasant, and Vasundhara. She has also made provisions to explain the exclusion of her daughters (though she need not have done so) in her Will. In paragraph 4 of the Will, Radhabai states: “I do not wish to give anything by this Will to my daughters or to legal heirs of the daughters who have expired. As per my strength what all I could do for my daughters, I have done for them and their children are living happily.” This is self-explanatory and the exclusion, therefore, of a particular heir is not *ipso facto* a suspicious circumstance sufficient to dislodge an otherwise valid will,⁴² or make it unnatural.⁴³ The exclusion of Madhukar and the five daughters is not automatically suspicious.

29. In these circumstances, it is peculiar for Vasant’s children, Vivek and Madhavi, to claim improper exclusion under the Will. In fact, Vivek in his own cross-examination states that his father received the entire fourth floor plus the eastern side of the third floor of Radhakrishna as a bequest under Radhabai’s Will. This bequest is significantly greater than what he would have received in the absence of the Will — a one-eighth share in the property.⁴⁴ This is at a distant remove from being excluded or cut out of the Will.

30. It is interesting to note that despite several caveats being filed by Radhabai’s daughters and their legal heirs in opposition

42 *Uma Devi Nambiar & Or. V T. C. Sidhan*, (2004) 2 SCC 321.

43 *Pentakota Satyanarayana and Ors. v Pentakota Seetharatnam and Ors.*, (2005) 8 SCC 67.

44 Recompiled record, Qn. 48, p. 188.

to the grant of probate, Rajni has not come forward to support this opposition. Vijay and Vrushali filed an Affidavit of Evidence but did not participate in the trial.

31. There are very many aspects on which the Plaintiff's testimony is unshaken: that Vasundhara, Sarpotdar, Dr Khandekar and the two attesting witnesses were all present together when the document was brought into existence; that Radhabai affixed her left-hand thumb impression in the presence Sanghavi and Shridhar; and that both the attesting witnesses signed it at the same time. The crucial requirements of Section 63 are fully met, and it is difficult to see how an exclusion of some of the legal heirs of the deceased can dislodge what appears to me to be sufficient evidence of due execution.

32. The final averment of the Defendants is that the Will has been forged, or in the alternative, fabricated. No particulars have been shown to prove this.

33. Although we do not have the evidence of the attesting witnesses, the Plaintiff has brought on record the evidence of two other people who were present at the time of execution. This is in accordance with the requirements of Section 68 and 69 the Indian Evidence Act, 1872.

34. Section 68 mandates that a document requiring attestation be proved by at least one of the attesting witnesses *if there be an attesting witness alive*. In the present case, since neither of the

attesting witnesses is alive, Section 69 ensues. Section 69 clarifies that where no attesting witness is found, the document may be proved by a person who can testify that the signatures of the testatrix and at least one of the attesting witnesses are in the handwriting of those people, respectively.

35. The testimonies of the Plaintiff's witnesses fulfill the requirement of Section 69. Vasundhara and Sarpotdar were present on 10th October 1975. Not only can they testify to the fact that the handwriting — in this case, thumb impression — in the Will is of the testatrix and two attesting witnesses, but they can also attest to the execution of the Will.

36. Issues Nos. 1 and 2 must be answered in the affirmative and they are. The Will is properly and validly executed and Radhabai was under no mental or physical incapacity when she made it. Therefore, Issue No. 3 is also answered in the affirmative.

37. The Suit is decreed. Probate is directed to be issued expeditiously. Drawn up decree is dispensed with. No costs. Original documents to be returned to the parties upon these being substituted with the photocopies authenticated as true by their Advocates in accordance with Rule 306 of the Bombay High Court (Original Side) Rules.

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

39. Mr Saraf applies for a stay of the operation of this order for a period of four weeks from today. The issuance of probate is stayed for four weeks.

(G.S. PATEL, J.)