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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
TESTAMENTARY SUIT NO. 35 OF 2013
IN
TESTAMENTARY PETITION NO. 1390 OF 2011**

Kullprit Singh Sahani S/o Manjit Singh Sahani ...Plaintiff
Versus
Ramesh Tulsidar Ahuja ...Defendant

Mr Mahesh Menon, i/b Mahesh Menon & Co., for the Plaintiff.
Mr BA Dilima, i/b Dilima & Associates, for the Defendant.

CORAM: G.S. PATEL, J
DATED: 30th January 2018

PC:-

1. This is one of those cases that cries out for a Court's immediate intervention. The reasons are many. The first is that parties should not needlessly have to expend time, energy and money in fruitless litigation. The second is the imperative to save the Court's time. The third is that this litigation has proceeded in the teeth of law that has been settled for nearly a century. Time and again this Court, the Supreme Court, the Privy Council and other High Courts have held that testamentary proceedings do not determine questions of title. A Testamentary Court is not a Civil Court. All questions of title are to be determined only in civil

proceedings irrespective of the outcome of the testamentary litigation. A person is not robbed of his title to the premises or property because probate is obtained in a testamentary dispute.

2. At the cost of repetition: a petition for probate does not address itself to ownership of property. It addresses itself to — and only to — proof of the Will in its solemn form, i.e. whether it is established that the Will was duly executed by the Testator and attested by at least two witnesses as required by law, and satisfaction of the Court that the making of the Will is not vitiated by any of the restrictions to be found in the Indian Succession Act 1925. That is the whole of it. There is nothing further that engages the Court when it comes to title or right to any property.

3. There is no dispute that the deceased Murlidhar Tulsidas Ahuja was survived by his widow Indu, a son named Kiran and a daughter named Reena, now married. His brother Ramesh was not his heir on intestacy under any provision of the Hindu Succession Act or the Indian Succession Act. Since Murlidhar left Class I heirs, the brother, a Class II heir, would stand excluded. I am unable to understand why the brother's name was included in the Petition or why he was served with a citation. This was evidently done by the executor, an outsider, and it is perhaps a case of ill-advised enthusiasm rather than strict conformity with the law. The brother says, for his part, that the Will purports to make bequest of property that partly belongs to him but was not exclusively the property of the Testator and could not have been the subject matter of a bequest. This, as I have noted, is not something that is ever decided in a testamentary proceeding. Upon receiving probate, the executor

cannot claim, merely by virtue of probate, a higher or better title than the deceased could have had in his lifetime. Should he attempt to do so, he will necessarily have to adopt civil proceedings. Alternatively, those against whom the executor-Petitioner mounts such a claim would be required to file an appropriate civil proceeding in defence to their title.

4. All questions of title in respect of all properties contained in the Will are expressly left open for determination in appropriate civil proceedings.

5. With this clarification, the Caveat is dismissed as withdrawn.

6. There is, therefore, no surviving challenge to the Will in question.

7. The Suit need not proceed as a contested action. The Petition for probate is now to proceed departmentally. Probate to be issued on a priority basis.

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

(G. S. PATEL, J)