

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
TESTAMENTARY SUIT NO. 71 OF 2010**

IN

TESTAMENTARY PETITION NO. 911 OF 2018

**1. KISHU BULCHAND RAMNANI ALIAS
KISHIN B RAMNANI**

**2. PADMA KISHU RAMNANI ALIAS
PADMA K RAMNANI**
Both Hindu, inhabitants of Mumbai,
Both residing at 53, Cairnhill Road, 17/02,
Cairnhill Plaza, Singapur – 229664 and also
residing at Flat No. 22, Anand Niwas, A-
Road, Churchgate, Mumbai 400 020, being
the Legatees named in the Will of the
Deceased above named.

... PLAINTIFFS

~ VERSUS ~

SHARMILA RAMNANI,
having his address at Montana Apartments,
Plot No. 104, Road No.4, Scheme-6,
Matunaga, Mumbai 400 019.

... DEFENDANT

APPEARANCES

FOR THE PLAINTIFFS **Mr Rohan Cama, with Ms Jesal Shah &
Ms Jyoti Shah, i/b Daru Shah & Co.**

FOR THE DEFENDANT **Mr Rajesh P Chheda, with Mr Sagar
Gala.**

CORAM : G.S.Patel, J.
DATED : 25th January 2019

ORAL JUDGMENT:

1. The Petition seeks Letters of Administration with Will annexed. The Will in question is of 8th July 2005.¹ The testator, Vashi Bulchand Ramnani (“**the deceased**”; “**the testator**”; “**Mr Ramnani**”) died in Mumbai on 24th February 2006. He was married to one Monica (*née* Padma Parmanand Uttamchandani). They divorced in 2000. The four heirs named in the Petition are the three daughters and son of the deceased and Monica. There is some question sought to be raised about service of the citation on the daughter, Asha Ramnani (“**Asha**”), and one of the sons, Prakash Ramnani (“**Prakash**”), saying that they lived abroad in Canada and that the Plaintiffs knew this. This is not a question that I can possibly address because the record indicates that there is an order of 23rd July 2011 permitting substituted service by publication in local newspapers, viz., Navshakti and Free Press Journal, and there is an Affidavit of Service that establishes that it was done. This would not furnish, in my view, the sole caveatrix a line of defence. The only person who entered a Caveat and Affidavit in Support is one of the daughters, Sharmila Ramnani (“**Sharmila**”). On the caveat being filed, the Testamentary Petition was renumbered as a suit and taken to trial.

1 Exhibit “P6”, compilation page 125.

2. Parties led evidence after issues were framed. The Plaintiffs led the evidence of three witnesses, the two attesting witnesses and a notary. The Defendant led her own evidence.

3. Before I turn to the Will, a brief summary of the Affidavit in Support of the Caveat filed by Sharmila, which runs like this. Paragraphs 1 to 7 contain no specific challenges to the Will itself. It is in paragraph 8 that Sharmila says that the Will is unnatural since none of the deceased children received anything under the Will. In paragraph 9 she says the Will is not registered, but this is no ground. Paragraph 10 then says in general terms that the Will is not genuine. In paragraph 11, Sharmila says that there is no certificate of a medical practitioner to the state of mind of the deceased. In paragraph 12, the assertion is that the testator signed twice on the Will and the two signatures differ, and that this is, therefore, suspicious. Paragraph 13 enlarges on the contention regarding the Will being unnatural by saying that the testator chose his brother and sister-in-law as legatees rather than his direct descendants i.e. his four children.

4. Moving slightly ahead in the chronology, I believe I should make reference to my order of 16th December 2016 simply because this has a bearing on how the trial later unfolded. In her Affidavit of Evidence Sharmila said very many things that were not supported by any pleadings in her Affidavit in Support of the Caveat. Principally, she alleged that the Will was forged. As we seen she took no plea of forgery in her Affidavit in Support. She then said, quite unfortunately, that the testator, her own father, was “a habitual drunkard”, and that towards the end of his life he was suffering from

many illnesses. At the instance of the Plaintiffs on 16th December 2016, I ordered those portions of the Evidence Affidavit to be redacted and the trial then proceeded on that basis. The redacted portions are marked in the original Evidence Affidavit.

