

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
TESTAMENTARY PETITION NO. 749 OF 2017**

Ramchand Bheroomal Hemrajani ...Deceased
And
Kanchan Kriplani through constituted attorney of
Jyoti R Hemrajani & Anr ...Petitioners

**WITH
TESTAMENTARY PETITION NO. 785 OF 2016
IN
TESTAMENTARY SUIT NO. 6 OF 2018**

Rajkumar B Hemrajani ...Petitioner
Versus
Jyoti R Hemrajani ...Caveatrix

Mr Rohaan Cama, *with Mr Shanay Shah, Ms Chhaya Asher, Ms Namrata Shah, i/b M/s K Ashar & Company, for the Petitioners in Testamentary Petition No. 749 of 2017.*

Mr Vijay B Mishra, *for Caveatrix in Testamentary Petition No. 749 of 2017 & Petitioner in Testamentary Petition No. 785 of 2016*

CORAM: G.S. PATEL, J
DATED: 21st March 2018

PC:-

1. The Petition is for Letters of Administration with an authenticated copy of the Will annexed. The Petition is brought by the constituted attorney of the widow, Jyoti, and daughter, Sapna, of the deceased Ramchand Bheroomal Hemrajani, who died in Hong Kong on 16th December 2015, leaving a Will executed in Hong Kong on 17th June 2010. The High Court of the Hong Kong Special Administrative Region, Court of First Instance granted Probate of this Will to the Petitioner on 16th November 2016.

2. The Petitioner then applied under Section 228 for a re-sealing of the Probate in this Court. The registry has declined to re-seal the Probate and to issue the grant on the limited ground that the deceased's brother has filed a Testamentary Petition No.785 of 2016 propounding an *earlier* Will of 24th May 1995. The present Petitioners have entered a Caveat in that testamentary suit pointing out that they have already received Probate to the later Will of 17th June 2010. Quite evidently, Testamentary Petition No. 785 of 2016, though now converted into a Testamentary Suit, will have to be dismissed. The reason is self-evident. There cannot be two grants of Probate in respect of the two Wills of the same deceased, one later and one earlier. The later Will, once proved, operate as a revocation of the earlier Will. There can be no controversy over this.

3. I understand the submission on behalf of the Respondent-brother to be that there is some property to which the deceased did not have title. At the cost of repetition, this is not a question that can ever be decided by a Probate Court. If the brother believes that he has title to any property, he must adopt appropriate proceedings in a Civil Court of competent jurisdiction to establish that title. The

grant of Probate will neither convey nor confer title to any property on any person. Therefore, the Respondent-brother is at liberty to adopt such proceedings as he is advised in regard to any particular property and all contentions in that behalf are kept open. That action or proceeding will remain unaffected by the grant of Probate or Letters of Administration with Will annexed.

4. The Registry will proceed with the grant sought in the present Testamentary Petition No. 749 of 2017. Testamentary Petition No. 785 of 2016 and its accompanying Testamentary Suit shall stand dismissed, subject to the aforesaid observation.

(G. S. PATEL, J)