5. On the rival pleadings issues were framed on 22nd July 2013 (RD Dhanuka J). Three issues were framed. These are set out below with my answers against each.

Sr.No.	Issues	Findings
1.	Whether Plaintiffs prove that the Will is genuine and properly executed?	Yes
2.	Whether the Defendant proves that the Petition is misconceived and not tenable in law?	No
3.	Whether the Defendant proves that the Will is an unnatural Will and, therefore, liable to be set aside?	No

6. As to the Will itself (I am looking at the document that was marked in evidence, the original of which is lodged in our Registry), it is a simple one-page typewritten Will. There are no handwritten corrections in the text. The Will says that the deceased owned fixed deposits, bonds, bank balances and a 50% share (one that is agreed was undivided) in an immovable property called Anand Niwas, A Road, Mumbai 400 020. The principal bequest is in the last paragraph of this Will by which the testator says that his entire property after paying for funeral and other expenses was to be divided equally between his brother Kishin, 1st Plaintiff and his wife Padma, 2nd Plaintiff. Below this we see the usual execution clause. Then there are the names of the two witnesses. The first of these is one Dinesh Dalamal (“**Mr Dalamal**”) giving the name of his company and its address, all typewritten. The second attesting

witness was one Ramesh Harjani (“**Mr Harjani**”), also a resident of Anand Niwas at Churchgate. The signatures of the two attesting witnesses appear against their names to the right. But against the execution clause we see that the testator signed twice. There are in fact two physical signatures one below the other. I note this at the forefront because one of the principal defences by Mr Chheda for the Defendant has been that the neither of these signatures matches the signature of the deceased on a very old passport of 1960 that came to be marked in evidence. He has also submitted that the two signatures are in themselves suspicious.

7. As I noted earlier, the Plaintiffs led the evidence of three witnesses while the Defendant led her own evidence.

Re: Issue No. 1:

8. It is settled that the initial burden of proof of a Will in its solemn form lies on the person propounding the Will. This means in terms of the Succession Act that it is for the Plaintiff to show that the testator was a person capable of making a testamentary dispossession, viz., that he was an adult and of sound and disposing state of mind, memory and understanding and that he was not coerced into making the Will nor was it obtained by importunity. The second aspect brings us within the frame of Section 63(c) of the Succession Act and here the Plaintiffs must show that the essential requirements were met. These are, simply stated, that the testator signed the Will in the presence of two witnesses both of whom saw him do so and witnessed his execution; and in an acknowledgement

of their so witnessing it, affixed their own signatures to it. Both witnesses need not have been present at the same time.

9. With this, let us turn to a consideration of the evidence that the parties led. PW1 was the first attesting witness Mr Dalamal. He was the attesting witness who filed an Affidavit in Support of the Petition.² He then filed an Evidence Affidavit dated 13th September 2013. At that time he was 38 years old. In paragraph 2 PW1 said that the deceased and Monica divorced by mutual consent on 22nd December 2000. By then, all four children were adults. Paragraph 3 onwards deal with the actual execution and PW1 says that in June 2005 Mr Ramnani contacted him and asked him to come to his residence. There, the testator told PW1 that he wanted to make a Will. He introduced PW1 to Mr Harjani, PW2, a neighbour. The deceased also said that he desired his Will to be notarised and had made arrangements with the Notary Public, one Dhirendra Shah (“**Mr Shah**”), whose later give evidence as PW2. That appointment has apparently already set for 8th July 2005 and the Will was ready by that time. PW1 was given Mr Shah’s address at Picket Road, Mumbai near the Small Causes Court. PW1 then says that on 8th July 2005 he drove to the deceased’s residence at Anand Niwas. He collected both the deceased and the second attesting witness Mr Harjani. In paragraph 4 he says that the deceased was in good health both mentally and physically and moved about on his own. The three reached Mr Shah’s office at Picket Road at about 3.00 pm that afternoon. There, Mr Ramnani introduced PW1 and Mr Harjani to Mr Shah. Then PW1 says that Mr Ramnani put his signature on the one page Will in the presence of all three i.e.

2 Page 22 to 25 of the recompiled record

himself, Mr Harjani and Mr Shah. What follows is important for this is now an explanation about the second signature on the Will. PW1 says that since the first signature placed by the deceased was “not very clear” he put his signature once more on the Will below his first signature. It is after this, PW1 says that he put his own signature against his name and address and Mr Harjani followed suit, signing the Will against his typewritten name and address. There is once again an assertion of Mr Ramnani’s fitness or purpose and then PW1 says that Mr Shah asked Mr Ramnani to sign in his register. He then claims that Mr Shah affixed the notarial stamps, seals and wrote Sr. No. 77 and the date of execution of the Will, 8th July 2005 in his own handwriting.

10. Paragraph 5 of this Affidavit at page 43 is crucial. It directly addresses the allegation made in the Affidavit in Support of the Caveat where Sharmila says that the Will is unnatural. Here PW1 says that since he was a relative he knew that Sharmila and her siblings had not maintained any contact with the deceased both before and after his divorce. PW1 says that the deceased himself told him that his children never visited him or enquire about his well being and that there was no closeness or bond between them and his children, and that he managed his affairs himself. How are they related? The answer to this is in paragraph 2 and I find no dispute about it. Here PW1 says that his own grandfather one Wadhmal Dalamal Ramnani and the father of the deceased Bulchand Ramnani were paternal cousins.

11. I have noted this because the only cross-examination of PW1 that I am able to find on this aspect of the matter is in Q 16 in ross-

examination at page 55 where this paragraph were shown to PW1 and it was simply put to him that his statements were not to his personal knowledge were false and were incorrect. PW1 entirely denied this suggestion and reaffirms what he has said in paragraph 5 of his Affidavit in Support. There is simply no further cross-examination on this at all.

12. This is of some consequence, as we shall see, because the legal concept of what constitutes an unnatural bequest is quite different from what Mr Chheda submits. If a relative in the family, therefore, went to the extent — which he need not really have done — of demonstrating or asserting that there was no affinity between the deceased and his lineal descendants, then obviously it was for the Defendant to show otherwise by some affirmative evidence. In any case, the burden of proof to show that the Will was unnatural was always on the Defendant. I will return to this when considering issue no.2 separately hereafter. I have only placed it here as part of the chronological narrative.

13. PW1 then goes on to say that on 24th February 2006, the 1st Petitioner called him from Singapore and informed him of Mr Ramnani's demise. Later, the 1st Petitioner came to Mumbai from Singapore. PW1 and the 1st Petitioner went to the hospital where Mr Ramnani had been hospitalised prior to his demise. In paragraph 7 PW1 says that none of the deceased's children visited either the hospital or the crematorium. There is absolutely no cross-examination on this aspect of the matter.

14. Paragraph 8 of the Affidavit in Support deals with the deceased's half-share in the Anand Niwas property. It also deals with the custody of the original documents. Not much will turn on this. In paragraph 9 PW1 says that in May 2008 the Petitioner told him that Sharmila and one of her sisters, Hema, had filed a Cooperative Court dispute for a declaration in respect of the Anand Niwas flat. He says he recommended a lawyer. That dispute was ultimately dismissed. It is simply a matter of record.

15. The cross-examination of PW1 on the limited question of due execution is inconclusive. He was asked whether a medical certificate was produced.³ But that in itself will not establish a lack of soundness of mind particularly in light of PW1 remaining testimony. Indeed PW1 accepted that he had not relied on a medical certificate and then, despite the order striking the evidence and despite there being no foundational pleading, a case was put to PW1 that the deceased was a habitual drunkard. PW1 countered this by saying it was wholly incorrect. There followed another question, again wholly unsupported and meaningless in itself where the Defendant put it to PW1 that the deceased was "semi lunatic" (and I do not even pretend to understand what, if anything, this is supposed to mean), and that he was under treatment for these "lunacy problems". There is no such pleading. But when a Defendant puts a case like this she assumes the burden of proving it and of this proof there is no sign whatsoever.

3 Questions 56 to 59, page 55

16. The cross-examination on commission continued for some time but throughout I find no successful challenge to PW1's narrative about the due execution of the Will on 8th July 2005 or of the deceased's condition on that date.

17. Before we look at the evidence of PW2, the Notary, and the third player on the question of due execution. I believe it is best to go directly to the evidence of PW3, Mr Harjani, the other attesting witness. He filed an Evidence Affidavit dated 6th August 2015.⁴ While he confirms what PW1 says about the execution, he also says that he knew Mr Ramnani since they were neighbours. Mr Ramnani stayed in Flat No. 22 on the third floor of the Anand Niwas while Mr Harjani lived in Flat 16 on the second floor. He knew too of Mr Ramnani's marriage to Moncia and the later divorce. In paragraph 2 he also says that after Mr Ramnani's wife and children left him. The children maintained no contact with the deceased. He says that he has known the Petitioners for a long time and that they were closed to the deceased. In paragraphs 3, 4 and 5 he gives his version of the execution of the Will and this is entirely accords with the narrative by PW1. Paragraphs 6 and 7 speak of the death of the deceased after a hospitalisation and the filing of this Petition.

18. The cross-examination that followed before a Commissioner did not, as far as I am able to tell, address the question of due execution at all. Once again, I find that a case was placed to PW3 despite my order deleting portions of the Evidence Affidavit to the effect that the deceased was a habitual drunkard. There is no such

4 Pages 73 to 76.

foundation or pleading and no such case could ever have been put. In any case the Defendant has done nothing to prove this. When asked in Q 12 in cross-examination⁵ Whether it was correct that he had several illnesses. The answer from Mr Harjani was that he did indeed have cancer of throat. That in itself is not something that would preclude the making of a testamentary dispossession unless it be shown that at the time of the Will the ailment was so severe as to cause complete mental impairment. Q 13 in cross-examination is one that I find is put again and again in contested testamentary matters and that is whether the deceased had hypertension and depression. For good measure, lawyers in this city seem to throw in diabetes as well, as if to suggest that any of these are in themselves adequate grounds to preclude the making of a valid Will. If they do not prevent the rendering of a judgment by a Court, I do not see how they could prevent the making of a testamentary dispossession. The less said about this line of cross-examination the better.

19. In Q 58 of its cross-examination,⁶ PW3 Mr Harjani was asked to refer to an earlier Q 21.⁷ In Q 21 Mr Harjani was asked how often he had seen the deceased sign papers prior to the Will. "Several times," said Mr Harjani and when he was shown this answer again a little later in Q 58, he was, in my view quite ill-advisedly, asked in cross-examination to give instances when he had seen the deceased sign documents. Mr Harjani, PW3, obligingly provided this information by saying that he has seen the deceased signed on documents such as payment of society dues, electricity bills etc.

5 Page 82.

6 Page 95.

7 Page 83.

Now this is evidence obtained by the Defendant herself in cross-examination and it is completely destructive of the defence or opposition. It establishes that the attesting witness was familiar with the deceased's signature and was no stranger to it and this answer having been obtained in cross-examination not dislodged thereafter, any case the Defendant may have had that the signature on the Will is not of the deceased must necessarily fail.

20. Returning to the question of cancer there was a faint-hearted attempt to say that Mr Ramnani was unable to function but PW3 repelled this emphatically by saying that he is able to speak.

21. Q 22 then went further afield, and again without any basis whatsoever, suggested Parkinsons as a reason for impairment. This again was answered as being incorrect. Q 42 to Q 44 are emphasized by Mr Chheda and this is how they read.

42 Q. I put it to you that Mr Vashi Bulchand Ramnani did not execute any Will in your presence. What do you have to say?

Ans. No idea.

43 Q. I put it to you that you and Mr Vashi Bulchand Ramnani were not known to each other. What do you have to say?

Ans. I do not agree.

44 Q. Mr Vashi Bulchand Ramnani has never ever approached you for any purposes? Mrs Jyoti N Shah, Advocate for the Plaintiffs objects to this question on the ground that the question is vague.

Per Commissioner: The response of the witness was recorded subject to the objection and ruling thereon by the Hon'ble Court.

Ans. It is true.

22. I do not think it would be a sound approach to see these questions and answers in isolation. It is incorrect to say that the answer to Q 44 extracted above necessarily means that the entire narrative about the due execution of the Will is untrue.

23. I come now to the evidence of PW2 Mr Shah, a notary. He filed an Evidence Affidavit dated 29th January 2015 (pages 62 to 65). He sets out the circumstances in which he notarised the Will. He confirms that he checked the deceased identity and that since his signature was not clear when he first placed it that he signed the second time before the notary himself.

24. The cross-examination was brief and it was entirely inconclusive. Indeed in the manner in which it was placed it actually reaffirmed the Plaintiffs case rather than dislodging it. I think it is best to reproduce all 16 questions of that cross-examination.

- 1 **Q.** For how many years have you been a Notary?
 Ans. Since 1984.
- 2 **Q.** Who brought the Will to you for notarization?
 Ans. Mr Vashi Bulchand Ramnani himself came to me with the Will.
- 3 **Q.** Did you notarize the Will when Mr Ramnani brought it to you?
 Ans. Yes.
- 4 **Q.** Where did Mr Ramnani contact you for this notarization?
 Ans. In my office at the Picket Road at the address given in my Evidence Affidavit.
- 5 **Q.** Was he accompanied by any witnesses when he came to you?
 Ans. Yes

- 6 **Q.** Do you remember the names of the two witness who accompanied Mr Ramnani?
- Ans.** The names of the witnesses are those given in paragraph 3 of my Evidence Affidavit, i.e., Mr Dinesh Dalamal and Mr Ramesh Harjani.
- 7 **Q.** At the time of notarization of the Will did you verify Mr Ramnani's signature?
- Ans.** He signed the Will in my presence.
- 8 **Q.** Did the notarial stamp bear your name, validity period, licence registration number and area?
- Ans.** Yes.
- 9 **Q.** (Shown "P6" being the original Will in question.)
Do you still maintain after seeing the original Will that the notarial stamp with your name, validity period and licence registration number and area are all mentioned?
- Ans.** It shows the serial number, date and my address.
- 10 **Q.** I put it to you that there is no seal affixed on the Will as required by the law in force at that time. Would you agree?
- Ans.** I did not know that a seal was required to be placed.
- 11 **Q.** I put it to you that the Will was executed earlier and not in your presence?
- Ans.** That is not true.
- 12 **Q.** I put it to you that neither the deceased nor the witnesses signed in your presence?
- Ans.** That is not correct.
- 13 **Q.** I put it to you that the deceased was not in a sound state of mind when he executed the Will?
- Ans.** That is not true.
- 14 **Q.** I put it to you that you have not obtained the signatures of the witnesses in your notarial register?
- Ans.** It is not necessary to do so.
- 15 **Q.** I put it to you that you have come here to depose falsely?
- Ans.** That is absolutely untrue.

16 Q. I put it to you that the said Will was not duly notarised as required by law?

Ans. That is not correct.

25. The difficulty with placing questions in this fashion is that the questions themselves posit an acceptance of the existence and the execution of the Will. Q11 in particular is most peculiar. Not only is there no such case pleaded, but it is difficult to understand what the Defendant intended by putting it to the notary that the Will “was executed earlier and not in” his presence. This is an admission of execution of the Will and the only dispute being raised is about the presence of the notary who was not himself an attesting witness to the Will. Again in answer to Q7 the notary confirmed that the Will was in fact signed in his presence and there was no follow up question or cross-examination to dislodge this answer.

26. The Defendant herself was not present at the time of execution of the Will. Her case on due execution can only be established through cross-examination. There is nothing in the cross-examination that was conducted on her behalf that would lead to the conclusion that the due execution of the Will was not proved let alone disproved.

27. The first issue is answered in the affirmative. The Will is proved in its solemn form.

Re: Issue No.2:

28. Despite the finding returned on issue no.1, it is always open to the Defendant to show that, whether duly executed or not, the Will failed on any of the recognized grounds in law including that it is unnatural. But what does this mean in law? I believe this must be addressed first rather than allowing a digressive debate. Mr Cama for the Plaintiffs quite correctly relies on the decision of the Supreme Court in *Ramabai Padmakar Patil v Rukminibai Vishnu Vekhande & Ors*⁸ and in particular paragraph 8 which says that the whole purpose of a Will is to disrupt or alter the ordinary line of succession. Were it otherwise, no Will would ever been necessary. The mere exclusion of a natural heir or the grant of a less than a equal share is not in itself a suspicious circumstance. It is true that it is for the propounder of a Will to remove all suspicion surrounding a Will. But this suspicion must, as the Supreme Court says, be real, germane and valid, and not the fantasy of a doubting mind.

29. With this as the legal position (and this is a consistent line of a authority from the Supreme Court) what is it that the Defendant has been able to bring forward? Mr Chheda places his case by suggesting that the Will or its propounder must show why the brother and sister-in-law were preferred over the children. This inverts the legal requirement. There is no such governing principle. It is the Defendant who raised the plea that the Will is unnatural. This does not mean that it is sufficient for the Defendant to show that she was the daughter and therefore had to receive necessarily a share in the

8 (2003) 8 SCC 537.

estate under a Will. She must go further. She must demonstrate that between her and her father there existed right up to the time of the Will a bond of such affinity, affection and closeness that her exclusion from the Will could not but be suspicious. That affinity and closeness must be demonstrated and it is never sufficient to merely allege it. To put it somewhat more brutally: paternity is not proof of affinity even between father and daughter. This is not a test of paternity. It is a test of affinity and the two are very different things. On this aspect of the matter, Mr Chheda says that since the children were living in the premises until the year 2000 that is sufficient proof. But as we have seen, the questions put to PW1 on his personal knowledge (and we will remember that he was a relative of the deceased) about the lack of closeness between father and children was never controverted. Mr Chheda submits on the basis of Q 44 & Q 45 of the cross-examination of his own client by the Plaintiff that till the year 2000 the four children lived in Anand Niwas. Possibly so; but what of it? There is evidence to indicate that for the longest time, possibly since 1960, the deceased lived usually in Hong Kong and only visited India periodically. His children lived in Anand Niwas. He divorced Monica in 2000. She and the children left the Anand Niwas premises and though there is some lack of clarity about whether they left in 2000 or in 2006,⁹ this makes little difference. There is an acceptance by the Defendant in cross-examination that she, her mother and younger sister did in fact leave this premises at the very latest by 2006. The Will itself is of 8th July 2005. This makes all the difference. She must therefore be able to show that in those few years around the Will, she and her father was

9 Q 50 page 115.

so close that there was no occasion for him to have cut her out of his Will.

30. Q 57 to Q 68 are emphasized by Mr Chheda and these are in regard to a passport that the Defendant produced and that came to be marked as Exhibit “D1”¹⁰. The difficulty with producing this is that it really takes us nowhere. The passport is of 1960. If it is meant to show a discrepancy in the signature, that cannot be a matter of an idle comparison by a Court. No evidence was led by the Defendant to compare the signatures and in any case any such report could necessarily have to account for natural variations spanning nearly half a century between 1960 and 2005. The mere continuance of the Defendant for sometime in the Anand Niwas premises would not on its own demonstrate closeness and, as to the deceased mental condition and state of health, we have already seen that there is no evidence that the Defendant was able to marshal.

31. In this view of the matter, the Suit will have to be decreed. The Petition is allowed. The Registry will proceed with the grant of Letters of Administration with Will annexed without insisting on further proof of service of citations or other compliances. The grant is to be issued as expeditiously as possible and, in any case, within four weeks from the date of uploading of this order.

32. Mr Chheda requests for a stay of this order. The operative portion of this order is stayed for a period of four weeks from today.

10 Page 151.

33. No costs.

(G.S. PATEL, J.)